

Town of Mead, Colorado
AGREEMENT FOR PROFESSIONAL SERVICES

Project/Services Name: Community Center Project Management

THIS AGREEMENT FOR PROFESSIONAL SERVICES (“Agreement”) is made and entered into by and between the Town of Mead, a municipal corporation of the State of Colorado, with offices at 441 Third Street, Mead, Colorado 80542 (the “Town”), and Ditesco, LLC, a Colorado limited liability company, with offices at 2133 S. Timberline Road, Suite 110, Fort Collins, CO 80525 (“Contractor”) (each individually a “Party” and collectively the “Parties”).

RECITALS

WHEREAS, the Parties entered into that certain Agreement for Professional Services dated March 30, 2021 as amended by that certain First Amendment to Agreement dated April 11, 2022, that certain Second Amendment to Agreement dated July 20, 2022, that certain Third Amendment to Agreement dated December 20, 2022, and that certain Fourth Amendment to Agreement dated March 6, 2023 (together, “Prior Agreement”), pursuant to which Contractor was retained by the Town to provide certain owner’s representative and project management services for Town construction projects; and

WHEREAS, specifically, Contractor provided on-call services to the Town for the Public Works Facility Project, the 3rd Street Reconstruction Project, the Highland Lake Projects, and the initial phases of the Community Center Project; and

WHEREAS, the Prior Agreement terminated on December 31, 2023; and

WHEREAS, the Town requires the Contractor’s continued project management services as more fully described in **Exhibit A** for the Construction Phase of the Community Center Project (“Services”); and

WHEREAS, the Town wishes to enter this Agreement with Contractor to extend the Services into calendar year 2024 and to establish a not to exceed amount for the Services; and

WHEREAS, the Town desires to contract with the Contractor subject to the terms and conditions of this Agreement.

NOW, THEREFORE, for the consideration hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

I. SCOPE OF SERVICES

A. Services. Contractor shall furnish all labor and materials required for the complete and prompt execution and performance of all duties, obligations, and responsibilities which are described or reasonably implied from the Scope of Services set forth in **Exhibit A**, attached hereto and incorporated herein by this reference (the “Services” or “Scope of Services”). The Parties recognize and acknowledge that, although the Town has requested certain general services to be

performed or certain work product to be produced, the Contractor has offered to the Town the process, procedures, terms, and conditions under which the Contractor plans and proposes to achieve or produce the services and/or work product(s) and the Town, through this Agreement, has accepted such process, procedures, terms, and conditions as binding on the Parties.

B. Changes to Services. A change in the Scope of Services shall not be effective unless authorized through a written amendment to this Agreement signed by both Parties. If Contractor proceeds without such written authorization, Contractor shall be deemed to have waived any claim for additional compensation, including a claim based on the theory of unjust enrichment, quantum meruit or implied contract. Except as expressly provided herein or as otherwise provided in writing by the Town, no agent, employee, or representative of the Town is authorized to modify any term of this Agreement.

C. Duty to Inform. The Contractor shall perform the Services in accordance with this Agreement and shall promptly inform the Town concerning ambiguities and uncertainties related to the Contractor's performance that are not addressed by the Agreement.

D. Time of Performance. The Contractor shall perform all Services in accordance with this Agreement commencing on the Effective Date, as set forth in Section II of this Agreement, until such Services are completed, or terminated or suspended in accordance with this Agreement. The Contractor shall not temporarily delay, postpone, or suspend the performance of the Services without the written consent of the Town Board of Trustees, Town Manager, or a person expressly authorized in writing to direct the Contractor's services.

II. TERM AND TERMINATION

A. Term. This Agreement shall commence on the date of mutual execution of the Parties (the "Effective Date") and shall continue until December 31, 2024 or until terminated as provided herein ("Termination Date"). The Parties may mutually agree in writing to extend the term of this Agreement, subject to annual appropriation.

B. Town Unilateral Termination. This Agreement may be terminated by the Town for any or no reason upon written notice delivered to the Contractor at least ten (10) days prior to termination. In the event of the Town's exercise of the right of unilateral termination as provided by this paragraph:

1. Unless otherwise provided in any notice of termination, the Contractor shall provide no further services in connection with this Agreement after Contractor's receipt of a notice of termination; and

2. The Contractor shall deliver all finished or unfinished documents, data, studies and reports prepared by the Contractor pursuant to this Agreement to the Town and such documents, data, studies, and reports shall become the property of the Town; and

3. The Contractor shall submit to the Town a final accounting and final invoice of charges for all outstanding and unpaid Services and reimbursable expenses authorized by this Agreement and performed prior to the Contractor's receipt of notice of termination and for any

Services authorized to be performed by the notice of termination as provided by Section II.B of this Agreement. The Contractor shall deliver such final accounting and final invoice to the Town within thirty (30) days of the date of termination; thereafter, the Town shall not accept and Contractor shall not submit any other invoice, bill, or other form of statement of charges owing to the Contractor.

C. Termination for Non-Performance. Should a party to this Agreement fail to materially perform in accordance with the terms and conditions of this Agreement, this Agreement may be terminated by the performing party if the performing party first provides written notice to the non-performing party. Such notice shall specify the non-performance, provide a demand to cure the non-performance and reasonable time to cure the non-performance, and state a date upon which the Agreement shall be terminated if there is a failure to timely cure the non-performance. For purpose of this Section II.C, “reasonable time” shall not be less than five (5) business days. In the event of a failure to timely cure a non-performance and upon the date of the resulting termination for non-performance, the Contractor shall prepare a final accounting and final invoice of charges for all performed but unpaid Services and any reimbursable expenses authorized by this Agreement. Such final accounting and final invoice shall be delivered to the Town within fifteen (15) days of the termination date contained in the written notice. Thereafter, the Town shall not accept and Contractor shall not submit any other invoice, bill, or other form of statement of charges owing to the Contractor. Provided that notice of non-performance is provided in accordance with this Section II.C, nothing in this Section II.C shall prevent, preclude, or limit any claim or action for default or breach of contract resulting from non-performance by a Party.

D. Suspension of Services. The Town may suspend the Contractor’s performance of the Services at the Town’s discretion and for any reason by delivery of written notice of suspension to the Contractor, which notice shall state a specific date of suspension. Upon Contractor’s receipt of such notice of suspension from the Town, the Contractor shall immediately cease performance of the Services on the date of suspension except: (1) as may be specifically authorized by the notice of suspension (e.g., to secure the work area from damage due to weather or to complete a specific report or study); or (2) for the submission of an invoice for Services performed prior to the date of suspension in accordance with this Agreement. Contractor shall not re-commence performance of the Services until it receives written notice of re-commencement from the Town.

E. Delivery of Notices. Any notice permitted by this Section II and its subsections shall be addressed to the Town Representative or the Contractor Representative at the address set forth in Section XII.D of this Agreement or such other address as either Party may notify the other of and shall be deemed given upon delivery if personally delivered, or forty-eight (48) hours after deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested.

III. REPRESENTATIVES AND SUPERVISION

A. Town Representative. The Town representative responsible for oversight of this Agreement and the Contractor’s performance of Services hereunder shall be the Town Manager or his or her designee (“Town Representative”). The Town Representative shall act as the Town’s primary point of contact with the Contractor.

B. Contractor Representative. The Contractor representative under this Agreement shall be Keith Meyer, Owner/Principal (“Contractor Representative”). The Contractor Representative shall act as the Contractor’s primary point of contact with the Town. The Contractor shall not designate another person to be the Contractor Representative without prior written notice to the Town.

C. Town Supervision. The Contractor shall provide all Services with little or no daily supervision by Town staff or other contractors. Inability or failure of the Contractor to perform with little or no daily supervision which results in the Town’s need to allocate resources in time or expense for daily supervision shall constitute a material breach of this Agreement and be subject to cure or remedy, including possible termination of the Agreement, as provided in this Agreement.

IV. COMPENSATION

A. Not-to-Exceed Amount. Following execution of this Agreement by the Parties, the Contractor shall be authorized to and shall commence performance of the Services as described in **Exhibit A**, subject to the requirements and limitations on compensation as provided by this Section IV and its subsections. Compensation to be paid hereunder shall not exceed **Two Hundred Forty Thousand Nine Hundred Seventy-Five Dollars and 00/100 (\$240,975.00)** (“Not-to-Exceed Amount”) unless a larger amount is agreed to by and between the Parties in accordance with the amendment requirements of this Agreement. Notwithstanding the amount specified in this Section, Contractor shall be paid only for work performed. Contractor shall not be paid until tasks identified in the Scope of Services are performed to the satisfaction of the Town. In consideration for the completion of the Scope of Services by Contractor, the Town shall pay Contractor as follows:

- If this box is checked, the Town shall pay Contractor on a time and materials basis in accordance with the rate schedule shown in **Exhibit B**. This amount shall include all fees, costs and expenses incurred by Contractor, and no additional amounts shall be paid by the Town for any fees, costs and expenses. Final payment may be requested by the Contractor upon completion of the Services and the Town’s acceptance of all work or Services as set forth in **Exhibit A**.
- If this box is checked, the Town shall pay the Contractor the Not-to-Exceed Amount in a single lump sum payment.

B. Receipts. The Town, before making any payment, may require the Contractor to furnish at no additional charge releases or receipts from any or all persons performing work under this Agreement and/or supplying material or services to the Contractor, or any subcontractor if this is deemed necessary to protect the Town’s interest. The Town, however, may in its discretion make payment in part or full to the Contractor without requiring the furnishing of such releases or receipts.

C. Reimbursable Expenses.

1. If this Agreement is for lump sum compensation, there shall be no reimbursable expenses.

2. If the Agreement is for compensation based on a time and materials basis, the following shall be considered “reimbursable expenses” for purposes of this Agreement and may be billed to the Town without administrative mark-up, which must be accounted for by the Contractor, and proof of payment shall be provided by the Contractor with the Contractor’s monthly invoices:

- None
- Vehicle Mileage (billed at not more than the prevailing per mile charge permitted by the IRS as a tax-deductible business expense)
- Printing and Photocopying Related to the Services (billed at actual cost)
- Long Distance Telephone Charges Related to the Services
- Postage and Delivery Services
- Lodging and Meals (but only with prior written approval of the Town as to dates and maximum amount)

3. Other Expenses. Any fee, cost, charge, or expense incurred by the Contractor not otherwise specifically authorized by this Agreement shall be deemed a non-reimbursable cost that shall be borne by the Contractor and shall not be billed or invoiced to the Town and shall not be paid by the Town.

D. No Waiver. The Town's review, approval or acceptance of, or payment for any services shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

V. PROFESSIONAL RESPONSIBILITY

A. General. Contractor hereby warrants that it is qualified to assume the responsibilities and render the services described herein and has all requisite corporate authority and professional licenses in good standing required by law.

B. Standard of Performance. The work performed by Contractor shall be in accordance with generally accepted professional practices and the level of competency presently maintained by other practicing professional firms in the same or similar type of work in the applicable community. The work and services to be performed by Contractor hereunder shall be done in compliance with applicable laws, ordinances, rules and regulations including environmental, health and safety laws and regulations.

C. Subcontractors. The Parties recognize and agree that subcontractors may be utilized by the Contractor for the performance of certain Services if included and as described more particularly in **Exhibit A**; however, the engagement or use of subcontractors will not relieve or excuse the Contractor from performance of any obligations imposed in accordance with this Agreement and Contractor shall remain solely responsible for ensuring that any subcontractors engaged to perform Services hereunder shall perform such Services in accordance with all terms and conditions of this Agreement.

VI. INDEPENDENT CONTRACTOR

A. General. Contractor is an independent contractor. Notwithstanding any other provision of this Agreement, all personnel assigned by Contractor to perform work under the terms of this Agreement shall be, and remain at all times, employees or agents of Contractor for all purposes. Contractor shall make no representation that it is a Town employee for any purposes.

B. Liability for Employment-Related Rights and Compensation. The Contractor shall be solely responsible for all compensation, benefits, insurance and employment-related rights of any person providing Services hereunder during the course of or arising or accruing as a result of any employment, whether past or present, with the Contractor, as well as all legal costs including attorney's fees incurred in the defense of any conflict or legal action resulting from such employment or related to the corporate amenities of such employment. The Contractor will comply with all laws, regulations, municipal codes, and ordinances and other requirements and standards applicable to the Contractor's employees, including, without limitation, federal and state laws governing wages and overtime, equal employment, safety and health, employees' citizenship, withholdings, reports and record keeping. Accordingly, the Town shall not be called upon to assume any liability for or direct payment of any salaries, wages, contribution to pension funds, insurance premiums or payments, workers' compensation benefits or any other amenities of employment to any of the Contractor's employees or any other liabilities whatsoever, unless otherwise specifically provided herein.

B. Insurance Coverage and Employment Benefits. The Town will not include the Contractor as an insured under any policy the Town has for itself. The Town shall not be obligated to secure nor provide any insurance coverage or employment benefits of any kind or type to or for the Contractor or the Contractor's employees, sub-consultants, subcontractors, agents, or representatives, including but not limited to coverage or benefits related to: local, state, or federal income or other tax contributions, FICA, workers' compensation, unemployment compensation, medical insurance, life insurance, paid vacations, paid holidays, pension or retirement account contributions, profit sharing, professional liability insurance, or errors and omissions insurance. The following disclosure is provided in accordance with Colorado law:

CONTRACTOR ACKNOWLEDGES THAT NEITHER IT NOR ITS AGENTS OR EMPLOYEES ARE ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS UNLESS CONTRACTOR OR SOME ENTITY OTHER THAN THE TOWN PROVIDES SUCH BENEFITS. CONTRACTOR FURTHER ACKNOWLEDGES THAT NEITHER IT NOR ITS AGENTS OR EMPLOYEES ARE ENTITLED TO WORKERS' COMPENSATION BENEFITS. CONTRACTOR ALSO ACKNOWLEDGES THAT IT IS OBLIGATED TO PAY FEDERAL AND STATE INCOME TAX ON ANY MONEYS EARNED OR PAID PURSUANT TO THIS AGREEMENT.

C. Employee Benefits Claims. To the maximum extent permitted by law, the Contractor waives all claims against the Town for any Employee Benefits; the Contractor will defend the Town from any claim and will indemnify the Town against any liability for any Employee Benefits for the Contractor imposed on the Town; and the Contractor will reimburse the Town for any award, judgment, or fine against the Town based on the position the Contractor was

ever the Town's employee, and all attorneys' fees and costs the Town reasonably incurs defending itself against any such liability.

VII. INSURANCE

A. General. During the term of this Agreement, the Contractor shall obtain and shall continuously maintain, at the Contractor's expense, insurance of the kind and in the minimum amounts specified as follows by checking the appropriate boxes:

- The Contractor shall obtain and maintain the types, forms, and coverage(s) of insurance deemed by the Contractor to be sufficient to meet or exceed the Contractor's minimum statutory and legal obligations arising under this Agreement ("Contractor Insurance"); OR
- The Contractor shall secure and maintain the following ("Required Insurance"):
 - Worker's Compensation Insurance in the minimum amount required by applicable law for all employees and other persons as may be required by law. Such policy of insurance shall be endorsed to include the Town as a Certificate Holder.
 - Comprehensive General Liability insurance with minimum combined single limits of One Million Dollars (\$1,000,000.00) each occurrence and of Two Million Dollars (\$2,000,000.00) aggregate. The policy shall be applicable to all premises and all operations of the Contractor. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall contain a severability of interests provision. Coverage shall be provided on an "occurrence" basis as opposed to a "claims made" basis. Such insurance shall be endorsed to name the Town as Certificate Holder and name the Town, and its elected officials, officers, employees and agents as additional insured parties.
 - Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than One Million Dollars (\$1,000,000.00) each occurrence with respect to each of the Contractor's owned, hired and non-owned vehicles assigned to or used in performance of the Services. The policy shall contain a severability of interests provision. Such insurance coverage must extend to all levels of subcontractors. Such coverage must include all automotive equipment used in the performance of the Services, both on the work site and off the work site, and such coverage shall include non-ownership and hired cars coverage. Such insurance shall be endorsed to name the Town as Certificate Holder and name the Town, and its elected officials, officers, employees and agents as additional insured parties.

- Professional Liability (errors and omissions) Insurance with a minimum limit of coverage of One Million Dollars (\$1,000,000.00) per claim and annual aggregate. Such policy of insurance shall be obtained and maintained for one (1) year following completion of all Services under this Agreement. Such policy of insurance shall be endorsed to include the Town as a Certificate Holder.

B. Additional Requirements. Such insurance shall be in addition to any other insurance requirements imposed by law. The coverages afforded under the policies shall not be canceled, terminated or materially changed without at least thirty (30) days prior written notice to the Town. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage. Any insurance carried by the Town, its officers, its employees, or its contractors shall be excess and not contributory insurance to that provided by Contractor. Contractor shall be solely responsible for any deductible losses under any policy.

C. Insurance Certificates. Contractor shall provide to the Town a certificate of insurance as evidence that the required policies are in full force and effect prior to the commencement of the Services. The certificate shall identify this the Project/Services Name as set forth on the first page of this Agreement.

D. Failure to Obtain or Maintain Insurance. The Contractor's failure to obtain and continuously maintain policies of insurance shall not limit, prevent, preclude, excuse, or modify any liability, claims, demands, or other obligations of the Contractor arising from performance or non-performance of this Agreement. Failure on the part of the Contractor to obtain and to continuously maintain policies providing the required coverage, conditions, restrictions, notices, and minimum limits shall constitute a material breach of this Agreement upon which the Town may immediately terminate this Agreement, or, at its discretion, the Town may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith. All monies so paid by the Town, together with an additional five percent (5%) administrative fee, shall be repaid by the Contractor to the Town immediately upon demand by the Town. At the Town's sole discretion, the Town may offset the cost of the premiums against any monies due to the Contractor from the Town pursuant to this Agreement.

VIII. INDEMNIFICATION

A. Contractor agrees to indemnify and hold harmless the Town and its officers, insurers, volunteers, representatives, agents, employees, and assigns from and against all claims, liability, damages, losses, expenses and demands, including attorney fees, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this Agreement if such injury, loss, or damage is caused in whole or in part by, the act, omission, error, professional error, mistake, negligence, or other fault of Contractor, any subcontractor of Contractor, or any officer, employee, representative, or agent of Contractor, or which arise out of a worker's compensation claim of any employee of Contractor or of any employee of any subcontractor of Contractor. Contractor's liability under this

indemnification provision shall be to the fullest extent of, but shall not exceed, that amount represented by the degree or percentage of negligence or fault attributable to Contractor, any subcontractor of Contractor, or any officer, employee, representative, or agent of Contractor or of any subcontractor of Contractor.

B. If Contractor is providing architectural, engineering, surveying or other design services under this Agreement, the extent of Contractor's obligation to indemnify and hold harmless the Town may be determined only after Contractor's liability or fault has been determined by adjudication, alternative dispute resolution or otherwise resolved by mutual agreement between the Parties, as provided by C.R.S. § 13-50.5-102(8)(c).

IX. RESERVED

X. REMEDIES

A. In addition to any other remedies provided for in this Agreement, and without limiting its remedies available at law, the Town may exercise the following remedial actions if the Contractor substantially fails to perform the duties and obligations of this Agreement. Substantial failure to perform the duties and obligations of this Agreement shall mean a significant, insufficient, incorrect, or improper performance, activities or inactions by the Contractor. The remedial actions include:

1. Suspend the Contractor's performance pending necessary corrective action as specified by the Town without the Contractor's entitlement to an adjustment in any charge, fee, rate, price, cost, or schedule; and/or
2. Withhold payment to the Contractor until the necessary services or corrections in performance are satisfactorily completed; and/or
3. Deny payment for those services which have not been satisfactorily performed, and which, due to circumstances caused by the Contractor, cannot be performed, or if performed would be of no value to the Town; and/or
4. Terminate this Agreement in accordance with this Agreement.

B. The foregoing remedies are cumulative and the Town, in its sole discretion, may exercise any or all of the remedies individually or simultaneously.

XI. RECORDS AND OWNERSHIP

A. Retention and Open Records Act Compliance. All records of the Contractor related to the provision of Services hereunder, including public records as defined in the Colorado Open Records Act ("CORA"), and records produced or maintained in accordance with this Agreement, are to be retained and stored in accordance with the Town's records retention and disposal policies. Those records which constitute "public records" under CORA are to be at the Town offices or accessible and opened for public inspection in accordance with CORA and Town policies. Public records requests for such records shall be processed in accordance with Town policies. Contractor

agrees to allow access by the Town and the public to all documents subject to disclosure under applicable law. Contractor's willful failure or refusal to comply with the provisions of this Section shall result in the immediate termination of this Agreement by the Town. For purposes of CORA, the Town Clerk is the custodian of all records produced or created as a result of this Agreement. Nothing contained herein shall limit the Contractor's right to defend against disclosure of records alleged to be public.

B. Town's Right of Inspection. The Town shall have the right to request that the Contractor provide to the Town a list of all records of the Contractor related to the provision of Services hereunder retained by the Contractor in accordance with this subsection and the location and method of storage of such records. Contractor agrees to allow inspection at reasonable times by the Town of all documents and records produced or maintained in accordance with this Agreement.

C. Ownership. Any work product, materials, and documents produced by the Contractor pursuant to this Agreement shall become property of the Town of Mead upon delivery and shall not be made subject to any copyright by the Contractor unless authorized by the Town. Other materials, statistical data derived from other clients and other client projects, software, methodology and proprietary work used or provided by the Contractor to the Town not specifically created and delivered pursuant to the Services outlined in this Agreement shall not be owned by the Town and may be protected by a copyright held by the Contractor and the Contractor reserves all rights granted to it by any copyright. The Town shall not reproduce, sell, or otherwise make copies of any copyrighted material, subject to the following exceptions: (1) for exclusive use internally by Town staff and/or employees; or (2) pursuant to a request under the Colorado Open Records Act, § 24-72-203, C.R.S., to the extent that such statute applies; or (3) pursuant to law, regulation, or court order. The Contractor waives any right to prevent its name from being used in connection with the Services. The Contractor may publicly state that it performs the Services for the Town.

D. Return of Records to Town. At the Town's request, upon expiration or termination of this Agreement, all records of the Contractor related to the provision of Services hereunder, including public records as defined in the CORA, and records produced or maintained in accordance with this Agreement, are to be returned to the Town in a reasonable format and with an index as determined and requested by the Town.

XII. MISCELLANEOUS

A. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Weld County, Colorado.

B. No Waiver. Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by the Town shall not constitute a waiver of any of the other terms or obligations of this Agreement.

C. Integration. This Agreement constitutes the entire agreement between the Parties, superseding all prior oral or written communications.

D. Notice. Unless otherwise provided in this Agreement, any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent via pre-paid, first class United States Mail, to the party at the address set forth below.

If to the Town:

If to Contractor:

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|---|---|
| Town of Mead Attn: Town Manager 441 Third Street P.O. Box 626 Mead, Colorado 80542 | Ditesco, LLC Attn: Keith Meyer 2133 S. Timberline Road, Suite 110 Fort Collins, CO 80525 |
| With Copy to: Michow Guckenberger McAskin LLP Attn: Mead Town Attorney 5299 DTC Blvd, Suite 300 Greenwood Village, Colorado 80111 | With Copy to: |

E. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

F. Modification. This Agreement may only be modified upon written agreement signed by the Parties.

G. Assignment. Neither this Agreement nor any of the rights or obligations of the Parties hereto, shall be assigned by either Party without the written consent of the other.

H. Affirmative Action. The Contractor warrants that it will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Contractor warrants that it will take affirmative action to ensure applicants are employed, and employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

I. Governmental Immunity. The Town, its officers, and its employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended (“CGIA”), or otherwise available to the Town and its officers or employees.

J. Rights and Remedies. The rights and remedies of the Town under this Agreement are in addition to any other rights and remedies provided by law. The expiration of this Agreement

shall in no way limit the Town's legal or equitable remedies, or the period in which such remedies may be asserted.

K. Annual Appropriation. Consistent with Article X, § 20 of the Colorado Constitution, any financial obligation of the Town not performed during the current fiscal year is subject to annual appropriation, and thus any obligations of the Town hereunder shall extend only to monies currently appropriated and shall not constitute a mandatory charge, requirement, debt or liability beyond the current fiscal year.

L. Binding Effect. The Parties agree that this Agreement, by its terms, shall be binding upon the successors, heirs, legal representatives, and assigns; provided that this Section XII shall not authorize assignment.

M. No Third-Party Beneficiaries. Nothing contained in this Agreement is intended to or shall create a contractual relationship with, cause of action in favor of, or claim for relief for, any third party, including any agent, sub-consultant or subcontractor of Contractor. Absolutely no third-party beneficiaries are intended by this Agreement. Any third party receiving a benefit from this Agreement is an incidental and unintended beneficiary only.

N. Release of Information. The Contractor shall not, without the prior written approval of the Town, release any privileged or confidential information obtained in connection with the Services or this Agreement.

O. Attorneys' Fees. If the Contractor breaches this Agreement, then it shall pay the Town's reasonable costs and attorney's fees incurred in the enforcement of the terms, conditions, and obligations of this Agreement.

P. Survival. The provisions of Sections VI (Independent Contractor), VII (Insurance), VIII (Indemnification) and XII (A) (Governing Law and Venue), (J) (Rights and Remedies), (K) Annual Appropriation), (N) (Release of Information) and (O) Attorneys' Fees, shall survive the expiration or termination of this Agreement. Any additional terms and conditions of the Agreement that require continued performance, compliance, or effect beyond the termination date of the Agreement shall survive such termination date and shall be enforceable in the event of a failure to perform or comply.

Q. Agreement Controls. In the event a conflict exists between this Agreement and any term in any exhibit attached or incorporated into this Agreement, the terms in this Agreement shall supersede the terms in such exhibit.

R. Force Majeure. Neither the Contractor nor the Town shall be liable for any delay in, or failure of performance of, any covenant or promise contained in this Agreement, nor shall any delay or failure constitute default or give rise to any liability for damages if, and only to extent that, such delay or failure is caused by "force majeure." As used in this Agreement, "force majeure" means acts of God, acts of the public enemy, acts of terrorism, unusually severe weather, fires, floods, epidemics, pandemics, quarantines, strikes, labor disputes and freight embargoes, to the extent such events were not the result of, or were not aggravated by, the acts or omissions of the

non-performing or delayed party.

S. Authority. The individuals executing this Agreement represent that they are expressly authorized to enter into this Agreement on behalf of the Town of Mead and the Contractor and bind their respective entities.

T. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same document. In addition, the Parties specifically acknowledge and agree that electronic signatures shall be effective for all purposes, in accordance with the provisions of the Uniform Electronic Transactions Act, Title 24, Article 71.3 of the Colorado Revised Statutes.

U. Protection of Personal Identifying Information. In the event the Services include or require the Town to disclose to Contractor any personal identifying information as defined in C.R.S. § 24-73-101, Contractor shall comply with the applicable requirements of C.R.S. §§ 24-73-101, et seq., relating to third-party service providers.

V. Web Accessibility Compliance Requirements. In the event the Services include Services related to the Town internet or intranet, or otherwise require the Contractor to provide documents that will be posted to the Town website, Contractor shall provide the Services subject to all applicable web accessibility requirements of C.R.S. § 24-34-802, as the same may be amended from time to time.

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SIGNATURE PAGES FOLLOW

THIS AGREEMENT is executed and made effective as provided above.

TOWN OF MEAD, COLORADO

By: _____

Printed Name: _____

Title: _____

Date of execution: _____

ATTEST:

Mary Strutt, MMC, Town Clerk

APPROVED AS TO FORM (*excluding exhibits*):

Marcus McAskin, Town Attorney

Ditesco, LLC, a Colorado limited liability company:

By: _____

Printed Name: _____

Title: _____

Date of execution: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing Agreement for Professional Services was subscribed, sworn to and acknowledged before me this ____ day of _____, 2024, by _____ as _____ of Ditesco, LLC, a Colorado limited liability company.

My commission expires: _____

(S E A L)

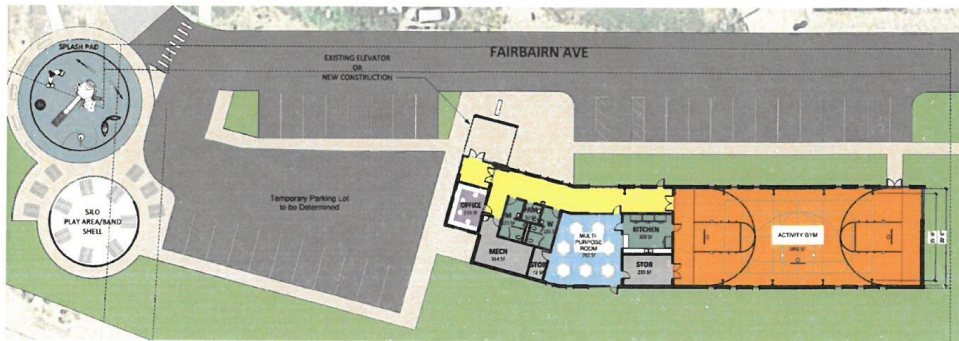
Notary Public
(Required for all contracts (C.R.S. § 8-40-202(2)(b)(IV)))

EXHIBIT A **SCOPE OF SERVICES**

Exhibit A **Town of Mead** **Bean Plant/Recreation Center Conversion** **Project Management Scope of Work**

Project Understanding

The Town of Mead (Town) desires to convert the existing Bean Plant at the corner of Martin Avenue and Third Street to a Recreation Center (Rec Center). The new Recreation Center will include a multi-purpose room, activity gym, kitchen, flexible storage space, and restrooms. Exterior improvements will include on-street parking along Fairbairn Avenue, and a temporary parking area to the south of the new facility. The Town also desires to have an exterior play area, such as a splash pad, located on the south end of the site.



Portions of the existing facility may be repurposed, if economical, or if feasible, or pending costs implications, may demolish the entire existing structures and re-build with similar look to provide continuity in aesthetics for this area of Mead. This will be determined by a forthcoming report by Anderson Hallas Architects, anticipated February 2022.

The Town has requested Ditesco provide project and construction management for this project. This effort will include development of Request for Proposal documents for Architect, participation in architect proposal evaluation, and management of the project Architect and design process. The Town is anticipating delivering this project through a Construction Manager at Risk (CMaR) or similar delivery model. Ditesco will assist the Town in solicitation of a qualified contractor to provide construction services, oversee the development of Not to Exceed, Guaranteed Maximum Price (GMP) contract, and construction of the new Rec Center.

Ditesco will work with the Town and selected architect to permit the project through the Town's building official, SafeBuilt. Ditesco will then provide construction management services during construction to oversee the demolition of the facility and construction of the new Rec Center.

The project is anticipated to be in design through 2022, with construction of the new facility beginning in 2023. Construction is anticipated to be completed by late summer, with the Recreation Center open for use in Fall 2023.

This scope of work assumes that the city will provide:

- Specialty inspections required by building code.
- Zoning and general material use compliance related to site development plan approvals.
- Erosion control (SWMP) compliance inspections.

Ditesco will provide project management during the design phase and construction phase and will provide construction management personnel to assist with inspections during construction. These tasks are further detailed below.

Phase – Demolition Phase

- Ditesco will complete one (1) site visit to collect information, photograph, and document the demolition limits of the site.
- We will attend bi-weekly progress meetings for design and construction. We have estimated this effort at a total of ten (10) meetings.
- Ditesco will develop a demolition drawing set as a separate deliverable. This drawing set is anticipated to include:
 - Cover (1 sheet)
 - General notes (1-2 sheets)
 - Overall site drawing (1 sheet)
 - Demolition drawings (2-3 sheets)
 - Demolition photograph details (2-3 sheets)
 - **Total Sheets: 7-10 Sheets**
- Ditesco will generate CSI-formatted technical specifications for the demolition work. For deconstruction of Building 2A, 2B, and 3, Ditesco will develop a performance specification for deconstruction, labeling, and storage of the building materials.
- We will assist the Town in development of bid documents for advertisement of this demolition project. This portion of the project is anticipated to be delivered via design-bid-build, or hard-bid method.
- Ditesco will participate in the pre-bid meeting, and prepare any addenda associated with the bidding process.

Upon selection of the Contractor, Ditesco will manage the Contractor through the demolition phase of construction. This effort is anticipated to include:

- Ditesco will complete one (1) pre-construction meeting. For this meeting, our staff will prepare a meeting agenda and meeting minutes.
- We will review the Contractor's schedule and provide feedback on key milestones to complete the work.
- We will manage on-site weekly check-in meetings with the Contractor. This effort is anticipated to be four (4) on-site meetings, through construction. We will prepare meeting agendas, as applicable, for these meetings.
- Ditesco will provide on-site construction management services for demolition. This effort is anticipated to be completed at a half-time, or four-hours per day effort. This work will include daily coordination with the Contractor, coordination with the Town, quality assurance verifications, and confirmation for general conformance with the drawings.
- Our staff will track demolition progress with photographic records on the project Procore site.

Phase – Design Management

- During this phase Ditesco will provide a full complement of project management services including budget management through routine cost control reports to Town management. We will also create and manage an overall program schedule.
- Ditesco will prepare request for proposals for the architect, and the Construction Manager at Risk (CMaR) general contractor working proactively with Town staff to advertise and select each team member. We will independently evaluate cost factors presented by contractors to ensure the cost is controlled through the general contractor selection process. We will ensure professional services rates are industry competitive for this type of project.

- We will hold bi-weekly coordination meetings with the selected architect and Town staff to ensure design schedules are maintained and required submittals are provided to match the delivery schedule.
- We will coordinate with the selected architectural firm and the Town to gain the necessary permits and project approvals. This is anticipated to include site plan and building permit through the Town's Building Official, SafeBuilt.
- Ditesco staff will also participate and/or manage meetings for design development/construction documentation creation including:
 - Design coordination meetings (bi-weekly)
 - Utility Coordination meetings (LTWD, United Power, TDS, Xcel) (assumed 6 meetings)
- During the design and construction phase, we will establish and manage a Procore document management site (cloud based) for design team and contractor access. This site will manage all construction phase communications including submittal review, RFIs, meeting minutes, test results, correspondence, and reports.
- Ditesco will oversee the architectural consultant contract providing guidance on design deliverables, quality control, schedule control and contract administration (invoice recommendations for approval, change orders and/or contract amendments).
- We will prepare and implement risk management plans to help control cost, schedule, and quality for the Town.
- Our team will provide design review for 30, 60, and 90% complete plans to ensure the architectural and engineering quality is delivered resulting in minimal delays in design and permitting approvals.
- Ditesco staff will work with Town personnel to ensure equipment specified has useful warranties and design elements are easily maintained thereby minimizing operational costs.
- Ditesco staff will participate in the GMP development process with the CMaR contractor including auditing GMP and subcontractor proposals. This will be completed to verify compliance with Town of Mead purchasing procedures.
- We will participate in all subcontractor selection and buy out sessions to ensure the proper scope of work is maintained for each subcontractor in the overall development of the GMP.
- We will audit the GMP preparation to ensure it is within budget and cost are calculated and presented according to the terms of the CMaR agreement.

Phase: Construction

- During this phase Ditesco personnel will photograph and video the existing project conditions and roadways leading into and out of the project site. This effort ensures a baseline record of pre-existing conditions protecting the Town from damage claims.
- We will review and comment on the contractor's initial schedule prior to the pre-construction meeting. We will ensure a logical, defined CPM schedule is established with an overall baseline for progress measurement.
- Our staff will coordinate, attend and document one pre-construction meeting.
- We will conduct weekly progress meetings on site with the general contractor and their subcontractors. We will provide meeting minutes for all meetings.
- We will review and recommend approval of pay applications to the Town, review and manage contract changes for approval by the County, generate and coordinate responses to RFIs and provide for overall administration of the construction contract.

- Our staff will perform daily site inspections to ensure quality construction and conformity to the plans and specifications. Inspections will include coordination for all specialty inspections required of the project including structural steel and concrete, masonry, coatings, wall, and roofing systems. Ditesco will oversee pipe, manhole, concrete flatwork, and asphalt paving construction. We will provide field engineering support addressing field changes quickly to avoid construction delays.
- We will provide the Town with monthly reports documenting the contractors work progress, contract times and other pertinent information. We will also document daily work progress in the form of daily logs.
- We will oversee the submittal process with all project submittals, between the architect and contractor.
- Ditesco staff will review all test reports. We will comment on reports not meeting specifications and recommend remediation measures if necessary. We will ensure the appropriate numbers of tests are taken and that they are sampled according to industry standards and the project specifications.
- We will coordinate work between the general contractor and outside agencies (e.g., utility companies, Town of Mead, Mountain View Fire Rescue District) affected by the project.
- We will maintain project records including contracts, schedules (overall job and three-week look-ahead), progress meeting minutes, material test results, weekly reports, correspondence, pay applications, change orders, routine photographs, submittals, RFIs, permits, commissioning records and post construction close-out paperwork (punch lists, lien waivers, substantial completion/final acceptance).
- Ditesco personnel will oversee the coordination of all relevant building inspections, by the Contractor, with SafeBuilt. Inspections not performed through SafeBuilt will be directly performed by Ditesco (or the Town's material testing firm) and documented appropriately for building code compliance.
- Ditesco personnel will ensure that an as-built plan set is maintained and transmitted to the architect upon completion of the project. This will be a redlined drawing set maintained by our staff and will be coordinated with plan changes that may be documented by the general contractor. We will also ensure accurate O&M manuals are transmitted to the Town upon completion of the project.
- Ditesco staff will also perform all project management efforts including cost, schedule, and quality control through construction.

Deliverables:

- **Demolition Phase:** deliverables will include complete drawing set for demolition, CSI Technical Specifications, meeting agendas and minutes, construction phase documents including photographs, meeting minutes, inspection notes, pay applications, change orders, field orders, work change directives, schedules, reports, and other relevant information produced through this phase.
- **Design & Construction Phase Management:** Deliverables will include full project documentation presented electronically including bid information, construction correspondence, pay applications, change orders, field orders, work change directives, schedules, submittals, transmittals, reports, photographs, meeting notes, record drawings and other relevant information produced throughout the design and construction phase.

Schedule

Demolition Phase: April 2022 to August 2022

The anticipated schedule for the Town of Mead Rec Center project is design completion in January 2023 and construction completion in September 2023.

Fee Estimate

We have based our fee estimate on the following assumptions of the project.

- Parallel effort for development of demolition design drawings and design-phase effort
- 10-month design phase. (2022)
- 8-month construction phase (2023)
- Rec Center plans and specifications prepared by Others
- Agreements and permits provided by the Town.
- All material testing: special inspections provided by the Town.
- All formal stakeholder engagement activities completed as part of previous programming phase.

Estimated Fee:

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|---|----------------------------|
| <i>Demolition Phase:</i> | <i>\$52,847.00</i> |
| <i>Design Phase Management</i> | <i>\$91,798.00</i> |
| <i>Construction Phase Management</i> | <i>\$240,975.00</i> |
| <i>Total:</i> | <i>\$385,619.00</i> |

A detailed task breakdown is included. Please find this on page 7 and 8 of this scope of work proposal.

The fee shown above is to be billed on a time and material basis, not to exceed basis based on the rates shown in the table on page 7 and 8 of this proposal. All reimbursable expenses will be billed at direct cost.

EXHIBIT B
COMPENSATION



Ditesco
2024-2025 Rate Schedule

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|---|-------------------------------|
| President: | \$215.00 to \$297.00 per hour |
| Principal/VP: | \$185.00 to \$248.00 per hour |
| Department/Program Manager: | \$160.00 to \$204.00 per hour |
| Senior Project Manager: | \$155.00 to \$196.00 per hour |
| Project Manager: | \$146.00 to \$183.00 per hour |
| Associate Project Manager: | \$132.00 to \$163.00 per hour |
| Engineer: | \$128.00 to \$152.00 per hour |
| Associate Engineer: | \$120.00 to \$142.00 per hour |
| Project Engineer: | \$106.00 to \$132.00 per hour |
| Senior Construction Manager: | \$134.00 to \$187.00 per hour |
| Construction Manager/Resident Engineer: | \$128.00 to \$157.00 per hour |
| Associate Construction Manager: | \$102.00 to \$144.00 per hour |
| Inspector: | \$85.00 to \$124.00 per hour |
| Senior CAD Design: | \$125.00 to \$154.00 per hour |
| CAD Design: | \$90.00 to \$135.00 per hour |
| GIS Technician: | \$78.00 to \$141.00 per hour |
| Administrative: | \$70.00 to \$94.00 per hour |
| Mileage Reimbursement: | IRS Rate |
| Subconsultant Markup: | 0% / None |
| All other costs: | At Direct Expense |
| Terms: | 30 days net |