

BID TALLY SHEET

Bid: 6043 MAPO Athletic Field Paint
 Date: March 29, 2007 Time: 3:00 P.M.

BIDDER	WHITE	YELLOW, RED, GREEN, BLUE, ORANGE			
Kwal Howells	3.28.	4.64.			
Sherwin Williams	6.89.	13.69.			
ALL STAR Sports	3.75.	7.95.			
Oldwestern Paint Co	1-49 pairs 8.74 50¢ 7.95.	11.65.			
Dionisi Manufacturing		1' NO Bid'			



**CITY OF FORT COLLINS
INVITATION TO BID**

BID 6043 MAPO-Athletic Field Paint

BID OPENING: 3:00 p.m. (our clock), March 29, 2007

Sealed bids will be received and publicly opened at the office of the Director of Purchasing and Risk Management, PO Box 580, 215 North Mason St., 2nd floor, Fort Collins, Colorado 80522, at the time and date noted on the bid proposal and/or contract documents. If delivered, they are to be sent to 215 North Mason Street, 2nd Floor, Fort Collins, Colorado 80524. If mailed, the address is P.O. Box 580, Fort Collins, 80522-0580.

The Agencies including Cities of Aurora, Englewood, Fort Collins, Loveland, Longmont, Brighton, and School Districts of Cherry Creek, Adams County District 50, Denver and Districts of Foothills Park and Recreation and acting collectively through their authorized procurement officials respectfully request separate sealed Bids for the purchase of athletic field paint. This is a one year contract and the Agreement may be extended for additional one year periods not to exceed four (4) additional one year periods.

Bids must be received at the Purchasing Office prior to 3:00 p.m. (our clock), March 29, 2007, 2007.

Questions concerning the scope of the bid should be directed to Project Manager Roger Daigle, (970) 221-6355.

Questions regarding bid submittal or process should be directed to John D. Stephen, CPPO, CPPB, Senior Buyer (970) 221-6777.

A copy of the Bid may be obtained as follows:

1. Download the Bid from the Purchasing Webpage, Current Bids page, at: <https://secure2.fcgov.com/bsol/login.jsp>.
2. Come by Purchasing at 215 North Mason St., 2nd floor, Fort Collins, and request a copy of the Bid.

Special Instructions

All bids must be properly signed by an authorized representative of the company with the legal capacity to bind the company to the agreement. Bids may be withdrawn up to the date and hour set for closing. Once bids have been accepted by the City and closing has occurred, failure to enter into contract or honor the purchase order will be cause for removal of supplier's name from the City of Fort Collins' bidders list for a period of twelve months from the date of the opening. The City may also pursue any remedies available at law or in equity. Bid prices must be held firm for a period of forty-five (45) days after bid openings.

Submission of a bid is deemed as acceptance of all terms, conditions and specifications contained in the City's specifications initially provided to the bidder. Any proposed modification must be accepted in writing by the City prior to award of the bid.

Only bids properly received by the Purchasing Office will be accepted. All bids should be clearly identified by the bid number and bid name contained in the bid proposal.

No proposal will be accepted from, or any purchase order awarded, to any person, firm or corporation in default on any obligation to the City.

Bids must be furnished exclusive of any federal excise tax, wherever applicable.

Bidders must be properly licensed and secure necessary permits wherever applicable.

Bidders not responding to this bid will be removed from our automated vendor listing for the subject commodities.

The City may elect where applicable, to award bids on an individual item/group basis or on a total bid basis, whichever is most beneficial to the City. The City reserves the right to accept or reject any and all bids, and to waive any irregularities or informalities.

Sales prohibited/conflict of interest: no officer, employee, or member of City Council, shall have a financial interest in the sale to the City of any real or personal property, equipment, material, supplies or services where such officer or employee exercises directly or indirectly any decision-making authority concerning such sale or any supervisory authority over the services to be rendered.

This rule also applies to subcontracts with the City. Soliciting or accepting any gift, gratuity, favor, entertainment, kickback or any items of monetary value from any person who has or is seeking to do business with the City of Fort Collins is prohibited.

Freight terms: unless otherwise noted, all freight is F.O.B. Destination, Freight Prepaid. All freight charges must be included in prices submitted on proposal.

Discounts: any discounts allowed for prompt payment, etc., must be reflected in bid figures and not entered as separate pricing on the proposal form.

Purchasing restrictions: your authorized signature of this bid assures your firm's compliance with the City's purchasing restrictions. A copy of the resolutions is available for review in the Purchasing Office or the City Clerk's Office. Request Resolution 91-121 for cement restrictions.

Collusive or sham bids: any bid deemed to be collusive or a sham bid will be rejected and reported to authorities as such. Your authorized signature of this bid assures that such bid is genuine and is not a collusive or sham bid.

Bid results: for information regarding results for individual bids send a self-addressed, self-stamped envelope and a bid tally will be mailed to you. Bid results will be posted in our office 7 days after the bid opening.

James B. O'Neill II, CPPO, FNIGP
Director of Purchasing and Risk Management



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James B. O'Neill II, CPPO, FNIGP
Director of Purchasing and Risk Management

BID 6043 MAPO-Athletic Field Paint

I. INSTRUCTIONS TO BIDDERS

1. BID OPENING AND AWARD

Bids will be examined promptly after opening, and an abstract will be provided upon request. (Supply a self addressed, stamped envelope with your Bid.) NO BID RESULTS WILL BE GIVEN OVER THE TELEPHONE. No Bid may be withdrawn for a period of sixty (60) calendar days of the Bid Opening date.

2. AGENCIES

The Host Agency is the Agency who is facilitating this Bid. Agencies is defined as the Agencies participating in the Bid.

3. BIDDER QUALIFICATIONS

No Bid shall be accepted from and no contract will be awarded to any person, firm or corporation that is in arrears to any participating Agency, upon debt or contract that is a defaulter, as surety or otherwise, upon any obligation to the Agencies or that is deemed irresponsible or unreliable by the individual Agencies. If requested, Bidders shall be required to submit satisfactory evidence that they have a practical knowledge of the particular supply/service Bid upon and that they have the necessary financial resources to provide the proposed supply/service called for as described in the attached Technical Specifications.

4. BID FORM

Each Bidder must submit an original Bid and additional copies as required on the forms attached. The Bidder shall sign his Bid correctly, and the Bid may be rejected if it shows any omissions, alterations of the form, additions not called for, conditional Bid, or any irregularities of any kind.

In case of a discrepancy between the unit price and the extended price, the unit price shall prevail.

5. SPECIFICATION DEVIATIONS BY THE BIDDER

Any deviation from this specification MUST be noted in detail, and submitted in writing on the Bid Form. Completed specifications should be attached for any substitutions offered, or when amplifications are desirable or necessary. The absence of the specification deviation statement and accompanying specifications, will hold the Bidder strictly accountable to the specifications as written herein. Failure to submit this document of specification deviation, if applicable, shall be grounds for rejection of the item when offered for delivery. If specifications or descriptive papers are submitted with Bids, the Bidder's name should be clearly shown on each document.

6. BIDDER REPRESENTATION

Each Bidder must sign the Bid with their usual signature and shall give their full business address on the form provided in this Bid. Bids by partnerships shall be signed with the partnership name by one of the members or by an authorized representative. Bids by corporations shall be signed with the name of the corporation followed by the signature and designation of the President, Secretary, or other person authorized to bind it in the matter and shall have the corporate seal affixed thereto.

7. BROCHURES

Bids shall include adequate brochures, latest printed specifications and advertising literature, describing the product offered in such fashion as to permit ready comparison with our specifications on any item-by-item basis where applicable.

8. SPECIFICATION CHANGES, ADDITIONS AND DELETIONS

All changes in Bid documents shall be through written addendum and furnished to all Bidders. Verbal information obtained otherwise will NOT be considered in awarding of Bids.

9. BID CHANGES

Bids, amendments thereto, or withdrawal requests received after the time advertised for Bid Opening, will be void regardless of when they were mailed.

10. BASIS OF BID AWARD

Award of Bid shall be made to the lowest responsive, and responsible Bidder(s) meeting the specifications. The following is a partial list of the criteria that may be used in the award of this Bid.

- A. Superior quality and adherence to specifications
- B. Adequate maintenance and service
- C. Delivery and/or completion time
- D. Guarantees and Warranties
- E. Company's reputation and financial status
- F. Past experience and cost with same or similar equipment or service
- G. Anticipated future cost and experience

11. INSURANCE

For **SERVICES** requiring contractor's presence on any Agency property, the successful Bidder shall, during the term of this Agreement and until completion thereof, provide and maintain the following minimum coverages:

<u>Type of Insurance</u>	<u>Minimum Limits of Liability</u>
Standard Workers' Compensation & Employers' Liability Including Occupations Disease Coverage	Statutory in conformance with the compensation laws of the State of Colorado
Comprehensive General Liability Insurance	\$ 150,000 each person; \$1,000,000 each occurrence
Comprehensive Automobile Liability Insurance	\$ 150,000 each person; \$1,000,000 each person
Umbrella Liability Coverage	\$1 million

The successful Bidder shall effect the insurance policies in a company or companies and in a form satisfactory to the Owner. Before commencing any performance under this Agreement, successful Bidder shall deliver, to each Agency, Certificates of Insurance issued by the insurance company, and/or its duly authorized agents pertaining to the aforementioned insurance, and certifying that the policies stipulated above are in full force and effect.

All policies and/or Certificates of Insurance shall include each individual entity as an additional named insured.

Nothing herein shall be deemed or construed as a waiver of any of the protections to which the Agencies may be entitled pursuant to the Colorado Governmental Immunity Act, sections 24-10-101, C.R.S., as amended.

12. DELIVERY DATE

The delivery time, as stated in the Bid Form, shall be the time required to deliver the complete item after the receipt of the order or award of the Contract. Where multiple items appear on a Bid request, the Bidder shall, unless otherwise stated by the participating Agencies, show the delivery time for each item separately. If only a single delivery time is shown, it will be assumed to mean that all items included in the Bid can and will be delivered on or before the specified date. The Bidder agrees that the delivery will be completed in the time stated assuming that the time between the Bid Opening and the placing of the order, does not exceed the number of days so stipulated. The right is reserved to reject any Bid in which the delivery time indicated is considered sufficient to delay the operational needs for which the commodity/service is intended.

13. CASH DISCOUNTS

Cash discounts should be so stated on the Bid Form. Prices bid must, however, be based upon payment in thirty (30) days. In all cases, cash discounts will be calculated from the date of the invoice or the date of acceptance, whichever is later.

14. TIE BIDS

In the case of tie Bids, the Agencies reserve the right to make the award based on the factors previously outlined in paragraph number ten.

15. BID REJECTION OR PARTIAL ACCEPTANCE

The Agencies reserve the right to reject any or all Bids. They further reserve the right to waive technicalities and formalities in Bids, as well as to accept in whole or in part such Bid or Bids where they deem it advisable in protection of the best interests of the Agencies.

16. INVOICES

Individual purchase orders will be assigned to the successful Bidder(s) from the participating Agencies in this Bid and each is to be invoiced separately. All invoices submitted must show the respective Agency's purchase order number.

17. PAYMENTS

Payments will be made for all goods/services delivered within 30 days of receipt and acceptance of delivery.

18. MODIFICATION, ADDENDA AND INTERPRETATIONS

Any apparent inconsistencies, or any matter seeming to require explanation or interpretation, must be inquired into by the Bidder at least 72 hours (excluding weekends and holidays) prior to the time set for the Bid Opening. Any and all such interpretations or modifications will be in the form of written addenda. All addenda shall become part of the Contract Documents and shall be acknowledged and dated on the Bid Form. All requests for information should be in writing or telephoned to the Host Agency.

19. LAWS AND REGULATIONS

All applicable State of Colorado and Federal laws, City and County ordinances, licenses and regulations of all Agencies having jurisdiction shall apply to the award throughout and incorporated here by reference.

20. SUBCONTRACTING

No portion of this Bid may be subcontracted without the prior written approval by each Agency.

21. TELEGRAPHIC/ELECTRONIC BID SUBMITTAL

Telegraphic and/or Bid offers sent by electronic devices are not acceptable and will be rejected upon receipt. Proposing firms will be expected to allow adequate time for delivery of their Bid either by air freight, postal service, or other means.

22. MISCELLANEOUS

The Agencies reserve the right, either collectively or separately, to reject any and all Bids or parts thereof. The participating Agencies reserve the right to inspect vendor's facilities prior to the award of this Bid. The Agencies reserve the right, either collectively or separately, to negotiate optional items with the successful Bidder.

23. COOPERATIVE BIDDING

Other governmental agencies may be extended the opportunity to purchase off this Bid with the agreement of the successful vendor(s) and the participating MAPO Agencies. Requests for participation of other Agencies will be coordinated by the MAPO Agency hosting the Bid. The Host Agency may notify the vendor(s) and the Agency wishing to participate, in writing.

II. TERMS AND CONDITIONS

1. MODIFICATION OF AGREEMENT

No modification of award shall be binding upon any participating Agency unless made in writing and signed by authorized agents of each participating Agency.

2. WARRANTIES

Bidder warrants that all articles, materials and work will conform within applicable drawings, specifications, samples and/or other descriptions given to Agencies, and will be free from defects. Without limitation of any rights which Agencies may have by reason of any breach of warranty, goods which are not as warranted may be returned at Bidder's expense at reasonable time after delivery, for either credit or replacement, as each participating Agency may direct.

3. OVERSHIPMENTS

Material shipped in excess of quantity ordered may be returned at Bidder's expense.

4. CANCELLATION

Either party may cancel the award in the event that a petition, either voluntary or involuntary, is filed to declare the other party bankrupt or insolvent or in the event that such party makes an assignment for the benefit of creditors.

5. PATENT GUARANTEE

Bidder shall, with respect to any device or composition of Bidder's design or Bidder's standard manufacture, indemnify and hold harmless each participating Agency, its employees, officers, and agents, from costs and damage as finally determined by any court of competent jurisdiction for infringement of any United States Letters Patent, by reason of the sale of normal use of such device or composition, provided that Bidder is promptly notified of all such actual or potential infringement suits, and is given an opportunity to participate in the defense thereof by the Agencies.

6. TERMINATION OF AWARD FOR CAUSE

If, through any cause, the successful Bidder shall fail to fulfill in a timely and proper manner its obligations or if the successful vendor shall violate any of the covenants, agreements or stipulations of the award, the Agency shall thereupon have the right to terminate the award by giving written notice to the successful Bidder of such termination and specifying the effective date of termination. In that event, all finished or unfinished services, reports or other materials prepared by the successful Bidder shall, at the option of the Agency, become its property, and the successful Bidder shall be entitled to receive just, equitable compensation for any satisfactory work completed, prepared documents or materials as furnished.

Notwithstanding the above, the successful vendor shall not be relieved of liability to the Agency for damage sustained by the Agency by virtue of breach of the award by the successful vendor and the Agency may withhold any payments to the successful vendor for the purpose of set off until such time as the exact amount of damages due the Agency from the successful vendor is determined.

7. TERMINATION OF AWARD FOR CONVENIENCE

The Agency may terminate the award at any time by giving written notice to the successful vendor of such termination and specifying the effective date thereof, at least thirty (30) working days before the effective date of such termination. In that event, all finished or unfinished services, reports, material(s) prepared or furnished by the successful Bidder under the award shall at the option of each Agency become its property. If the award is terminated by each Agency as provided herein, the successful vendor will be paid an amount which bears the same ratio to the total compensation as the services actually performed or material furnished bear to the total services/materials the successful Bidder covered by the award, less payments of compensation previously made. If the award is terminated due to the fault of the successful Bidder, termination of award for cause, relative to termination shall apply.

8. ACCEPTANCE OF TERMS BY SHIPMENT

Shipment of all or any portion of the goods covered by this order shall be deemed an acceptance of the Bid upon the terms and prices set forth herein.

9. ASSIGNMENT

Bidder shall not assign this order nor any monies to become due hereunder without the prior written consent of each Agency. Any assignment or attempt at assignment made without such consent of the Agency shall be void.

10. TAXES

The Agencies are exempt from City, County, State and Federal Sales/Excise Taxes. Certificates will be issued upon request. Any appropriate taxes shall be shown as a separate item on your Bid. Bidder shall obtain all appropriate tax exemption certificates from the Agencies.

11. EQUAL OPPORTUNITY

The successful firm will agree not to refuse to hire, discharge, promote, demote, or to otherwise discriminate in matters of compensation against any person otherwise qualified solely because of race, creed, sex, national origin, ancestry or physical handicap.

12. AMERICANS WITH DISABILITIES ACT

It shall be a condition that any company, firm or corporation supplying goods or services, must be in compliance with the appropriate areas of the Americans With Disabilities Act of 1990 as enacted, and from time to time amended, and any other applicable Federal regulation. A signed, written certificate stating compliance with the Americans With Disabilities Act may be required, upon request, by any participating Agency.

13. COMMON LANGUAGE

Unless otherwise specified in this document, all words shall have a common language unless the context in which they are used clearly requires a different meaning. Words in the singular number include the plural, and in the plural include the singular. Additionally, words in the masculine gender include the feminine and the neuter, and when the sense so indicates, words of the neuter gender may refer to any gender.

14. PROPRIETARY INFORMATION

All information included in any Bid that is of a proprietary nature must be clearly marked as such. Each Agency shall be held harmless from any claims arising from the release of proprietary information not clearly designated as such by the proposing firm.

Because of the need for public accountability, the following information concerning the Bid will not be considered proprietary, even if such information is clearly marked as such: prices of Bid, non-financial information concerning compliance with specifications, guarantees and warranties.

15. COMPETITIVENESS AND INTEGRITY

The collective Agencies have assigned control of this acquisition process to the Host Agency identified in the Bid Notice of this document, to prevent biased evaluations and to preserve the competitiveness and integrity of such acquisition efforts. Offerors are to direct all communications regarding this Bid to the designated Host Agency, unless otherwise specifically noted. Attempts by offering firms to circumvent this requirement will be viewed negatively and may result in rejection of the offer of the firm found to be in non-compliance. The Host Agency may refer communications to other participating Agencies for clarification.

16. FOB POINT

The FOB point shall in all cases be destination(s). If freight is charged to any of the Agencies, the vendor will prepay and add.

17. CREDIT

If a vendor places any dollar limitations for credit extended on a purchase order, the participating Agencies will consider such limitations in the evaluation of the Bids. Any credit limits without justification may cause the Agencies to disqualify the Bid. Additionally, MAPO Agencies will not complete credit applications.

III. SPECIAL INSTRUCTIONS TO BIDDERS

A. COLLECTIVE

- BIDS MUST BE PREPARED ON THE FORMS PROVIDED HEREIN.
 - Bids shall consist of:
 - ATHLETIC FIELD LATEX PAINT
 - Each item on the bid must be bid individually, and the Agencies reserve the right to accept the lowest and best bid per item, combination of items, or all items combined, whichever is deemed in the best interest, and actual applications as appropriated by the Agencies.
 - Releases to be made as required throughout the period of the award. Consideration will be given to vendors with a favorable firm price period with no minimum release requirements.
 - Prices must remain in effect from Date of Award through March 31, 2008.
 - The quantities listed are estimates and may increase or decrease as deemed necessary by the Agencies.
 - This award may be extended for an additional 4 (four) twelve (12) month periods, contingent upon future years funding, and agreement of the Agencies.

B. INDIVIDUAL

NOTE: Each Bidder may use contacts listed below to obtain information on published specifications, quantities, special conditions or instructions, physical delivery points and/or any other elements necessary to submit a complete bid.

**DIRECT ALL QUESTIONS TO: John Stephen, CPPO, CPPB, Senior Buyer
(970) 221-6777 or E-MAIL jstephen@fcgov.com**

AGENCY: City of Aurora
CONTACT: Michelle Ratcliff
PHONE NO: (303)739-7344

AGENCY: City of Brighton
CONTACT: John Wesolowski
PHONE NO: (303)655-2086

AGENCY: City of Englewood
CONTACT: Mark Kottwitz
PHONE NO: (303) 762-2541

AGENCY: City of Fort Collins
CONTACT: Roger Daigle
PHONE NO: (970) 221-6660

AGENCY: City of Loveland
CONTACT: Mike Robinson
PHONE NO: (970)290-2012

AGENCY: City of Longmont
CONTACT: James Curtis
PHONE NO: (303) 651-8452

AGENCY: Adams County School district #50
CONTACT: Dan Monroe
PHONE NO: (720) 542-5124

AGENCY: Cherry Creek School District
CONTACT: Duane Johnson
PHONE NO: (720) 886-7300

AGENCY: Denver Public Schools
CONTACT: Ryan Harter
PHONE NO: (720) 423-3324

AGENCY: Foothills Park & Recreation District
CONTACT: Dean Johnson
PHONE NO: (303) 409-2308

IV. SPECIFICATIONS FOR FIELD MARKING LATEX PAINT

1) GENERAL

- Paint to be Acrylic Modified Vinyl Flat that is recommended for temporary marking paint for use on grass, artificial turf and gravel tracks. Paint is readily removable and will not be used where durability is required.
- Paint to contain no lead and complies with EPA's voluntary 33/50 program.
- Paint must be able to be applied by brush, roller, conventional or airless sprayer.
- Paint to be set to touch within 30 minutes and thoroughly dry within 1 hour.
- Clean up must be with water only or water with soap.
- Paint must not be allowed to freeze.
- The specification shall be considered a minimum specification.
- Minimum ingredient (or approved equal) specification is:

A.	Water	45-<60 weight percent
	Calcium Carbonate	10-<20 weight percent
	Titanium Dioxide	10-<20 weight percent
	Propylene Glycol	1-<5 weight percent
	Crystalline Silica-Quartz	.1-<5 weight percent

Approved equal

B.	(+or- 2%)	
	Pigment	47%
	TiO ₂	10 %
	Carbonate	37%
	Vehicle	53%

2) ORDERING and DELIVERY REQUIREMENTS

- Awarded vendor must deliver paint only when ordered by an agency and in quantities specified.
- Minimum paint ordered may be 10 (ten) gallons.
- Paint must be delivered in 5 gallon container.
- Delivery must be within 48 hours ARO.
- Awarded vendor must provide MSDS to each agency prior to paint delivery.

V. ESTIMATED QUANTITIES AND BID FORM

THE QUANTITIES ARE ESTIMATES ONLY. AWARD WILL BE BASED ON LOWEST, RESPONSIVE AND RESPONSIBLE PRICE PER GALLON.

<i>QUANTITY</i>	<i>COLOR</i>	<i>PRICE PER GALLON</i>
15545 GALLONS	WHITE	\$ _____
700 GALLONS	YELLOW, RED, GREEN, BLUE, ORANGE	\$ _____

SIGNATURE PAGE

The undersigned Bidder, having examined these documents, and having full knowledge of the condition under which the work described herein must be performed, hereby proposes that he will fulfill the obligations contained herein in accordance with all terms, conditions, and specifications set forth; and that he will furnish all required products and pay all incidental costs in strict conformity with these documents, for the stated prices as payment in full.

Submitting Firm: _____
(Corporation, DBA, Partnership, LLC, or PC?)

Address: _____

Telephone Number: _____

Name of Agent (print/type): _____

Title: _____

Authorized Signature: _____

Date: _____

Attest: _____

My Commission Expires: _____

CORPORATE SEAL

SERVICES AGREEMENT

THIS AGREEMENT made and entered into the day and year set forth below by and between THE CITY OF FORT COLLINS, COLORADO, a Municipal Corporation, hereinafter referred to as the "City" and _____, hereinafter referred to as "Service Provider".

WITNESSETH:

In consideration of the mutual covenants and obligations herein expressed, it is agreed by and between the parties hereto as follows:

1. Scope of Services. The Service Provider agrees to provide services in accordance with the scope of services attached hereto as Exhibit "A", consisting of _____ pages and incorporated herein by this reference.

2. Contract Period. This Agreement shall commence _____, and shall continue in full force and effect until _____, unless sooner terminated as herein provided.

3. Delay. If either party is prevented in whole or in part from performing its obligations by unforeseeable causes beyond its reasonable control and without its fault or negligence, then the party so prevented shall be excused from whatever performance is prevented by such cause. To the extent that the performance is actually prevented, the Service Provider must provide written notice to the City of such condition within fifteen (15) days from the onset of such condition.

4. Early Termination by City/Notice. Notwithstanding the time periods contained herein, the City may terminate this Agreement at any time without cause by providing written notice of termination to the Service Provider. Such notice shall be delivered at least fifteen (15) days prior to the termination date contained in said notice unless otherwise agreed in writing by the parties. All notices provided under this Agreement shall be effective when mailed, postage prepaid and sent to the following addresses:

City:
City of Fort Collins
Attn: Purchasing
PO Box 580
Fort Collins, CO 80522

Service Provider:

In the event of early termination by the City, the Service Provider shall be paid for services rendered to the date of termination, subject only to the satisfactory performance of the Service Provider's obligations under this Agreement. Such payment shall be the Service Provider's sole right and remedy for such termination.

5. Contract Sum. The City shall pay the Service provider for the performance of this Contract, subject to additions and deletions provided herein, per the attached Exhibit "A", consisting of _____ pages, and incorporated herein by this reference.

6. City Representative. The City will designate, prior to commencement of the work, its representative who shall make, within the scope of his or her authority, all necessary and proper decisions with reference to the services provided under this agreement. All requests concerning this agreement shall be directed to the City Representative.

7. Independent Service provider. The services to be performed by Service Provider are those of an independent service provider and not of an employee of the City of Fort Collins. The City shall not be responsible for withholding any portion of Service Provider's compensation hereunder for the payment of FICA, Workmen's Compensation or other taxes or benefits or for any other purpose.

8. Personal Services. It is understood that the City enters into the Agreement based on the special abilities of the Service Provider and that this Agreement shall be considered as an agreement for personal services. Accordingly, the Service Provider shall neither assign any responsibilities nor delegate any duties arising under the Agreement without the prior written consent of the City.

9. Acceptance Not Waiver. The City's approval or acceptance of, or payment for any of the services shall not be construed to operate as a waiver of any rights or benefits provided to the City under this Agreement or cause of action arising out of performance of this Agreement.

10. Warranty.

- (a) Service Provider warrants that all work performed hereunder shall be performed with the highest degree of competence and care in accordance with accepted standards for work of a similar nature.
- (b) Unless otherwise provided in the Agreement, all materials and equipment incorporated into any work shall be new and, where not specified, of the most suitable grade of their respective kinds for their intended use, and all workmanship shall be acceptable to City.
- (c) Service Provider warrants all equipment, materials, labor and other work, provided under this Agreement, except City-furnished materials, equipment and labor, against defects and nonconformances in design, materials and workmanship/workwomanship for a period beginning with the start of the work and ending twelve (12) months from and after final acceptance under the Agreement, regardless whether the same were furnished or performed by Service Provider or by any of its subcontractors of any tier. Upon receipt of written notice from City of any such defect or nonconformances, the affected item or part thereof shall be redesigned, repaired or replaced by Service Provider in a manner and at a time acceptable to City.

11. Default. Each and every term and condition hereof shall be deemed to be a material element of this Agreement. In the event either party should fail or refuse to perform according to the terms of this agreement, such party may be declared in default thereof.

12. Remedies. In the event a party has been declared in default, such defaulting party shall be allowed a period of ten (10) days within which to cure said default. In the event the default remains uncorrected, the party declaring default may elect to (a) terminate the Agreement and seek damages; (b) treat the Agreement as continuing and require specific performance; or (c) avail himself of any other remedy at law or equity. If the non-defaulting party commences legal or equitable actions against the defaulting party, the defaulting party shall be liable to the non-defaulting party for the non-defaulting party's reasonable attorney fees and costs incurred because of the default.

13. Binding Effect. This writing, together with the exhibits hereto, constitutes the entire agreement between the parties and shall be binding upon said parties, their officers, employees,

agents and assigns and shall inure to the benefit of the respective survivors, heirs, personal representatives, successors and assigns of said parties.

14. Indemnity/Insurance. a. The Service Provider agrees to indemnify and save harmless the City, its officers, agents and employees against and from any and all actions, suits, claims, demands or liability of any character whatsoever brought or asserted for injuries to or death of any person or persons, or damages to property arising out of, result from or occurring in connection with the performance of any service hereunder.

b. The Service Provider shall take all necessary precautions in performing the work hereunder to prevent injury to persons and property.

c. Without limiting any of the Service Provider's obligations hereunder, the Service Provider shall provide and maintain insurance coverage naming the City as an additional insured under this Agreement of the type and with the limits specified within Exhibit B, consisting of one (1) page, attached hereto and incorporated herein by this reference. The Service Provider before commencing services hereunder, shall deliver to the City's Director of Purchasing and Risk Management, P. O. Box 580 Fort Collins, Colorado 80522 one copy of a certificate evidencing the insurance coverage required from an insurance company acceptable to the City.

15. Entire Agreement. This Agreement, along with all Exhibits and other documents incorporated herein, shall constitute the entire Agreement of the parties. Covenants or representations not contained in this Agreement shall not be binding on the parties.

16. Law/Severability. The laws of the State of Colorado shall govern the construction interpretation, execution and enforcement of this Agreement. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Agreement.

17. Prohibition Against Employing Illegal Aliens. This paragraph shall apply to all Contractors whose performance of work under this Agreement does not involve the delivery of a specific end product other than reports that are merely incidental to the performance of said work.

Pursuant to Section 8-17.5-101, C.R.S., *et. seq.*, Contractor represents and agrees that:

- A. As of the date of this Agreement:
 - 1. Contractor does not knowingly employ or contract with an illegal alien; and
 - 2. Contractor has participated or attempted to participate in the basic pilot employment verification program created in Public Law 208, 104th Congress, as amended, and expanded in Public Law 156, 108th Congress, as amended, administered by the United States Department of Homeland Security (the "Basic Pilot Program") in order to verify that Contractor does not employ any illegal aliens.
- B. Contractor shall not knowingly employ or contract with an illegal alien to perform works under this Agreement or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.
- C. Contractor shall continue to apply to participate in the Basic Pilot Program and shall in writing verify same every three (3) calendar months thereafter, until Contractor is accepted or the public contract for services has been completed, whichever is earlier. The requirements of this section shall not be required or effective if the Basic Pilot Program is discontinued.
- D. Contractor is prohibited from using Basic Pilot Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.
- E. If Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, Contractor shall:
 - 1. Notify such subcontractor and the City within three days that Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and
 - 2. Terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to this section the subcontractor does not cease employing or contracting with the illegal alien; except that Contractor shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.
- F. Contractor shall comply with any reasonable request by the Colorado Department of Labor and Employment (the "Department") made in the course of an investigation that the Department undertakes or is undertaking pursuant to the authority established in Subsection 8-17.5-102 (5), C.R.S.

G. If Contractor violates any provision of this Agreement pertaining to the duties imposed by Subsection 8-17.5-102, C.R.S. the City may terminate this Agreement. If this Agreement is so terminated, Contractor shall be liable for actual and consequential damages to the City arising out of Contractor's violation of Subsection 8-17.5-102, C.R.S.

H. The City will notify the Office of the Secretary of State if Contractor violates this provision of this Agreement and the City terminates the Agreement for such breach.

CITY OF FORT COLLINS, COLORADO
a municipal corporation

By: _____
James B. O'Neill II, CPPO, FNIGP
Director of Purchasing and Risk Management

Date: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

Assistant City Attorney

By: _____

PRINT NAME

CORPORATE PRESIDENT OR VICE PRESIDENT

Date: _____
(Corporate Seal)

ATTEST:

CORPORATE SECRETARY

EXHIBIT A

EXHIBIT B

INSURANCE REQUIREMENTS

1. The Service Provider will provide, from insurance companies acceptable to the City, the insurance coverage designated hereinafter and pay all costs. Before commencing work under this bid, the Service Provider shall furnish the City with certificates of insurance showing the type, amount, class of operations covered, effective dates and date of expiration of policies, and containing substantially the following statement:

"The insurance evidenced by this Certificate will not be cancelled or materially altered, except after ten (10) days written notice has been received by the City of Fort Collins."

In case of the breach of any provision of the Insurance Requirements, the City, at its option, may take out and maintain, at the expense of the Service Provider, such insurance as the City may deem proper and may deduct the cost of such insurance from any monies which may be due or become due the Service Provider under this Agreement. The City, its officers, agents and employees shall be named as additional insureds on the Service Provider's general liability and automobile liability insurance policies for any claims arising out of work performed under this Agreement.

2. Insurance coverages shall be as follows:

A. Workers' Compensation & Employer's Liability. The Service Provider shall maintain during the life of this Agreement for all of the Service Provider's employees engaged in work performed under this agreement:

1. Workers' Compensation insurance with statutory limits as required by Colorado law.
2. Employer's Liability insurance with limits of \$100,000 per accident, \$500,000 disease aggregate, and \$100,000 disease each employee.

B. Commercial General & Vehicle Liability. The Service Provider shall maintain during the life of this Agreement such commercial general liability and automobile liability insurance as will provide coverage for damage claims of personal injury, including accidental death, as well as for claims for property damage, which may arise directly or indirectly from the performance of work under this Agreement. Coverage for property damage shall be on a "broad form" basis. The amount of insurance for each coverage, Commercial General and Vehicle, shall not be less than \$500,000 combined single limits for bodily injury and property damage.

In the event any work is performed by a subcontractor, the Service Provider shall be responsible for any liability directly or indirectly arising out of the work performed under this Agreement by a subcontractor, which liability is not covered by the subcontractor's insurance.