

## **SECOND AMENDMENT TO AGREEMENT FOR GOODS AND/OR SERVICES**

THIS SECOND AMENDMENT TO AGREEMENT FOR GOODS AND/OR SERVICES (this “Second Amendment”), is made this 11<sup>th</sup> day of January, 2022, by and between the TOWN OF FRISCO, a Colorado home rule municipal corporation (the “Town”), and OHLSON LAVOIE CORPORATION, a Colorado corporation (the “Contractor”).

### **Recitals**

This Second Amendment is made with respect to the following facts:

A. On or about April 13, 2021, the Town and Contractor entered into that certain Agreement for Goods and/or Services (the “Agreement”) pursuant to which the Contractor agreed to provide certain design services and architectural drawings for the project known as the Village Center Building on property owned by the Town and known as the Frisco Adventure Park; and

B. The Town desires to expand the scope of services set forth in the Agreement to include design services for a net-zero energy building design, including energy impacts of design alternatives and value engineering decisions, energy modelling and review of multiple HVAC system types, and to adjust the Contractor’s compensation for services accordingly; and

C. The Contractor desires to provide the additional design services and drawings and to adjust the compensation as set forth in this Second Amendment; and

D. Accordingly, the Town and Contractor desire to amend the Agreement to provide for the additional services and authorize the additional expenditure as set forth below.

### **Agreement**

NOW, THEREFORE, in consideration of the foregoing Recitals, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Town and Contractor agree that this Second Amendment shall amend the Agreement as follows:

SECTION 1. The Additional Service Proposals that are attached hereto for:

1. Design of a net-zero energy building;
2. Energy modelling; and
3. HVAC systems design; and
4. Electrical load determination; and
5. Architectural services to include solar energy system design;

are hereby incorporated, by this reference, into Attachment A to the Agreement and are intended to be a part of the Project and Scope of Services under the Agreement.

SECTION 2 Section 4.1 of the Agreement, concerning compensation to the Contractor for its services, is hereby amended to read in its entirety as follows:

Section 4.1 Compensation: CONTRACTOR shall be compensated for its services under this agreement on a task and deliverables basis, but in no event to exceed the sum of THREE HUNDRED AND FOURTY THREE THOUSAND THREE HUNDRED AND NINETY-SEVEN DOLLARS (\$343,397). A schedule of tasks, deliverables, and reimbursable expenses for the CONTRACTOR's work under this Agreement is set forth in Attachment B hereto, and in the Additional Services Proposals that concern the net-zero design for the new Village Center Building at the Frisco Adventure Park in Frisco, Colorado. Attachment B hereto is hereby incorporated by reference and made a part of this Agreement.

SECTION 3 All capitalized terms used in this Second Amendment shall have the same meaning as provided in the Agreement, unless otherwise defined herein. Except as expressly amended by this Second Amendment, the Agreement shall remain in full force and effect. In the event of any conflict, inconsistency, variance, or contradiction between the provisions of this Second Amendment and any of the provisions of the Agreement or any prior modification to the Agreement, the provisions of this Second Amendment shall in all respects supersede, govern, and control.

IN WITNESS WHEREOF, the Town and Contractor have caused these presents to be executed by their duly authorized officers, as of the date first above written.

TOWN OF FRISCO

ATTEST:

\_\_\_\_\_  
Deborah Wohlmuth, CMC, Town Clerk

\_\_\_\_\_  
Hunter Mortensen, Mayor

OHLSON LAVOIE CORPORATION

By:

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

Title: \_\_\_\_\_

# Additional Services Proposal (ASP)

Please return to Ohlson Lavoie Corporation

Project #: 21008.00  
Project: Frisco Peninsula Recreation Area  
Village Center (now Slopeside Hall)  
To: Diane McBride, Acting City Manager

ASP#: 005  
ASP Date: 11-29-21

Email:  
dianem@townoffrisco.com  
Email:

Cc:

In reference to the original agreement between the Owner and OLC dated:

March 23<sup>rd</sup>, 2021

Owner: Town of Frisco Colorado  
P.O. Box 4100  
Frisco, CO 80443

Architect: Ohlson Lavoie Corporation  
400 Santa Fe Dr.  
Denver, Colorado 80204  
(303) 294-9244, Tel  
(303) 294-9440, Fax  
www.olcdesigns.com

## DESCRIPTION: (Continued on attached sheets)

As requested, the design team is providing the attached additional fees to design the Project to be Net Zero Energy, including energy impacts of design alternates and value engineering decisions, energy modelling and review of multiple HVAC system types. The complete scope of work includes that listed in the Sub-Consultant's proposals attached hereto.

### Additional Fees:

PCD Engineering:	\$9,200 (Energy Modeling)
The Ballard Group:	\$8,335 (HVAC Systems Design)
AE Design Group:	\$4,500 (Electrical Load Determination)
OLC Coordination:	\$7,800 (Solar Energy System Coord. & Spec's)

## CONSULTANTS REQUIRED:

☐ Civil ☐ Landscape. ☐ Struct. ☒ Mech./Plumb ☒ Elec. ☐ Aquatics ☐ Food Svc. ☐ Acoustic ☒ Other Energy Consultant

## Fee And Time Summary:

All A/E services required to complete this ASP shall be Additional Services in accordance with article I of the Agreement, and are summarized as follows:

Additional Services Fee:	\$ 29,835.00	<input checked="" type="checkbox"/> Fixed	<input type="checkbox"/> Maximum	<input type="checkbox"/> Hourly
Additional Services Time:	Six (6) Weeks	<input type="checkbox"/> Fixed	<input checked="" type="checkbox"/> Estimated	
Start Date:	Upon Approval	<input type="checkbox"/> Fixed	<input type="checkbox"/> Estimated	
Completion Date:	TBD	<input type="checkbox"/> Fixed	<input type="checkbox"/> Estimated	
Expenses:	\$ 0.00	<input type="checkbox"/> Fixed	<input checked="" type="checkbox"/> Estimated	Multiplier = 1.0

## Issued By:



11-29-21 Robert L. McDonald

ARCHITECT

Date: Print Name:

## Authorized By:

By signing below, I authorize the Additional Services as described herein and affirm that I am authorized to enter into this agreement.

Owner

Date: Print Name:



November 15, 2021



Robert McDonald  
Senior Principal  
OLC Architecture  
720.880.7536  
400 Santa Fe Dr.  
Denver, CO 80204  
[rmcdonald@olcdesignes.com](mailto:rmcdonald@olcdesignes.com)

Re: Slopeside Hall  
Energy analysis and consulting for Net Zero Energy Design

PCD Engineering Services (PCD) is pleased to provide this scope of work and agreement for the Slopeside Hall building in Frisco, CO. Services to be provided include energy modeling and analysis for Net Zero energy design assistance. Modeling scope and fee are based on review of the 50% DD set dated 10/29/2021 and conversations with the client. The energy modeling results, supporting documents and reporting will be reviewed by the building owner and design team and modeling results will be timed to provide guidance for major design milestones.

Project Building	Building Area (SF)	Type of Work
Slopeside Hall	Approx.7,800	new construction

### **1.1 Scope of Work:**

PCD will provide engineering services under this agreement as follows:

1. Attend kickoff meeting (via conference call) to review the scope of work, obtain pertinent building documentation, and set up coordination procedures with design team.
2. Participate in meetings at major design milestones to discuss energy impacts of design alternate and value engineering decisions. One meeting via conference call to coordinate work for each of Design Development (DD) and Construction Document (CD) stages would be included in this scope.
3. Conduct DD "box model" iterations to measure the energy impacts of up to 3 HVAC system type options and up to 5 other building component choices for envelope, lighting and/or HVAC sub components. Box model will use anticipated building square footage and general default inputs to provide energy use impact guidance.
4. Compile design information from Architect, MEP designers, lighting designer and building owner for each design milestone.
5. Utilize design information to complete baseline and proposed energy models based on ASHRAE 90.1 Appendix G (or other local energy code at owner's preference) modeling procedure using a Department of Energy approved 8,760 hour modeling software package.
6. Update and maintain energy modeling based on received information from the DD and CD deliverable drawing packages to ensure owner's energy goals are met. At these stages the scope includes study of design alternatives that require one single modeling parameter to be changed.

323 3<sup>rd</sup> Avenue-Suite 100, Longmont, CO 80501 Tel: 303.678.1108 Fax: 303.678.1142  
[PCDENGINEERING.COM](http://PCDENGINEERING.COM)

7. Complete any necessary supporting documentation to demonstrate energy characteristics of building equipment that cannot be accurately described within the energy modeling software as per modeling best practices.
8. Present modeling results to the design/ownership team to evaluate where the design is in reference to Net Zero Energy goals. This will be done via email and/or conference call. These modeling results will include a kWh per year quantity that will be provided to a solar contractor or design team member for sizing a solar PV system with the intention of fully offsetting building energy use.
9. Produce one short form (3-4 page) modeling results report to be delivered to the design and ownership team as the final deliverable.
10. Respond to owner and design team review comments to clarify modeling results if needed.
11. Present modeling results to planning commission for confirmation of net zero building design status.

### **1.2 Basis of Compensation:**

Pricing for the above-mentioned services is \$9,200 of total pricing. Basis of compensation shall be invoiced monthly as a percent completion. Payment due on invoice date. Unpaid bills are subject to 18% per annum interest charges and collection or attorney fees. PCD reserves the right to stop work or retrieve signed Building Department Submittals at any time outstanding payments remain in excess of 30 days. Additional services or changes in scope would be invoiced hourly at PCD's prevailing rates, unless a fixed fee is agreed to in advance for the specific service. Reimbursable expenses invoiced at cost + 10%.

### **1.3 Exclusions:**

Any task not specifically included, including but not limited to:

- In person meetings as it is assumed that virtual conferencing is available for all meetings.
- Generating project plans and specifications. This will be completed by the design team.
- Commissioning and monitoring and verification for proposed systems/equipment. PCD Engineering is available to provide these services on the project.
- Overseeing training activities for proposed systems and equipment. PCD Engineering is available to provide these services on the project.
- Modeling alternatives in addition to those mentioned above.
- Reconstruction or major revision of the model(s) (including, but not limited to change in HVAC system type, change in building size, change in building geometry, etc.) after Construction document modeling is complete.
- Documentation of compliance or certification under any codes, certification programs or utility incentive programs other than those mentioned above. PCD Engineering is available to provide these services on the project.

### **1.4 Indemnification:**

The client agrees, to the fullest extent permitted by law, to indemnify and hold harmless PCD, its officers, directors, employees, and sub-consultants against all damages, liabilities, or costs including reasonable attorney fees and defense costs, arising out of or in any way connected with this Project or the performance by any of the parties above named of the services under this Agreement. PCD agrees to be responsible for its negligent acts, errors, or omissions. If the undersigned does not retain PCD to perform field observations of construction progress, it is agreed that the undersigned and/or owner will defend, indemnify, and hold harmless PCD from any claim or suit whatsoever including but not limited to all payments, expenses, or costs involved, arising from or

alleged to have arisen from the contractor's performance or the failure of the contractor's work to conform to design intent and the contract documents.

**1.5 Risk Allocation:**

The undersigned agrees to limit PCD and PCD's officers' and employees' liability to the Owner and to all construction contractors and subcontractors on the project, due to PCD's negligent acts, errors, or omissions, such that the total aggregate liability of PCD to all those named shall not exceed PCD's per claim limit for Professional Liability insurance under this scope of work (This amount may change depending upon changes in the scope of work outlined above).

**1.6 Corporate Protection**

It is intended by the parties to this Agreement that PCD's services in connection with the Project shall not subject PCD's individual employees, officers, or directors to any personal legal exposure for the risks associated with this Project. Therefore, and notwithstanding anything to the contrary contained herein, Client agrees that as Client's sole and exclusive remedy, any claim, demand or suit shall be directed and/or asserted only against PCD Engineering Services, Inc., a Colorado corporation, and not against any of PCD's individual employees, officers or directors.

**1.7 Dispute Resolution**

In an effort to resolve any conflicts that may arise during or following the completion of the project, we both agree that all disputes arising out of, or relating to this agreement, shall be submitted to non-binding mediation under the auspices of a nationally recognized mediation agency.

**1.8 Applicable Law**

The agreement is governed by and will be construed in accordance with the laws of the State of Colorado. The venue of any action brought to enforce or relating to this Agreement shall be brought exclusively in the District where the project is located.

**1.9 Instruments of Service**

The documents are instruments of service and shall remain the property of PCD. Copies of these aforementioned documents retained by Client are for Client's use in the case for which they were prepared and are neither intended nor represented to be suitable for re-use by Client, or others, on extensions of the work or on any other project. Any re-use without specific written approval and adaptation from PCD is strictly prohibited and shall be at Client's sole risk, without liability to PCD, and Client shall indemnify and hold PCD harmless from all loss, cost, damage, and expense including attorney's fees resulting therefrom.

**1.10 Standard of Care**

PCD will provide in connection with the work contemplated hereunder the standards of care, skill, and diligence normally provided by a professional engineer in the performance of the same or similar services. PCD shall prepare all our documents to the best of our ability, but do not guarantee that the documents are without error, but rather that the documents are useable. Nothing in this Agreement shall be construed to establish a fiduciary relationship between the parties. PCD makes no other representations or warranties, whether expressed or implied, with respect to the services rendered hereunder. PCD shall exercise usual and customary professional care in its efforts to comply with applicable codes, regulations, laws, rules, ordinances, and such other requirements ("Laws") in effect as of the date of execution of this Agreement.

**1.11 Third-Party Beneficiaries**

Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Client or PCD. PCD's services under this Agreement are being performed solely for the Client's benefit, and no other party or entity shall have any claim against the Consultant because of this Agreement or the performance or nonperformance of services hereunder.

#### **1.12 Consequential Damages**

Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither the Client nor PCD, their respective officers, directors, partners, employees, contractors or sub-consultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the Project or to this Agreement. This mutual waiver of consequential damages shall include but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation and any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty.

#### **1.13 Opinions of Cost**

Since the engineer has no control over the cost of labor, materials, equipment or services furnished by others, or over the Contractor's methods of determining prices, or over competitive bidding or market conditions, engineer's opinions of probable Total Project Costs and Construction Cost provided for herein are to be made based on engineer's experience and qualifications and represent engineer's best judgment as an experienced and qualified professional engineer, familiar with the construction industry; but engineer cannot and does not guarantee that proposals, bids or actual Total Project or Construction Costs will not vary from opinions of probable cost prepared by the engineer. If prior to the Bidding or Negotiating Phase owner wishes greater assurance as to Total Project or Construction Costs, the owner shall employ an independent cost estimator.

#### **1.14 Duration**

This agreement may be withdrawn or amended if not accepted within thirty (30) days.

Regards,



Jacob Goodman, BEMP, LEEDAP – Project Manager

**Approved and Accepted By:**

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date



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**The Ballard Group, Inc.**  
Mechanical Consulting Engineers

November 16, 2021

Robert McDonald  
Ohlson Lavoie Collaborative

**Re: Frisco Slopeside Hall – Net-Zero**

Dear Bob,

Below you will find our additional service proposal and scope of work. Please let me know if you have any questions.

Scope:

1. Assist in the evaluation of multiple mechanical, electrical and architectural design options to support the Town of Frisco's goals of providing a Net-Zero energy use building.
2. Redesign our systems based on the energy modeling results.
3. Remove all natural gas fired equipment in favor of an all-electric system.
4. Participate in meetings and coordination efforts to reach a final Net-Zero design.

Our fee proposal is as follows:

Mechanical Engineering	Total
Additional Service - Net Zero Redesign	\$6,615
Additional Service - Net Zero Through Task III	\$1,720
Total	\$8,335

Sincerely,

THE BALLARD GROUP, INC.

Peter W. Failla II, PE  
Principal

November 29, 2021

Mr. Bob McDonald  
Ohlson Lavoie Corporation  
400 Santa Fe Drive  
Denver, Colorado 80204  
(303)294-9244  
mcdonald@olcdesigns.com

**RE: 4570.00 - Frisco Slopeside Hall, Frisco, Colorado  
Modifications to Achieve Net Zero Energy Design**

Dear Bob;

In response to the Owner's request, we submit this Add-Service Proposal Agreement for your review. Our services included in this Agreement are defined as indicated below.

## **DESCRIPTION OF WORK**

### **Additional Services Proposal:**

1. Design/Engineer to accommodate a Net Zero Energy standards. Scope of work includes:
  - a. Coordination with the energy modeling consultant.
  - b. Coordination of increased electrical loads with utility company for anticipated new site utility transformer delivery.
  - c. Re-engineer electrical service size, distribution, and equipment locations.
  - d. Re-coordinate with mechanical/plumbing systems.
  - e. Coordination of photovoltaic tie-in with photovoltaic systems designer/vendor.
    - i. Design/engineering of a photovoltaic systems is excluded.
    - ii. It is anticipated that the energy model will indicate photovoltaic system production capacity requirements to meet Net Zero standards.
  - f. Re-engineer electrical distribution to site out-buildings (Yurt, Tube Building).

This design scope & fee are in addition to, and do not nullify, any previously negotiated fee agreements.

## **SCHEDULE**

The added work will follow the same timeline as remainder of project.



## FEES

Fixed fee for additional services:               **\$ 4500.00**

Thank you for the opportunity to provide you with this agreement for the project and we look forward to working with you and your firm.

Sincerely,

AE Design

Jeff Mullikin, P.E.  
Principal

By signing below, **Ohlson Lavoie Corporation** agrees to the scope of work and fee as noted above.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date