

## AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT FOR PROFESSIONAL SERVICES ("Agreement") is made and entered into effective this \_\_\_\_ day of \_\_\_\_\_, 2022 ("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 Z DESIGN GROUP, LLC, a Colorado limited liability company whose principal business address is 1877 Broadway, Suite 200, Boulder, CO 80302 ("Contractor").

WHEREAS, the City desires to retain the services of Contractor, and Contractor 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, Contractor will **provide site planning, design and construction administration services for the clubhouse and maintenance areas at the City's Buffalo Run Golf Course** as set forth in Exhibit A – "Scope of Services," attached and incorporated by reference ("Services"). Contractor 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 Contractor without penalty. Contractor 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 Contractor proceeds without such written authorization, Contractor 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. Contractor 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. Contractor's failure to do so will constitute a material breach of this Agreement. Contractor will consult with the City to determine acceptable electronic formats before beginning the Services. All Deliverables and other tangible materials produced by Contractor 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. Contractor 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. Contractor 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. Contractor 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 or developed by Contractor in the course of performance of the Services shall be exclusively owned by the City. Contractor expressly acknowledges and agrees that all work performed under the Scope of Services constitutes a "work made for hire." To the extent, if at all, that it does not constitute a "work made for hire," Contractor hereby transfers, sells, and assigns to the City all of its right, title, and interest in such work. 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 Contractor.

E. Contractor Representations; Standard of Care. Contractor 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. Contractor acknowledges that the City is relying on Contractor's expertise, skill, and knowledge, and that Contractor's obligations and liabilities will not be diminished by reason of any approval or review by the City. Contractor 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 Contractor, and (ii) will be performed in a timely manner as required by the Agreement and performed and supervised by qualified personnel. Contractor further represents that all application software developed or implemented by Contractor under this Agreement, when used in accordance with its associated documentation, shall not infringe upon the rights or marks of a third party. Lastly, Contractor 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. Contractor will perform all work in a professional, workmanlike, and timely manner. Contractor shall be responsible for the professional quality, technical accuracy, and the coordination of all materials produced and other services furnished by the Contractor under this Agreement. Contractor will furnish all labor, materials, tools, supplies, machinery, utilities, and other equipment that may be necessary for the prompt completion of the Services. Contractor 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 Contractor 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. Contractor will correct any errors or omissions in its work and any work deemed unsatisfactory or unacceptable by the City promptly, for no additional compensation, and without limiting any other express or implied remedies of the City.

H. Subcontractors. Contractor will not engage subcontractors 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. Contractor and each subcontractor will be responsible to obtain all required licenses and permits, including a City Contractor's license, if required. Contractor will pay any and all license and permit fees. Contractor is responsible for the payment of applicable taxes, including the City's sales and use tax, if applicable.

J. Time for Completion. Contractor shall complete all Services to the City's satisfaction by no later than **December 31, 2024**. Further, Contractor 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. Contractor's rate of progress is a material term of this Agreement. At the City's request, Contractor 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 Contractor 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. Contractor will cooperate with the City relating to such monitoring and evaluation.

L. Drugs, Alcohol, Workplace Violence, and Harassment; Compliance with Applicable Law. Contractor 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 Contractor upon request. Contractor 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. Contractor 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 Contractor for work actually performed, in accordance with the limitations and rates set forth in Exhibit A, a sum not to exceed **\$628,355.00**. The compensation established by this Agreement includes all of Contractor'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 Contractor any other charges or fees and Contractor will not be entitled to any additional compensation or reimbursement.

B. Invoices. Contractor 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 Contractor seeks reimbursement, the hours worked by each employee for the billing period, and the total amount that Contractor claims is due. The Contractor 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.

C. Representation. By submitting an invoice, Contractor 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 Contractor or any other person or entity. Contractor shall not include in its invoice any billing for defective

work or for work performed by subcontractors or suppliers if it does not intend to pay the subcontractors or suppliers for such work.

D. Payment. The City will make payment to Contractor within thirty (30) days after receipt and approval of invoices submitted by Contractor. The City's obligation to make payment is contingent upon the Contractor'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.

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

F. 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. Contractor 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, Contractor 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. Contractor 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.

G. Changed Conditions. Contractor 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. Contractor 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. Contractor agrees that the City may terminate this Agreement without cause at any time for convenience of the City. Contractor 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. Contractor 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 Contractor at least fourteen (14) calendar days prior to the effective date of termination. Contractor 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 Contractor begins any Services or portion of the Services. Once Contractor has commenced performance of the Services, Contractor expressly agrees that the City shall be liable only for work Contractor satisfactorily completed up to the point of the effective date of the notice of termination, consistent with Section III(C) of this Agreement. The Contractor 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, Contractor 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 Contractor. Contractor 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 Contractor for the purposes of setoff until such time as the exact amount of damages due to the City from Contractor is determined. If Contractor 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 Contractor; 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 Contractor, and allow the Contractor a reasonable period of time to cure the Breach, subject to the discretion of the City.

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

- a) The Contractor 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 Contractor to perform the Services required due to matters within the Contractor's control such as voluntary bankruptcy, strikes, boycotts, and labor disputes involving the Contractor'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 Contractor or the Contractor's employees;
- c) The Contractor has submitted requests for payment under this Agreement that are fraudulent or persistently or flagrantly erroneous or misleading;
- d) The Contractor 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 Contractor 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 Contractor fails to remedy the situation to the satisfaction of the City;

f) The Contractor 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 Contractor and is not timely discharged, unless the Contractor furnishes to the City such bond or other financial assurance reasonably acceptable to protect the interests of the City;

h) The Contractor 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 Contractor has failed to deliver title or warranties or has failed to honor warranties as required by this Agreement;

j) The Contractor 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 Contractor or any of its officers or employees are convicted, plead nolo contendere, enter into a formal agreement in which they admit guilt, enter a plea of guilty, or otherwise admit culpability to criminal offenses of bribery, kickbacks, collusive bidding, bid rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature, in connection with the Contractor's business.

3. 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 Contractor 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 Contractor 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 Contractor to not perform. The City will not be liable to Contractor 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 subcontractors, 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, Contractor 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 contractor for the Services, if applicable.

5. The City may pursue any remedies available at law or equity. Contractor shall be liable to the City for any loss or damage sustained by the City because of failure to perform in accordance with this Agreement.

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

#### **D. Contractor's Remedies for Breach.**

1. Contractor 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. Contractor will first provide the City written notice of Contractor'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, Contractor shall not discontinue performance of the Services without the written consent of the City.

#### **IV. INDEMNITY.**

Contractor will be liable and responsible for any and all damages to persons or property caused by or arising out of the negligent or willful actions or omissions in the performance of the Services by Contractor, its employees, agents, or other persons acting under Contractor's direction or control. Contractor will indemnify and hold harmless the City, as well as its elected and appointed officials, current and former officers and employees, servants, volunteers, agents, attorneys, representatives, insurance carriers, and self-insurance pools ("Indemnified Parties"), from any and all liability, claims, demands, actions, damages, losses, judgments, costs or expenses, including, but not limited to, 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 Contractor and/or its employees, agents or representatives or other persons acting under Contractor's direction or control. Contractor 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, 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 the Contractor 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 Contractor has been informed of the possibility thereof. Moreover, to the extent any damages arising under this Agreement may be covered by insurance, the Contractor 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 Contractor for the City.

## VI. INSURANCE

A. Required Policies. Contractor 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).**

3. 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 Contractor's owned, hired or non-owned vehicles assigned to or used in connection with performance of the Services. If Contractor'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 Contractor agrees to assure compliance prior to allowing use of a vehicle not owned by Contractor for such purpose.

4. Professional Liability Insurance. If Contractor 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 Contractor is engaged, or if the City otherwise deems it necessary, errors and omissions professional liability insurance insuring Contractor against any professional liability with a limit of at least **One Million Dollars (\$1,000,000.00)** per claim and annual aggregate.

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

6. Excess or Umbrella Requirements. For the coverages required in Sections VI(A)(1-4), Contractor 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 will not limit Contractor's liability.

**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 Contractor or its officers, employees, agents, subcontractors or business invitees. The insurance policies will be for the mutual and joint benefit and protection of Contractor 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 Contractor deems reasonable for the Services, but in no event greater than **Ten Thousand Dollars (\$10,000.00)**, and Contractor 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.** Contractor will identify whether the type of coverage is "occurrence" or "claims made." If the type of coverage is "claims made," which at renewal Contractor changes to "occurrence," Contractor will carry a twelve (12) month tail. Contractor will not do or permit to be done anything that will invalidate the policies.

5. **Pollution Coverage.** The insurance required by this Agreement will cover any and all damages, claims or suits arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants, and will not exclude from coverage any liability or expense arising out of or related to any form of pollution, whether intentional or otherwise. If necessary, Contractor will secure and maintain either a rider or a separate policy insuring against liability for pollution related damages, claims or suits with at least **Two Million Dollars (\$2,000,000)** each occurrence, subject to approval by the City, which approval will not be unreasonably withheld.

6. **Evidence of Coverage.** Before commencing work under this Agreement, Contractor 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 Contractor provides acceptable such certificates of insurance and endorsements. If the Term extends beyond the period of coverage for any required insurance, Contractor 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.** Contractor will include the insurance requirements of this Agreement in all subcontracts. Contractor will be responsible if any subcontractor 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. Contractor Responsible for Tax. Contractor 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 Contractors (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.

C. Equipment. Prior to or on the date Contractor locates equipment within the City to fulfill this Agreement, Contractor 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 Contractor 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, Contractor 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 Contractor fails to declare the equipment to the City prior to or on the date Contractor 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:

Golf Manager  
Parks, Recreation & Golf  
City of Commerce City  
13905 E. 112th Ave  
Commerce City, CO 80022

If to Contractor:

Manager  
Z Design Group, LLC  
1877 Broadway, Suite 200  
Boulder, CO 80302

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

## IX. INDEPENDENT CONTRACTOR.

A. Generally. The relationship between Contractor and the City will be as independent contractors, and neither the City nor Contractor will be deemed or constitute an employee, servant, agent, partner or joint venturer of the other. Contractor is obligated to pay federal and state income tax on any money earned pursuant to this Agreement, and neither Contractor nor Contractor'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. Contractor 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. Contractor 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. Contractor has and retains control of and supervision over the performance of Contractor's obligations hereunder and control over any persons employed by Contractor for performing the Services hereunder

E. Non-Exclusivity. Contractor 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 Contractor and Contractor shall take all precautions necessary for the proper and sole performance thereof.

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

B. 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, Contractor consents to the exclusive jurisdiction of and venue in the state courts in the County of Adams, State of Colorado. Contractor 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. 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. Any obligation of the City to pay court costs or attorney fees pursuant to this Section shall be subject to the appropriation of funds by the City Council for such purpose.

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, *et seq.*

D. COVID-19 and Other Public Health Emergencies. While on City property, Contractor and any employees and subcontractors 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. Contractor 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. Contractor 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 Contractor in the course of performing the Services. Contractor will notify the City within twenty-four (24) hours of Contractor's determination that a security breach has occurred, as defined in C.R.S. § 6-1-716(1)(c) and C.R.S. § 24-73-103(1)(b), 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 Contractor 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. Contractor acknowledges that time is of the essence in the performance of this Agreement. Contractor'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 Contractor 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 Contractor 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. 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.

L. Acknowledgement of Open Records Act. The City is a public entity subject to the Colorado Open Records Act, C.R.S. § 24-72-201, *et seq.*, 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 ("CORA" or "Act"), C.R.S. § 24-72-201, *et seq.*, which efforts may include notifying the Contractor of a CORA request and allowing the Contractor to take steps to prevent disclosure, where and when it is reasonably possible to do so. **The Contractor 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.**

M. 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.

N. Liability of City Representatives. 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

O. 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.

P. 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.

**[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**

\_\_\_\_\_  
Cathy Blakeman, Acting City Manager

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Dylan A. Gibson, City Clerk

\_\_\_\_\_  
Matt Hader, Interim City Attorney

Recommended for Approval:

\_\_\_\_\_  
Carolyn J. Keith, CPRP, Director

**Z DESIGN GROUP, LLC**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name, Title

## **EXHIBIT A**

### **Scope of Services**

**CONTRACTOR:** Z Design Group, LLC

**LOCATION(S) OF SERVICES:** Buffalo Run Golf Course 15700 E. 112<sup>th</sup> Ave, Commerce City, CO 80022.

**GENERAL DESCRIPTION OF SERVICES:** Contractor will provide design planning and architectural drawings for the redevelopment of the clubhouse and maintenance areas at Buffalo Run Golf Course. After the design is complete, Contractor will produce a full set of construction documents (i.e. architectural drawings/plans) and perform the services of construction administration as described hereinbelow in this Exhibit A.

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

### **SCOPE OF PROJECT & SERVICES**

**A.** Contractor's services are based upon the Summary Report for Site Planning and Design Study, dated June 2, 2021, which was previously provided to the City, and which is incorporated herein by this reference and is summarized below:

1. Site Areas

1a. Clubhouse Site:

- Add new dining patio area
- Revise Golf Staging Area and adjacent cart paths
- Revise Service/Delivery/Trash Area
- Other site areas adjacent to Clubhouse building (related to other improvements)

1b. Golf Maintenance Facility Site:

- Add new paved area for materials delivery/holding and for employee parking
- Revise maintenance yard (related to other improvements)
- Add new materials storage bins and related paving
- Add new perimeter fence and gates

2. Clubhouse Building Areas – Minor Refurbishment

2a. Entry Porch & Lobby

2b. Restrooms

- Men's & Ladies'
- Universal
- Janitor

2c. Golf Shop /Offices

- Merchandise Display Area
- Sales/Control Counter
- Offices & Storage

2d. Golf Cart Storage (not included in project scope)

3. Clubhouse Building Areas – Remodel & Expansion

3a. Dining Room & Bar

- Existing/Remodeled Dining Room (66 seats)
- Add new 3-Season Casual Dining Porch (64 seats)
- Add new Bar (more of a service bar; less of a feature bar)

3b. Private Function Rooms

- Room A (36 seats)
- Room B (24 seats)

3c. Kitchen

- Preparation, Cooking, Dishwasher(s)
- Dry Food Storage & Walk-in Refrigerators
- Refrigerated Beer & Other Beverage Storage
- Serving Station
- Staff Break Room

3d. F&B Manager Office

3e. New Porches (related to improvements at north side of building)

3f. Circulation, Mechanical, Electrical

4. Event Pavilion – Remodel & Expansion

4a. Remodel Seating Area (120-150 seats; add closable sides, radiant heat, ceiling fans, lighting)

4b. Add new Restrooms & Service Bar

5. Golf Maintenance Facility Building Areas – Remodel & Expansion

4a. Expand Chemical Storage Room

4b. Add new Equipment Storage Building

**B.** The following are examples of Supplemental Option Studies as requested by the client during the Schematic Design Phase for design of concepts that were not envisioned at time of the Summary Report dated June 2, 2021.

1. Remove and replace existing Event Pavilion

- Seating Area (~2500-3000 sf; ~150 seats; closeable sides, radiant heat, ceiling fans, lighting)
- Roof-level Viewing Terrace (assuming two exit/access stairs and elevator)
- Restrooms & Service Bar



2. Alternative Option for Roof-level Viewing Terrace if located at Main Clubhouse
3. Alternative Options for Bar size and location
4. Other as requested by City
5. Note that these concept studies are included in the scope of architectural services in this Agreement, but for detailed documentation and other consultant disciplines (structural, MEP, etc.) additional compensation will need to be evaluated after the design changes are established.

## **BASIC SERVICES – ARCHITECTURE**

The following brief description of architecture services provides clarification to the scope and phases of Basic Services and provide building architectural services as further clarified below:

Programming. Space Program (attached hereto as Exhibit B), in the Summary Report for Site Planning and Design Study dated June 2, 2021 and Supplemental Option Studies, incorporated herein by this reference, and as noted in this Exhibit A (Scope of Project & Services, Section B hereinabove).

### Schematic Design Phase

During the schematic design (SD) services phase, Contractor will consult with the City and develop the proposed concept as included in the Summary Report for Site Planning and Design Study dated June 2, 2021 which is incorporated herein by this reference. The Space Program will define the required functions of the project and will include estimated square footage of each usage type and any other elements that shall achieve the project goals.

Architect will develop study drawings and other documents that illustrate the concepts of the design and shall include spatial relationships, scale, and form for the City to review. This phase produces a final schematic design, to which the City shall agree to after consultation and discussions with the Contractor. Costs will be estimated by a preconstruction building contractor retained by the City and in consultation with the Contractor. The design then moves forward to the design development phase.

### Design Development Phase

Design development (DD) services will utilize the approved SD and develop upon it further by including to the layout of mechanical, electrical, plumbing, structural, and architectural details. Drawings will be in Revit and AutoCAD format and will specify design elements such as material types and location of windows and doors. The completed DD phase will be presented to the City for approval. Costs will be updated by the preconstruction building contractor in consultation with the Contractor. The design for the project shall then move forward to the Construction Document Phase.

### Construction Documents Phase

When the City is satisfied with the DD submittal, the Contractor shall move forward the Construction Document Phase (CD) by producing drawings with greater detail. Included will be a specification manual for construction details and materials. Once the CD drawings and specifications are produced, the Contractor will provide these to the preconstruction building contractor for their use in pricing and bidding.

### Construction Phase Services

Bidding / Negotiation: The first step of the construction phase is to assist in the process of competitive bidding and negotiated proposals including, for example, advertisement for bids, instructions to bidders, bid form, bid documents, City-contractor agreement, labor and material payment bonding, etc. and shall assist City in evaluating the bids and selecting contractor.

### Construction Administration (CA)

Construction Administration (CA) services shall begin with the initial contract for construction and terminate when the final certificate of payment is issued. Questions may arise on site that require the Contract to develop written responses, sketches and drawings issued after construction documents have been released that offer additional clarification in order to finish the project properly.

### **ADDITIONAL SERVICES – ARCHITECTURE (Not Included)**

The following services are not included in the scope of this Agreement.

- Services beyond those outlined above as Basic Services.
- Services connected with preparation of documents and construction administration for alternate bids or for segregated contracts for phased or “fast-track” construction (up to 3 packages are included in basic services).
- Services connected with changes in governmental regulations.
- Detailed design for future expansion.
- Design changes to accommodate pre-existing conditions discovered during construction.
- Continuous construction site observation(s).
- Preparation of shop drawings normally prepared by building contractor and their subcontractors.
- Redesign to accommodate the building contractor’s means and methods.
- Providing design and details for repair of defective or damaged construction.
- Startup costs and cost escalation associated with delays in the design or construction process.
- As-built(s) (other than updating construction documents to reflect reasonable amount of field notes provided by building contractor are included in basic services)
- Contractor is not responsible for any review fees, property taxes, subdivision improvement fees or any other fees that are typically paid directly to the county by an applicant.
- Geotechnical Engineering.
- Renderings and Computer Imaging by third-party Professional Illustrators.
- Scale Models and Computer Animations.
- Selection of start-up operating items and equipment (e.g., tableware, kitchen cookware, linens, uniforms, trash cans, fittings for shop fixtures, telephone system, televisions, audio-visual systems, etc.)
- Sustainable design consulting services (LEED certification, etc.).

### **BASIC SERVICES – STRUCTURAL ENGINEERING**

The following brief description of structural engineering services provides clarifications to the scope and phases of Basic Services in Section 3.0 et. seq. for renovation and expansion of the existing golf course clubhouse as described in the Summary Report for Site Planning and Design Study dated June 2, 2021 which is incorporated herein by this reference.

### Schematic Design Phase

- Attend meetings with the City and design team to discuss and develop initial design parameters.
- Establish the criteria required to prepare the structural design.
- Consider alternate structural systems and materials that will meet the project requirements.
- Determine the need and make recommendations for any special structural studies.
- Provide structural criteria for geotechnical consultant.
- Prepare and submit a narrative and/or schematic design drawings or sketches that illustrate the structural systems and materials.

### Design Development Phase

- Participate in the selection of the structural systems and materials with the City and design team.
- Identify any performance specified structural systems and elements.
- Review the geotechnical report for structural concerns and for the recommended foundation system(s).
- Prepare preliminary foundation design(s) based on the geotechnical recommendations.
- Prepare and/or edit outline specifications for the structural elements.
- Review the results of any special studies and determine their effects on the structural systems.
- Prepare and submit for City review and approval, design development drawings of the proposed structural systems including foundations and lateral load resistance.

### Construction Documents Phase

- Prepare final structural design of the primary structural systems.
- Provide and/or coordinate structural design criteria for the design of any performance specified elements.
- Review the effects of non-structural elements connected to and/or supported by the primary structural system.
- Attend meetings and participate in the coordination of the structural documents with those of the Contractor and other disciplines.
- Prepare and provide structural calculations in a form acceptable to reviewing agencies.
- Prepare and provide final structural construction drawings sufficiently completed and understandable for bidding and construction.
- Provide and/or edit structural specifications.
- Perform a review and check of the structural design and construction documents.
- Assist in filing construction documents for review and approval by - governing agencies.
- Make revisions to construction documents as may be required by governing agencies.

### Construction Administration Phase

- Bidding and Negotiation:
  - Assist, when requested, in determining bidders' qualifications.
  - Prepare structural addenda and clarification upon request or as needed.
  - Assist, when requested, in evaluation of bids.
  - Review and act upon submission of requests for acceptance of alternates and substitutions.
- Pre-Construction:
  - Attend, as appropriate, one pre-construction meeting.
  - Respond to questions and/or building contractors' requests for information.
  - Assist in the implementation of the material testing and inspection program.

- Submittal Review:
  - Review required submittal documents pertaining to structural items designed by the engineer of record.
  - Review the design and drawings of performance specified elements designated by the engineer of record and designed by others.
- Site Visits and Observations:
  - Make four (4) periodic construction site visits at intervals deemed appropriate by the engineer of record.
  - Provide, in a timely manner, a written report documenting construction observations and any information or instructions given to the building contractor.
- Material Testing and Inspection:
  - Review testing and inspection reports.
  - Initiate appropriate action to the testing and inspection report as required.
- Additional Services:
  - Early Foundation Package or Multiple Bid Packages.
  - Alternate Bid Items.
  - Structural slabs isolated from the soil or framed floors over crawlspace.
  - Design for flood forces.
  - Porte Cochere and other site/amenity features other than those identified in the scope of work.
  - Independent peer review not associated with Building Department's permitting process.
  - Secondary structure to address the specific needs of a photovoltaic supplier.
- Excluded Services
  - Storefront and curtain wall assemblies.
  - Construction cost estimates.
  - Design of temporary or permanent excavation shoring.

## **BASIC SERVICES – MECHANICAL & ELECTRICAL**

The MEP sub-consultant for mechanical and electrical engineering will provide those services and deliverables as follows:

1. Mechanical, Electrical, Plumbing and Fire Protection (MEP/FP) Engineering:
  - a. One (1) predesign survey to review existing conditions.
  - b. Design the HVAC system.
  - c. Design the plumbing system.
  - d. Design the power distribution system.
  - e. Design the lighting and associated control systems. Specialty lighting shall be selected by others/interior designer and coordinated within our electrical documents.
  - f. Design the exterior and parking lot lighting systems.
  - g. Provide site lighting photometric calculations.
  - h. Provide power (only) to the landscaping lighting. The landscape lighting design shall be provided by others.
  - i. Provide Design-Build performance criteria for fire protection and fire alarm systems.
  - j. Submit stamped and signed drawings to the AHJ.
  - k. Attend two virtual design meetings.

1. Conduct MEP related contract administration services including shop drawing review, RFI response, conduct two (2) observations of the construction progress, and conduct one additional observation for the purposes for preparation of a single punch list.

Note: Contractor has included providing performance based fire protection and fire alarm specifications and coordination of major elements. Contractor has not provided detailed/complete design.

2. Optional MEP Commissioning:

- a. Our commissioning scope-of-work is based on the requirements of the Current Energy Conservation Code requirements.
- b. General Inclusions:
  - (1) Form the commissioning team.
  - (2) Develop and implement a commissioning plan.
  - (3) Coordinate and manage the commissioning activities.
  - (4) Provide system performance testing for systems/equipment to be commissioned.
  - (5) Verify system compliance and recommend modifications to the systems that will correct or enhance the system performance.
  - (6) Track commissioning deficiencies.
- c. Provide a final commissioning report including:
  - (1) Executive Summary.
  - (2) Performance Testing Procedures.
  - (3) Deficiency Report.
- d. Systems to be commissioned:
  - (1) Mechanical systems. Exact systems TBD based on final MEP design.
  - (2) Building Automation Systems
  - (3) Major exhaust systems, including kitchen exhaust systems
  - (4) Domestic hot water systems
  - (5) Lighting Systems

3 MEP/FP Engineering Exclusions:

- (a) Energy modeling.
- (b) Design of any Photovoltaic (PV) systems.
- (c) Design of the telecom/Low Voltage systems.
- (e) Design of the security/surveillance systems.
- (f) Design of Audio/Visual systems.
- (g) Landscaping lighting design services.
- (h) Complete fire protection and fire alarm design services.
- (i) Life Safety and Code Consulting.
- (j) Relocation of any existing site utilities.
- (k) Construction cost estimating.
- (l) Change order review.
- (m) LEED design/submitting documentation.
- (n) Commissioning of MEP systems.
- (o) Record Document/As-Built drawing preparation.
- (p) Any task not specifically included.

4      **Commissioning Exclusions:**

- (a)      Commissioning of the building's envelope.
- (b)      Commissioning of the following equipment:
  - (1)      Fire alarm equipment/systems, including fire/smoke dampers.
  - (2)      Safety interlocks (smoke detectors, refrigerant alarms, high duct static pressure safeties, freeze states, etc.).
  - (3)      Electrical equipment.
  - (4)      Low Voltage systems.
  - (5)      A/V systems.
  - (6)      Verification of test and balance work performed by others.
  - (7)      Verification of hydronic flushing.
  - (8)      Review of shop drawings
  - (9)      Review of as-built drawings.
  - (10)     City training.

**BASIC SERVICES – INTERIOR DESIGN**

The following brief description of interior design services provides clarifications to the scope and phases of Basic Services for renovation and expansion of the existing golf course clubhouse as described in the Summary Report for Site Planning and Design Study dated June 2, 2021 which is incorporated herein by this reference.

**Interior Architecture:**

Provide interior architectural services including: interior finishes, flooring, interior ceramic tile & stone, doors/frames/hardware, fireplaces & surrounds, running/standing trim, ceiling trim & decorative beams, ornamental metal, interior stone & cast stone, interior glass & mirrors, toilet accessories, decorative plumbing fixtures/faucets/trim, etc. Full Construction Phase services through to completion of construction will be included.

**Furnishings & Fixtures (FF&E):**

Provide interior design services including: design and specifications for all furnishings, carpet, wall coverings, window treatments, custom casework & countertops, interior signage, artwork & framing, accessories, artifacts, interior custom/decorative lighting, etc. from design through installation. FF&E purchasing services are available. Phases of work for the interior design services will include the following:

**Schematic Design Phase**

In the Schematic Design, proposed interior design concepts and options will be presented to the City including: plans indicating conceptual layouts for furnishings and fixtures; visual images and samples to establish the design concept; and preliminary FF&E estimate.

**Design Development Phase**

The Design Development will be prepared based on the City confirmation and approval of the Schematic Design. It is intended that the ID Design Development will be submitted to the City at the same time as the Architectural Design Development Phase. Components for Design Development are to include:

- Floor finish plan.
- Reflected ceiling plan.
- Interior elevations, casework/millwork elevations.
- Furniture plans and selections.
- Update FF&E estimate.

#### Contract Documents Phase

Based on the approved Design Development and any further adjustments to the scope, quality or budget, Contract Document drawings and specifications will be prepared to set forth requirements for the interior finishes and furnishings for the project. These documents will be intended for use in purchasing and bidding. Components for Contract Documents are to include:

- Floor finish plan.
- Reflected ceiling plan.
- Interior elevations, casework/millwork elevations.
- Casework/millwork details, other interior details.
- Door hardware selections (detailed schedule to be prepared by supplier and submitted for review).
- Finishes schedule.
- Furniture plans and specifications.
- Update FF&E estimate.

#### Contract Administration Phase

Services are to include:

- Periodic site observations and field reports
- Review shop drawings
- Clarify interior architecture and FF&E details
- Assist in supervising installation of furnishings and fixtures
- Prepare and submit record document of FF&E as installed

Note: FF&E purchasing services are not included.

### **BASIC SERVICES – FOODSERVICE EQUIPMENT DESIGN**

The following brief description of foodservice equipment design services provides clarifications to the scope and phases of Basic Services for renovation and expansion of the existing golf course clubhouse as described in the Summary Report for Site Planning and Design Study dated June 2, 2021 which is incorporated by reference herein.

#### Phase 1: Design & Development

Preliminary Programming and schematic design planning services shall include preliminary development of the kitchen space/bar area and will include the following services:

- Initial design meeting with principal owner and designer resulting in preliminary kitchen layout.
- Schematic design of kitchen layout.
- Two meetings to review and refine schematic kitchen layout.
- Client approval to move to production drawings.

### Phase 2: Production

Construction Documents services shall include final development of the Design Area and will include the following drawings and documentation as required for permits and approvals.

- Equipment layout drawings
- Equipment specifications
- Focus on electric equipment over gas equipment
- Electrical spotting plan
- Plumbing spotting plan
- Special conditions/slab penetrations plan
- Interior elevations
- Hood exhaust plan (if required)
- 3D perspective sketches as required

### Phase 3: Construction

Construction support shall include allowance for consultant, engineer, and/or architects' RFI's.

### **ADDITIONAL SERVICES**

Reimbursable/additional expenses include but are not limited to:

- Shell Plan.
- On-site visits (3 included).
- Travel required outside of Colorado.
- Custom casework/equipment design.
- Supplemental meetings after 2 schematic design review and finalization.
- Additional changes due to revisions to building or space if any occur after owner/ designer approved DD drawings.

**WHEN:** Contractor shall perform all Services to the satisfaction of the City by December 31, 2023.

**COST:** Under no circumstances shall the compensation due and owing to the Contractor for performance of the Services described herein exceed \$628,355.00 (quoted price \$483,350 + 30% contingency \$145,005). The contingency is for known exclusions from quote price that may require additional work and as otherwise identified herein.

**[Remainder of this page intentionally left blank – Fee Schedule follows].**



**Buffalo Run Golf Course – Facility Improvements  
City of Commerce City, Colorado**

**FEE SCHEDULE**

ITEM NO.	DESIGN DISCIPLINE	SCHEMATIC DESIGN	DESIGN DEVELOPMENT	CONSTRUCTION DOCUMENTS	CONTRACT ADMINISTRATION	TOTAL
<b>BASIC SERVICES</b>						
1	Architecture	\$ 54,800	\$ 68,500	\$ 95,900	\$ 54,800	\$ 274,000
2	Structural Engineering	\$ 6,000	\$ 12,000	\$ 18,000	\$ 10,000	\$ 46,000
3	Mechanical/Electrical Engineering	\$ 8,600	\$ 10,800	\$ 16,200	\$ 8,600	\$ 44,200
4	Interior Design	\$ 13,000	\$ 19,500	\$ 26,000	\$ 6,500	\$ 65,000
5	Foodservice Equipment	NA	\$ 5,750	\$ 7,500	\$ 2,500	\$ 15,750
6	Civil Engineering	\$ 6,000	\$ 10,000	\$ 16,800	\$ 5,600	\$ 38,400
<b>TOTALS - BASIC SERVICES</b>		<b>\$ 88,400</b>	<b>\$ 126,550</b>	<b>\$ 180,400</b>	<b>\$ 88,000</b>	<b>\$ 483,350</b>
<b>SUPPLEMENTAL OPTIONS</b>						
i	Structural - Site Wall Allowance (1)					\$ 3,000
ii	Mechanical/Electrical Commissioning (2)					\$ 6,800
iii	Landscape Consultant (3)					TBD
iv	Reimbursable Printing (4)					at actual cost
<b>Notes:</b> (1) Allowance for structural engineering services associated with site walls assume that engineer will design and detail on its structural drawings the typical site wall cross sections as needed. Architect or other consultants will provide layout and plan dimensions. (2) If not provided by other specialists, the MEP engineer will be available to provide commissioning services as required by the International Energy Conservation Code (IECC). (3) Landscape architecture consultant is not included. Client representatives have requested a proposal to consider, which is in progress at this time. (4) Out-of-pocket expenses for mileage, phones, and etc. are included in the base fees, except that large-format printing (size greater than 11" x 17") will be reimbursed by the City at actual cost in addition to the fees.						

**HOURLY BILLING RATE SCHEDULE**

<u>Firms &amp; Positions</u>	<u>Rates (\$/hr)</u>	<u>Firms &amp; Positions</u>	<u>Rates (\$/hr)</u>
<b>Architecture – Z Design Group:</b>		<b>Interior Design – Z Design Group &amp; JKA</b>	
Principal Architect	\$175	Z Design Group	see above
Senior Staff	\$100 - 115	J. Kattman Associates (JKA)	
Design/Technical Staff	\$75 - 100	Principal	\$150
Administrative	\$0	Project Designer/Drafting	\$90
<b>Structural Engineering – JVA:</b>		Assistant Designer	\$65
Principal	\$188 - 232	Clerical	\$50
Senior Project Manager	\$160 - 188	<b>Foodservice Equipment Design – Smith &amp; Greene:</b>	
Project Manager	\$148 - 156	Project Manager / Designer	\$95
Senior Project Engineer	\$132 - 136	<b>Civil Engineering – JVA:</b>	
Project Engineer	\$120 - 136	Principal	\$188 - 220
Design Engineer II	\$112 - 120	Senior Project Manager	\$168 - 184
Design Engineer I	\$104 - 108	Project Manager	\$152 - 160
BIM Manager	\$128	Senior Project Engineer	\$136 - 144
Senior BIM Modeler	\$128	Project Engineer	\$128 - 136
BIM Modeler	\$92	Senior Designer	\$132 - 148
Administrative Support	\$100 - 120	Design Engineer	\$120 - 122
<b>Mechanical/Electrical Engineering – G2 Engineering:</b>		CAD Designer	\$124 - 132
Principal	\$160	Administrative Support	\$100 - 120
Project Manager	\$140		
Mechanical Engineer	\$120		
Electrical Engineer	\$120		
Controls Engineer	\$120		
MEP Designer	\$110		
CAD/BIM Operator	\$95		

## EXHIBIT B

### Space Program

#### SPACE PROGRAM

BUFFALO RUN GOLF COURSE - CLUBHOUSE  
SPACE PROGRAMMING WORKSHEET

November 16, 2020

	Existing		Targets		Notes
	Quantities	Size (SF)	Quantities	Size (SF)	
ENTRY / RECEPTION					
Porte Cochere	none	0	none	0	
Entry Lobby		460		460	no change (unless related to other changes)
Restrooms					
Mens	2 sink, 2 ur, 3 wc	180	2 sink, 2 ur, 3 wc	180	no change (unless related to other changes)
Ladies	2 sink, 3 wc, 0 van	130	2 sink, 3 wc, 0 van	130	no change (unless related to other changes)
Janitor Closet		20		20	no change (unless related to other changes)
FOOD & BEVERAGE					
Dining Room & Bar Area	seating 70-80	1,600	seating 120	2,600	2 options: partial-service bar (like existing) or full-service bar
Private Function Rooms	(e) conf. rm. 10-12	180	seating 60 (total)	900	room 1 - seating 40; room 2 - seating 20 (openable together)
Main Kitchen, Server Station, Storage		950		1,800	expansion
F&B Office		140		140	same size
Snack Bar for Golfers at Turn	none	0	include		possibly provide pick-up window if bar is moved
TOURNAMENT / EVENT FACILITIES					
Event Pavilion					
Covered Seating Area	seating 100	1500	seating 150	2,250	possibly enclosable with sliding or bi-folding glass panels
Restrooms					
Mens	none	0	2 sink, 2 ur, 1 wc	175	new
Ladies	none	0	2 sink, 2 wc, 0 van	175	new
Server Station, Service Bar, Catering Room	none	0		300	new
Storage: Table/Chairs, Plates/Tableware/Props, Etc.	none	0		200	new
GOLF OPERATIONS					
Golf Shop, Fitting Room, Storage		1,025		1,025	no change (unless related to other changes)
Office - Manager of Golf		200		200	no change (unless related to other changes)
Asst Pro/Workroom, Storage		260		260	no change (unless related to other changes)
Cart Storage & Repair		separate bldg		separate bldg	
Hospitality Cart Supplies, Ice Machine		separate bldg		separate bldg	
OTHER STAFF & SUPPORT AREAS					
Staff Break Room, Restrooms	none	0		200	new
Receiving, Timekeeping		included		include	
Mech/Elec/Data Rooms					

BUFFALO RUN GOLF COURSE Summary Report