

City Contract No. \_\_\_\_\_

**PROFESSIONAL SERVICES AGREEMENT**  
for  
**CITY OF CHEYENNE PARKS AND RECREATION MASTER PLAN**

This Professional Services Agreement (“Agreement”) is made and entered into by and between the **City of Cheyenne**, located at **2101 O’Neil Avenue, Cheyenne, Wyoming 82001** (“City”), and **Design Workshop, Inc.**, located at **22860 Two Rivers Road, Suite 102, Basalt, Colorado 81621** (“Consultant”). This Agreement shall become effective upon the date of the last signature affixed hereto.

RECITALS

In consideration of the mutual covenants and obligations herein expressed, it is agreed by and between the parties as follows:

1. SCOPE OF WORK

The Consultant agrees to provide services as described for the **City of Cheyenne Parks and Recreation Master Plan Project**, in accordance with City of Cheyenne **Request for Proposal (RFP) #11-23**, incorporated herein by reference, and the **Consultant’s submitted proposal**, incorporated herein by reference. The scope of work shall consist of the information provided via City RFP 11-23, as modified and accepted in the Consultant’s ‘Modifications to Scope of Work’ section of their submitted proposal.

2. TIME OF PERFORMANCE

The work included in this Scope of Work shall be completed before **September 2, 2024**.

3. COMPENSATION

In consideration of the services to be performed pursuant to this Agreement, the Consultant will bill the City and the City agrees to pay Consultant an amount not to exceed **Two Hundred Seventy-Four Thousand, Eight Hundred Forty-Five Dollars (\$274,845.00)** as stated in **Exhibit A – Price Proposal**, attached hereto and incorporated herein by reference.

4. CONSULTANT RESPONSIBILITY

In providing services under this Agreement, the Consultant shall perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. Upon notice to the Consultant, the Consultant will, without additional compensation, correct those services not meeting such a standard.

5. COMPLIANCE WITH LAWS

The Parties agree that they will perform their obligations as provided in this Agreement in accordance with all applicable laws and ordinances.

6. DRUG-FREE WORKPLACE

In compliance with the Drug-Free Workplace Act of November 1988, the City of Cheyenne has established an Alcohol and Controlled Substance Policy that pertains to alcohol and drug usage by City Employees. All architects, engineers, and other consultants under contract with City of Cheyenne, and their employees and sub-consultants, are required to comply with the provisions of the City's Alcohol and Controlled Substance Policy for drug and/or alcohol usage on City property or other sites occupied by the Consultant while performing the duties and responsibilities of the Agreement. It is the responsibility of the Consultant to familiarize themselves with the requirements of this policy and to inform all their employees and sub-consultants of the requirements and ensure their compliance. If the Consultant, their employees or sub-consultants are found in violation of this policy, the Agreement may be terminated.

7. INDEMNIFICATION/HOLD HARMLESS

The Consultant agrees to indemnify, and hold harmless, the City from and against any and all liabilities, claims, penalties, forfeitures, and suits, and the cost and expenses incident thereto, including reasonable attorney's fees, to the extent caused by the performance of the Consultant's duties, including death or bodily injury to any person, destruction or damage to any property, contamination of or adverse effects on the environment, or any violation of governmental laws, regulations, or orders to the extent caused by (1) the Consultant's breach of any term or provision of this Agreement; or (2) any negligent or wrongful act, error, or omission by the Consultant, or its employees or sub-consultants in the performance of this Agreement. The Consultant acknowledges that it may incur a financial obligation to the City pursuant to the terms of this paragraph.

8. INSURANCE REQUIREMENTS

The Consultant must provide proof of the following insurance coverages:

**Commercial General Liability Insurance**

For claims arising out of bodily injury, illness, or death, or from damage to or destruction of property of others, including loss or use thereof, with minimum limits of \$1,000,000 per occurrence, \$2,000,000 aggregate for the entire term of the Agreement.

**Workers' Compensation**

Workers' compensation coverage shall be in effect for the entire term of the Agreement, as required by Wyoming law, for all employees or agents providing services under this Agreement. Consultant shall provide the City with proof of workers' compensation or employer's liability insurance coverage.

**Professional Liability Insurance**

The Consultant shall provide proof of professional liability insurance or errors and omissions liability insurance in an amount not less than \$500,000 to protect the City from any and all claims arising from the Consultant's negligence in the performance of duties

under this Agreement. The City prefers that this liability insurance coverage be provided pursuant to an “occurrence” policy.

If this coverage is provided pursuant to a “claims made” policy:

- a. Consultant shall, concurrently with the execution of this Agreement, provide the City with a certificate of insurance demonstrating that such coverage is or shall be in effect at the time the Consultant begins the provision of services under this Agreement; and
- b. In the event the Consultant’s services extend into a future policy period, the Consultant shall, prior to the policy expiration date, provide the City with a new certificate of insurance demonstrating that such coverage is or shall be in effect during all periods of time that Consultant will provide services under this Agreement; and
- c. Consultant shall maintain said “claims made” coverage for a period of five (5) years following the last date that Consultant has provided services under this Agreement; and
- d. In the event the Consultant or the insurer terminates “claims made” coverage prior to the expiration of the periods provided in subparagraphs a., b., or c. of this paragraph, the Consultant shall provide to the City advance written notification of the termination of said coverage and shall provide the City with an endorsement for an extended reporting period (“tail coverage”) which shall be in effect for a period of time not less than five (5) years following the last date that Consultant has provided services under this Agreement.

### **Additional Insurance Information**

The Consultant shall name the City of Cheyenne as **an Additional Insured** by endorsement on its insurance policies and shall provide the City with a copy of the endorsements. This requirement does not apply to workers’ compensation and professional liability insurance policies.

Consultant shall provide the City with certificates of insurance acknowledging the above-stated coverages prior to beginning any work under this Agreement.

It is understood and agreed that these policies are primary and not contributory. All policies required under this Agreement shall be in effect for the duration of the Agreement. It shall be an affirmative obligation upon Consultant to immediately notify in writing the city risk manager, city clerk, and city attorney of any fact, circumstance, or occurrence that has resulted in or may result in the cancellation of, or substantive change to any insurance coverage required by this Agreement, and failure to do so shall be construed to be a breach of this Agreement.

If requested by the City, the Consultant shall provide the City with copies of insurance policies and/or policy endorsements listing the City of Cheyenne as an additional insured.

The City's failure to request or review such policies, endorsements, or certificates shall not affect the City's rights or Consultant's obligation hereunder.

Any insurance company providing coverage under this Agreement shall have a minimum A. M. Best rating of A- (excellent).

9. MINORITY AND DISADVANTAGED BUSINESS ENTERPRISES (49 C.F.R. Part 26)  
All parties to this Agreement assure that no person will be excluded from participation in, denied the benefits of, or otherwise discriminated against, in connection with the award and performance of this Agreement on the grounds of age, race, color, disability, national origin, or sex.
10. MONTHLY REPORT  
With every monthly billing, Consultant shall provide the City Representative with a written statement of the status of the work with respect to the Scope of Work, time sheets, and work schedule. Failure to provide the required monthly report will delay processing of any payment request until the report is submitted.
11. INDEPENDENT CONSULTANT  
The Consultant shall function as an independent consultant for the purposes of this Agreement. The Consultant shall assume sole responsibility for any debts or liabilities that may be incurred by the Consultant in fulfilling the terms of this Agreement. Nothing in this Agreement shall be interpreted as authorizing the Consultant or its agents or employees to act as an agent or representative of or on behalf of the City or to incur any obligation of any kind on the behalf of the City.
12. TAXES  
The Consultant agrees to pay all valid taxes, excises, license fees, permit fees, bills, debts, and obligations incurred by and in connection with its operations under this Agreement.
13. DEFAULT  
Each and every term and condition in this Agreement shall be deemed to be a material element of the Agreement. In the event either party should fail or refuse to perform according to the terms of this Agreement, such party may be declared in default.
14. REMEDIES  
In the event a party has been declared in default, such defaulting party shall be allowed a period of fifteen (15) days within which to cure the default. In the event the default remains uncorrected, the non-defaulting party declaring default may elect to:
  - a. Terminate the Agreement and seek damages, which damages shall not exceed the contract amount; or
  - b. Treat the Agreement as continuing and require specific performance.

15. TERM AND TERMINATION

The term of this Agreement shall be from date of execution to **September 2, 2024**. The parties may by mutual written agreement renew or extend this Agreement.

The City may, without cause, and upon thirty days' written notice to the Consultant, terminate this Agreement in whole or in part at any time, for the City's convenience. Upon receipt of such notice, the Consultant shall:

- a. Discontinue all services affected; and
- b. Deliver to the City within five (5) days all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by the Consultant in performing this Agreement, whether completed or in process.
- c. In the event of termination for convenience, the City will pay the Consultant for accepted work done and expenses incurred to the date of termination. Such acceptance shall not be unreasonably withheld.

16. ADDITIONAL REMEDIES

In the event the Consultant fails to strictly perform in accordance with this Agreement, the City may elect to correct the deficiencies and charge the Consultant. In the event of default of any of the conditions by either party which shall require the party not in default to commence legal or equitable action against the defaulting party each party shall bear its own costs and expenses, including without limitation, attorney's fees.

17. GOVERNING LAW, JURISDICTION AND VENUE

The construction, interpretation, and enforcement of this Agreement shall be governed by the laws of the State of Wyoming. The courts of the State of Wyoming shall have jurisdiction over any action arising out of this Agreement and over the parties, and the venue shall be the First Judicial District, Laramie County, Wyoming.

18. GOVERNMENTAL IMMUNITY

The City of Cheyenne, along with its officials and employees, does not waive its governmental immunity by entering into this Agreement, except to the extent necessary for the parties to pursue a contract action to clarify or enforce the written terms of the Agreement. Furthermore, the City specifically retains all immunities and defenses available to it as a sovereign or governmental entity pursuant to Wyo. Stat. § 1-39-101, *et seq.*, and all other relevant state and federal law. Designations of venue, choice of law, enforcement actions, and similar provisions should not be constructed as a waiver of governmental immunity. The parties agree that any ambiguity in this Agreement shall not be strictly construed, either against or for either party, except that any ambiguity as to governmental or sovereign immunity shall be construed in favor of governmental immunity.

19. MONITORING ACTIVITIES

The City shall have the right to monitor all activities related to this Agreement that are performed by the Consultant or its sub-consultants. This shall include, but not be limited to, the right to make site inspections at any time and with reasonable notice; to bring

experts and consultants on site to examine or evaluate completed work or work in progress; to examine the books, ledgers, documents, papers, and records pertinent to this Agreement; and to observe personnel in every phase of performance of the related work.

20. OWNERSHIP OF DOCUMENTS AND WORK PRODUCT

Copies of all deliverables by the Consultant, all work product of the Consultant, all notes, calculations, memoranda, or any other documentation generated by the Consultant pursuant to the scope of this Agreement, shall be the property of the City of Cheyenne and shall be provided to the City of Cheyenne immediately upon request.

21. NON-DISCRIMINATION

The Consultant shall comply with the Civil Rights Act of 1964, the Wyoming Fair Employment Practices Act (Wyo. Stat. § 27-9-105, *et seq.*), the Americans With Disabilities Act (ADA), as amended, 42 U.S.C. § 12101, *et seq.*, and the Age Discrimination Act of 1975 and any properly promulgated rules and regulations thereto, and shall not discriminate against any individual on the grounds of age, sex, creed, color, race, religion, national origin, ancestry, pregnancy or qualifying disability in connection with the performance under this Agreement.

22. FORCE MAJEURE

The performance of the Agreement by either party shall be subject to force majeure including, but not limited to, acts of God, fire, flood, natural disaster, war or threat of war, acts or threats of terrorism, civil disorder, unauthorized strikes, governmental regulation or advisory, recognized health threats as determined by the World Health Organization, the Centers for Disease Control, or local government authority or health agencies (including, but not limited to, the health threats of COVID-19, H1N1, or similar infectious diseases), curtailment of transportation facilities, or other similar occurrence beyond the control of the parties, where any of those factors, circumstances, situations, or conditions or similar ones prevent, dissuade, or unreasonably delay the performance required by this Agreement. The Agreement may be cancelled by either party, without liability, damages, fees, or penalty, and any unused deposits or amounts paid shall be refunded, for any one or more of the above reasons, by written notice to the other party.

23. PROFESSIONAL REGISTRATION

The Consultant shall endorse, as required by law, plans and reports prepared under this Agreement, and shall affix thereto his or her seal of professional registration, showing that he or she is licensed to practice in the State of Wyoming, if necessary.

24. SUPPLEMENTAL FEDERAL PROVISIONS & CLAUSES

Administration of Federal Funds. Consultant agrees its use of the funds awarded herein is subject to the Uniform Administrative Requirements of 2 C.F.R. Part 200, *et seq.*; any additional requirements set forth by the federal funding agency; all applicable regulations published in the Code of Federal Regulations; and other program guidance as provided to it by the City of Cheyenne, and as stated in **Exhibit B – Federal Certifications**, attached hereto and incorporated herein by reference.

24. ENTIRETY OF AGREEMENT

This Agreement consisting of seven (7) pages, Exhibit A – Price Proposal, consisting of two (2) pages, Exhibit B – Federal Certifications, consisting of six (6) pages, Request for Proposal RFP 11-23, consisting of nineteen (19) pages, Addendum One to the Request for Proposal RFP 11-23, consisting of four (4) pages, and the Consultant's submitted proposal, consisting of forty (40) pages, contains the entire understanding of the parties. There are no other terms or conditions, written or oral, concerning or controlling this matter. Copies of all documents referenced herein, shall be stored via digital archive in the City Treasurer's Office.

IN WITNESS WHEREOF, the Parties to this Agreement, through their duly authorized representatives, have executed this Agreement on the days and dates set out below and certify that they have read, understood, and knowingly and voluntarily agreed to the terms and conditions of this Agreement. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

City of Cheyenne

(SEAL)

By: \_\_\_\_\_  
Patrick Collins, Mayor

Attest:

\_\_\_\_\_  
Kristina F. Jones, City Clerk

Date: \_\_\_\_\_

Consultant, **Design Workshop, Inc.**

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

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_