

## **AGREEMENT**

**THIS AGREEMENT** is made and entered into by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City” or “Customer”) and **C&M AIR COOLED ENGINE, INC.**, a Texas corporation whose address is 5080 Paris Street, Denver, Colorado 80239 (“Contractor”).

### **RECITALS:**

1. The City desires to obtain 474 Golf Carts (electric-283 units; gas-180 units; gas ranger-11 units) and 22 pieces of various Turf Equipment and associated equipment, and Contractor desires to provide that equipment to the City.

2. Payment for the equipment shall be financed through a separate lease-purchase agreement (the “LPA”) between the City and **BANC OF AMERICA, PUBLIC CAPITAL CORP.** (“Financer”).

### **AGREEMENT:**

For and in consideration of the agreements contained, and subject to the terms and conditions stated, in this Agreement, the parties agree as follows:

1. **FORM OF AGREEMENT.** This Agreement shall consist of the terms and conditions stated in the following numbered Articles, together with those exhibits or attachments that are referenced and incorporated in such Articles. In the event that any conflict between the terms and conditions contained in this document and those contained in any exhibits or attachments shall occur, the terms and conditions of these numbered Articles shall be controlling.

2. **COORDINATION AND LIAISON:** Contractor agrees that during the term of this Agreement it shall fully coordinate the performance of this Agreement with the City, including the Manager of Parks and Recreation (“Manager”) or the Director of Golf Operations as the Manager's designee or as otherwise directed by the City.

3. **EQUIPMENT AND WARRANTIES TO BE PROVIDED.**

A. Contractor shall provide to the City the equipment and warranties listed and described on **Exhibit A** attached hereto (hereinafter referred to as the “Equipment” and “Warranties”).

B. It is understood and agreed that the Equipment and Warranties associated with this Agreement that are being provided to the City hereunder are also routinely provided to nongovernmental customers on the same terms and conditions that were offered to the City and are agreed to by the City in this Agreement.

4. **SPECIAL PURCHASING TERMS AND CONDITIONS:** In addition to all other terms and conditions stated in this Agreement, Contractor shall comply with the following special purchasing terms and conditions:

A. Pricing is F.O.B. Denver, CO, delivered to the City facilities as set out on Exhibit A.

B. Contractor agrees to bear all risk of loss, injury, or destruction of goods and materials ordered as a result of this Agreement which occur prior to delivery to the City; and such loss, injury or destruction shall not release Contractor from any obligation hereunder. Thereafter, risk of loss shall pass to the City and Financer as further described in the LPA.

C. Contractor agrees to furnish, upon the written request of the City, any additional information needed to substantiate or clarify the design and/or performance characteristics of the Equipment.

D. Contractor Invoices must include the following:

- (1) City contract control number.
- (2) Items listed individually.
- (3) Invoice number and date.
- (4) Requesting department name and "ship to" address.
- (5) Payment terms.

5. **TERM.** The term of this Agreement shall commence upon April 21, 2014, and expire on August 1, 2014.

6. **COMPENSATION.**

A. It is understood and agreed that the City has elected to lease/purchase/finance the Equipment and Warranties through the LPA. The City and Financer have also entered into an escrow agreement that together with the LPA provide for payment to the Contractor of the maximum amount stated herein subject to the procedure set out in the LPA. The Contractor's performance under this Agreement is expressly conditioned upon funding of the escrow agreement and proper payment as set out herein.

B. The total compensation payable to Contractor for acquiring and delivering the Equipment together with the Warranties shall not exceed the amount of **ONE MILLION SIX HUNDRED SIXTY-EIGHT THOUSAND FOUR HUNDRED AND FIVE DOLLARS AND NINETY-SEVEN CENTS** (\$1,668,405.97) (the "Maximum Purchase Amount"), payable directly to the Contractor by Financer. Title to the Equipment shall vest with Financer upon payment of the Maximum Purchase Amount to Contractor. Beneficial use of the Equipment and Warranties shall remain with the City.

C. The total compensation payable by the City to Contractor under this Agreement for the Equipment and Warranties shall not exceed Zero Dollars (\$0.00) (the "Maximum Contract Amount").

D. The total obligation of the City hereunder shall be limited to funds appropriated for the purposes of this Agreement by the Council of the City and County of Denver, paid into the Treasury of the City and encumbered for the purpose of this Agreement.

E. The Contractor will forward title to the Equipment within twenty-four (24) hours of receiving payment from US Bank to:

Banc of America Public Capital Corp  
2059 Northlake Parkway, 4<sup>th</sup> Floor  
Tucker, GA 30084

7. **TIME IS OF THE ESSENCE**: The parties agree that in the performance of the terms, conditions, and requirements of this Agreement by Contractor, time is of the essence.

8. **STATUS OF CONTRACTOR**: It is understood and agreed by and between the parties that the status of Contractor shall be that of an independent contractor and it is not intended, nor shall it be construed, that Contractor or any employee or subconsultant is an employee, officer, or agent of the City under Chapter 18 of the Denver Revised Municipal Code for purposes of unemployment compensation, workers' compensation, or for any purpose whatsoever.

9. **TERMINATION OF AGREEMENT**: The City may terminate this Agreement at any time on thirty (30) days' notice if Contractor is in breach or default of the Agreement or if the underlying project or activity is canceled. The City may also by written Notice of Default to Contractor terminate the whole or part of this Agreement in the event Contractor or any of its officers or employees are convicted, plead nolo contendere, enter into a formal agreement in which they admit guilt, enter a plea of guilty, or otherwise admit culpability to criminal offenses of bribery, kickbacks, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature, in connection with Contractor's business. Contractor may terminate this Agreement upon ten (10) days prior written notice if (a) the City breaches this Agreement and the breach remains uncured for thirty (30) days after receipt of written notice of the breach, or (b) Financer fails to honor its obligations under the LPA.

10. **WHEN RIGHTS AND REMEDIES NOT WAIVED**: In no event shall any payment by the City hereunder constitute or be construed to be a waiver by the City of any breach of term, covenant, or condition or any default which may then exist on the part of Contractor, and the making of any such payment when any such breach or default shall exist shall not impair or prejudice any right or remedy available to the City with respect to such breach or default; and no assent, expressed or implied, to any breach of any one or more terms, covenants, or conditions of the Agreement shall be construed as a waiver of any succeeding or other breach.

11. **EXAMINATION OF RECORDS**: Contractor agrees that any duly authorized representative of the City, including the City Auditor or his representative, shall, until the expiration of three (3) years after the final payment under this Agreement, have access to and the right to examine any directly pertinent books, documents, papers and records of Contractor, involving transactions related to this Agreement.

12. **TAXES, PERMITS AND LICENSES**: Contractor agrees to pay promptly all taxes, excises, license fees and permit fees of whatever nature applicable to its operations, and to take out and keep current all required licenses or permits, whether municipal, state or federal, required for the conduct of its business hereunder, and further agrees not to permit any of said taxes, excises or license or permit fees to become delinquent. Contractor further agrees to furnish the City, upon request, duplicate receipts or other satisfactory evidence showing the prompt payment by Contractor of all required licenses and permits and all taxes. Contractor further agrees to pay promptly when due all bills, debts and obligations incurred by it in connection with its operations, and not to permit the same to become delinquent and to suffer no lien, mortgage, judgment or execution to be filed which will in any way impair the rights of the City under this Agreement.

13. **VENUE, GOVERNING LAW**: Each and every term, condition, or covenant herein is subject to and shall be construed in accordance with the provisions of Colorado law, any applicable federal law, the Charter of the City and County of Denver and the ordinances, regulations, and Executive Orders enacted and/or promulgated pursuant thereto. Such applicable

law, together with the Charter, Revised Municipal Code, regulations and Executive Orders of the City and County of Denver, as the same may be amended from time to time, is hereby expressly incorporated into this Agreement as if fully set out herein by this reference. Venue for any action arising hereunder shall be in the Denver County or Denver District Court in the City and County of Denver, Colorado.

14. **USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS:** Contractor, its officers, agents, and employees shall cooperate and comply with the provisions of Executive Order 94 and Attachment A thereto concerning the use, possession or sale of alcohol or drugs. Violation of these provisions or refusal to cooperate with implementation of the policy can result in the City's barring Contractor from City facilities or participating in City operations.

15. **ASSIGNMENT AND SUBCONTRACTING:**

A. Provided that the City shall have accepted the Equipment, the City shall not have the right to and shall not assert against any assignee of Financer or other registered owner of the Equipment any claim, counterclaim or other right the City may have against the Contractor.

B. None of the City's right, title and interest in any portion of the Equipment may be assigned or encumbered by the City for any reason; except that the City may sublease all or part of such Equipment if (a) such sublease is to an agency or department of, or a political subdivision of, the State or (b) the City obtains the prior written consent of Financer and an opinion of nationally recognized counsel in the area of tax exempt municipal obligations satisfactory to Financer that such subleasing will not adversely affect the exclusion of the interest components of the rental payments made to Financer under the lease-purchase transaction referenced herein from gross income for federal income purposes. Any such sublease of all or part of any Equipment shall be subject to the lease-purchase transaction with Financer and the rights of Financer in, to and under such transaction with respect to the Equipment.

C. The City is otherwise not obligated or liable under this Agreement to any party other than the Contractor named herein. Contractor understands and agrees that it shall not assign or subcontract with respect to any of its rights, benefits, obligations or duties under this Agreement except upon prior written consent and approval of the City, which consent or approval may be withheld in the absolute discretion of the City; and in the event any such assignment or subcontracting shall occur, such action shall not be construed to create any contractual relationship between the City and such assignee or subcontractor, and Contractor herein named shall remain fully responsible to the City according to the terms of this Agreement.

16. **NO DISCRIMINATION IN EMPLOYMENT:** In connection with the performance of work under this Agreement, Contractor agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and Contractor further agrees to insert the foregoing provision in all subcontracts hereunder.

17. **INSURANCE:**

A. **General Conditions:** Contractor agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. Contractor shall keep the required insurance coverage in

force at all times during the term of the Agreement, or any extension thereof, during any warranty period, and for three (3) years after termination of the Agreement. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-"VIII or better. Each policy shall contain a valid provision or endorsement requiring notification to the City in the event any of the required policies be canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices section of this Agreement. Such notice shall reference the City contract number listed on the signature page of this Agreement. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, contractor shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing the City's contract number. If any policy is in excess of a deductible or self-insured retention, the City must be notified by the Contractor. Contractor shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Contractor. The Contractor shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

**B. Proof of Insurance:** Contractor shall provide a copy of this Agreement to its insurance agent or broker. Contractor may not commence services or work relating to the Agreement prior to placement of coverage. Contractor certifies that the certificate of insurance attached as Exhibit B, preferably an ACORD certificate, complies with all insurance requirements of this Agreement. The City requests that the City's contract number be referenced on the Certificate. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Contractor's breach of this Agreement or of any of the City's rights or remedies under this Agreement. The City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.

**C. Additional Insureds:** For Commercial General Liability, and Auto Liability, Contractor and subcontractor's insurer(s) shall name the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

**D. Waiver of Subrogation:** For all coverages, Contractor's insurer shall waive subrogation rights against the City.

**E. Subcontractors and Subconsultants:** All subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of the Contractor. Contractor shall include all such subcontractors as additional insured under its policies (with the exception of Workers' Compensation) or shall ensure that all such subcontractors and subconsultants maintain the

required coverages. Contractor agrees to provide proof of insurance for all such subcontractors and subconsultants upon request by the City.

**F. Workers' Compensation/Employer's Liability Insurance:** Contractor shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims. Contractor expressly represents to the City, as a material representation upon which the City is relying in entering into this Agreement, that none of the Contractor's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the term of this Agreement, and that any such rejections previously effected, have been revoked as of the date Contractor executes this Agreement.

**G. Commercial General Liability:** Contractor shall maintain a Commercial General Liability insurance policy with limits of \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate.

**H. Business Automobile Liability:** Contractor shall maintain Business Automobile Liability with limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement

**I. Additional Provisions:**

(a) For Commercial General Liability and Excess Liability, the policies must provide the following:

- (i) That this Agreement is an Insured Contract under the policy;
- (ii) Defense costs are in excess of policy limits;
- (iii) A severability of interests or separation of insureds provision (no insured vs. insured exclusion); and
- (iv) A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City.

(b) For claims-made coverage:

- (i) The retroactive date must be on or before the contract date or the first date when any goods or services were provided to the City, whichever is earlier

(c) Contractor shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At their own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, the Contractor will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

**K. City's Insurance.** The City is self-insured pursuant to the Colorado Governmental Immunity Act, C.R.S. §24-10-101 et seq., and shall not be required to obtain any liability, fire, casualty or other insurance as a result of this Agreement. Neither shall any contrary statement contained in any attachment or exhibit hereto be construed to shift the risk of loss or liability to the City.

**18. DEFENSE AND INDEMNIFICATION:**

**A.** Contractor hereby agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Agreement (“Claims”), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of Contractor or its subcontractors either passive or active, irrespective of fault, including City’s concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.

**B.** Contractor’s duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether Claimant has filed suit on the Claim. Contractor’s duty to defend and indemnify City shall arise even if City is the only party sued by claimant and/or claimant alleges that City’s negligence or willful misconduct was the sole cause of claimant’s damages.

**C.** Contractor will defend any and all Claims which may be brought or threatened against City and will pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City’s exclusive remedy.

**D.** Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Contractor under the terms of this indemnification obligation. The Contractor shall obtain, at its own expense, any additional insurance that it deems necessary for the City’s protection.

**E.** This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

**F.** In the event of any claim to the City concerning infringement or violation of a third party’s intellectual property rights, the City will endeavor to promptly notify Contractor in writing of any such claim and will cooperate with Contractor and its legal counsel in the defense thereof. Contractor may in its discretion (1) contest, (2) settle, (3) procure for the City the right to continue using the Equipment, software, or services, or (4) modify or replace them to be non-infringing (as long as the functionality and performance are not degraded as reasonably determined by the City). The City may participate in the defense of such action at its own expense. If none of the foregoing options is reasonably possible, then Contractor will

refund a pro-rata portion of the amounts paid hereunder with respect to the Equipment, software, or services (based on the expected life thereof) and reimburse the City for all reasonable expenses for removal and replacement of the Equipment or software. Contractor is not liable for any infringement-related liabilities based upon modifications to the Equipment or software made by the City without Contractor's consent or being used or sold with products not provided by Contractor and made without Contractor's consent.

19. **CONFLICT OF INTEREST:** The parties agree that no official, officer or employee of the City shall have any personal or beneficial interest whatsoever in the services or property described herein and Contractor further agrees not to hire or contract for services any official, officer or employee of the City or any other person which would be in violation of the Denver Revised Municipal Code Chapter 2, Article IV, Code of Ethics, or Denver City Charter Sections 1.2.9 and 1.2.12.

20. **NO THIRD PARTY BENEFICIARY:** It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the City and Contractor, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person or entity on such Agreement, including but not limited to subcontractors and suppliers. It is otherwise the express intention of the City and Contractor that any person or entity other than the City or Contractor receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

21. **TRADE SECRETS AND CONFIDENTIAL INFORMATION:**

A. Contractor shall not at any time or in any manner, either directly or indirectly, divulge, disclose or communicate to any person, firm or corporation in any manner whatsoever any information concerning any matters related to this Agreement which are not subject to public disclosure, including without limitation the trade secrets of businesses or entities doing business with the City and other privileged or confidential information.

B. In the event that this Agreement or any exhibit or attachment is the subject of an open records request by a third party under Colorado law, the City will notify Contractor of such request. If Contractor believes that any material furnished to the City under this Agreement is not subject to disclosure, it shall take whatever action it deems necessary or appropriate to obtain a court order from the Denver District Court to preclude such disclosure by the City.

22. **DISPUTES:** All disputes of whatsoever nature between the City and Contractor regarding this Agreement shall be resolved by administrative hearings pursuant to the procedure established by Denver Revised Municipal Code §56-106(b) et. seq. For the purposes of that procedure, the City official rendering a final determination shall be the City representative identified in Article 2 hereof.

23. **TAXES, CHARGES AND PENALTIES:** The City shall not pay or be liable for any claimed interest, late charges, fees, taxes or penalties of any nature, except as required by the City's Revised Municipal Code.

24. **PARAGRAPH HEADINGS:** The captions and headings set forth herein are for convenience of reference only, and shall not be construed so as to define or limit the terms and provisions hereof.



25. **SEVERABILITY**: It is understood and agreed by the parties hereto that if any part, term, or provision of this Agreement, except for the provisions of the Agreement requiring prior appropriation of funds and limiting the total amount payable by the City, is by the courts held to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

26. **SURVIVAL OF CERTAIN AGREEMENT PROVISIONS**: The parties understand and agree that all terms, conditions and covenants of this Agreement, together with the exhibits and attachments hereto, if any, any or all of which, by reasonable implication, contemplate continued performance or compliance beyond the expiration or termination of this Agreement (by expiration of the term or otherwise), shall survive such expiration or termination and shall continue to be enforceable as provided herein. Without limiting the generality of the foregoing, Contractor's obligations for the provision of insurance, for indemnity to the City and for preserving confidentiality of trade secrets and other information shall survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.

27. **AGREEMENT AS COMPLETE INTEGRATION - AMENDMENTS**: This Agreement, together with the LPA, is intended as the complete integration of all understandings between the parties as to the subject matter of this Agreement. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a written amendatory or other Agreement properly executed by the parties. No oral representation by any officer or employee of the City at variance with the terms and conditions of this Agreement or any written amendment to this Agreement shall have any force or effect or bind the City. Amendments to this Agreement will become effective when approved by both parties and executed in the same manner as this Agreement. This Agreement and any amendments shall be binding upon the parties, their successors and assigns.

28. **LEGAL AUTHORITY**:

A. Contractor assures and guarantees that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement.

B. The person or persons signing and executing this Agreement on behalf of Contractor, do hereby warrant and guarantee that he/she or they have been fully authorized by Contractor to execute this Agreement on behalf of Contractor and to validly and legally bind Contractor to all the terms, performances and provisions herein set forth.

C. The City shall have the right, at its option, to either temporarily suspend or permanently terminate this Agreement, if there is a dispute as to the legal authority of either Contractor or the person signing the Agreement to enter into this Agreement. The City shall not be obligated to pay Contractor for any performance of the provisions of this Agreement after the City has suspended or terminated this Agreement as provided in this Article.

29. **COUNTERPARTS OF THIS AGREEMENT:** This Agreement shall be executed in two (2) counterparts, each of which shall be deemed to be an original of this Agreement.

30. **NO EMPLOYMENT OF ILLEGAL ALIENS TO PERFORM WORK UNDER THE AGREEMENT:**

A. This Agreement is subject to Division 5 of Article IV of Chapter 20 of the Denver Revised Municipal Code, and any amendments (the “Certification Ordinance”).

B. The Contractor certifies that:

- (1) At the time of its execution of this Agreement, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement.
- (2) It will participate in the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

C. The Contractor also agrees and represents that:

- (1) It shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.
- (2) It shall not enter into a contract with a sub-consultant or subcontractor that fails to certify to the Contractor that it shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.
- (3) It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement, through participation in either the E-Verify Program.
- (4) It is prohibited from using either the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement, and that otherwise requires the Contractor to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.
- (5) If it obtains actual knowledge that a sub-consultant or subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such sub-consultant or subcontractor and the City within three (3) days. The Contractor will also then terminate such sub-consultant or subcontractor if within three (3) days after such notice the sub-consultant or subcontractor does not stop employing or contracting with the illegal alien, unless during such three-day period the sub-consultant or subcontractor provides information to establish that the sub-consultant or subcontractor has not knowingly employed or contracted with an illegal alien.

- (6) It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S., or the City Auditor, under authority of D.R.M.C. 20-90.3.

**D.** The Contractor is liable for any violations as provided in the Certification Ordinance. If Contractor violates any provision of this section or the Certification Ordinance, the City may terminate this Agreement for a breach of the Agreement. If the Agreement is so terminated, the Contractor shall be liable for actual and consequential damages to the City. Any such termination of a contract due to a violation of this section or the Certification Ordinance may also, at the discretion of the City, constitute grounds for disqualifying Contractor from submitting bids or proposals for future contracts with the City.

31. **ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS:** Contractor consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

32. **NOTICES:** All notices required by the terms of the Agreement must be hand delivered, sent by overnight courier service, mailed by certified mail, return receipt requested, or mailed via United States mail, postage prepaid, if to Contractor at the address first above written, and if to the City at:

Manager of Parks and Recreation or Designee  
201 West Colfax Avenue, Dept. 601  
Denver, Colorado 80202

With a copy of any such notice to:

Denver City Attorney's Office  
1437 Bannock St., Room 353  
Denver, Colorado 80202

Notices hand delivered or sent by overnight courier are effective upon delivery. Notices sent by certified mail are effective upon receipt. Notices sent by mail are effective upon deposit with the U.S. Postal Service. The parties may designate substitute addresses where or persons to whom notices are to be mailed or delivered. However, these substitutions will not become effective until actual receipt of written notification.

33. **COMPLIANCE WITH ALL LAWS:** Contractor shall perform or cause to be performed all services in full compliance with all applicable laws, rules, regulations and codes of the United States, the State of Colorado; and with the Charter, ordinances, rules, regulations and Executive Orders of the City and County of Denver.

34. **NO CONSTRUCTION AGAINST DRAFTING PARTY:** The parties and their respective counsel have had the opportunity to review the Agreement, and the Agreement will not be construed against any party merely because any provisions of the Agreement were prepared by a particular party.

35. **ADVERTISING AND PUBLIC DISCLOSURE:** The Contractor shall not include any reference to the Agreement or to services performed pursuant to the Agreement in any of the Contractor's advertising or public relations materials without first obtaining the written approval of the Manager. Any oral presentation or written materials related to services performed under the Agreement will be limited to services that have been accepted by the City. The Contractor shall notify the Manager in advance of the date and time of any presentation. Nothing in this provision precludes the transmittal of any information to City officials.

36. **CITY EXECUTION OF AGREEMENT:** The Agreement will not be effective or binding on the City until it has been fully executed by all required signatories of the City and County of Denver, and if required by Charter, approved by the City Council.

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**EXHIBIT A**  
**EQUIPMENT PURCHASED,**  
**CORRESPONDING WITH THE ACCEPTANCE CERTIFICATES OF THE LPA**

Specifications of equipment, training, and warranties to be provided by Contractor are set out on the attached pages, which together with this cover sheet constitute **Exhibit A**.

Delivery shall be to six various locations set out below.

Contractor shall deliver the vehicles and equipment in seven separate batches, set out below, the timing of which shall be agreed to between the Contractor and the City. The Contractor shall be paid pursuant to Acceptance Certificates for each of the completed batches delivered. Delivery shall be completed no later than the end of the term of this Agreement. The payments below reflect the net amounts due to the Contractor after the trade in of golf carts from the City. The prices listed below are the pre-trade in prices for the units.

**180 Gas Golf Carts at \$4,021 per unit**

**283 Electric Golf Carts at \$3,984 per unit**

**11 Ranger Gas Golf Carts at \$3,996 per unit**

**Item 1**

To be delivered to the Wellshire Golf Course, 3333 South Colorado Blvd., Denver CO 80222-6600.

**Name of Vendor:** C & M Air Cooled Engine, Inc.  
5080 Paris St.  
Denver, Colorado 80239

<u>Item</u>	<u>Quantity</u>
2015 TXT Electric Golf Carts	70
2014 TXT Gas Golf Carts	2
<b>Total:</b>	<b>\$ 199,518.09</b>

**Item 2**

To be delivered to the Evergreen Golf Course, 29614 Upper Bear Creek Road, Evergreen, CO 80439.

**Name of Vendor:** C & M Air Cooled Engine, Inc.  
5080 Paris St.  
Denver, Colorado 80239

<u>Item</u>	<u>Quantity</u>
2014 TXT Gas Golf Carts	71

<b>Total:   \$198,540.22</b>
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**Item 3**

To be delivered to the Evergreen Golf Course, 29614 Upper Bear Creek Road, Evergreen, CO 80439.

**Name of Vendor:**                   C & M Air Cooled Engine, Inc.  
   5080 Paris St.  
   Denver, Colorado 80239

<u>Item</u>	<u>Quantity</u>	<u>Unit Price</u>	<u>Subtotal</u>
Jacobsen Lf550 Reels, Rear Roller Brushes	1	\$ 38,819.66	\$ 38,819.66
R311t 11 Ft Rotary Rough Mower	1	\$ 40,919.58	\$ 40,919.58
Eclipse 322 Gas Hybrid Reels & Segmented Rollers	3	\$ 24,706.55	\$ 74,119.65
Extra 11 Bld. Cutting Units W/ Segmented Rollers	3	\$ 1,096.70	\$ 3,290.10
Eclipse 322 Gas Hybrid , 9 Bld. Reels W Gr. Rollers	1	\$ 25,081.10	\$ 25,081.10
Cushman Truckster Gas/ W 47" Steel Bed	1	\$ 14,921.50	\$ 14,921.50
Turfco Truck Mount Top Dresser For Cushman	1	\$ 9,183.60	\$ 9,183.60
Jacobsen Three Deck Rotary Trim Mower	1	\$ 21,708.50	\$ 21,708.50
Cushman Hauler 1200x Utility Vehicle W/ Canopy	3	\$ 6,944.34	\$ 20,833.02
Smithco Superstar W/ Rear Rake/Flex Brush & Rbs Spiker	1	\$ 16,604.70	\$ 16,604.70
Smithco Ultra Roller	2	\$ 11,353.00	\$ 22,706.00
Smithco 200g. Sprayer, Tank Rinsing Device	1	\$ 34,649.30	\$ 34,649.30
Canopy For Fairway Mower & Rough Mower	2	\$ 576.52	\$ 1,153.04
Spraytek Ds300 ,Diesel 4speed Manual Transmission	1	\$ 26,308.22	\$ 26,308.22

<b>Total</b>	\$ 350,297.97
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**Item 5**

To be delivered to the Overland Golf Course, 1801 Huron Street, Denver, CO 80223.

**Name of Vendor:** C & M Air Cooled Engine, Inc.  
5080 Paris St.  
Denver, Colorado 80239

<u>Item</u>	<u>Quantity</u>
2015 TXT Electric Golf Carts	72
2014 TXT Gas Golf Carts	2
<b>Total:</b> \$ 205,059.79	

**Item 6**

To be delivered to the Kennedy Golf Course, 10500 East Hampden Avenue, Denver, CO 80014.

**Name of Vendor:** C & M Air Cooled Engine, Inc.  
5080 Paris St.  
Denver, Colorado 80239

<u>Item</u>	<u>Quantity</u>
2014 TXT Gas Golf Carts	112
<b>Total:</b> \$ 313,182.86	

**Item 7**

To be delivered to the City Park Golf Course, 2500 York Street, Denver, CO 80205.

**Name of Vendor:** C & M Air Cooled Engine, Inc.  
5080 Paris St.  
Denver, Colorado 80239

<u>Item</u>	<u>Quantity</u>
2015 TXT Electric Golf Carts	69
2014 TXT Gas Golf Carts	2

**Total:** \$ 196,747.24

**Item 9**

To be delivered to the Willis Case Golf Course, 4999 Vrain Street, Denver, CO 80212.

**Name of Vendor:** C & M Air Cooled Engine, Inc.  
5080 Paris St.  
Denver, Colorado 80239

<u>Item</u>	<u>Quantity</u>
2015 TXT Electric Golf Carts	72
2014 TXT Gas Golf Carts	2
<b>Total:</b> \$ 205,059.79	





## STATEMENT OF LIMITED WARRANTY

### LIMITED WARRANTY

The Jacobsen Division of Textron Inc. ("Jacobsen") warrants that any whole good product or serialized accessory manufactured or sold by Jacobsen other than batteries, engines and tires ("Product") shall be free from defects in material and/or workmanship for the time periods set forth below ("Limited Warranty"). Any Product found in the reasonable judgment of Jacobsen to be defective in material or workmanship shall be repaired or the defective component replaced, in Jacobsen's sole discretion, by an authorized Jacobsen dealer or distributor without charge. This Limited Warranty extends to the original retail purchaser or lessee only and is not transferable to any subsequent purchasers or lessees, or applicable to used equipment.

### LIMITED WARRANTY PERIODS

- Products (other than Aeration Products): the earlier of two (2) years from date of delivery, or two thousand (2,000) hours of usage.
- Aeration Products: the earlier of two (2) years from date of delivery, or five hundred (500) hours of usage.

### INDIVIDUAL COMPONENT WARRANTIES

Batteries, engines and tires sold as part of Jacobsen whole goods are warranted separately by their manufacturers and are not subject to this Limited Warranty. You should carefully review the warranty materials provided with your Jacobsen equipment to determine the applicable warranty. Any warranty claims for batteries, engines or tires should be made to that manufacturer at the contact information provided with your equipment.

### PARTS WARRANTIES

Any parts and non-serialized accessories provided to replace defective parts and non-serialized accessories under this Limited Warranty are themselves warranted for defects in material and workmanship for the longer of one hundred and eighty (180) days from the date of installation or the remaining warranty period for the Product. Parts that are sold separately are subject to their own limited warranty.

### MAKING A WARRANTY CLAIM

To make a warranty claim, you must notify an authorized Jacobsen dealer or distributor as soon as a warrantable condition becomes known to you, but not later than the end of the applicable warranty period. You must provide the dealer or distributor with proof and date of purchase. Warranty repairs performed by other than authorized Jacobsen dealers or distributors will not be reimbursed and may void this Limited Warranty. Jacobsen makes no warranty for warranty service performed by other than its authorized dealers and distributors. You should visit your authorized Jacobsen dealer or distributor periodically to ensure proper maintenance and care of your Jacobsen equipment.

This Limited Warranty gives you specific legal rights and you may also have other rights which vary from state to state. Some states do not allow the exclusion of incidental damages or limitations on how long an implied warranty may last, so the above exclusions and limitations may not apply to you.

### WARRANTY EXCEPTIONS

This Limited Warranty is not applicable to Product that:

- has been subject to misuse, neglect, negligence, or accident;
- has been operated or maintained in any way contrary to the instructions specified in the Operator's Manual or Service Manual;
- has not received required maintenance or repair;
- has been altered or modified in a manner not approved by Jacobsen, (including the use of aftermarket/retrofit accessories that adversely affect the Product's operation, performance or durability) or that has been altered or modified so as to change its intended use;
- is damaged as a result of ordinary wear and tear, or is the result of consumption through use (unless otherwise found to be defective), including, but not limited to, blades, bedknives, bearings, reels, tines, caster wheels, belts, brake and clutch linings, spark plugs, hoses, oil, lubricants, or coolant;
- is damaged as a result of the use of non-Jacobsen approved replacement parts that cause damage to other parts;
- is damaged as a result of weather, exposure to the elements, or lack of reasonable storage practices that can affect the appearance and durability of exterior components, including but not limited to, seats, paint and plastics; and
- is damaged as a result of exposure to unapproved or recycled coolants, oils, lubricants, additives or other chemicals.

### WARRANTY LIMITATIONS

OTHER THAN THIS LIMITED WARRANTY, THERE ARE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. ALL WARRANTIES OTHER THAN THIS EXPRESS LIMITED WARRANTY ARE SPECIFICALLY DISCLAIMED. JACOBSEN'S OBLIGATION UNDER THIS LIMITED WARRANTY IS STRICTLY AND EXCLUSIVELY LIMITED TO THE REPAIR OR REPLACEMENT OF DEFECTIVE PARTS. JACOBSEN DOES NOT ASSUME OR AUTHORIZE ANYONE (INCLUDING ITS AUTHORIZED DEALERS OR DISTRIBUTORS) TO ASSUME FOR IT ANY OTHER OBLIGATION. JACOBSEN SHALL HAVE NO LIABILITY FOR INCIDENTAL, SPECIAL, CONSEQUENTIAL, INDIRECT OR OTHER DAMAGES ARISING OUT OF OR RELATED TO THE USE OF JACOBSEN EQUIPMENT OR BREACH OF WARRANTY, INCLUDING, BUT NOT LIMITED TO, EXPENSE FOR GASOLINE, TRAILERING OR TOWING CHARGES, RENTAL OR PURCHASE OF REPLACEMENT EQUIPMENT WHILE WARRANTY SERVICE IS BEING PERFORMED, TRAVEL, LODGING, LOSS OR DAMAGE TO PERSONAL PROPERTY, LOSS OF REVENUE, LOSS OF USE OF PRODUCT, OR LOSS OF TIME OR INCONVENIENCE. JACOBSEN RESERVES THE RIGHT TO CHANGE OR IMPROVE THE DESIGN OF ANY PRODUCT WITHOUT ASSUMING ANY OBLIGATION TO MODIFY ANY PRODUCT PREVIOUSLY MANUFACTURED.

**EXHIBIT B**  
**CERTIFICATE OF INSURANCE**



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
11/21/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> FEDERATED MUTUAL INSURANCE COMPANY HOME OFFICE: P.O. BOX 328 OWATONNA, MN 55060		<b>CONTACT NAME:</b> CLIENT CONTACT CENTER <b>PHONE (A/C, No, Ext):</b> 888-333-4949 <b>FAX (A/C, No):</b> 507-446-4664 <b>E-MAIL ADDRESS:</b> CLIENTCONTACTCENTER@FEDINS.COM	
<b>INSURED</b> C & M AIR COOLED ENGINE INC, C & M GOLF & GROUNDS EQUIPMENT PO BOX 20517 WACO, TX 76702		<b>INSURER(S) AFFORDING COVERAGE</b> <b>INSURER A:</b> FEDERATED MUTUAL INSURANCE COMPANY NAIC # 13935 <b>INSURER B:</b> FEDERATED SERVICE INSURANCE COMPANY 28304 <b>INSURER C:</b> <b>INSURER D:</b> <b>INSURER E:</b> <b>INSURER F:</b>	

**COVERAGES**

CERTIFICATE NUMBER: 18

REVISION NUMBER: 0

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY	N	N	9903934	12/30/2013	12/30/2014	EACH OCCURRENCE	\$1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$100,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						MED EXP (Any one person)	EXCLUDED
							PERSONAL & ADV INJURY	\$1,000,000
							GENERAL AGGREGATE	\$2,000,000
							PRODUCTS - COMP/OP AGG	\$2,000,000
							GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	
A	AUTOMOBILE LIABILITY	N	N	9903934	12/30/2013	12/30/2014	COMBINED SINGLE LIMIT (Ea accident)	\$1,000,000
	<input checked="" type="checkbox"/> ANY AUTO						BODILY INJURY (Per person)	
	<input type="checkbox"/> ALL OWNED AUTOS						BODILY INJURY (Per accident)	
	<input type="checkbox"/> HIRED AUTOS						PROPERTY DAMAGE (Per accident)	
A	UMBRELLA LIAB	N	N	9903935	12/30/2013	12/30/2014	EACH OCCURRENCE	\$2,000,000
	<input checked="" type="checkbox"/> EXCESS LIAB						AGGREGATE	\$2,000,000
	<input type="checkbox"/> CLAIMS-MADE							
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	N/A	N	9903936	12/30/2013	12/30/2014	<input checked="" type="checkbox"/> WC STATUTORY LIMITS	OTHER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)							
	E.L. EACH ACCIDENT						\$1,000,000	
	E.L. DISEASE - EA EMPLOYEE						\$1,000,000	
	E.L. DISEASE - POLICY LIMIT	\$1,000,000						

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

SEE ATTACHED PAGE

**CERTIFICATE HOLDER**
 347-046-5  
 CITY & COUNTY OF DENVER  
 201 W COLFAX AVE DEPT 205  
 DENVER, CO 80202-5330

18 0

**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE



AGENCY CUSTOMER ID: 347-046-5

LOC #: \_\_\_\_\_

**ADDITIONAL REMARKS SCHEDULE**Page 1 of 1

AGENCY FEDERATED MUTUAL INSURANCE COMPANY		NAMED INSURED C & M AIR COOLED ENGINE INC, C & M GOLF & GROUNDS EQUIPMENT PO BOX 20517 WACO, TX 76702	
POLICY NUMBER SEE CERTIFICATE # 18.0		EFFECTIVE DATE: SEE CERTIFICATE # 18.0	
CARRIER SEE CERTIFICATE # 18.0	NAIC CODE		

**ADDITIONAL REMARKS****THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,**FORM NUMBER: 25 FORM TITLE: CERTIFICATE OF LIABILITY INSURANCE

PROPOSAL NUMBER: EQUIPMENT - LEASE0733A.  
'THE CITY AND COUNTY OF DENVER ITS ELECTED AND APPOINTED  
OFFICIALS, EMPLOYEES AND VOLUNTEERS ARE NAMED AS ADDITIONAL  
INSURED WITH REGARDS TO THE COMMERCIAL GENERAL LIABILITY  
POLICY AND BUSINESS AUTOMOBILE LIABILITY POLICY.'

**Contract Control Number:**

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

**CITY AND COUNTY OF DENVER**

ATTEST:

By \_\_\_\_\_

\_\_\_\_\_

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_



Contract Control Number: PARKS-201415968-00

Contractor Name: C & M AIR COOLED ENGINE INC

By: 

Name: TYLER DICKEY  
(please print)

Title: GENERAL MANAGER  
(please print)

ATTEST: [if required]

By: \_\_\_\_\_

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)

