

DESIGN SERVICES AGREEMENT

THIS AGREEMENT (“**Agreement**”) is made and entered into, effective as of the date set forth on the City’s signature page (“**Effective Date**”), by and between the **CITY AND COUNTY OF DENVER** (the “City”), a municipal corporation of the State of Colorado, and **OZ ARCHITECTURE, INC.** (the "Design Consultant"), a Colorado Corporation, whose address is 3003 Larimer Street, Denver, Colorado, jointly “the Parties”.

SECTION 1 – ENGAGEMENT

1.01 Engagement. The City engages the Design Consultant to furnish professional design services for the Project as set forth in this Agreement. The Design Consultant accepts such engagement upon, subject to and in accordance with the terms, conditions and provisions of this Agreement.

1.02 Line of Authority for Contract Administration. The City's Executive Director of Public Works ("Director") is the City's representative responsible for authorizing and approving the work performed under this Agreement. The Director hereby designates the City Engineer as the Director’s authorized representative for the purpose of designating a Project Manager, for the purpose of issuing a written Notice to Proceed and for purposes of administering, coordinating and finally approving the work performed by the Design Consultant under this Agreement. The Project Manager shall be responsible for the day-to-day administration, coordination and approval of work performed by the Design Consultant, except for approvals which are specifically identified in this Agreement as requiring the Director’s approval. The Director expressly reserves the right to designate another authorized representative to perform on the Director’s behalf by written notice to the Design Consultant.

1.03 Independent Contractor. The Design Consultant is an independent contractor retained to perform professional or technical services for limited periods of time. Neither the Design Consultant nor any of its employees are employees or officers of the City under Chapter 18 of the Denver Revised Municipal Code, or for any purpose whatsoever.

1.04 Scope of Design Consultant’s Authority. The Design Consultant shall have no authority to act on behalf of the City other than as expressly provided in this Agreement. The Design Consultant is not authorized to act as a general agent for or to undertake, direct or modify any contracts on behalf of the City. The Design Consultant lacks any authority to bind the City on any contractual matters. Final approval of all contractual matters that purport to obligate the City must be executed by the City in accordance with the City’s Charter and the D.R.M.C.

SECTION 2 – DESIGN CONSULTANT’S SERVICES

2.01 General. The Design Consultant shall provide professional design services for the Project in accordance with the terms and conditions of this Agreement. The Design Consultant's basic services shall consist of all of those services described in this Agreement and in **Exhibit A**.

2.02 Professional Responsibility.

- (a) All of the work performed by the Design Consultant under this Agreement shall be performed in accordance with the standards of care, skill and diligence

provided by competent professionals who perform work of a nature similar to the Work described in this Agreement.

- (b) The Design Consultant agrees to strictly conform to and be bound by written standards, criteria, budgetary considerations and memoranda of policy furnished to it by the City and further agrees to design each project in compliance with applicable laws, statutes, codes, ordinances, rules and regulations, and industry standards.
- (c) All professional services, plans and specifications and other work, or deliverables provided under this Agreement for the Project shall be adequate and sufficient for the proper construction of the Project and its intended purpose.
- (d) All drawings, specifications and other products shall be prepared so the Project, when constructed in accordance with such drawings and specifications, is in compliance with all applicable laws, statutes, codes, ordinances, and rules and regulations of the City, the State and the Federal government.
- (e) Any design changes required by changes in such applicable laws, statutes, codes, ordinances or rules and regulations of the City, the state or the federal government, which are enacted after the City's acceptance of Construction Documents, defined herein, will be outside the scope of the Design Consultant's basic services and basic fee, and will be compensated for approval as an additional service, subject to the additional services budget for that project.
- (f) The Design Consultant shall prepare the plans, specifications and other materials for the Project in a format that complies with all City requirements as well as all state and federal requirements for the Project. No funds will be paid to the Design Consultant for the preparation of contract documents in a form other than that considered usual and customary by the Department of Public Works. It shall be the responsibility of the Design Consultant to contact the reviewing agencies and determine the acceptable format for the final documents. No documents will be considered final until approved by the City, even though any responsible federal and state agencies have approved such documents.
- (g) The City reserves the right to proceed with the construction of the Project using either the City's standard general contractor bidding approach, on call contractors or using construction management techniques. The Design Consultant agrees to organize its Contract Documents for either construction technique and to coordinate the construction documents into selected bid packages, as appropriate. The City will notify the Design Consultant prior to the completion of the Design Development Design Phase which method will be used and the amount of work or the limits of construction to be included in the proposed bid package(s).
- (h) The reports, studies, drawings and specifications and other products prepared by the Design Consultant under this Agreement, when submitted by the Design

Consultant to the Director and the user agency for any identified phase of the Project, must represent a thorough study and competent solution for the project as per usual and customary professional standards and shall reflect all architectural and engineering skills applicable to that phase of the project.

- (i) The responsibilities and obligations of the Design Consultant under this Agreement shall not be relieved or affected in any respect by the presence on the site of any agent, consultant or subconsultant, or an employee of the City.
- (j) The Design Consultant shall provide all professional services required by the City in defending all claims against the City, which relate in any way to alleged default hereunder, errors or omissions of the Design Consultant or its subconsultants, without additional compensation.

2.03 Program and Budget.

- (a) The Design Consultant agrees to review the City's program and budget for the Project and further agrees, unless it has timely notified the City that the Project cannot be accomplished within such budget, to accomplish the Project within the intent of the program and established budget. Should the Design Consultant determine that The Project cannot be accomplished within the established budget, the Design Consultant shall immediately notify the City, in writing, so that the project scope or project budget can be reviewed and modified if necessary.
- (b) The term "Project Construction Cost" shall mean the estimated cost to the City of actually constructing the Project, but such cost shall not include any Design Consultant's or special consultant's fees or reimbursements or the cost of equipment installed by the City under separate contract, unless the Design Consultant is required by the City to prepare drawings and specifications for such equipment. The initial Project Construction Cost has been provided to the Design Consultant.
- (c) The Design Consultant agrees to design the Project within the estimated Project Construction Cost for the Project. Should all responsive bids or proposal received for the Project work provided for in the design exceed such cost, the Design Consultant agrees to redesign the Project at no additional cost to City and, in a manner acceptable to the City.

2.04 Coordination and Cooperation.

- (a) The Design Consultant agrees to perform under this Agreement in such a manner and at such times that the City or any Contractor who has work to perform, or contracts to execute, can do so without unreasonable delay.
- (b) Coordination with the City and other involved agencies shall be a continuing work item through all phases of each assigned project. Such coordination shall consist of regular progress and review meetings with the City, work sessions with the City's Public Works, and other user agencies or as otherwise directed by the City. Such coordination may also include field and office reviews of plans and documents as required during the development of the design for any

specific project. The Design Consultant shall document all such conferences and distribute notes to the City.

2.05 Personnel Assignments.

- (a) The key professional personnel identified in **Exhibit B** will be assigned by the Design Consultant or its subconsultants to perform the services required under this Agreement, as appropriate.
- (b) The Design Consultant's services shall be diligently performed by the regular professional and technical staff of the Design Consultant. In the event the Design Consultant does not have as part of its regular staff certain professional consultants, then such consulting services shall be performed, with City approval, by practicing professional consultants outside of the employ of the Design Consultant.
- (c) The Design Consultant agrees, at all times during the term of this Agreement, to maintain on its payroll or to have access to through outside subconsultants, professional design personnel and technicians in sufficient strength to meet the requirements of the City. Such personnel and technicians shall be of the classifications referenced in **Exhibit B**. The hourly rates specified therein include all costs except those specifically referenced as reimbursables in the appropriate hourly rate schedule.
- (d) Prior to designating an outside professional to perform subconsultant work, the Design Consultant shall submit the name of such subconsultant, together with a resume of training and experience in work of like character and magnitude of the project being contemplated, to the City and receive prior approval in writing.
- (e) It is the intent of the Parties hereto that all key professional personnel be engaged to perform their specialty for all such services required by this Agreement and that the Design Consultant's and the subconsultant's key professional personnel be retained for the life of this Agreement to the extent practicable and to the extent that such services maximize the quality of work performed hereunder.
- (f) If the Design Consultant or a subconsultant decides to replace any of its key professional personnel, the Design Consultant shall notify the Director in writing of the desired change. No such changes shall be made until replacement personnel are recommended by the Design Consultant and approved in writing by the Director, which approval shall not be unreasonably withheld.
- (g) If, during the term of this Agreement, the Director determines that the performance of approved key personnel or a subconsultant is not acceptable, she shall notify the Design Consultant and give the Design Consultant the time which the Director considers reasonable to correct such performance.

Thereafter, she may require the Design Consultant to reassign or replace such key personnel. If the Director notifies the Design Consultant that certain of its key personnel or a subconsultant should be replaced, Design Consultant will use its best efforts to replace such key personnel or a subconsultant within ten (10) days from the date of the Director's notice.

- (h) Neither the Design Consultant nor any subconsultant shall have other interests which conflict with the interests of the City, including being connected with the sale or promotion of equipment or material which may be used on a project to which they may be assigned, and the Design Consultant shall make written inquiry of all of its subconsultants concerning the existence of a potential for such conflict. In unusual circumstances, and with full disclosure to the City of such conflict of interest, the City, in its sole discretion, may grant a written waiver for the particular consultant or subconsultant.
- (i) Actions taken by the City under this Article shall not relieve the Design Consultant of its responsibility for contractual or professional deficiencies, errors or omissions.
- (j) The Design Consultant shall submit to the Director a list of any additional key professional personnel who will perform work under this Agreement within thirty (30) days after this Agreement has been executed, together with complete resumes and other information describing their ability to perform the tasks which may be assigned. Such additional personnel must be recommended by the Design Consultant and approved by the Director before they are assigned to a specific project.
- (k) The Director shall respond to the Design Consultant's written notice regarding replacement of key professional personnel within fifteen (15) days after the Director receives the list of changes. If the Director or his designated representative does not respond within that time, the changes shall be deemed to be approved.

2.06 Basic Services – General.

- (a) These services shall be diligently performed by the regular professional and technical staff of the Design Consultant. In the event the Design Consultant does not have as part of its regular staff certain professional consultants, then such consulting services shall be performed, with City approval, by practicing professional consultants outside of the employ of the Design Consultant.
- (b) Prior to designating an outside professional to perform work or services under this Agreement, the Design Consultant shall submit the name of such professional, together with a resume of training and experience in work of like character and magnitude as the project being contemplated, to the City and receive prior approval in writing.
- (c) All professional consultants and subconsultants must be retained for the life of the Project to the extent practicable, except that acceptable replacements may be substituted with prior written approval from the City as set out in Section 2.05.

- (d) The Design Consultant's basic services for the Project shall consist of the phases described below and shall include, but not be limited to, architectural, structural, mechanical, civil and electrical engineering services appropriate to each Project for each phase.
- (e) The Design Consultant shall obtain written authorization from the City before proceeding with each phase.
- (f) Nothing in this Agreement shall be construed as placing any obligation on the City to proceed with any phase beyond the latest phase authorized in writing by City.
- (g) The responsibilities and obligations of the Design Consultant under this Agreement shall not be relieved or affected in any respect by the presence on the site of any agent, consultant, subconsultant, or employee of the City.

2.07 Basic Services - Phase Specific. In the interest of tracking progress towards completion of all work items necessary to complete the Project specified herein, the required Basic Services tasks which must be performed on each Project have been separated into phases. As applicable for the Project, the Design Consultant shall satisfactorily complete all work necessary to complete each phase as specifically set out in **Exhibit A**.

2.08 Additional Services.

- (a) If the Design Consultant performs services in addition to its Basic Services, as a result of material changes in the Project or due to other circumstances beyond the Design Consultant's control, and if such services (1) are pre-approved in writing; (2) will not cause the total compensation payable to the Design Consultant to exceed the Maximum Contract Amount; and (3) are not occasioned by any neglect, breach or default of the Design Consultant, then the Design Consultant will be reimbursed its pre-approved cost for performance of such service(s).
- (b) Before providing any such services, the Design Consultant first shall file with the City, and secure the City's written approval of, a complete description of the proposed services including an estimate of the maximum cost of any and all such services, on the basis set out in **Exhibits A and B**, of rates per hour, per day, or other basis of cost. Such description shall also include a statement from the Design Consultant that the maximum cost of such services will not cause the total amount payable to the Design Consultant under this Agreement to exceed the maximum contract amount. In no event shall any form of authorization or pre-approval of additional services be deemed valid or binding upon either the City or the Design Consultant if the maximum cost of such services would cause the aggregate amount payable under this Agreement to exceed the maximum contract amount. Payment for additional services shall not, in any event, exceed the cost estimated by the Design Consultant and approved in writing by the City.
- (c) The cost of such additional service shall be deemed to be the lesser of the estimated maximum cost or:

1. The actual time card cost of all design personnel including principal designer's time at the rates as set out in **Exhibit B**;
 2. The actual cost to the Design Consultant for other necessary outside services, such as structural, mechanical or electrical engineering performed by independent consultants; and
 3. The Design Consultant's actual reproduction cost for drawings.
- (d) The Design Consultant shall maintain an accurate and acceptable cost accounting as to all such additional expenses and shall make available to the City all records, canceled checks and other disbursement media to substantiate any and all requests for payment for additional services.
- (e) Payment to the Design Consultant for such additional services shall not, in any event, exceed the maximum additional services amount set forth in Section 3.

2.09 Surveying and Testing.

- (a) The Design Consultant shall obtain all necessary surveying, tests and reports to properly design and administer the construction of each project, including, but not limited to, soils and hazardous materials testing. The Design Consultant shall be responsible for the accuracy, adequacy and content of such tests, surveying and reports.
- (b) The Design Consultant and its appropriate subconsultant shall review all survey and test results reports and shall follow the recommendation of the soils engineer or other subconsultant unless, in the exercise of appropriate professional judgment, the Design Consultant or appropriate subconsultant discovers, or should in the exercise of professional judgment discover, factors indicating the report or results are not reliable.
- (c) If any such inadequacy or any inconsistency, based upon such exercise of professional judgment, is noted the Design Consultant and/or its appropriate subconsultant shall report such inconsistency or inadequacy promptly to the City and require such inadequacy or inconsistency to be addressed by the soils engineer, testing laboratory or land surveyor before any further use is put to the data.
- (d) The Design Consultant shall require all surveying, engineering and testing entities it selects to carry and maintain Comprehensive Auto Liability and Property Damage Insurance, General Commercial Liability and Property Damage Insurance and Professional Errors and Omissions coverage as required by the City's Office of Risk Management which will adequately protect the interests of the City and third parties from the acts and omissions of the testing entity.
- (e) The amount of surveying or testing, the cost, and the types of reports required must be approved by the Director prior to the Design Consultant actually ordering any such work to be accomplished. Such approvals by the City shall be for purposes of compensation only and shall not relieve the Design

Consultant of any responsibility for determining the scope and amount of surveying and testing necessary for the design of the project.

- (f) It is understood and agreed that this Agreement does not include the investigation, sampling, testing, planning, abatement design, and remediation management of asbestos or other hazardous waste material. Should the presence of asbestos or other hazardous waste material be known to exist on a specific project or if the Design Consultant shall observe the presence of asbestos or hazardous waste material on any project site during its performance of services under this Agreement, the Design Consultant shall notify the City in writing immediately.
- (g) Payment to the Design Consultant for such surveying, testing, and abatement shall not exceed the surveying and testing budget set forth in the project specific proposal for each project.

2.10 Compliance with M/WBE Requirements.

- (a) This Agreement is subject to Article III, Divisions 1 and 3 of Chapter 28, Denver Revised Municipal Code (D.R.M.C.), designated as Sections 28-31 to 28-36 and 28-52 to 28-90 D.R.M.C. (the “M/WBE Ordinance”) and any Rules or Regulations promulgated pursuant thereto. The Design Consultant identified in its Proposal MBE and/or WBE firms with which it intends to subcontract under this Agreement, with a total participation level by such firms of 19%. The project goal for M/WBE participation established for this Agreement by the Division of Small Business Opportunity (DSBO) is 19%.
- (b) Under § 28-72 D.R.M.C., the Design Consultant has an ongoing, affirmative obligation to maintain for the duration of this Agreement, at a minimum, compliance with its originally achieved level of MBE and WBE participation upon which this Agreement was awarded, unless the City initiates a material alteration to the scope of work affecting MBEs or WBEs performing on this Agreement through change order, contract amendment, force account, or as otherwise described in § 28-73 D.R.M.C. The Design Consultant acknowledges that:
 - (1) It must establish and maintain records and submit regular reports, as required, which will allow the City to assess progress in achieving the M/WBE participation goal.
 - (2) If change orders or any other contract modifications are issued under the Agreement, the Design Consultant shall have a continuing obligation to immediately inform DSBO in writing of any agreed upon increase or decrease in the scope of work of such contract, upon any of the bases discussed in § 28-73, D.R.M.C., regardless of whether such increase or decrease in scope of work has been reduced to writing at the time of notification.
 - (3) If change orders or other contract modifications are issued under the contract, that include an increase in scope of work of this Agreement, whether by amendment, change order, force account

or otherwise which increases the dollar value of the contract, whether or not such change is within the scope of work designated for performance by an M/WBE at the time of contract award, such change orders or contract modification shall be immediately submitted to DSBO for notification purposes. Those amendments, change orders, force accounts or other contract modifications that involve a changed scope of work that cannot be performed by existing project subconsultants or by the Design Consultant shall be subject to a goal for M/WBEs equal to the original goal on the contract which was included in the proposal. The Design Consultant shall satisfy such goal with respect to such changed scope of work by soliciting new M/WBEs in accordance with § 28-73, D.R.M.C., as applicable, or the Design Consultant must show each element of modified good faith set out in § 28-75(c) D.R.M.C. The Design Consultant shall supply to the director the documentation described in § 28-75-(c) D.R.M.C. with respect to the increased dollar value of the contract.

- (4) Failure to comply with these provisions may subject the Design Consultant to sanctions set forth in the M/WBE Ordinance. Should any questions arise regarding specific circumstances, the Design Consultant must consult the M/WBE Ordinance or contact the Project's designated DSBO representative at (720) 913-1999

SECTION 3 – COMPENSATION, PAYMENT, AND FUNDING

The City shall compensate the Design Consultant for its service performed and expenses incurred under this Agreement as follows.

3.01 Fee for basic services. The City agrees to pay the Design Consultant, as full compensation for its basic services rendered hereunder, a fee not to exceed **EIGHT HUNDRED EIGHTY TWO THOUSAND FIVE HUNDRED FIFTY FIVE DOLLARS AND ZERO CENTS (\$882,555.00)**, in accordance with the billing rates and project budget stated in **Exhibits A and B**. The amounts budgeted for phases may be increased or decreased, and the amounts allocated for services and expenses adjusted, upon written approval of the Director or his designee, and subject to the Maximum Contract Amount stated in this Section 3.

3.02 Reimbursable Expenses. Except for those reimbursable expenses specifically identified in **Exhibit A**, or approved in writing by the City as reasonably related to or necessary for the Design Consultant's services, all other expenses shall be included in the Design Consultant's fee and will not be reimbursed hereunder. The maximum amount to be paid for all reimbursable expenses under this Agreement is **FIFTY THOUSAND FIVE HUNDRED DOLLARS AND ZERO CENTS (\$50,500.00)** unless an additional amount is approved by the Director or his designee in writing, subject to the Maximum Contract Amount stated herein. Unless this Agreement is amended in writing according to its terms to increase the Maximum Contract Amount, any increase in the maximum amount of reimbursable expenses will reduce the Design Consultant's maximum fee amount accordingly.

3.03. Additional Services. If pre-approved additional services are performed by the

Design Consultant, the City agrees to pay the Design Consultant for such additional services in accordance with Section 2.08. The maximum amount to be paid by the City for all additional services under this contract is **SEVENTY FIVE THOUSAND AND ZERO CENTS (\$75,000.00)**.

3.04 Invoicing and Payment. The City will make monthly progress payments for all services performed under this Agreement based upon the Design Consultant's monthly invoices. Such invoices shall be in a form acceptable to the City and shall include detail of the time worked by the Design Consultant's own personnel, billings from subcontractors, and all other information necessary to assess the Design Consultant's progress. Invoices shall be accompanied by documentation of expenses for which reimbursement is sought, and all other supporting documentation required by the City. The City's Prompt Payment Ordinance, §§ 20-107 to 20-118, D.R.M.C., applies to invoicing and payment under this Agreement. Final Payment to the Design Consultant shall not be made until after the Project is accepted, and all certificates of completion, record drawings and reproducible copies are delivered to the City, and the Agreement is otherwise fully performed by the Design Consultant. The City may, at the discretion of the Director, withhold reasonable amounts from billing and the entirety of the final payment until all such requirements are performed to the satisfaction of the Director. However, no deductions shall be made from the Design Consultant's compensation on account of penalty, liquidated damages or other sums withheld from payments to contractor(s).

3.05 Maximum Contract Amount.

- (a) Notwithstanding any other provision of the Agreement, the City's maximum payment obligation will not exceed **ONE MILLION EIGHT THOUSAND FIFTY FIVE DOLLARS AND ZERO CENTS (\$1,008,055.00)** (the "Maximum Contract Amount"). The City is not obligated to execute an Agreement or any amendments for any further services, including any services performed by Design Consultant beyond that specifically described in **Exhibit A**. Any services performed beyond those set forth therein are performed at Design Consultant's risk and without authorization under the Agreement.
- (b) The City's payment obligation, whether direct or contingent, extends only to funds appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of the Agreement. The City does not by the Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years, and the Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.
- (c) The Design Consultant understands and agrees that the provision of any services by the Design Consultant, which would cause the total amount payable to the Design Consultant to exceed the amount of previously appropriated and encumbered funds, is strictly prohibited. In the event the continuation of services by the Design Consultant would cause the amount payable to the Design Consultant to exceed such amounts, the Design Consultant agrees to give to the Project Director at least two (2) weeks notice of the exhaustion of available funds. In the event additional funds are not made available within such two (2) week period, the Design Consultant agrees to stop providing services until such

time as additional funds are appropriated and encumbered for the purposes of the this Agreement, and amounts which remain available for payment to the Design Consultant

SECTION 4 – TERM AND TERMINATION

4.01 Term.

The Agreement will commence on execution of this Agreement and expire, unless sooner terminated, upon final completion of the Project.

4.02 Termination.

- (a) Nothing herein shall be construed as giving the Design Consultant the right to perform the services contemplated under this Agreement beyond the time when its services become unsatisfactory to the Director.
- (b) The Director may terminate this Agreement for cause at any time if the Design Consultant's services become unsatisfactory, in the sole discretion of the Director. The City shall have the sole discretion to permit the Design Consultant to remedy the cause of a contemplated termination for cause without waiving the City's right to terminate the Agreement.
- (c) In the event of a termination for cause, or in the event the Design Consultant becomes unable to serve under this Agreement, the City may take over work to be done under this Agreement and prosecute the work to the completion by contract or otherwise, and the Design Consultant shall be liable to City for all reasonable cost in excess of what the City would have paid the Design Consultant had there been no termination for cause.
- (d) The City may, for convenience, cancel and terminate this Agreement by giving not less than thirty (30) days' prior written notice to the Design Consultant, which notice shall state the date of cancellation and termination.
- (e) If the Design Consultant's services are terminated, postponed or revised, or if the Design Consultant shall be discharged before all the work and services contemplated have been completed, or if the project is, for any reason, stopped or discontinued, the Design Consultant shall be paid only for the portion of work or services which has been satisfactorily completed at the time of such dismissal, termination, cancellation, postponement, revision or stoppage.
- (f) All drawings, specifications, and other documents relating to the design or administration of work completed or partially completed shall be delivered by the Design Consultant to the City in the event of any dismissal, termination, cancellation, postponement, revision or stoppage.
- (g) In the event of any dismissal, termination, cancellation, postponement, revision or stoppage, the Design Consultant shall cooperate in all respects with the City. Such cooperation shall include, but not be limited to, delivery of drawings, specifications, and other documents referred to herein, and assisting the City during a transition to another Design Consultant, if applicable.

SECTION 5 – GENERAL PROVISIONS

5.01 City's Responsibilities.

- (a) The City shall provide available information regarding its requirements for each project, including related budgetary information, and shall cooperate fully with the Design Consultant at all times. However, the City does not guarantee the accuracy of any such information and assumes no liability therefore. The Design Consultant shall notify City in writing of any information or requirements provided by the City which the Design Consultant believes to be inaccurate or inappropriate to the design or construction of the project.
- (b) If the City observes or otherwise becomes aware of any fault or defect in the project or non-conformance with Contract Documents, it shall give prompt notice thereof to Design Consultant.

5.02 Ownership of Documents.

- (a) The City shall have title and all intellectual and other property rights, in and to all phased and final Design documents, and all data used in the development of the same, including the results of any tests, surveys or inspections at the Project site, and all photographs, drawings, drafts, studies, estimates, reports, models, notes and any other materials or work products, whether in electronic or hard copy format, created by the Design Consultant pursuant to this Agreement, in preliminary and final forms and on any media whatsoever (collectively, the "Documents"), whether the Project for which the Documents were created is executed or not. The Design Consultant shall identify and disclose, as requested, all such Documents to the City.
- (b) To the extent permitted by the U.S. Copyright Act, 17 USC § 101 *et seq.*, as the same may be amended from time to time, the Documents are a "work made for hire," and all ownership of copyright in the Documents shall vest in the City at the time the Documents are created. To the extent that the Documents are not a "work made for hire," the Design Consultant hereby assigns and transfers all right, title and interest in and to the Documents to the City, as of the time of the creation of the Documents, including the right to secure copyright, patent, trademark, and other intellectual property rights throughout the world and to have and to hold such copyright, patent, trademark, and other intellectual property rights in perpetuity.
- (c) The Design Consultant shall provide (and cause its employees and subcontractors to provide) all assistance reasonably requested in securing for the City's benefit any patent, copyright, trademark, service mark, license, right or other evidence of ownership of such Documents, and shall provide full information regarding the Documents and execute all appropriate documentation in applying for or otherwise registering, in the City's name, all rights to such Documents.
- (d) The Design Consultant agrees to allow the City to review any of the procedures used in performing the work and services hereunder, and to make

available for inspection the field notes and other documents used in the preparation for and performance of any of the services performed hereunder.

- (e) The Design Consultant shall be permitted to retain reproducible copies of all of the Documents for the information and reference, and the originals of all of the Documents, including all CAD disks, shall be delivered to the City promptly upon completion thereof, or if authorized by the City's Project Manager, upon termination or expiration of this Agreement.

5.03 Taxes and Licenses. The Design Consultant shall promptly pay, when they are due, all taxes, excises, license fees and permit fees of whatever nature applicable to the work and services which it performs under this Agreement, and shall take out and keep current all required municipal, county, state or federal licenses required to perform its services under this Agreement. The Design Consultant shall furnish the Director, upon request, duplicate receipts or other satisfactory evidence showing or certifying to the proper payment of all required licenses and/or registrations and taxes. The Design Consultant shall promptly pay all owed bills, debts and obligations it incurs performing work under this Agreement and shall not allow any lien, verified claim, mortgage, judgment or execution to be filed against land, facilities or improvements owned or beneficially owned by the City as a result of such bills, debts or obligations.

5.04 Design Consultant's Records. Records of the Design Consultant's direct personnel, consultant and reimbursable expenses pertaining to this Project and records of accounts between the City and the Design Consultant shall be kept on a generally recognized accounting basis. The Design Consultant agrees that any duly authorized representative of the City, including the City Auditor, shall, until the expiration of three (3) years after the final payment under this Agreement, have access to and the right to examine any books, documents, papers and records of the Design Consultant, involving transactions related to this Agreement.

5.05 Assignment and Subcontracting. The City is not obligated or liable under this Agreement to any party other than the Design Consultant named herein. The Design Consultant understands and agrees that it shall not assign or subcontract with respect to any of its rights, benefits, obligations or duties under this Agreement except upon prior written consent and approval of the City to such assignment or subcontracting. Any attempt by the Design Consultant to assign or subcontract its rights hereunder without such prior written consent of the City shall, at the option of the City, automatically terminate this Agreement and all rights of the Design Consultant hereunder. Such consent may be granted or denied at the sole and absolute discretion of the City. In the event any such subcontracting shall occur, with the City's approval, such action shall not be construed to create any contractual relationship between the City and such subcontractor, and the Design Consultant named herein shall in any and all events be and remain responsible to the City according to the terms of this Agreement.

5.06 No Discrimination in Employment. In connection with the performance of work under this Agreement, the Design Consultant agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability. The Design Consultant agrees to insert the foregoing provision in all subcontracts hereunder.

5.07 Insurance.

- (a) **General Conditions:** Contractor agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. Contractor shall keep the required insurance coverage in force at all times during the term of the Agreement, or any extension thereof, during any warranty period, and for eight (8) years after termination of the Agreement. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as “A-”VIII or better. Each policy shall contain a valid provision or endorsement requiring notification to the City in the event any of the required policies be canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices section of this Agreement. Such notice shall reference the City contract number listed on the signature page of this Agreement. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, contractor shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing the City’s contract number. If any policy is in excess of a deductible or self-insured retention, the City must be notified by the Contractor. Contractor shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Contractor. The Contractor shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.
- (b) **Proof of Insurance:** Contractor shall provide a copy of this Agreement to its insurance agent or broker. Contractor may not commence services or work relating to the Agreement prior to placement of coverages required under this Agreement. Contractor certifies that the certificate of insurance attached as Exhibit C, preferably an ACORD certificate, complies with all insurance requirements of this Agreement. The City requests that the City’s contract number be referenced on the Certificate. The City’s acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Contractor’s breach of this Agreement or of any of the City’s rights or remedies under this Agreement. The City’s Risk Management Office may
- (c) **Additional Insureds:** For Commercial General Liability, Auto Liability and Excess Liability/Umbrella (if required), Contractor and subcontractor’s insurer(s) shall include the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.
- (d) **Waiver of Subrogation:** For all coverages required under this Agreement, Contractor’s insurer shall waive subrogation rights against the City.
- (e) **Subcontractors and Subconsultants:** All subcontractors and subconsultants

(including independent contractors, suppliers or other entities providing goods or services required by this Agreement) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of the Consultant. Consultant shall include all such subconsultants as additional insured under its policies (with the exception of Workers' Compensation) or shall ensure that all such subcontractors and subconsultants maintain the required coverages. Consultant agrees to provide proof of insurance for all such subcontractors and subconsultants upon request by the City.

- (f) **Workers' Compensation/Employer's Liability Insurance:** Consultant shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims. Consultant expressly represents to the City, as a material representation upon which the City is relying in entering into this Agreement, that none of the Consultant's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the term of this Agreement, and that any such rejections previously effected, have been revoked as of the date Consultant executes this Agreement.
- (g) **Commercial General Liability:** Contractor shall maintain a Commercial General Liability insurance policy with limits of \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate.
- (h) **Business Automobile Liability:** Contractor shall maintain Business Automobile Liability with limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement.
- (i) **Professional Liability (Errors & Omissions):** Contractor shall maintain limits of \$1,000,000 per claim and \$1,000,000 policy aggregate limit.
- (j) **Additional Provisions:**
 - (a) For Commercial General Liability, the policy must provide the following:
 - (i) That this Agreement is an Insured Contract under the policy;
 - (ii) Defense costs are outside the limits of liability;
 - (iii) A severability of interests or separation of insureds provision (no insured vs. insured exclusion); and
 - (iv) A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City.
 - (b) For claims-made coverage:
 - (i) The retroactive date must be on or before the contract date or the first date when any goods or services were provided to the City, whichever is earlier

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

5.08 Defense & Indemnification.

- (a) To the fullest extent permitted by law, the Consultant agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or related to the work performed under this Agreement that are attributable to the negligence or fault of the Consultant or the Consultant's agents, representatives, subcontractors, or suppliers ("Claims"). This indemnity shall be interpreted in the broadest possible manner consistent with the applicable law to indemnify the City.
- (b) Consultant's obligation to defend and indemnify may be determined after Consultant's liability or fault has been determined by adjudication, alternative dispute resolution, or otherwise resolved by mutual agreement between the parties. Consultant's duty to defend and indemnify City shall relate back to the time written notice of the Claim is first provided to City regardless of whether suit has been filed and even if Consultant is not named as a Defendant.
- (c) Consultant will defend any and all Claims which may be brought or threatened against City and will pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City's exclusive remedy.
- (d) Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Consultant under the terms of this indemnification obligation. The Consultant shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.
- (e) This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

5.09 Colorado Governmental Immunity Act. The parties hereto understand and agree that the City is relying upon, and has not waived, the monetary limitations (presently \$150,000 per person, \$600,000 per occurrence) and all other rights, immunities and protection provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*

5.10 Contract Documents; Order of Precedence. This Agreement consists of Sections 1 through 5, which precede the signature page, and the following attachment, which is incorporated herein and made a part hereof by reference:

Exhibit A	Scope of Work/Rates
Exhibit B	Key Personnel

Exhibit C ACORD Certificate of Insurance

In the event of an irreconcilable conflict between a provision of Sections 1 through 5 and the listed attachments, or between provisions of any attachments, such that it is impossible to give effect to both, the order of precedence to determine which provision shall control to resolve such conflict, is as follows, in descending order:

- Sections 1 through 5
- Exhibit A
- Exhibit B
- Exhibit C

5.11 When Rights and Remedies Not Waived. In no event shall any payment by the City constitute a waiver of any breach of covenant or default which may then exist on the part of the Design Consultant. No assent, expressed or implied, to any breach of the Agreement shall be held to be a waiver of any later or other breach.

5.12 Governing Law; Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado, the Charter and Revised Municipal Code of the City and County of Denver, and the ordinances, regulations and Executive Orders enacted or promulgated pursuant to the Charter and Code, including any amendments. The Charter and Revised Municipal Code of the City and County of Denver, as the same may be amended from time to time, are hereby expressly incorporated into this Agreement. Venue for any action arising hereunder shall be in the City and County of Denver, Colorado.

5.13. Conflict of Interest.

- (a) The parties agree that no employee of the City shall have any personal or beneficial interest in the services or property described herein, and the Design Consultant further agrees not to hire or contract for services with any employee or officer of the City which would be in violation of the Revised Municipal Code Chapter 2, Article IV, Code of Ethics or Denver City Charter provisions 1.2.9 and 1.2.12.
- (b) The Design Consultant agrees that it will not engage in any transaction, activity or conduct that would result in a conflict of interest under this Agreement. The Design Consultant represents that it has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities or conduct that would affect the judgment, actions or work of the Design Consultant by placing the Design Consultant's own interests, or the interests of any party with whom the Design Consultant has a contractual arrangement, in conflict with those of the City. The City, in its sole discretion, shall determine the existence of a conflict of interest and may terminate this Agreement in the event such a conflict exists after it has given the Design Consultant written notice which describes the conflict. The Design Consultant shall have thirty (30) days after the notice is received to eliminate or cure the conflict of interest in a manner that is acceptable to the City.

5.14 No Third Party Beneficiaries. Enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the

City and the Design Consultant, and nothing contained in this Agreement shall give or allow any claim or right of action by any other or third person under this Agreement. It is the express intention of the parties that any person other than the City or the Design Consultant receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

5.15 Time is of the Essence. The parties agree that in the performance of the terms, conditions and requirements of this Agreement by the Design Consultant, time is of the essence.

5.16 Taxes, Charges and Penalties. The City and County of Denver shall not be liable for the payment of taxes, late charges, or penalties of any nature except as provided in the City's Prompt Payment Ordinance.

5.17 Proprietary or Confidential Information.

- (a) **City Information:** The Design Consultant acknowledges and accepts that, in performance of its work under the terms of this Agreement, the Design Consultant may have access to Proprietary Data or confidential information which may be owned or controlled by the City and that the disclosure of such data or information may be damaging to the City or third parties. As such, the Design Consultant agrees that all information provided or otherwise disclosed by the City to the Design Consultant be held in confidence and used only in the performance of its obligations under this Agreement. The Design Consultant shall exercise the same standard of care to protect such information as a reasonably prudent Design Consultant would to protect its own proprietary or confidential data. "Proprietary Data" shall mean geographic materials or Geographic Information Systems ("GIS") data owned by the City and County of Denver including but not limited to maps, computer programs, aerial photography, methodologies, software, diagnostics and documents; or any other materials or information which may be designated or marked "Proprietary" or "Confidential" and provided to or made available to the Design Consultant by the City. Such Proprietary Data may be in hardcopy, printed, digital or electronic format.
- (b) **Design Consultant's Information:** The parties understand that all the material provided or produced under this Agreement may be subject to the Colorado Open Records Act, C.R.S. 24-72-201, et seq., and that in the event of a request to the City for disclosure of such information, the City shall advise the Design Consultant of such request in order to give the Design Consultant the opportunity to object to the disclosure of any of its proprietary or confidential material. In the event of the filing of a lawsuit to compel such disclosure, the City will tender all such material to the court for judicial determination of the issue of disclosure and the Design Consultant agrees to intervene in such lawsuit to protect and assert its claims of privilege and against disclosure of such material or waive the same. The Design Consultant further agrees to defend, indemnify and save and hold harmless the City, its officers, agents and employees, from any claim, damages, expense, loss or costs arising out of the Design Consultant's intervention to protect and assert its claim of privilege against disclosure under this Article including, but not limited to, prompt

reimbursement to the City of all reasonable attorney fees, costs and damages that the City may incur directly or may be ordered to pay by such court.

5.18 Use, Possession or Sale of Alcohol or Drugs. The Design Consultant, its officers, agents, and employees shall cooperate and comply with the provisions of Executive Order 94 and Attachment A thereto concerning the use, possession or sale of alcohol or drugs. Violation of these provisions or refusal to cooperate with implementation of the policy can result in the City's barring the Design Consultant from City facilities or participating in City operations.

5.19 No Employment of Illegal Aliens to Perform Work Under the Agreement.

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

(b) The Consultant certifies that:

(1) At the time of its execution of this Agreement, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement.

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

(c) The Consultant also agrees and represents that:

(1) It shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

(2) It shall not enter into a contract with a subconsultant or subcontractor that fails to certify to the Consultant that it shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

(3) It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement, through participation in the E-Verify Program.

(4) It is prohibited from using the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement, and that otherwise requires the Consultant to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.

(5) If it obtains actual knowledge that a subconsultant or subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such subconsultant or subcontractor and the City within three (3) days. The Consultant will also then terminate such subconsultant or subcontractor if within three (3) days after such notice the subconsultant or subcontractor does not stop employing or contracting with the illegal alien, unless during such three-day period the subconsultant or subcontractor provides information to establish that the subconsultant or subcontractor has not

knowingly employed or contracted with an illegal alien.

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

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

5.20 Disputes. All disputes between the City and Design Consultant regarding this Agreement shall be resolved by administrative hearing pursuant to the procedure established by D.R.M.C. § 56-106(b), *et seq.* For the purposes of that procedure, the City official rendering a final determination shall be the Director.

5.21 Waiver of C.R.S. 13-20-802, et seq. The Design Consultant specifically waives all the provisions of Chapter 8 of Article 20 of Title 13, Colorado Revised Statutes (also designated C.R.S. 13-20-802 *et seq.*) relating to design defects in the Project under this Agreement.

5.22 Survival of Certain Contract Provisions. The parties understand and agree that all terms and conditions of this Agreement, together with the exhibits and attachments hereto, which, by reasonable implication, contemplate continued performance or compliance beyond the termination of this Agreement, (by expiration of the term or otherwise), shall survive such termination and shall continue to be enforceable as provided herein. Without limiting the generality of the foregoing, the Design Consultant's obligations for the provision of insurance and to indemnify the City shall survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period."

5.23 Advertising And Public Disclosure. The Design Consultant shall not include any reference to this Agreement or to services performed pursuant to this Agreement in any of its advertising or public relations materials without first obtaining the written approval of the Director, which will not be unreasonably withheld. Any oral presentation or written materials related to services performed under this Agreement shall include only services that have been accepted by the City. The Director shall be notified in advance of the date and time of any such presentation. Nothing in this provision shall preclude the transmittal of any information to officials of the City, including without limitation the Mayor, the Director, City Council or the Auditor.

5.24 Legal Authority. Design Consultant represents and warrants that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement. Each person signing and executing this Agreement on behalf of Design Consultant represents and warrants that he has been fully authorized by Consultant to execute this Agreement on behalf of Design Consultant and to validly and legally bind Design Consultant to all the terms, performances and provisions of this Agreement. The

City shall have the right, in its sole discretion, to either temporarily suspend or permanently terminate this Agreement if there is a dispute as to the legal authority of either Design Consultant or the person signing the Agreement to enter into this Agreement.

5.25 Notices. Notices, bills, invoices or reports required by this Agreement shall be sufficiently delivered if sent in the United States mail, postage prepaid, to the Parties at the following addresses:

to the City: Executive Director of Public Works
201 West Colfax Avenue, Dept. 601
Denver, Colorado 80202

to the Design Consultant: OZ Architecture, Inc.
3003 Larimer Street
Denver, Colorado 80205

The addresses may be changed by the Parties by written notice.

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

5.27 Agreement as Complete Integration-Amendments. This Agreement is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion or other amendment shall have any force or effect, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion or other amendment hereto shall have any force or effect unless embodied in a written amendatory or other agreement executed by the parties and signed by the signatories to the original Agreement. This Agreement and any amendments shall be binding upon the parties, their successors and assigns.

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

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Contract Control Number:

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

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By _____

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By _____

By _____

By _____



Contract Control Number: PWADM-201626298-00

Contractor Name: OZ Architecture, INC.

By: Joseph P. Leui

Name: JOSEPH P. LEUI
(please print)

Title: PRINCIPAL
(please print)

ATTEST: [if required]

By: Kelly Yamasaki

Name: Kelly Yamasaki
(please print)

Title: Principal
(please print)





EXHIBIT A

January 12, 2016

Kent Grissom
Project Manager
Denver Public Works Facilities Capital Project Management
201 W. Colfax
Denver, CO 80202

RE: City and County of Denver - Architectural and Engineering Professional Services for Denver 911 Communication Center Relocation, No. FAC2015-056

Dear Kent,

We are excited to begin work on the 911 Communication Center Relocation project and we appreciate the time that we have spent with you over the past few weeks in more clearly defining the scope of work for the project. Through our conversations our team has developed a clearer picture of the existing building along with the city's assumptions in terms of the scope of work, and we've hopefully given you some insight of potential challenges that we see in remodeling the building.

PROJECT SCOPE

- A. The project is to be the remodel of approximately 43,000 square feet of an existing 75,000 square foot building at 12025 E. 45th Street into Denver's 911 Emergency Communication Center.
- B. The remodel is to include upgrades to the building and site to meet many of the requirements of NFPA 1221 – Standards for the Installation, Maintenance, and use of Emergency Communication Centers. This includes the seismic analysis and upgrade of the entire 75,000 square foot building to a risk category IV, a requirement to meet the IBC's definition as an essential facility.
- C. The 32,000 square feet of the building that is not occupied by the 911 Communication Center will have a future, compatible, city agency tenant. Our scope of work includes design to satisfy the building department that this remaining space is safe as an unoccupied shell.
- D. The construction budget is \$10,000,000 and the project will aim for a LEED Gold certification.
- E. The 911 program includes emergency call takers, police department dispatchers, fire department dispatchers, emergency medical service dispatchers, technology services support staff, communication center training staff, and the 911 administrative staff.
- F. In addition to the interior renovations to meet the new program, our scope of work includes a new communications tower, building and site security upgrades, site access improvements,

and connectivity improvements (with the assumption that the utilities are available in the adjacent streets).

- G. As part of our fee we have included a Threat Assessment Charrette, in which our team will lead a session with the building users and city representatives to conduct a vulnerability analysis and to identify potential mitigation strategies.
- H. The project will have a Construction Manager/General Contractor which will be selected during Schematic Design.
- I. This submittal is based on the information provided by the Owner during the RFP process in the following documents:
 - 1. 911 Center Site Assessment – 12025 East 45th Avenue, dated December 19, 2014, prepared by Jacobs.
 - 2. United States Postal Service renovation drawings, dated 1996 prepared by Reck and Associates.
 - 3. Fit Study, dated January 28, 2015, prepared by Jacobs.
 - 4. Original architectural and structural design drawings, dated 1969, prepared by Muchow architects and KKBNA engineers.
 - 5. Program Development, dated December 17, 2014, prepared by Jacobs.
 - 6. Seismic Retrofit Report – 12045 East 45th Avenue, dated February 2, 2015, prepared by Jacobs.

SCHEDULE

We hope to begin design of this project as soon as possible. Assuming a March, 2016 kick-off, we plan on completing design documents by October, 2016 with construction to be completed by the end of the second quarter of 2017.

BASIC SERVICES

- A. Programming
 - 1. Review existing contract documents for the building. Visit the site and perform visual evaluation of the condition of the building and site.
 - 2. Conduct workshop with building users and City representatives to confirm project goals and to confirm previously completed program including room sizes and adjacencies.
 - 3. Conduct a security planning meeting in which security goals and criteria are defined and threat mitigation strategies are identified.
- B. Schematic Design:
 - 1. Develop preliminary design of the space and site including schematic plans, reflected ceiling plans, exterior elevations, and building sections.
 - 2. Develop room data sheets.

3. Establish structural, mechanical, electrical, and low voltage design criteria. Consider alternate solutions, materials, equipment, and construction methods for the seismic upgrade and summarize findings in a written narrative.
4. Preliminary code review with building official. Based on the selected Schematic Design solution for the structure, discuss with the building official the strategy for upgrading the existing facility to applicable portions of the current codes.
5. Sustainability Charrette. Will also conduct preliminary energy analysis.
6. Cost Estimate based upon the Schematic design drawings, narratives and outline specifications.
7. Assist Owner in the selection of a CM/GC.

C. Design Development:

1. Expand conceptual design solutions. Prepare drawings and other documents to describe and fix the size and character of the design from all disciplines.
2. Prepare building security device matrix.
3. Prepare Design Development Cost Estimate and compare to cost estimate provided by CM/GC.

D. Construction Documents:

1. Prepare final drawings, specifications, and calculations for bidding, permit and construction.
2. Assist in the preparation of performance-based specifications and drawings that define the system and the design criteria for the following potential Deferred Submittal elements:
 - a. Carbon fiber reinforcement
 - b. Precast and/or Prestressed concrete walls or columns
 - c. Light gage framing in the exterior wall
3. Prepare LEED required plans. Complete and submit LEED design credits.

E. Bidding and Negotiation:

1. Respond to the comments from the Authority Having Jurisdiction (AHJ) regarding documents submitted for permit and update such documents, if necessary.
2. Respond to queries of bidders regarding interpretation of Construction Documents. Provide clarifying addenda.
3. Review and act upon substitution requests for reasonable alternates included as a part of bidder's submittals.

F. Construction Administration:

1. Review shop drawings, allied submittals, and samples furnished by the Contractor.
2. Review and respond to Contractor's Requests for Information (RFI) when they request clarification to the contract documents.

3. Site observation and attendance at OAC meetings. OZ will conduct weekly site observations and will issue field reports. Engineers will conduct periodic site observations at key points of their system's construction.
4. Review contractor's applications for payment.
5. Project closeout services including punchlist reviews, issuance of certificate of substantial completion and final completion confirmation.

G. Post-Construction Services:

1. Revisions of drawings to include Record Drawings from redlines from the Contractor.
2. Review of contractor documentation of LEED construction submittals. Response to GBCI review items.
3. 11 month post construction observation and report.

ASSUMPTIONS and CLARIFICATIONS

- A. Our design phase services are based upon a single design and bid package. The design team may request additional services if multiple bid packages are desired.
- B. Our fee proposal is based upon the Site Assessment report dated December 14, 2014. Should equipment, such as the generator, which was noted as adequate in the report, be found to be in-adequate during design additional design fees may be requested.
- C. We have assumed that the existing parking lot will not have major modifications other than those needed to provide a secured lot. As such, we have assumed that upgrades to the water detention and water quality structures of the site are not required. An alternate fee has been provided should those upgrades be needed.
- D. We have not included blast protection design in our base fee. Should the security planning meeting identify the need to provide blast protection, a potential range of structural design services has been provided.
- E. We have assumed that no major modifications or upgrades are required of the central plumbing system.
- F. The fire sprinkler system will be defined with a performance specification.
- G. Data Center design is not included. Elevations of the racks, based on information from the Owner, in the Data Center are included.
- H. Design, specification, and relocation of the 911 equipment is by the Owner or their sub-contractor.
- I. The radio tower will be selected by the Owner. The design team will locate the tower, provide a foundation design, and will provide connections from the tower to the Data Center.
- J. A survey of the building for Wi-Fi, radio, and cellular coverage has not been included.
- K. Energy modeling for LEED certification is included, but daylight modeling and commissioning services are not included.

REIMBURSABLE EXPENSES: We understand reimbursable expenses to include the following.

- A. There is no mark-up of any reimbursable expenses.
- B. No mileage or parking is allowed for local travel.
- C. Estimates for travel by MWL to Denver have been included in the reimbursable allowance. Only travel by MWL for approved trips, with required receipts provided, will be reimbursed.
- D. Printing/copying and courier/delivery costs for client meetings is allowed but not for internal design meetings/use.
- E. Food and beverage for all day workshops and charrettes.
- F. Approved additional site visits.
- G. LEED registration and review fees.
- H. And other expenses as pre-approved by the City Project Manager.

As you requested, we have gone back to our team and have asked them to re-look at their fee to see if there was any room to make adjustments once they had a clearer understanding of scope. While there were a few who did not make any adjustments, most of our consultants did make revisions. The attached fee worksheet shows our revised fee proposal, along with our updated percentage of M/WBE participation. In addition, we have attached a separate worksheet that shows potential fees for some potential additional services. This includes a fee to provide a variety of blast protection design options, and a fee to provide an engineering submittal and construction documents should Public Works require this project to provide upgraded water quality and detention facilities. I have also attached the proposals from our consultants which provide a detailed description of their scope of work.

Thank you for the opportunity to submit this proposal. We look forward beginning work on this important project.

Sincerely,



Joe Levi, AIA
Principal in Charge - OZ Architecture



Kelly Yamasaki, AIA, LEED AP
Principal/Project Manager - OZ Architecture

**Denver 911 Communication Center Relocation
Design Team Fee Proposal (Revised)**

1/11/2016

OZ Architecture - FEE PROPOSAL TABULATION FORM									
Consultant Name	FEE & DETAILS								
	Programing Fee	SD Fee	DD Fee	CD Fee	Bid / Negotiation	CA Fee	Total Fee	Percentage of Total Fee	M/WBE %
OZ Architecture	\$15,600	\$60,000	\$90,000	\$130,000	\$6,000	\$95,000	\$396,600	42.51%	
McClaren Wilson & Lawrie - 911 Consultant	\$25,205	\$16,500	\$12,505	\$8,455	\$640	\$8,790	\$72,095	7.73%	
Aakar Architects	NA	NA	NA	\$10,000	NA	NA	\$10,000	1.07%	1.07%
Latitude39 - Landscape	\$1,000	\$500	\$1,500	\$2,500	\$250	\$250	\$6,000	0.64%	0.64%
HCL - Civil	\$1,600	\$3,600	\$4,800	\$5,000	\$1,600	\$1,600	\$18,200	1.95%	1.95%
HCL - Structural	\$1,000	\$3,000	\$4,400	\$6,800	\$800	\$3,500	\$19,500	2.09%	2.09%
Martin/Martin - Structural	\$14,000	\$12,750	\$10,200	\$15,300	\$2,550	\$10,200	\$51,000	5.47%	
Swanson Rink - Mechanical	\$2,714	\$4,762	\$17,206	\$12,942	\$857	\$5,609	\$44,090	4.73%	
PK Electrical - Electrical	\$3,500	\$16,800	\$39,500	\$23,800	\$2,500	\$10,500	\$96,600	10.35%	10.35%
Technology Plus - Technology, Data, Security	\$6,745	\$8,960	\$31,050	\$29,800	\$3,465	\$13,135	\$93,155	9.98%	
K2 Audio - Acoustical	\$945	\$2,430	\$2,970	\$4,185	\$270	\$1,215	\$12,015	1.29%	1.29%
Amick Group - Cost Estimating	NA	\$6,000	\$15,000	NA	NA	NA	\$21,000	2.25%	2.25%
Group 14 - LEED Services	NA	\$7,200	\$5,000	\$16,800	NA	\$13,300	\$42,300	4.53%	4.53%
SUBTOTAL	\$72,309	\$142,502	\$234,131	\$265,582	\$18,932	\$163,099	\$882,555	94.59%	24.18%
Reimbursable Expenses	\$6,500	\$7,000	\$7,000	\$16,000	\$5,000	\$9,000	\$50,500	5.41%	
GRAND TOTAL FEE							\$933,055	100.00%	24.18%
FEE NOTES / CLARIFICATIONS									
See attached detailed proposals from consultants for specific information and assumptions on scope of work. Includes a threat assessment charrette to be conducted during programming.									

Attachment 1
CONSULTANT TEAM MEMBERS

Firm Name: **OZ Architecture**

Title/Classification	Name	Responsibilities	Rate/Hr.
Principal	Joe Levi	Principal in Charge, quality control, client satisfaction, Architect of Record	\$200/hr
Principal/Project Manager	Kelly Yamasaki	Project Manager, point of contact, day-to-day management of the project	\$200/hr
Associate Principal	TBD	Architectural Design Services	\$155/hr
Project Architect	Rebecca Greek	Project Designer, works with Project Manager to create project designs	\$125/hr
Intern Architect	TBD	Architectural Design Services	\$85/hr
Sr. Interior Designer	Shelley Cockrell	Interior Design Principal, manages and directs all interior design on the project	\$110/hr
Interior Designer	TBD	Interior Design Services	\$90/hr

Multiplier, which when multiplied by the direct labor rate yields the above hourly billing rate: 2.6 – 3.3

SUB-CONSULTANT TEAM MEMBERS

Firm Name: AAKAR ARCHITECTS

Title/Classification	Name	Responsibilities	Rate/Hr.
Principal	DITSA OJHA SINHA	Overall Project management, Coordination with Prime Architect and sub-consultants as required. Project quality assurance.	\$120
Project Manager	PAUL GIBSON	Developing design and construction documents and management of document preparation.	\$90

Multiplier, which when multiplied by the direct labor rate yields the above hourly billing rate: _____

SUB-CONSULTANT TEAM MEMBERS

Firm Name: **Amick Group, LLC.**

Title/Classification	Name	Responsibilities	Rate/Hr.
Principal	Tracy Amick	Estimating and management of firm	\$150/hr

Multiplier, which when multiplied by the direct labor rate yields the above hourly billing rate: _____

SUB-CONSULTANT TEAM MEMBERS

Firm Name: Group14 Engineering, Inc.

Title/Classification	Name	Responsibilities	Rate/Hr.
Sustainability Team Leader	Laura Charlier	Oversees LEED on the project, coordinates LEED submittal and documentation	\$132
Project Engineer	Taylor Roberts	Project management, energy analysis	\$125
Sustainable Design Project Manager	Laura Unrein	Project management, LEED administration	\$125
Energy Engineer	Axaule Sultanova	Energy Analysis Support	\$110
Sustainable Design Support	Lauran McNeill	LEED documentation and support	\$110
Admin	Maria Chavez	Office admin	\$65

Multiplier, which when multiplied by the direct labor rate yields the above hourly billing rate: 2.7

SUB-CONSULTANT TEAM MEMBERS

Firm Name: HCL Engineering & Surveying, LLC.

Title/Classification	Name	Responsibilities	Rate/Hr.
Principal	Jasper Lloyd Herrera	Contract Administration / Project Oversight	\$140
Project Manager	Chris Chen	Responsible for project coordination, design, and client communications.	\$125
Civil Engineer	Matthew Dickson	Civil Engineering Lead responsible for civil infrastructure design and utility coordination.	\$125
Project Engineer	Chris Beach	Civil Engineer responsible for design and drawing of civil infrastructure.	\$90
Project Engineer	Jason Dahnke	Structural Engineer responsible for the design and analysis of buildings and foundations.	\$105
Project Engineer	Brian Harting	Structural Engineer responsible for design, modeling, and drawing of the building structure.	\$90
Project Designer	Shelby Parkinson	Structural Designer responsible for modeling and drawing of the building structure.	\$80

Multiplier, which when multiplied by the direct labor rate yields the above hourly billing rate: 2.96

SUB-CONSULTANT TEAM MEMBERS

Firm Name: K2 Audio, LLC

Title/Classification	Name	Responsibilities	Rate/Hr.
Sr. Consultant/Acoustics	Ted Pyper	Analyze the design, and make recommendations for acoustical treatments, sound isolation, and HVAC/MEP systems noise control	\$135

Multiplier, which when multiplied by the direct labor rate yields the above hourly billing rate: 2.25

SUB-CONSULTANT TEAM MEMBERS

Firm Name: Latitude 39 Engineering & Development Consultants

Title/Classification	Name	Responsibilities	Rate/Hr.
Landscape Architect	Chris Peterson, LA	Landscape Architecture	100
Principal	Cathy Johnson	Project Coordination	145

Multiplier, which when multiplied by the direct labor rate yields the above hourly billing rate: _____

SUB-CONSULTANT TEAM MEMBERS

Firm Name: Martin/Martin, Inc.

Title/Classification	Name	Responsibilities	Rate/Hr.
Principal	Elizabeth Jones	Structural Engineering	\$175
Associate	Nicole Lane	Structural Engineering	\$150

Multiplier, which when multiplied by the direct labor rate yields the above hourly billing rate: 3 – 3.5%

SUB-CONSULTANT TEAM MEMBERS

Firm Name: McClaren, Wilson & Lawrie, Inc.

Title/Classification	Name	Responsibilities	Rate/Hr.
Senior Principal	James McClaren	input to room data & critical details, detail and specification input –supervision, management, site monitoring	\$258
Senior Principal	David Wilson	coordinate graphics, room data sheets production, develop details, shop drawing review	\$258
Principal	Dean Roberts	design team, input to room data & critical details, detail and specification input –supervision, management, site monitoring	\$140
Architect	Leo McGill	design team, room data, specification and detail coordination, detail & specification assistance, management, site monitoring	\$69

Multiplier, which when multiplied by the direct labor rate yields the above hourly billing rate: 1.492

SUB-CONSULTANT TEAM MEMBERS

Firm Name: PK Electrical

Title/Classification	Name	Responsibilities	Rate/Hr.
Principal	Karen Purcell, P.E.	Engineer of Record QA/QC	\$200
Principal / Project Manager	Alan Wiskus, LEED AP BD+C	Project Manager, Oversight of entire project, supervise staff	\$180
Project Engineer	Mike Greene, PE	Project Engineer for the electrical design. Will attend meetings, perform electrical design, be day-to day point of contact and supervise junior designers.	\$150
Engineer in Training	Jerod Ellingson, EI	Electrical designer. Will assist with design.	\$130
Senior CAD Operator	Brenda Glavin	Will do all electrical CAD drawing in either BIM or AutoCAD	\$85

Multiplier, which when multiplied by the direct labor rate yields the above hourly billing rate: _____

SUB-CONSULTANT TEAM MEMBERS

Firm Name: Swanson Rink

Title/Classification	Name	Responsibilities	Rate/Hr.
Senior Engineer	Mike Minear	Mr. Minear is responsible for the oversight of the mechanical design for complex spaces. He will be involved in creating the direction for the mechanical system design and oversee the development of the design documents and specifications.	\$145
Senior Engineer	Don Paus	Mr. Paus will lead the design of the plumbing and fire protection systems including development of drawings and specifications.	\$145
Project Manager	Nick Wells	Nick Wells will be responsible for communication within the design team and internal to Swanson Rink to ensure timely delivery of all design milestones.	\$115
Mechanical Engineer	Joshua Armstrong	Mr. Armstrong will provide mechanical engineering design services for all phases of project development, from initial concept of need, through proposal, estimate, and design phases, to construction administration and inspection.	\$120
Senior CAD Technician	Jon Powell	Mr. Powell will layout the plumbing and fire protection systems under the direction of Mr. Paus.	\$90
CAD Technician	Rachel Gonzales	Ms. Gonzales will provide the CAD drawings for the layout of the mechanical systems under the direction of Mr. Armstrong.	\$80
Project Assistant	Delaine Novak	Mrs. Novak prepares correspondence, reports, transmittals, memos, agendas, and other project-related documents. She also gathers information necessary for preparation of formal issues, assembles drawings and specifications, and arranges for printing and delivery of documents to Clients.	\$75

Multiplier, which when multiplied by the direct labor rate yields the above hourly billing rate: _____

SUB-CONSULTANT TEAM MEMBERS

Firm Name: Technology Plus, Incorporated

Title/Classification	Name	Responsibilities	Rate/Hr.
President/Principal	Howard Feingold	Principal-In-Charge, Team Project Management	\$150.00
Project Manager	Jason Crandell	911, Audiovisual, Radio, Team Lead Designer	\$130.00
Senior Engineer	Rod Brockelman	Structured Cabling, Technical Designer	\$130.00
Security Designer	Damon Sickmon	Physical Security Design	\$130.00

Multiplier, which when multiplied by the direct labor rate yields the above hourly billing rate: _____



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
1/13/2016

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement.

Table with 2 main columns: PRODUCER (USI Colorado, LLC Prof Liab) and CONTACT NAME (Travelers Indemnity Company). Includes fields for phone, fax, email, address, and NAIC # for multiple insurers.

COVERAGES CERTIFICATE NUMBER: 964889216 REVISION NUMBER:

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

Main table listing insurance coverages: COMMERCIAL GENERAL LIABILITY, AUTOMOBILE LIABILITY, UMBRELLA LIAB, WORKERS COMPENSATION AND EMPLOYERS' LIABILITY, and Professional Liability. Includes columns for INSR LTR, TYPE OF INSURANCE, POLICY NUMBER, POLICY EFF, POLICY EXP, and LIMITS.

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

As required by written contract, the City and County of Denver, its Elected and Appointed Officials, Employees and Volunteers are included as Additional Insured as respects the Commercial General Liability and Business Auto. Project Control No. FAC2015-056

CERTIFICATE HOLDER

CANCELLATION

Table with 2 columns: CERTIFICATE HOLDER (City and County of Denver) and CANCELLATION (SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE: Valerie Howard)