

FIRST AMENDATORY AGREEMENT

This **FIRST AMENDATORY AGREEMENT** is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”) and **IRON & METALS, INC.**, a Colorado corporation, with its principal place of business located at 5555 Franklin Street, Denver, Colorado 80216 (the “Contractor”), jointly (“the Parties”).

RECITALS:

A. The Parties entered into an Agreement dated December 20, 2018, (the “Agreement”) to perform, and complete all of the services and produce all the deliverables set forth on **Exhibit A**, Scope of Work, to the City’s satisfaction.

B. The Parties wish to amend the Agreement to extend the term, update paragraph 7, examination of records, update paragraph 21, no employment of illegal aliens; update paragraph 24, no discrimination in employment, and amend the scope of work.

NOW THEREFORE, in consideration of the premises and the Parties’ mutual covenants and obligations, the Parties agree as follows:

1. Section 3 of the Agreement entitled “**TERM**” is hereby deleted in its entirety and replaced with:

“**3. TERM**: The term of the Agreement will commence on **December 20, 2018** and will expire on **December 20, 2022** (the “**Term**”), unless extended in accordance with the terms of the Agreement. The term of the Agreement may be extended on the same terms and conditions, for one (1) additional one (1) year term, upon a written amendment to this Agreement prior to the expiration of the current term.”

2. Section 7 of the Agreement entitled “**EXAMINATION OF RECORDS**” is deleted in its entirety and replaced with:

“**7. EXAMINATION OF RECORDS**: Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access and the right to examine, copy and retain copies, at City’s election in paper or electronic form, any pertinent books, documents, papers and records related to Contractor’s performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement. Contractor shall cooperate with City representatives and City representatives shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable

statute of limitations. When conducting an audit of this Agreement, the City Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audit pursuant to this paragraph shall require Parties to make disclosures in violation of state or federal privacy laws. Parties shall at all times comply with D.R.M.C. 20-276.

3. Section 21 of the Agreement entitled “**NO EMPLOYMENT OF ILLEGAL ALIENS TO PERFORM WORK UNDER THE AGREEMENT:**” is hereby deleted in its entirety and replaced with:

“21. NO EMPLOYMENT OF WORKERS WITHOUT AUTHORIZATION 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 a worker without authorization who will perform work under this Agreement, nor will it knowingly employ or contract with a worker without authorization to perform work under this Agreement in the future.

(2) It will participate in the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., and confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

(3) It will not enter into a contract with a subconsultant or subcontractor that fails to certify to the Contractor that it shall not knowingly employ or contract with a worker without authorization to perform work under this Agreement.

(4) It is prohibited from using the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under this Agreement, and it is required 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 subconsultant or subcontractor performing work under this Agreement knowingly employs or contracts with a worker without authorization, it will notify such subconsultant or subcontractor and the City within three (3) days. The Contractor shall also terminate such subconsultant or subcontractor if within three (3) days after such notice the subconsultant or subcontractor does not stop employing or contracting with the worker without authorization, unless during the three-day period the subconsultant or subcontractor provides information to establish that the subconsultant or subcontractor has not knowingly employed or contracted with a worker without authorization.

(6) It will comply with a 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.

(c) The Contractor is liable for any violations as provided in the Certification Ordinance. If the Contractor violates any provision of this section or the Certification Ordinance, the City may terminate this Agreement for a breach of the Agreement. If this Agreement is so terminated, the Contractor shall be liable for actual and consequential damages to the City. Any 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 the Contractor from submitting bids or proposals for future contracts with the City.”

4. Section 24 of the Agreement entitled “**NO DISCRIMINATION IN EMPLOYMENT**” is hereby deleted in its entirety and replaced with:

“**24. NO DISCRIMINATION IN EMPLOYMENT:** In connection with the performance of work under the Agreement, the Contractor may not refuse to hire, discharge, promote, demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, ethnicity, citizenship, immigration status, gender, age, sexual orientation, gender identity, gender expression, marital status, source of income, military status, protective hairstyle, or disability. The Contractor shall insert the foregoing provision in all subcontracts.”

5. **Exhibit A** is hereby deleted in its entirety and replaced with **Exhibit A-1, Scope of Work and Technical Requirements**, attached and incorporated by reference herein. All references in the original Agreement to **Exhibit A** are changed to **Exhibit A-1**.

6. As herein amended, the Agreement is affirmed and ratified in each and every particular.

7. This First Amendatory 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.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

Contract Control Number: GENRL-202161094-01[GENRL-201843515-01]
Contractor Name: IRON & METAL, INC.

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:

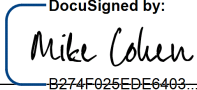
Attorney for the City and County of Denver

By:

By:

By:

Contract Control Number: GENRL-202161094-01[GENRL-201843515-01]
Contractor Name: IRON & METAL, INC.

By:  _____
B274F025EDE6403...

Name: Mike Cohen
(please print)

Title: President
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

EXHIBIT A-1
SCOPE OF WORK AND TECHNICAL REQUIREMENTS

SCOPE OF WORK

This agreement is for the right to provide containerization, removal, sale and recycling of scrap metals recovered from City and County of Denver facilities.

TERM OF THE AGREEMENT:

The term of the resulting contract shall be for an initial three years from date of City signature, with an option for two (2) one-year extensions via contract amendment.

REQUIRED SERVICES:

a. **SERVICE:** Contractor shall provide scrap metal containers/roll-offs of various sizes as requested by City agencies and to be placed at their respective facilities. Contractor shall then remove containers as scheduled or as needed, depending upon usage, and remit payment to the City for the sale of these scrap metals.

b. **REMOVAL:** Contractor shall respond to an agency request for removal of a container within twenty-four (24) hours of notice and shall replace it with an empty container within forty-eight (48) hours of the removal of a container. At a location where there is currently no on-site container, the Contractor shall place a container at a specific site within forty-eight (48) hours of the request. These requests are only to be made by the General Services Contract Administrator. (The type of container provided by the Contractor shall not necessarily be specified by the City; the City shall require however, that containers be provided in the form of roll-offs, pans, hoppers or a combination of all the above at sites specified herein or wherever requested. Containers provided shall be adequate to service the needs of the City.)

NOTE: Emergency situations may dictate a more rapid placement and/or turn-around of containers than noted above.

c. **EQUIPMENT:** Contractor shall utilize equipment that is fully licensed in accordance with all ordinances of the City and County of Denver pertaining to scrap metal containerization and hauling and shall comply with any requirements that may be instituted by the City and County of Denver in reference to same during the course of the Agreement. Weigh scales utilized by the Contractor shall be certified by the State of Colorado. Such proof of certification is to be available upon request by the City. Further, all motor vehicles utilized by the Contractor shall be fully operational and appropriate to the weight and dimensions of the loads to be hauled and shall be covered by all required insurances as indicated in Section D of this document.

d. **SPECIAL ITEMS:** The City will occasionally generate metals that do not fall into the pricing items below (e.g. brass, copper, electric motors, etc.). Upon receiving metals that are not covered by a pricing item, the City and the Contractor must mutually agree upon pricing for this material. This price must be based on a current AMA Chicago price line of which a copy will be

submitted with the Contractor's monthly payment. All agreed upon pricing for these infrequent metals must be approved in writing by the Director of Purchasing or his/her representative.

City agencies may occasionally generate an item or items which, because of size or construction, cannot be deposited in conventional containers. In this event, the Contractor shall respond with any labor, tools, equipment and supplies necessary for successful removal of said item or items. In such instances where additional personnel or special equipment are required to accomplish removal, the Contractor may request a negotiated adjustment to the bid percentage offered herein. Further, if it is determined by the City and the Contractor that removal costs offset the salvage value of the scrap metal in question, the City and the Contractor may agree to no monetary compensation for the City in exchange for this service. However, no adjustment to the bid percentage offered herein or decision to waive monetary compensation in exchange for removal service shall be made without the express, written approval of the Director of Purchasing or his/her authorized representative.

EXCLUSIONS:

Contractor shall be aware that the City may choose to sell specific accumulations of scrap metals (e.g., brass, copper, clean aluminum, etc., not deposited in the Contractor's containers) utilizing other methods or markets. This Agreement is specifically for the removal of scrap metal placed in the Contractor's containers by authorized City personnel, or special items as described above. On occasion, City personnel may deliver scrap metal to the Contractor.

ESTIMATED QUANTITIES:

The City does not guarantee any quantity of items listed herein to be generated over the course of the Agreement. However, for information only, a copy of the approximate volume is on this bid site listed as "Attachment A".

COOPERATIVE PURCHASING:

The City and County of Denver encourages and participates in cooperative purchasing endeavors undertaken by or on behalf of other governmental jurisdictions, pursuant to Denver Revised Municipal Code Sec. 20-64.5. To the extent other governmental jurisdictions are legally able to participate in cooperative purchasing endeavors, the City and County of Denver supports such cooperative activities. Further, it is a specific requirement of this proposal or Request for Proposal that pricing offered herein to the City and County of Denver may be offered by the vendor to any other governmental jurisdiction purchasing the same products.

The vendor(s) must deal directly with any governmental agency concerning the placement of purchase orders, freight charges for destinations outside of the Denver Metro area, contractual disputes, invoicing, and payment. The City and County of Denver shall not be liable for any costs, damages incurred by any other entity.

BACKGROUND CHECKS AND DISQUALIFICATION:

Because of the nature of the contract for the City, Contractor, at its expense, must conduct, or have previously conducted a background check for each of its employees, as well as for the employees of its subcontractors, who will provide services to the City. Background checks are to be conducted through an independent background check vendor and must include the following:

- Social Security Number Trace;
- Federal Criminal Records (includes wants, warrants, arrests, convictions, and incarcerations);
- Colorado Criminal Records (includes wants, warrants, arrests, convictions, and incarcerations);
- Criminal Records from other States if the employee disclosed, or the background check identifies, that the employee lived in another state in the last seven years (includes wants, warrants, arrests, convictions, and incarcerations); and
- National Sexual Offender Registry Search.

The background check shall include all convictions for the last seven years and may include additional convictions beyond seven years when permitted and/or required by law.

Because of the sensitive nature of the work proposed under this RFP, the City shall automatically disqualify from employment under this contract persons with felony convictions. Alternatively, the Director of Purchasing may require that a fidelity bond, or such other assurance in such amount as deemed appropriate, be provided to the City as a condition precedent to grant permission where an employee's prior conviction would otherwise preclude their participation under the contract.

All Contractor employees are required to self-disclose to the Contractor any criminal charges and convictions and nolo contendere pleas (not contest pleas) that occur while providing services to the City within three business days of the conviction, charge, or plea. Contractor is required to inform the City of any criminal charges or convictions or nolo contendere pleas (no contest pleas) that arise while an employee is on assignment with the City. Contractor must inform the City within one business day of the Contractor having knowledge of the charge, conviction, or plea. The City will determine, in its sole discretion, whether the employee will remain on a City assignment.

Contracts for work at the following locations require NCIC background checks:

- Police Academy
- Denver Animal Shelter
- Traffic Operations
- DPD Police Precincts

Other City locations may also require a NCIC background check. These background checks will be administered by the City and will be at no cost to the Contractor. Contractor employees will be required to provide their social security numbers to the City. Contractors will be provided entrance cards for each facility. Contractors are not allowed to share cards to provide services. The background check(s) must be conducted successfully prior to initial access and/or involvement by employees. Employees who separate from the Contractor's employment must undergo another background check prior to renewed access and/or involvement in providing services to the City. The City also has the ability to audit the Contractor's background check process, to ensure compliance with City standards, at any time. Additionally, Failure by the Contractor to comply with the terms of this Section may result in the termination of its contract with the City.

LAWS, REGULATIONS, TAXES AND PERMITS

The Vendor shall procure all permits and licenses, pay all charges, taxes and fees and give all notices necessary and incidental to the due and lawful prosecution of the work. All costs thereof shall be deemed to be included in the prices proposed for the work.

The Vendor, at all times, shall observe and comply with all federal, state, county, city and other laws, codes, ordinances, rules and regulations in any manner affecting the conduct of the work.

Without limiting the foregoing, the Vendor shall establish appropriate procedures and controls so that services under this Contract will not be performed by using any alien who is not legally eligible for such employment under United States Immigration laws. Failure to comply with this condition satisfactorily may cause the City to terminate this Contract.

LOCATIONS AND CONTAINER DESCRIPTIONS:

The following locations are the primary sites requiring roll-offs/containers for the accrual of scrap and other metals. However, the City does not guarantee that this information reflects current or future needs. If there is a question regarding the container needs for any City facility, it is the Contractor's responsibility to visit that site, inspect any roll-offs, hoppers or other containers being utilized, and determine any appropriate changes. Locations and container sizes as noted below may change over time, with periodic container deletions or additions over the term of the Agreement, as necessary, with some sites requiring multiple containers for anticipated special needs. Contractor shall be required to provide appropriate containers and services, as needed, for any City agency at any designated location. Therefore, the list below will not be inclusive of all requirements.

All new sites, service and/or changes to service must be requested directly from the General Services Contract Administrator.

City and County of Denver Sites

	SITE	SIZE CONTAINER
1.	Fleet Maintenance A. 5440 Roslyn	5 – 30 yd roll-offs 4 – 10 yd luggers 7 – dump hoppers
2.	Fleet Maintenance A. 1271 W. Bayaud	1 – 20 yd roll-off
3.	Parks & Recreation A. 945 S. Huron	1 – 20 yd roll-off

- | | | |
|-----|---|-------------------------------|
| | B. 10450 Smith Rd. | 1 – 10 yd lugger |
| | C. 4495 Jason St. | 1 – 26 yd roll-off |
| | D. 678 Jason St. | 1 – 3 yd dumpster |
| 4. | Fire Line Shop
A. 4640 Lipan | 1 – 8 yd lugger |
| 5. | Solid Waste
A. 2013 S. Osage | 1 – high sided cargo trailer |
| 6. | Solid Waste Substation/Cherry Creek
A. 7301 E. Jewell Ave. | 1 – 12 yd lugger |
| 7. | Wastewater Management
A. 2000 W. 3rd Ave. | 1 – 20 yd roll-off |
| 8. | City & County Building
A. 1437 Bannock St. | 1 – w/h box w/ wheels (4'x4') |
| 9. | Vehicle Impound Facility
A. 5160 York St. | 1 – 10 yd lugger |
| 10. | Performing Arts Garage
A. 1055 13th St. | 1 – 6 yd lugger |
| 11. | Electrical Engineering Bureau
A. 1930 35th St. | 1 – 6 yd lugger |
| 12. | Additional locations that may require periodic service, mobile cranes, placement of extra containers or “wait while loaded” services (generally mixed materials): | |

- | | |
|---|---|
| A. Various City Parks and Facilities | F. Facilities Planning & Mgmt. (as ordered) |
| B. City and County Bldg. | G. Street Maintenance |
| C. Central Library & Branches | H. Traffic Engineering |
| D. Solid Waste Division (various locations) | I. Denver Metro SWAT Unit (Police) |
| E. Surplus Warehouse | J. City Jail |