

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO NEGOTIATE A
CONTRACT WITH D2C ARCHITECTS, INC. FOR THE ARCHITECTURAL AND
ENGINEERING PROFESSIONAL SERVICES FOR THE DESIGN OF THE POLICE
DEPARTMENT SUBSTATION LOCATED AT THE NORTHEAST CORNER OF E.
104TH AVE. AND POTOMAC STREET**

NO. 2024-001

WHEREAS, the City of Commerce City ("City") will collaborate with the Contractor who will provide architectural and engineering professional services for the design of the Police Department Substation located at the northeast corner of E. 104th Ave. and Potomac Street, as described by the City's Public Works Department, consistent with the scope of work detailed in CMO-03-2023 Request for Proposals for Police Substation Architectural and Engineering Professional Services ("Project");

WHEREAS, the City has engaged in a formal competitive proposal process consistent with applicable requirements to select a contractor to complete the Project, and City staff has determined the lowest responsive and responsible bidder whose bid provides the best value to the City is D2C Architects, Inc. ("Contractor"); and

WHEREAS, the cost of the Project to the City will exceed \$250,000.00 and, pursuant to the City's procurement policies and the City Manager's commitment to the City Council, the City Council must approve any procurement in excess of \$250,000.00.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COMMERCE CITY, COLORADO, AS FOLLOWS:

SECTION 1. Findings. The recitals to this resolution are incorporated as findings of the City Council. This resolution is found to be necessary for the preservation of the public health, safety, and welfare and in the public interest. Specifically, the City Council hereby finds and determines the award of the contract for the Project to the Contractor is and shall be in the best interests of the residents of the City.

SECTION 2. Award of Contract. The award of the contract for the Project to the Contractor is hereby approved subject to successful finalization of an appropriate contract on terms acceptable to the City Manager. This resolution shall not be deemed to grant any right or interest in the award of a contract to D2C Architects, Inc. All rights and interests shall be defined exclusively by the terms and conditions set forth in the written contract.

SECTION 3. Authorization to Negotiate. The City Manager is hereby authorized to negotiate and finalize the details of a contract with the Contractor, including final pricing and payment terms.

SECTION 4. Execution and Attestation. Upon successful finalization of the contract and approval as to form by the City Attorney, the City Manager is hereby authorized to execute, and the City Clerk to attest, the contract on behalf of the City.

RESOLVED AND PASSED THIS 5TH DAY OF FEBRUARY 2024.

CITY OF COMMERCE CITY, COLORADO



Steven Douglas, Mayor

ATTEST



AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT FOR PROFESSIONAL SERVICES ("Agreement") is made and entered into effective this ____ day of _____, 2023 ("Effective Date"), by and between the CITY OF COMMERCE CITY, a Colorado home rule municipality whose address is 7887 East 60th Avenue, Commerce City, Colorado ("City"), and D2C ARCHITECTS, INC. a Colorado corporation whose principal business address is 1212 S Broadway, Ste 250, Denver, CO 80210 ("Consultant").

WHEREAS, the City desires to retain the services of Consultant, and Consultant desires to provide services to the City.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement, the sufficiency of which is hereby acknowledged, the parties agree as follows:

I. SERVICES.

A. Services. At the City's direction, Consultant will provide architectural and engineering professional design services for new municipal building serving the City's Police Substation as set forth in Exhibit A – "Scope of Services," attached and incorporated by reference ("Services"). Consultant shall furnish all labor and materials required for the complete and prompt execution and performance of all duties, obligations, and responsibilities which are described or reasonably implied from the Scope of Services. The City reserves the right to omit any of the Services identified in Exhibit A upon written notice to Consultant without penalty. Consultant acknowledges that this Agreement does not grant any exclusive privilege or right to supply the Services to the City.

B. Changes to Scope of Services. A change in the Scope of Services shall not be effective unless authorized as an amendment to this Agreement. If Consultant proceeds without such written authorization, Consultant shall be deemed to have waived any claim for additional compensation, including a claim based on the theory of unjust enrichment, quantum merit or implied contract. Except as expressly provided herein, no agent, employee, or representative of the City is authorized to modify any term of this Agreement, either directly or implied by a course of action.

C. Controlling Terms. The terms of this Agreement will control if the terms of any exhibit, attachment, or invoice conflict with this Agreement. Additional terms and conditions not specifically relating to the Services (such as unnegotiated or form terms included in any related proposal, quote, invoice, terms and conditions sheet or like document, or any attachment), whether or not in conflict with this Agreement, are not agreed to by the City and are declared void and of no force or effect.

D. Format and Ownership of Deliverables.

1. Format. Consultant will provide all reports, surveys, maps, plans, drawings or photographs, or any other materials that lend themselves to production in electronic format ("Deliverables") to the City in both hard copy and electronic formats acceptable to the City, unless otherwise directed by the City in writing. Consultant's failure to do so will constitute a material breach of this Agreement. Consultant will consult with the City to determine acceptable electronic formats before beginning the Services. All Deliverables and other tangible materials produced by Consultant pursuant to this Agreement will at all times be considered the property of the City. Deliverables which include spatial data that is intended for use within the City's GIS will be an Esri file geodatabase (.gdb), or a shapefile (.shp), or an AutoCAD drawing file (.dwg). All Deliverables will contain a file describing coordinate systems used. Consultant will provide complete metadata (who, what, when, where, how) for all provided spatial data and related information, including but not limited to the following: file description, attribute

descriptions, author and contact information (credit), and date created.

2. Digital Images. Consultant will provide non-copyrighted, high resolution, illustrative, digital images of project site plans, elevations, renderings, photos, and other Deliverables, as directed by the City, suitable for reproduction of and dissemination in marketing materials and at City Council hearings and public presentations. Consultant will affirm that the images do not violate copyright laws and will indemnify and hold harmless the City from liability for any expense, cost, loss or damage resulting from any claim of copyright infringement arising from the City's use of the images. All images provided will become the property of the City.

3. Ownership. Any materials, items, and work specified in the Scope of Services, and any and all related documentation and materials provided to Consultant in the course of performance of the Services shall be exclusively owned by the City. Consultant expressly acknowledges and agrees that all work performed under the Scope of Services constitutes Instruments of Service. Consultant hereby Grants the City a perpetual license to use all such Instruments of Service for the project contemplated, as long as Consultant is paid in full for services actually rendered. The City may, with respect to all or any portion of such work, use, publish, display, reproduce, distribute, destroy, alter, retouch, modify, adapt, translate, or change such work without providing notice to or receiving consent from Consultant, but City releases Consultant from any liability caused by City's alteration of such work without Consultant's written approval or endorsement, or use of such work including altered work for other than the immediate project for which it was created.

E. Consultant Representations; Standard of Care. Consultant represents that it has the requisite authority, capacity, experience and expertise to perform the Services in compliance with the provisions of this Agreement and all applicable laws. Consultant acknowledges that the City is relying on Consultant's expertise, skill, and knowledge, and that Consultant's obligations and liabilities will not be diminished by reason of any approval or review by the City. Consultant represents that the Services provided: (i) will be performed in accordance with the applicable professional standard of care of a reasonable professional that is performing the same or similar work, at the same time and locality and under the same or similar conditions faced by Consultant, and (ii) will be performed in a timely manner as required by the Agreement and performed and supervised by qualified personnel. Consultant further represents that all application software developed or implemented by Consultant under this Agreement, when used in accordance with its associated documentation, shall not infringe upon the rights or marks of a third party. Lastly, Consultant represents that it is not a party to nor subject to any agreement or order which would limit, prevent or restrict its performance of any Services.

F. Prosecution of the Services. Consultant will perform all work in a professional, workmanlike, and timely manner. Consultant shall be responsible for the professional quality, technical accuracy, and the coordination of all materials produced and other services furnished by the Consultant under this Agreement. Consultant will furnish all labor, materials, tools, supplies, machinery, utilities, and other equipment that may be necessary for the prompt completion of the Services. Consultant will monitor, supervise, and otherwise control and be solely responsible for all persons or entities performing work on its behalf. The Services to be performed by Consultant hereunder shall be done in compliance with any and all applicable laws, ordinances, rules and regulations. All work, if related to construction, will be performed in accordance with the City's Engineering Standards and Specifications.

G. Correction of Errors. Consultant will correct any errors or omissions in its work identified and documented as falling below the applicable professional standard of care by the City promptly, for no additional compensation, and without limiting any other express or implied remedies of the City.

H. SubConsultants. Consultant will not engage subConsultants to perform any part of the Services, other than for the provision of goods, materials or supplies, without the City's express written consent.

I. Licenses, Permits & Taxes. Consultant and each subConsultant will be responsible to obtain all required licenses and permits, including a City Consultant's license, if required. Consultant will pay any and all license and permit fees. Consultant is responsible for the payment of applicable taxes, including the City's sales and use tax, if applicable.

J. Time for Completion. Consultant shall complete all Services to the City's satisfaction by no later than **December 31, 2025**. Further, Consultant shall fully perform, complete, or present all identified tasks, sub-tasks, and Deliverable items by the deadline(s) established in the Scope of Services, as applicable. Consultant's rate of progress is a material term of this Agreement. At the City's request, Consultant will provide a progress schedule for the performance of any Services subject to the City's approval.

K. Monitoring and Evaluation. The City reserves the right to monitor and evaluate the progress and performance of Consultant to ensure that the terms of this Agreement are being satisfactorily met in accordance with the City's and other applicable monitoring and evaluating criteria and standards. Consultant will cooperate with the City relating to such monitoring and evaluation.

L. Drugs, Alcohol, Workplace Violence, and Harassment; Compliance with Applicable Law. Consultant and its employees and agents, while performing the Services or while on City property for any reason during the Term, will adhere to the City's policies applicable to City employees regarding drugs, alcohol, workplace violence, and harassment. Policies will be made available to Consultant upon request. Consultant will comply with all applicable federal, state and local laws, ordinances and regulations.

M. Non-Exclusivity. The City may engage the services of other persons for the provision of Services that could be performed under this Agreement. Consultant acknowledges that it is not entitled to perform any work except as assigned under this Agreement and is not guaranteed any amount of work.

II. COMPENSATION.

A. Amount. As compensation for performance of the Services and any other obligations under this Agreement, the City will pay Consultant for work actually performed, in accordance with the rates set forth in Exhibit A, a sum not to exceed **\$900,000.00**. The compensation established by this Agreement includes all of Consultant's costs and expenses to fully perform the Services and other obligations of this Agreement, for the Term, as defined below. The City shall not be obligated to pay any late fees or interest. The City will not consider or be obligated to pay or reimburse Consultant any other charges or fees and Consultant will not be entitled to any additional compensation or reimbursement.

Invoices. Consultant will submit invoices on a monthly basis, in a format approved by the City, and provide verification documentation as requested by the City. Invoices will be submitted to the City not more frequently than monthly. Invoices will identify the specific Services performed for which payment is requested, including a description of the Services, the applicable rates, any costs for which Consultant seeks reimbursement, the hours worked by each employee for the billing period, and the total amount that Consultant claims is due. The Consultant must also submit documentation supporting the charges in the invoice, which must be consistent with this Agreement, and must include a reference to this Agreement on each invoice.

B. Representation. By submitting an invoice, Consultant warrants that: (i) the work covered by

previous invoices is free and clear of liens, claims, security interests or encumbrances, except for any interest created by retainage; and (iii) no work covered by the invoice is subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by Consultant or any other person or entity. Consultant shall not include in its invoice any billing for defective work or for work performed by subConsultants or suppliers if it does not intend to pay the subConsultants or suppliers for such work.

C. Payment. The City will make payment to Consultant within thirty (30) days after receipt and approval of invoices submitted by Consultant. The City's obligation to make payment is contingent upon the Consultant's: (a) submission of a complete and accurate invoice; and (b) satisfactory performance of the Services and conditions of this Agreement. The City may withhold payment of any disputed amounts, and no interest will accrue on any amount withheld pending the resolution of the dispute. The City's review, approval or acceptance of, or payment for any Services shall not be construed to operate as a waiver of any rights under this Agreement, or a waiver of any cause of action arising out of the performance of this Agreement.

D. IRS Form W-9. If not on file with the City, Consultant will provide to the City a current, completed Internal Revenue Service Form W-9 with or before Consultant's first invoice. Failure to submit a W-9 may result in delay or cancellation of payment under this Agreement.

E. Subject to Annual Appropriation. This Agreement is expressly made subject to the limitations of the Colorado Constitution and Section 12, Chapter XII of the Charter of the City of Commerce City. Consultant acknowledges and accepts that nothing herein shall constitute or be deemed to constitute the creation of any kind of multiple fiscal-year debt, liability, or financial obligation of the City. Further, Consultant acknowledges and accepts that no provision of this Agreement shall be construed to create any kind of obligation of future monetary appropriations by the City Council of Commerce City that may run contrary to Article X, § 20 of the Colorado Constitution, or any other constitutional, statutory, or Charter debt limitation. Consultant acknowledges that the City has made no promise to continue to budget funds beyond the current fiscal year, and further acknowledges that the City has made no promise that it will pledge adequate cash reserves on a fiscal-year by fiscal-year basis, notwithstanding any provision of this Agreement that may be construed to the contrary. Consistent with Article X, § 20 of the Colorado Constitution, any financial obligation or liability of the City which may arise under this Agreement in any fiscal year after the date of execution, shall extend only to monies currently appropriated, and shall not constitute a mandatory charge, requirement, debt or liability beyond the current fiscal year.

F. Changed Conditions. Consultant agrees that, by careful examination, it is satisfied as to the nature and location of the Services, the conformation of the ground, the character, quality, and quantity of the materials to be encountered, the character of equipment and facilities needed before beginning and for the Services, the general and local conditions, and all other matters, which can in any way affect the performance of the Services. Consultant specifically waives any claim for additional compensation for any changed condition arising out of any one or more of the following, unless such changed condition is caused in whole or in part by acts or omissions within the City's control: (1) a physical condition of the site of an unusual nature; (2) any condition differing materially from those ordinarily encountered and generally recognized as inherent in work or services of the character and at the location provided for in this Agreement; or (3) any force majeure.

III. TERM AND TERMINATION.

A. Term. The term of this Agreement will be from the Effective Date until the completion and acceptance of the Services ("Term").

B. Termination

1. For Convenience. Consultant agrees that the City may terminate this Agreement without cause at any time for convenience of the City. Consultant assumes all risks of being terminated for convenience, whether such risks are known or unknown, and acknowledges that the City's decision to terminate for convenience lies solely within the City's own discretion. Consultant represents that it is a sophisticated business, has entered into the Agreement voluntarily, and has calculated all business risks associated with this Agreement. In the event of a termination for convenience, the City will provide written notice of termination to Consultant at least fourteen (14) calendar days prior to the effective date of termination. Consultant expressly agrees to and assumes the risk that the City shall not be liable for any costs or fees of whatsoever kind and nature if termination for convenience occurs before Consultant begins any Services or portion of the Services. Once Consultant has commenced performance of the Services, Consultant expressly agrees that the City shall be liable only for work Consultant satisfactorily completed up to the point of the effective date of the notice of termination, consistent with Section III(C) of this Agreement. The Consultant shall have no claim of any kind whatsoever against the City for any termination for convenience, except for compensation for work completed to the satisfaction of the City.

2. For Cause. If, through any cause, Consultant fails to fulfill its obligations under this Agreement in a timely and proper manner, violates any provision of this Agreement, or violates any applicable law relating to the performance of this Agreement ("Breach"), the City may terminate this Agreement for cause immediately upon written notice of termination to Consultant. Consultant will not be relieved of liability to the City for any damages sustained by the City by virtue of any Breach, and the City may withhold payment to Consultant for the purposes of setoff until such time as the exact amount of damages due to the City from Consultant is determined. If Consultant challenges a termination for cause by the City and prevails on all grounds asserted as a basis for such termination, the termination for cause will be deemed to be a termination for convenience and will be effective fourteen (14) days from the date that the original written notice of termination for cause was given to Consultant; no further notice will be required. As an alternative to immediate termination of the Agreement, the City may, but is not required, to provide written notice of a Breach to the Consultant, and allow the Consultant a reasonable period of time to cure the Breach, subject to the discretion of the City.

3. The occurrence of any one or more of the following as set forth in this non-exhaustive list shall constitute a Breach:

- a) The Consultant fails or refuses to expeditiously and actively undertake or substantially or timely perform its responsibilities and obligations, or fails or refuses to make adequate progress in performing its responsibilities and obligations under this Agreement, including those stated in the Scope of Services;
- b) There is substantial evidence that it has been or will be impossible for the Consultant to perform the Services required due to matters within the Consultant's control such as voluntary bankruptcy, strikes, boycotts, and labor disputes involving the Consultant's employees or closure or suspension of operations by regulatory order of a governmental entity or an order of a court due to violations or infractions by the Consultant or the Consultant's employees;
- c) The Consultant has submitted requests for payment under this Agreement that are fraudulent or persistently or flagrantly erroneous or misleading;

- d) The Consultant has made an assignment or transfer of, or subcontracts, any or all of its responsibilities and obligations under this Agreement in violation of the terms of this Agreement;
- e) The Consultant fails to obtain, renew, replace, or maintain the insurance coverage required by this Agreement, or causes or is at fault for damage to property or injury to persons that is not covered or not adequately covered by insurance and the Consultant fails to remedy the situation to the satisfaction of the City;
- f) The Consultant fails to obtain or properly and timely maintain any financial assurances required by this Agreement;
- g) Any lien is filed against City property because of any act or omission of the Consultant and is not timely discharged, unless the Consultant furnishes to the City such bond or other financial assurance reasonably acceptable to protect the interests of the City;
- h) The Consultant has failed to obtain or maintain any required permit or license, or has utilized personnel or workers not licensed or registered as required by law;
- i) The Consultant has failed to deliver title or warranties or has failed to honor warranties as required by this Agreement;
- j) The Consultant has flagrantly or persistently failed or refused to comply with any applicable laws or City policies, or fails or refuses to rectify any condition or situation in violation of applicable law or City policies;
- k) The Consultant 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 the Consultant's business.

4. For Non-Appropriation. Notwithstanding any other provision of this Agreement, with respect to any financial obligation of the City which may arise under this Agreement in any fiscal year after the year of execution, in the event the budget or other means of appropriation for any such year fails to provide funds in sufficient amounts to discharge such obligation, such failure (i) shall act to terminate this Agreement at such time as the then-existing and available appropriations are depleted, and (ii) neither such failure nor termination shall constitute a default or breach of this Contract, including any Work Order, sub-agreement, attachment, schedule, or exhibit thereto, by the City.

C. Effect of Termination.

- 1. For termination pursuant to either Section III(B)(1) or (2), above, the City will be liable only for Services Consultant performed that were actually requested by the City and completed to the City's satisfaction up to the date of the effective date of termination.
- 2. For termination pursuant to Section III(B)(3), above, the City will be liable only for Services that Consultant performed that were actually requested by the City and completed to the City's satisfaction up to the date of the effective date of termination, to the extent that the budget for the year of such termination provided sufficient funds to discharge such obligation.

3. Following termination for any reason, under no circumstances will the City be liable for any costs related to Services not performed to the satisfaction of the City, any Services not requested by the City, or any Services that the City directed the Consultant to not perform. The City will not be liable to Consultant for any unperformed Services, anticipated profits, overhead, mobilization or demobilization costs, administrative costs, productivity costs, losses on disposal of equipment or materials, cost associated with the termination of subConsultants, costs associated with purchase orders or purchases, or any other costs or fees of any kind and nature.

4. Upon receipt of a notice of termination, Consultant will:

- a) Immediately discontinue performance of the Services (unless otherwise instructed in writing);
- b) Take reasonable actions necessary, or as the City may direct, for the protection and preservation of completed or partial work;
- c) Provide the City with all drawings, specifications, photographs, data, and other pertinent documents and information relating to work completed or partially completed, in either their original format or such other commercially reasonable format as the City may direct; and
- d) Cooperate in all respects with the City, which cooperation shall include, but not be limited to, all of the foregoing obligations listed herein, as well as assisting the City during a transition to another Consultant for the Services, if applicable.

5. The City may pursue any remedies available at law or equity. Consultant shall be liable to the City for any loss or damage sustained by the City caused by the Consultant's failure to perform in accordance with this Agreement.-

D. Consultant's Remedies for Breach.

1. Consultant may terminate this Agreement for non-payment of sums due under this Agreement except where non-payment is pursuant to the City's rights under this Agreement. Consultant will first provide the City written notice of Consultant's intent to terminate and allow the City thirty (30) days within which to make payment.

2. Notwithstanding any claim of a material breach by the City, Consultant shall not discontinue performance of the Services without the written consent of the City.

IV. INDEMNITY.

To the extent permitted under Colorado Revised Statute Section 13-50.5-102(8), Consultant will indemnify and hold harmless the City, as well as its elected and appointed officials, current and former officers and employees, and agents acting under the City's direction or control ("Indemnified Parties"), from any and all liability, claims, demands, actions, damages, losses, judgments, costs or expenses, including, but not limited to, reasonable attorney fees, which may be made or brought or which may result against any of the Indemnified Parties as a result or on account of the negligent, grossly negligent, willful and wanton, or intentional actions or omissions of or a failure to observe any applicable standard of care by Consultant and/or its employees, agents or representatives or other persons acting under Consultant's direction or control. Consultant need not indemnify or hold harmless an Indemnified Party from damages resulting from the sole negligence or fault of that Indemnified Party. Consultant will include the provisions of this Section in any such subcontracts engaged to perform any part of the Services. The provisions set forth in this Section will survive the completion of the Services and the satisfaction, expiration or termination of this Agreement.

V. WAIVER OF CONSEQUENTIAL DAMAGES; SUBROGATION

Notwithstanding any provision of this Agreement that may be construed to the contrary, in no event shall the City or the Consultant, including its elected and appointed officials, current and former officers and employees, servants, agents, attorneys, representatives, insurance carriers, and self-insurance pools, be liable to one another for any exemplary, punitive, special, indirect, consequential, remote, or speculative damages arising out of or relating to, in any manner, this Agreement; whether arising in contract, tort, or otherwise,, even if the party has been informed of the possibility thereof. Moreover, to the extent any damages arising under this Agreement may be covered by insurance, the Consultant agrees to waive all rights of subrogation against the City, its subsidiary, parent, associated and/or affiliated entities, successors, or assigns, its elected and appointed officials, current and former officers and employees, servants, volunteers, agents, attorneys, representatives, insurance carriers, and self-insurance pools for losses arising from the Services performed by the Consultant for the City.

VI. INSURANCE

A. Required Policies. Consultant will procure and keep in force the following insurance subject to the conditions below, for the duration of this Agreement:

1. **Commercial General Liability Insurance.** Comprehensive general liability insurance insuring against any liability for personal injury, bodily injury or death arising out of the performance of the Services with minimum combined single limits of **One Million Dollars (\$1,000,000.00)** for each occurrence and **Two Million Dollars (\$2,000,000.00)** general aggregate.

2. **Products and Completed Operations Insurance.** Products and completed operations insurance insuring against any liability for bodily injury or property damage caused by the completed Services, with a combined single limit of at least **One Million Dollars (\$1,000,000).**

Comprehensive Automobile Liability Insurance. Automobile Liability coverage with minimum combined single limits for bodily injury and property damage of not less than **One Million Dollars (\$1,000,000.00)** for any one occurrence with respect to each of Consultant's owned, hired or non- owned vehicles assigned to or used in connection with performance of the Services. If Consultant's insurance does not cover non-owned or hired vehicles, the requirements of this paragraph shall be met with respect to each such vehicle used in connection with performance of the Service, and Consultant agrees to assure compliance prior to allowing use of a vehicle not owned by Consultant for such purpose.

3. **Professional Liability Insurance.** If Consultant is an architect, engineer, surveyor, appraiser, physician, attorney, accountant or other licensed professional, or if it is customary in the trade or business in which Consultant is engaged, or if the City otherwise deems it necessary, errors and omissions professional liability insurance insuring Consultant against any professional liability with a limit of at least **One Million Dollars (\$1,000,000.00)** per claim and annual aggregate.

4. **Other Insurance.** Workers' compensation insurance (unless Consultant provides a completed Declaration of Independent Consultant Status Form) and other insurance required by applicable law.

5. **Excess or Umbrella Requirements.** For the coverages required in Sections VI(A)(1-4), Consultant shall provide umbrella or excess coverage written on a "follow-form" basis to the

underlying policy and in a coverage amount not less than **One Million Dollars (\$1,000,000.00)**. In so doing, the coverage shall provide complete protection to the City consistent with the liability limits that may be imposed upon the City pursuant to C.R.S. § 24-10-114, as may be amended.

The limits of any insurance required by this Agreement shall be the limit of Consultant's liability regardless of the nature or form of the claim(s).

B. Terms of Insurance.

1. **Additional Insured.** Except for the professional liability policy, if applicable, and workers' compensation policy, **all required insurance policies shall name the City as an additional insured** and will provide that the City, although named as an additional insured, will nevertheless be entitled to recovery under said policies for any loss occasioned to the City or its officers, employees or agents by reason of the negligence of Consultant or its officers, employees, agents, subConsultants or business invitees. The insurance policies will be for the mutual and joint benefit and protection of Consultant and the City. **Such policies will be written as primary policies not contributing to and not in excess of coverages the City may carry.**

2. **Qualification; Deductible.** Insurance required by this Section will be with companies qualified to do business in the State of Colorado and may provide for deductible amounts as Consultant deems reasonable for the Services, but in **no event** greater than **Twenty Thousand Dollars (\$20,000.00)**, and Consultant will be responsible for the payment of any such deductible.

3. **Cancellation.** No such policies will be cancelable or subject to reduction in coverage limits or other modification unless previously approved by the City in writing.

4. **Coverage Type.** Consultant will identify whether the type of coverage is "occurrence" or "claims made." If the type of coverage is "claims made," which at renewal Consultant changes to "occurrence," Consultant will carry a twelve (12) month tail. Consultant will not do or permit to be done anything that will invalidate the policies.

5. **Evidence of Coverage.** Before commencing work under this Agreement, Consultant will provide certificates of insurance policies and all necessary endorsements evidencing insurance coverage required by this Agreement. The City will not be obligated under this Agreement until Consultant provides acceptable such certificates of insurance and endorsements. If the Term extends beyond the period of coverage for any required insurance, Consultant will, at least ten (10) days before the expiration of any such insurance coverage, provide the City with new certificates of insurance and endorsements evidencing either new or continuing coverage.

C. **Subcontracts.** Consultant will include the insurance requirements of this Agreement in all subcontracts. Consultant will be responsible if any subConsultant fails to procure and maintain insurance meeting the requirements of this Agreement.

VII. SALES AND USE TAX.

Unless specifically exempt, all materials provided and equipment used in the performance of Services within the City are subject to City Sales & Use Tax, including services performed on behalf of the City.

A. **Consultant Responsible for Tax.** Consultant is subject to the tax on all purchases, fabrication,

manufacture or other production of tangible personal property used, stored, or consumed in performance of the Services.

B. Specific Industry Standard. The Specific Industry Standard for Construction and Consultants (Regulation 20-S.I.15) can be provided upon request by contacting the City's Finance Department, Sales Tax Division, at 303-289-3628, and is available on the City's website at <http://www.c3gov.com/DocumentView.aspx?DID=115>.

C. Equipment. Prior to or on the date Consultant locates equipment within the City to fulfill this Agreement, Consultant will file a declaration describing each anticipated piece of equipment the purchase price of which was two thousand five hundred dollars (\$2,500) or greater, stating the dates on which Consultant anticipates the equipment to be located within and removed from the boundaries of the City and stating the actual or anticipated purchase price of each such anticipated piece of equipment along with any other information deemed necessary by the City. When such declared equipment is located within the City for a period of thirty (30) days or less, Consultant may include sales and use tax calculated on one-twelfth (1/12) of the purchase price of such equipment in the contract amount, in compliance with Section 20-5-T of the Commerce City Sales & Use Tax Code. If Consultant fails to declare the equipment to the City prior to or on the date Consultant locates the equipment within the City, none of the sales and use tax due on the equipment will be allowed as a contract expense.

VIII. NOTICES.

Except for routine communications, written notices required under this Agreement and all other correspondence between the parties will be directed to the following and will be deemed received when hand-delivered or three (3) days after being sent by certified mail, return receipt requested:

If to the City:

Facilities Program Manager
Public Works
City of Commerce City
8602 Rosemary Street
80210 Commerce City, CO 80022
Cc: City Attorney's Office
7887 E. 60th Avenue
Commerce City, CO 80022

If to Consultant:

Owner/Manager
D2C Architects, Inc.
1212 S Broadway, Ste 250
Denver, CO

The parties may agree to delivery of notices via electronic mail.

IX. INDEPENDENT CONSULTANT.

A. Generally. The relationship between Consultant and the City will be as independent Consultants, and neither the City nor Consultant will be deemed or constitute an employee, servant, agent, partner or joint venturer of the other. Consultant is obligated to pay federal and state income tax on any money earned pursuant to this Agreement, and neither Consultant nor Consultant's employees, agents or representatives are entitled to workers' compensation benefits, unemployment compensation benefits, sick and annual leave benefits, medical insurance, life insurance, or pension or retirement benefits from the City.

B. Representations. Consultant shall make no representation that either it or any of its employees, agents, or representatives are employees of the City for any purposes.

C. No Authority to Bind the City. Consultant does not have the authority to act for the City, or to bind the City in any respect whatsoever, or to incur any debts or liabilities in the name of or on behalf of the City.

D. Control and Supervision. Consultant has and retains control of and supervision over the performance of Consultant's obligations hereunder and control over any persons employed by Consultant for performing the Services hereunder

E. Non-Exclusivity. Consultant represents that it is engaged in providing similar services to other clients and/or the general public and is not required to work exclusively for the City.

F. Assumption of Risk. All Services are to be performed solely at the risk of Consultant and Consultant shall take all precautions necessary for the proper and sole performance thereof.

G. Separate Operations. Consultant will not combine its business operations in any way with the City's business operations and each party shall maintain their operations as separate and distinct.

X. GENERAL PROVISIONS.

A. Incorporation by Reference. All Exhibits attached to this Agreement are incorporated into this Agreement by reference.

B. No Assignment. Consultant will not assign or transfer any rights, interests, or obligations under this Agreement without the City's prior written consent.

Governing Law; Jurisdiction and Venue; Recovery of Costs. This Agreement will be governed by the laws of the State of Colorado without regard to its conflicts of laws provisions. For all claims arising out of or related to this Agreement, Consultant consents to the exclusive jurisdiction of and venue in the state courts in the County of Adams, State of Colorado. Consultant waives any exception to jurisdiction because of residence, including any right of removal based on diversity of citizenship. The prevailing party in any litigation to resolve a dispute between the parties arising from this Agreement will be entitled to recover from the non-prevailing party court costs, reasonable third party expenses, and reasonable attorney fees incurred in prosecuting or defending such action and enforcing any judgment, order, ruling or award but such amounts shall be capped at \$50,000. The prevailing party shall be determined based upon an assessment of which party's arguments or positions could fairly be said to have prevailed over the other party's arguments or positions on major disputed issues at trial. Such assessment should include evaluation of the following: the amount of the net recovery; the primary issues disputed by the parties; whether the amount of the award comprises a significant percentage of the amount sought by the claimant; and the most recent settlement positions of the parties, which the parties agree shall be admissible for purposes of determining the prevailing party.

C. Governmental Immunity. No term or condition of this Agreement will be construed or interpreted as an express or implied waiver of any of the immunities, rights, benefits, protections, or other provisions of the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 to -120.

D. COVID-19 and Other Public Health Emergencies. While on City property, Consultant and any employees and subConsultants will comply with all public health orders and laws related to the COVID-19 public health emergency and any other public health emergency in the City, and all City directives relating to any public health emergency, including distancing, face coverings, employee screening, and sanitation. Consultant will not permit any employee who has tested positive for COVID-19, who is exhibiting symptoms of COVID-19, or who has exhibited symptoms within the

prior 10 days, to be present at any City facility.

E. Protections for Data Privacy. Consultant shall implement and maintain reasonable security procedures and practices compliant with C.R.S. § 6-1-713.5(2)(a-b) and C.R.S. § 24-73-102(2)(a-b) with respect to any personal identifying information, as defined in C.R.S. § 6-1-713(2)(b) and C.R.S. § 24-73-101(4)(b), disclosed to Consultant in the course of performing the Services. Consultant will notify the City within twenty-four (24) hours of Consultant's determination that a security breach has occurred, as defined in C.R.S. § 6-1-716(1)(c), (h) and C.R.S. § 24-73-103(1)(b), (h) with regard to any personal information, as defined in C.R.S. § 6-1-716(1)(g) and C.R.S. § 24-73-103(1)(g), disclosed to Consultant in the course of performing the Services, and will conduct such investigation and provide such notice as required by law in the event of such breach.

F. Rights and Remedies. The rights and remedies of the City under this Agreement are in addition to any other rights and remedies provided by law. The expiration of this Agreement shall in no way limit the City's legal or equitable remedies, or the period in which such remedies may be asserted, for Services negligently or defectively performed.

G. Time of the Essence. Consultant acknowledges that time is of the essence in the performance of this Agreement. Consultant's failure to complete any of the Services during the Term, or as may be more specifically set forth in an exhibit, notice to proceed, change order, or any approved progress schedule, will be deemed a breach of this Agreement.

H. No Third-Party Beneficiaries. Enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement will be strictly reserved to the parties. Any person other than the City and Consultant will be deemed to be only an incidental beneficiary under this Agreement.

I. No Waiver. The waiver of any breach of a term of this Agreement, including the failure to insist on strict compliance or to enforce any right or remedy, will not be construed or deemed as a waiver of any subsequent breach of such term; any right to insist on strict compliance with any term; or any right to enforce any right or remedy with respect to that breach or any other prior, contemporaneous, or subsequent breach.

J. Rules of Construction. Neither party will be deemed to have drafted this Agreement. This Agreement has been reviewed by all parties and will be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of all parties. No term of this Agreement will be construed or resolved in favor of or against the City or Consultant on the basis of which party drafted the uncertain or ambiguous language. Where appropriate, the singular includes the plural and neutral words and words of any gender will include the neutral and other gender. Paragraph headings used in this Agreement are for convenience of reference and will in no way control or affect the meaning or interpretation of any provision of this Agreement.

K. Acknowledgement of Open Records Act. The City is a public entity subject to the Colorado Open Records Act, ("CORA" or "Act") C.R.S. § 24-72-201 to -205.5, and this Agreement and any related documents are subject to public disclosure. The City will take reasonable steps to keep confidential only documents actually prevented from disclosure under the Colorado Open Records Act, C.R.S. § 24-72-201 -205.5, which efforts may include notifying the Consultant of a CORA request and allowing the Consultant to take steps to prevent disclosure, where and when it is reasonably possible to do so. **The Consultant will indemnify and hold the City harmless from any claims arising from the release or inadvertent disclosure of confidential or proprietary**

information, and from any claims arising from the withholding, or release of documents not protected from disclosure under the Act.

L. Authority. The parties represent and warrant that they have taken all actions necessary to legally authorize the undersigned signatories to execute this Agreement for the parties and to bind the parties to its terms. The signatories represent and warrant that each has legal authority to execute this Agreement for the party he or she represents and to bind that party to its terms.

M. Individual Liability. All authorized representatives of the City are acting solely as agents and representatives of the City when carrying out and exercising the power or authority granted to them under the Contract. There shall not be any liability on them either personally or as employees of the City. Except for fraud, willful or wanton misconduct, deliberate breach, or recklessness no individual agent or representative of Consultant shall be subject to any liability either personally or as employees of Consultant. Except for the foregoing, all claims brought by either party shall be brought out against the municipal or corporate entities of the parties.

N. Entire Agreement; Modification; Binding Effect. This Agreement contains the entire agreement of the parties relating to the subject matter of this Agreement and, except as expressly provided, may not be modified or amended except by validly executed written agreement of the parties. All prior and contemporaneous agreements and understandings, whether oral or written, are superseded by this Agreement and are without effect to vary or alter any terms or conditions of this Agreement. This Agreement will be binding upon, and will inure to the benefit of, the parties and their respective heirs, personal representatives, successors and assigns.

O. Severability. A holding by a court of competent jurisdiction that any term of this Agreement is invalid or unenforceable will not invalidate or render unenforceable any other term of this Agreement.

P. Survivability. The following provisions of this Agreement shall survive termination of this Agreement for any reason: I(D); I(E); II; III; IV; V; VI; IX; X. The obligations of any surety under any bond provided pursuant to this Agreement will survive termination.

Q. Counterparts; Execution. This Agreement may be executed in any number of counterparts, each deemed to be an original, and, taken together will constitute one and the same instrument. Signature pages may be executed via "wet" signature or electronic mark and the executed signature pages may be delivered using pdf or similar file type transmitted via electronic mail, cloud based server, e-signature technology or other similar electronic means.

[Remainder of this page intentionally left blank – signature page(s) follow(s).]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

CITY OF COMMERCE CITY

Jason R. Rogers, City
Manager City Manager's
Office

ATTEST:

APPROVED AS TO FORM:

Dylan A. Gibson, City Clerk

John-Patrick Sansom, Assistant City Attorney

D2C ARCHITECTS, INC.

Signature

Printed Name, Title

EXHIBIT A

Scope of Services

CONSULTANT: D2C Architects, Inc.

LOCATION(S) OF SERVICES: Future North Police Substation, 13701 E 104th Avenue, Commerce City, CO 80022

GENERAL DESCRIPTION OF SERVICES:

General Project Requirements:

Consultant will prepare and deliver all necessary plans, documents, specifications, and other relevant information necessary to design, permit, and construct a new police substation, as generally detailed in the Feasibility Study. All work shall be completed in accordance with applicable City standards, professional standards, and within the agreed upon timeline. Completion of the work includes but is not limited to, participation in regular design meetings through the completion of Construction Documents ("CD"); community engagement during the pre-design process; completion of an initial project budget and construction schedule; detailed updates to the budget/schedule at the completion of a Schematic Design ("SD"), Design Development ("DD") package and CD package; assist the City and the design team with quality/budget minded decisions through the completion of CD's while working collaboratively with the CMGC ("Construction Manager/General Contractor"), which is anticipated to be procured around the 30% design level; assist the City with presentation documents to facilitate City staff communications to the City Council regarding the project's budget and schedule; complete a final budget/schedule for preparation of a construction contract with the City of Commerce City.

Scope of Project & Services

Consultant will host an initial kickoff meeting to interact with key stakeholders, walk site, and tour other Facilities.

The Attachments attached hereto shall for all purposes hereof form an integral part of this Agreement and are hereby incorporated by reference in their entirety. (Attachment A Tasks).

1. Pre-Design, Concept, and Programming Service (Task 1, per attachment A)

Consultant will provide pre-design, concept-design, and programming services necessary to identify the project scope of work as well as the perceived schedule and budget. Consultant will research, analyze, and evaluate all of the requirements, building code, subdivision regulations, and zoning regulations, as well as any other precedent research and any analysis of the property necessary to identify any issues that may affect the specific development. The Consultant will develop recommendations on the feasibility of the project. To include, user interviews, concept workshop/charrette, pre-submittal meetings with C3 AHJs, community outreach, detailed report presentation, and authorization to proceed.

Consultant will:

- a. Engage with the City to determine the exact location and floorplans of the Police Substation and any ancillary structures. Conceptual designs will need to include basic furniture placement to help City staff more clearly envision space usage. Conceptual design should also include space usage and availability compared to programming and service needs.
- b. Engage with the City and community to develop concept and programming of the space.
- c. Review existing conceptual and feasibility plans and project documentation.

- d. Familiarization with the City's development process for platting, development plans, construction plans, and other regulatory requirements in the Land Development Code.
- e. Provide recommendations on the feasibility of the project.

Once the concept and programming are presented and the Consultant provides the City with drawings, the Consultant and the City will agree, in writing, to proceed to the next phase of design.

2. Schematic Design (Task 2, per attachment A)

Consultant and the City will discuss the project and any requirements. The architect establishes the size, location, and relationships between all the spaces. The basic goal of Schematic Design is to establish the shape and size of the building with some basic plans of the spaces. The consultant will meet with various stakeholders to obtain an idea of space needs for the facilities. To include, schematic workshop/charrette, present drawings, and authorization to proceed.

Consultant will develop a space plan prepared on a scalable floor plan and shall include the following:

- a. Provide layout of the City's proposed premises showing interior walls, open areas, door swings, demising walls, corridor partitions, and exterior window walls in relationship to the building core and entire floor plan.
- b. Provide location and accurate size of columns, stairways, elevators, and other building features shall also be shown on the space plan.
- c. Provide names and sizes of all rooms contained on the space plan.
- d. Develop summary information from space plan indicating total usable square footage requirements.
- e. Develop, document, and present a design concept to the City's satisfaction based upon the City's desired image, budget, schedule, and consistent with the standards developed.
- f. Create a Preliminary Pricing Package to be issued to a General Contractor inclusive of the final space plans and detailed notes to facilitate initial construction pricing.

Consultant shall coordinate the Schematic Design Drawings through all respective disciplines for cursory and preliminary review. The Consultant will incorporate any comments received during the cursory and preliminary review of the Schematic Design into the Design Development phase.

Once the Schematic Design is agreed upon, submitted to the Department of Community Development for cursory, and preliminary review, the Consultant will provide the City with the drawings and the Consultant and the City will agree, in writing, to proceed to the next phase of design.

3. Design Development (Task 3, per attachment A)

Consultant and the City will select materials including interior finishes and products such as windows, doors, fixtures, appliances, and materials. Preliminary engineering will start on the structure as well as plumbing, electrical, heating/ventilation systems, energy analysis and any other project specific systems. This phase concludes when the interior and exterior design of the building is firmly established by the City and the Consultant. To include, meeting with permit authority, DAG coordination, review and approvals, design presentation, and authorization to proceed.

Based on the approved Schematic Design Package, the Design Team shall:

- a. Prepare final electronic plans to be used for Design Development and for team coordination.
- b. From the approved space plans, coordinate with their respective engineers as for preliminary MEP ("Mechanical, Electrical and Plumbing") and Structural Designs, with phasing considerations as necessary.
- c. Develop, document, and present design details, finishes and color scheme for the project

- premises to the City's satisfaction.
- d. Coordinate with the City on technology and equipment requirements.
 - e. Coordinate equipment schedules, system design and improvements, and architectural design requirements.
 - f. Coordinate with the selected CMGC on constructability and feasibility reviews.
 - g. Prepare an equipment matrix showing all required equipment based on information provided by the City. Matrix should identify electrical, mechanical, and structural requirements, and utility connections.
 - h. Provide design for pieces of furniture as required to accommodate the new space.
 - i. Prepare presentation materials as necessary to adequately convey the proposed design concept to the City.
 - j. Assist in the preparation of an updated detailed project budget including but not limited to consultants, construction, furniture, fixtures, equipment, and signage.
 - k. Participate in project design and coordination meetings as required.
 - l. Coordinate and continue documentation of ADA ("Americans with Disabilities Act") compliance for the site and building.
 - m. Based on the approved Schematic Design Package, prepare a design presentation consisting of the following:
 - Plans showing architectural design and MEP equipment.
 - Lighting plans showing new light fixtures.
 - Electrical and communication plans showing locations of all equipment.
 - Finishes plans showing locations of flooring materials including carpet, resilient flooring, and base treatments; coordinating wall treatments including paint colors, special paints, and wall coverings; surfacing materials for all new millwork; and any other associated finishes for presentation.
 - MEP plans showing heating, ventilating, air conditioning, plumbing or electrical requirements necessitated by the design, and coordinate with their engineer for development of the MEP construction drawings.

Consultant shall coordinate the Design Development Drawings through all respective disciplines for cursory and preliminary review. The Consultant will incorporate any comments received during the review of the Design Development Drawings into the Construction Document phase.

The Design Team shall issue a Design Development Package inclusive of the above-listed plans for review and approval. Once the Consultant provides the City with the drawings, submits to the Department of Community Development for cursory and preliminary review, the Consultant and the City will agree, in writing, to proceed to the next phase of design.

4. Construction Documents (Task 4)

The Architect and Engineer will finalize all the technical drawing and engineering including detailing. Heating and air conditioning and ventilation systems, plumbing, electrical, gas, energy calculations, and all products and materials are selected and/or scheduled. To include, documentation presentation, and authorization to proceed.

The Design Team shall prepare the Construction Documents to be issued in final form in PDF and AutoCAD formats for the City's use. These documents shall be used to obtain contractor pricing, building permits, and achieve final build out. These documents shall include, but are not limited to:

- Cover Sheet
- Specifications

- Standards and Schedules
- Demolition Plans
- Architectural Partition Plans
- Electrical Plans
- Mechanical Plans
- Plumbing Plans
- Structural Plans
- Lighting Plans
- Finish Plans
- Furniture Plans

Consultant shall meet with the City to review the Construction Documents for approval. The Consultant shall complete a Permit Set of documents showing all required information necessary to obtain a building permit in the designated location. The Consultant shall coordinate the full set of drawings through all respective disciplines. The Consultant will provide a final set of "For Construction" documents incorporating all permits, the City and Landlord comments and changes.

5. Bidding (Task 5)

It is anticipated the City will procure a CMGC for this project. Consultant will assist the City by providing answers to any contractors' questions and provide any additional documentation if requested or needed. Consultant will aid in developing a list of qualified contractors for selection of pre-construction services. Consultant will review submitted bids, provide analysis, and help compare the cost figures received from bidders.

Consultant shall:

- a. Complete and submit the forms required to file for the permit (Building Information, ADA Requirements, etc.).
- b. Issue the required sets of stamped and sealed drawings to the City for use in obtaining the necessary building permits to begin Work. The City will pay the cost of the City permit and City review fees.
- c. Issue the Contract Documents to General Contractors for their use in obtaining final bid pricing. Once bids are received, the Design Team will qualify those bids and present to the City with a Bid Comparison matrix comparing the Bids.
- d. Answer Bid RFI's in a timely manner so as to not delay start of construction toward the targeted Substantial Completion Date.
- e. Participate in the value engineering process as required.
- f. Consult with the City on the final selection of a General Contractor.

6. Construction Observation (Task 6)

The Architect will periodically visit the job site to see progress and ensure the contractor is following the plans per the architectural design intent. The Architect will review general contractor's monthly invoices to confirm percentage work completion. The Architect will be available to answer questions and provide additional information to issues that arise. The Architect will respond to clarification requests and/or change orders to address any conditions as they arise. To include, construction kick-off, preconstruction meeting, regular site observation and attendance, final walk through, punch list items, and 11-month warranty inspection.

The Design Team will:

- a. Respond to all appropriate Requests for Information (RFI's).
- b. Provide interpretation and clarification to contract documents and respond to field construction issues as necessary.

- c. Review shop drawings and finish samples for conformance with the design concept of the project, and for compliance with the information given in the contract documents, and as required to facilitate completion of the project. No review period shall take more than one (1) week for any single submission.
- d. Review and comment on all pricing and change orders.
- e. Review and approve the layout prior to the commencement of construction.
- f. Provide observation and attend regular job site meetings to observe the quality and quantity of work and ensure that the work being conducted by the contractor is satisfactory, is completed according to schedule, and is consistent with the specifications in the Contract Documents.
- g. Prepare periodic field reports as necessary.
- h. Assist Project Manager with the review and approval of General Contractor's Certificate(s) for payment of the City certifying that, to the best of space planning firm's knowledge and information, the quality of the suppliers' or vendors' work is in accordance with contract documents, and that such entities are entitled to payment by the City in the amounts certified.
- i. Develop a punch list at job completion specifying the work to be corrected or completed.
- j. Conduct up to two follow-up site visits to ensure that the punch list work has been completed.
- k. Coordinate a final close out meeting with the City, to confirm the completion of the punch list work.

Provide General Contractor with current updated Construction Documents in CAD format for the GC to use in their preparation of record drawings. Prepare and provide a final set of "as-built" documents to the City in both hard copy and electronic formats.

City Oversight

A designated individual will be responsible for management of the contract for the City ("Project Manager"). The City will provide reasonable assistance to Consultant in the scheduling of meetings, interpretation of policy and procedural requirements, research relating to internal documents, coordination with outside agencies and City staff, but the City's obligation will not limit Consultant's obligations to perform the Services. The City will rely on the personnel, experience, and expertise of Consultant to ensure all necessary components of the scope of work are completed.

Timeline and Budget

Consultant must complete all deliverables within the agreed-upon schedule and within the limits provided by the executed contract.

City Holidays

City holidays currently include: New Year's Day; Martin Luther King Day; President's Day; Memorial Day; Juneteenth; Independence Day; Labor Day; Veteran's Day; Thanksgiving Day; Day After Thanksgiving; Christmas Day.

Deliverables/Sub-tasks (including deadlines for each):

1. Upon completion of final scoping, that will be agreed upon and confirmed with the City, a detailed schedule will be provided and will be carried through the project as a tool for managing the process and ensuring adherence to overall schedule.

WHEN: Consultant shall perform all Services to the satisfaction of the City by **December 31, 2025**, unless extended by written amendment.

COST: Under no circumstances shall the compensation due and owing to the Consultant for performance of the Services described herein exceed **\$900,000.00**.

SUMMARY	DESIGN FEE BY PHASE	BY DISCIPLINE	
TASK 1 - PRE-DESIGN / PROGRAMMING / CONCEPT DESIGN	\$119,949.00	Architecture	\$511,702.00
TASK 2 - SCHEMATIC DESIGN (30%)	\$115,260.00	Landscape & Irrigation	\$32,495.00
TASK 3 - DESIGN DEVELOPMENT (60%)	\$212,923.00	Civil	\$64,005.00
TASK 4 - CONSTRUCTION DOCUMENTS	\$212,768.00	Structural	\$56,005.00
TASK 5 - BIDDING AND NEGOTIATION	\$30,287.00	MEPF	\$180,000.00
TASK 6 - CONSTRUCTION OBSERVATION	\$170,197.00	Food & Laundry Service	Not Anticipated
ESTIMATED REIMBURSABLE EXPENSE ALLOWANCE	\$10,500.00	Environmental / Hazardous	Not Anticipated
		Cost Estimator	\$7,642.00
		Survey	By Commerce City
		Geotechnical	\$11,545.00
		Sustainability	Not Included
		CA (Commissioning)	By Commerce City
		Est. Reimbursable Expense Allowance	\$19,500.00
TOTAL REQUESTED:	\$672,884.00	TOTAL REQUESTED:	\$672,884.00

Optional Additional Services

Services beyond those detailed in this Agreement may only be added through a written amendment to this Agreement. Any additional services requested by the City covered in the rates and fees listed below shall only be provided at the rates and fees listed below.

1) Technology Design

Current scope accounts for pull strings and conduit only as described in MEP proposal and assumes that Commerce City / Commerce City IT or Facilities will pull wire for Telecomm, AV, Card Readers, Security, TVs, etc.

Audio-Visual Systems \$23,000.00

Complete design and specification of specialty AV systems located breakout spaces and Conference Rooms typical of justice centers. Systems shall allow for individual control of content as well as user A/V inputs. System components shall include controls systems/touch panels, video displays and projectors, local sound systems, hardware/software, equipment racks/cabinets, and associated infrastructure such as equipment distribution rooms, raceways, and cables. All equipment and raceway will be located on plan drawings with equipment schedules. Enlarged plans should be used for layouts of equipment distribution rooms.

Security Systems \$18,400.00

Design, specifications, and equipment lists for electronic access control (card readers and keypads), intrusion detection (door monitors), and video surveillance (cameras and recorders). Additionally, work includes head-end equipment, servers, security control panels, Command Center/Monitoring Station(s), console and video wall, power supplies, computer workstations, video monitors, cable, raceway, and power supplies.

Telecommunication Infrastructure \$27,600.00

Planning, design, and specification of telecommunications infrastructure including telecommunication rooms (telecom demarc room, main telecom room, intermediate telecom rooms, server rooms), telecom room hardware (backboard, equipment racks/cabinets, ladder rack), telecom ground system, telecom service duct-bank (underground conduits, manholes), backbone raceway (cable tray, conduits), horizontal station raceway (cable tray, conduits, y-hooks), and structured cabling system (backbone-OS-DM/Cat3, horizontal-Cat5/6A cables, terminations). Structured cabling system will be designed to support typical IP enabled devices and connectivity including Telephone, Data, Wi-Fi, Internet, IPTV, security cameras.

Develop (performance design) requirements for a neutral host DAS or similar system that converges major cellular telephone carriers including AT&T, Verizon, and T-Mobile. Work includes assisting client with the DAS Vendor selection process (competitive RFP or other process). Once under contract, the selected DAS Vendor will complete wireless survey and modeling, technical design, specifications, coordination, and drawings. ME scope includes assisting DAS Vendor with high level design coordination (focused on aesthetics and constructability) and Owner/Architect design approval process. (Note: all DAS low level design coordination and production of A/E bid and construction level documents is the responsibility of the selected DAS Vendor and is excluded from ME scope.)

2) Commissioning \$15,000.00

Commerce City appears to be under the 2021 International Building Codes. This includes the 2021 IECC that requires Mechanical and Lighting commissioning for projects of this size. Listed in the RFP Feasibility Report as an "Owner Cost" below the line therefore this has been listed as an Optional Service. This service can be provided if needed. If so, we would serve as commissioning agent (CA) for commissioning of the building MEP systems to comply with the applicable Energy Code (2021 IECC). This effort will be limited to HVAC, plumbing and electrical systems as noted in the code.

3 | Energy Analysis

TBD

It is not clear what is meant by "energy analysis". The design team however will need to show compliance with the 2021 IECC. If something more than COMCheck is required that service can be provided.

Commerce city is under Xcel Energy, so Xcel's Energy Design Assistance (EDA) program would be a good path that could allow us to get a model from a 3rd party (no cost to the client) and yet also yield Commerce City the potential for rebates.

4 Mechanical Noise Control, Acoustic Design and Property Line Noise Study	\$19,375.00
5 Life Cycle Cost Analysis (LCCA)	TBD
6 Cost Estimates at SD, DD and CDs. Efforts also include Cost Reconciliation Efforts	\$38,102.00
Schematic Design \$9,910	
Design Development \$12,893	
Construction Documents \$15,299	
*Cost Estimating Reconciliation not included in the fee above. If cost reconciliation is desired, add \$6,000 to each cost estimate price noted above.	
7 Supplemental Survey	\$4,600.00
Supplemental to Owner survey to confirm information at select locations.	
8 Subsurface Utility Engineering (SUE)	\$14,950.00
Potholing of existing utilities within rights-of-way where design requires determination of physical location, and preparation of a Subsurface Utility Engineering Report. A total of 6 potholes are assumed, each of which will be surveyed for location.	
9 Traffic Study	\$9,375.00
10 Perimeter Drain and/or Underdrain drainage system design	\$5,000.00

MISCELLANEOUS TERMS, CONDITIONS, OR OTHER SPECIFICS:

Payment Schedule:

WORK PERIOD (Month)	INVOICE SUBMITTAL DATE (From D2C Architects to Commerce City)	PAYMENT TERMS (NET 30)	PAYMENT DUE DATE (From Commerce City to D2C Architects)	RETAINAGE	PHASE BILLED FOR
DESIGN PHASES					
November 2023	November 30, 2023	30 Days after receipt and approval of submitted invoice	December 30, 2023	15% Retainage on each invoice	Task 1 - Pre-Design / Programming / Concept Design
December 2023	December 29, 2023		January 30, 2024		Task 1 - Pre-Design / Programming / Concept Design
January 2024	January 31, 2024		March 1, 2024		Task 2 - Schematic Design (30%)
February 2024	February 29, 2024		March 30, 2024		Task 2 + 3 - Schematic Design (30%) + Design Development (60%)
March 2024	March 29, 2024		April 28, 2024		Task 3 - Design Development (60%)
April 2024	April 30, 2024		May 30, 2024		Task 3 + 4 - Design Development (60%) + Construction Documents
May 2024	May 31, 2024		June 30, 2024		Task 4 - Construction Documents
June 2024	June 28, 2024		July 28, 2024		Task 4 + 5 - Construction Documents + Bidding and Negotiation
CONSTRUCTION PHASE					
July 2024	July 31, 2024	30 Days after receipt and approval of submitted invoice	August 30, 2024	15% Retainage on each invoice	Task 6 - Construction Observation
August 2024	August 30, 2024		September 29, 2024		Task 6 - Construction Observation
September 2024	September 27, 2024		October 27, 2024		Task 6 - Construction Observation
October 2024	October 31, 2024		November 30, 2024		Task 6 - Construction Observation
November 2024	November 29, 2024		December 29, 2024		Task 6 - Construction Observation
December 2024	December 31, 2024		January 30, 2025		Task 6 - Construction Observation
January 2025	January 31, 2025		March 2, 2025		Task 6 - Construction Observation
February 2025	February 28, 2025		March 30, 2025		Task 6 - Construction Observation
March 2025	March 31, 2025		April 30, 2025		Task 6 - Construction Observation
April 2025	April 30, 2025		May 29, 2025		Task 6 - Construction Observation
May 2025	May 30, 2025		June 29, 2025		Task 6 - Construction Observation
June 2025	June 30, 2025		July 30, 2025		Task 6 - Construction Observation