

AGREEMENT FOR CONSULTANT SERVICES

THIS AGREEMENT ("AGREEMENT") is entered into by and between the City of Commerce ("the CITY") and ejma Planning + Development ("CONSULTANT"), collectively referred to hereinafter as the Parties, for planning services, as they relate to cannabis policy development and implementation services.

RECITALS

WHEREAS, May 1, 2018, the City Council adopted a resolution establishing an eligibility list for various on-call professional services. These contracts are intended to provide flexibility and enhance the capacity of the City to deliver projects and programs. These professional service contracts reduce costs and expedite project schedules by reducing the time and effort to solicit multiple Requests for Proposals (RFPs) for various individual projects. ejma Planning + Development was included on the on-call professional services eligibility list adopted by the City Council on May 1, 2018. A separate Agreement for Consultant Services between the City of Commerce and ejma Planning + Development is being proposed due to ejma Planning + Development's subject matter expert on complex and highly regulated land uses.

WHEREAS, ejma Planning + Development is a planning and development company. Owner and Principal Ebony J. McGee Andersen of ejma Planning + Development is an experienced Urban and Regional Planner, and with over 10 years of experience has become a subject matter expert on complex and highly regulated land uses. Ms. Andersen assists municipalities to incorporate new land use programs as an economic development program, while focusing on equitable development agreements with extensive community benefit packages.

WHEREAS, on December 16, 2017, City Council passed and adopted Ordinance No. 693, a citywide moratorium banning commercial cannabis uses and activities, in order to allow the City time to study, amongst other things, the consistency of such uses with the City's General Plan and Zoning Code, and to enable the City time to evaluate the scope and extent of regulations and/or prohibitions of such land use and activities;

WHEREAS, City staff continues to review California cannabis laws and regulations, the impacts of same in the City, and the options the City has to regulate cannabis uses and activities within its jurisdiction in accordance with state law;

WHEREAS, in determining the City's regulatory options to regulate cannabis uses and activities in the City in accordance with state law, the City desires to engage CONSULTANT to assist the CITY with creating and implementing the necessary policies, procedures and regulations to ensure all cannabis related activities are regulated in a manner that promote the highest standards of public safety;

WHEREAS, in the event the City adopts and implements an ordinance authorizing the establishment of state authorized cannabis activities within the City's

jurisdiction, the City further desires to engage CONSULTANT to assist in the processing of applications for cannabis activities permitted by state law, including, cannabis land use entitlements in accordance with the City's zoning code and general plan requirements;

WHEREAS, CONSULTANT is willing to perform the services defined herein; and

WHEREAS, CONSULTANT represents that the principal representative stated below is authorized to act as such on behalf of CONSULTANT.

NOW, THEREFORE, the Parties agree as follows:

1. **TERM.** This AGREEMENT shall be for a term of six (6) months commencing on July 5, 2018, continuing through January 5, 2019, with three (3), one (1) month extension options, subject to written agreement by the Parties. An Amendment to extend the AGREEMENT shall be fully executed by the Parties no later than twenty-one (21) days prior to expiration of the then current term.

2. REPRESENTATIVES OF THE PARTIES AND SERVICE OF NOTICE.

The representatives of the Parties who are primarily responsible for the administration and performance of the AGREEMENT, and to whom formal notice, demands and communications shall be given, are as follows:

A. The principal representative of the CITY shall be:

Maryam Babaki, Director - Public Works Development Services
City of Commerce
2535 Commerce Way
Commerce, CA 90040
(323) 722-4805

B. The principal representative of the CONSULTANT shall be:

Ebony J. McGee Andersen, Owner and Principal
ejma Planning + Development
11755 Malaga Drive, Suite 1196
Rancho Cucamonga, CA 91730
(323) 569-1867 (Office)
(310) 494-1845 (Cellular)

C. Formal notices, demands and communications to be given hereunder by either party shall be made in writing and may be effected by personal delivery or by first-class mail. Formal notices and demands sent by E-mail or facsimile shall not be acknowledged.

- D. If the name of the principal representative designated to receive the notices, demands or communications, or the address of such person, is changed, written notice shall be given within five (5) working days of said changes.

3. **RETENTION.** The CITY retains CONSULTANT to provide highly-regulated land use policy development and implementation services, as well as community outreach and industry education, pursuant to this AGREEMENT. CONSULTANT agrees to render such services on the terms and conditions stated herein.

4. **SCOPE OF SERVICES.** The scope of services to be provided is set forth in the attached Scope of Services, which is made Exhibit "A" to this AGREEMENT.

5. **REVIEW AND APPROVAL OF CONSULTANT'S PRODUCT.** The Director of Public Works and Development Services and/or the Deputy Director of Development Services, or his designee ("AGREEMENT administrator") shall administer CONSULTANT's adherence to the performance of the scope of services herein, and shall have the authority to review, correct, edit, and/or approve all products submitted by CONSULTANT. The City Administrator shall also have such authority, only if the AGREEMENT administrator, or designee, is not available for this purpose for any reason.

6. **COMPENSATION.** The CITY agrees to pay CONSULTANT for the services set forth in the aforementioned Scope of Services. CONSULTANT agrees that the total fees for services under the term of this AGREEMENT shall not exceed the authorized amount of \$25,000.00, pursuant to the fees as set forth in the fee schedule, attached hereto as Exhibit "B," unless the CITY has given specific advance approval in writing. The amount of compensation may be increased by the CITY should the CITY make a determination that it requires the execution of additional services pursuant to the Scope of Services by CONSULTANT and the completed services rendered by CONSULTANT pursuant to this AGREEMENT has exceeded the authorized compensation pursuant to this section. In this event, a written Amendment to extend the compensation limit pursuant to this AGREEMENT shall be fully executed by the Parties

7. INDEPENDENT CONTRACTOR.

- A. CONSULTANT is an independent contractor. As such, CONSULTANT shall have no power or authority to incur any debt, obligation or liability on behalf of the CITY, unless such authority is expressly conferred under this AGREEMENT. Further, CONSULTANT is not entitled to any benefit typically associated with an employee such as medical, sick leave, retirement, or vacation benefit. CONSULTANT expressly waives any claim to any such rights.

- B. The personnel performing services pursuant to this AGREEMENT on behalf of CONSULTANT shall, at all times, be under CONSULTANT's exclusive direction and control. Neither the CITY, nor any of its employees, shall have any control over the manner, mode, or means by which CONSULTANT, its agents, or its employees, perform the services required herein, except as otherwise set forth herein.
- C. CONSULTANT shall perform services pursuant to this AGREEMENT as an independent contractor and shall, at all times, remain a wholly independent contractor. The CITY shall not in any way or for any purpose become or be deemed to be a partner of CONSULTANT in its business or otherwise a joint venture or member of any joint enterprise with CONSULTANT.

8. **PERS INDEMNITY.** In the event that CONSULTANT or any employee, agent, or subcontractor of CONSULTANT providing services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the CITY, CONSULTANT shall indemnify, defend, and hold harmless the City for the payment of any employee and/or employer contributions for PERS benefits on behalf of CONSULTANT or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, CONSULTANT and any of its employees, agents, and subcontractors providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by the CITY, including but not limited to eligibility to enroll in PERS as an employee of the CITY and entitlement to any contribution to be paid by the CITY for employer contribution and/or employee contributions for PERS benefits.

CONSULTANT is solely responsible for compliance with PERS restrictions applicable to any of CONSULTANT's employees, agents, or subcontractors.

9. **CONFLICTS OF INTEREST/NON-COLLUSION DECLARATION.** CONSULTANT covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interest of CITY, or which would in any way hinder CONSULTANT'S performance of services under this AGREEMENT. CONSULTANT further covenants that in the performance of this AGREEMENT, no person having any such interest shall be employed by it as an officer, employee, agent, or subcontractor. CONSULTANT agrees to at all times avoid conflict of interest or the appearance of any conflicts of interest with the interests of CITY in the performance of this AGREEMENT. CONSULTANT further covenants that it has submitted a signed and notarized "Non-Collusion Declaration," (which is incorporated herein by this reference), as part of an executed Professional

Services Agreement for On-Call Planning Services with the CITY, effective May 1, 2018, requiring CONSULTANT to adhere to same when executing the Scope of Services pursuant to this AGREEMENT.

10. INDEMNITY AND INSURANCE

A. INDEMNITY. CONSULTANT shall indemnify, defend with counsel acceptable to City and hold harmless City and its officials, officers, employees, members, agents and authorized volunteers from and against any and all losses, liabilities, claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, damages and expenses of any kind, whether actual or threatened (including but not limited to attorneys' fees and costs, court costs, interest defense costs, and expert witness fees) where the same arise out of, are a consequence of or are in any way attributable to, in whole or in part, the performance of this AGREEMENT, (or the failure to perform) by CONSULTANT or by any individual entity for which CONSULTANT is legally liable, including but not limited to officers, agents, employees or subcontractors of CONSULTANT. Such indemnification, defense and hold harmless extend to CONSULTANT's provision, use, transport and storage of hazardous materials, as those commonly are defined under state and federal laws and regulations.

The foregoing obligation of CONSULTANT shall not apply when (1) the injury, loss of life, damage to property or violation of law arises wholly from the negligence or willful misconduct of CITY or its officers, employees, agents, or authorized volunteers and (2) the actions of CONSULTANT or its employees, subcontractors or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law.

It is understood that the duty of CONSULTANT to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this AGREEMENT does not relieve CONSULTANT from liability under this indemnification and hold harmless clause. This indemnifications and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this AGREEMENT, CONSULTANT acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

B. INSURANCE. CONSULTANT shall procure and maintain at all times during the term of this Agreement insurance as set forth in Exhibit "C" attached hereto.

11. OWNERSHIP OF WORK PRODUCT. All reports, documents or other written material developed by CONSULTANT in the performance of this AGREEMENT shall be and remain the property of the CITY without restriction or limitation upon its use or dissemination by the CITY. Such material shall not be the subject of a copyright application by CONSULTANT. Any re-use by CITY of any such materials on any project other than the project for which they were prepared shall be at the sole risk of CITY unless CITY compensates CONSULTANT for such use.

12. CONFIDENTIALITY. Employees of CONSULTANT, in the course of their duties, may have access to financial, accounting, statistical, and personnel data of private individuals, persons and legal entities, as well as employees of the CITY. CONSULTANT covenants that all data, documents, discussion, or other information developed or received by CONSULTANT or provided for performance of this AGREEMENT are deemed confidential and shall not be disclosed by CONSULTANT without written authorization by the CITY. The CITY shall grant such authorization if disclosure is required by law. All CITY data shall be returned to the CITY upon the termination of this AGREEMENT. CONSULTANT's covenant under this Section shall survive the termination of this AGREEMENT.

13. TERMINATION FOR CONVENIENCE. The CITY may terminate this AGREEMENT at any time, without cause, by giving five (5) calendar days written notice to CONSULTANT of such termination and specifying the effective date thereof.

If the term of this AGREEMENT extends into fiscal years subsequent to that in which it was approved, such continuation of the contract is subject to the City Council's appropriation of funds for such purpose. If funds to effect such continued payment are not appropriated, CONSULTANT agrees to terminate provision of any goods or services supplied to the CITY under this AGREEMENT.

If this AGREEMENT is terminated as provided herein, CONSULTANT shall be paid only the total amount equal to the service CONSULTANT has provided, to the CITY's satisfaction, as determined solely by the CITY, as of the termination date. In no event shall the amount payable upon termination exceed the total maximum compensation provided for in this AGREEMENT or the value of services provided as of date of termination.

14. ASSIGNMENT AND SUBCONTRACTING. Neither Party shall assign or subcontract the rights or responsibilities under this AGREEMENT without the express, written consent of the other Party, which may be withheld for any reason or for no reason.

15. STANDARD. CONSULTANT agrees that the services to be rendered pursuant to this Agreement shall be performed in accordance with the standards customarily provided by an experienced and competent professional organization rendering the same or similar services. CONSULTANT shall re-perform any of said services, which are not in conformity with standards as determined by the CITY.

CONSULTANT will be relieved of its obligation to re-perform said services if the CITY does not notify CONSULTANT within 180 days after the completion of the non-conforming service. Compensation for CONSULTANT to re-perform said services shall be subject to the approval of the CITY, but in no event shall such compensation exceed the actual cost of said services. Except as hereinafter provided in respect of personal injury or property damage, the foregoing are CONSULTANT's entire responsibilities and the CITY's exclusive remedies for service rendered or to be rendered hereunder, and no other warranties, guarantees, liabilities, or obligations are to be implied.

16. RESOLUTION OF DISPUTES.

- A. Disputes regarding the interpretation or application of any provisions of this AGREEMENT shall, to the extent reasonably feasible, be resolved through good faith negotiations between the Parties.
- B. If any action, at law or in equity, is brought to enforce or to interpret any provisions of this AGREEMENT, the prevailing party in such action shall be entitled to recover reasonable attorney's fees, costs and necessary disbursements, in addition to such other relief as may be sought and awarded.

17. FORCE MAJEURE. The respective duties and obligations of the Parties hereunder shall be suspended while and so long as performance hereto is prevented or impeded by strikes, disturbances, riots, fire, severe weather, government action, war acts, acts of God, or any other cause similar or dissimilar to the foregoing which are beyond the control of the party from whom the affected performance was due.

18. NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY. In the performance of this AGREEMENT, CONSULTANT shall not discriminate against any employee, subcontractor, or applicant for employment because of race, color, creed, religion, sex, marital status, national origin, ancestry, age physical or mental handicap, medical condition, or sexual orientation. CONSULTANT will take affirmative action to ensure that subcontractors and applicants are employed without regard to their race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition, or sexual orientation.

19. SEVERABILITY. If any provision of this AGREEMENT is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions nevertheless will continue in full force and effect without being impaired or invalidated in any way.

20. GOVERNING LAW. This Agreement shall be governed by and construed in accordance with laws of the State of California. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in the County of Los Angeles. In the event of litigation in a U.S. District Court, exclusive venue shall lie in the Central District of California.

21. **ENTIRE AGREEMENT.** This AGREEMENT, together with Exhibits "A," "B," and "C" supersede any and all other agreements, either oral or in writing, between the parties with respect to the subject matter herein. Each party to this AGREEMENT acknowledges that no representation by any party, which is not embodied herein, nor any other agreement; statement or promise not contained in this AGREEMENT shall be valid and binding. Any modification of the AGREEMENT shall be effective only if it is in writing and signed by all Parties.

[END OF AGREEMENT. SIGNATURE PAGE FOLLOWS.]

IN WITNESS WHEREOF this Agreement is entered into by the Parties hereto on the dates set forth below.

ATTEST:



Lena Shumway, City Clerk

THE CITY OF COMMERCE

By: 

Hugo A. Argumedo, Mayor

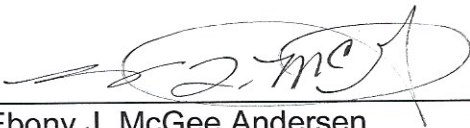
Date: 7-3-2018

APPROVED AS TO FORM:



Norma Copado, City Attorney

CONSULTANT

By: 

Ebony J. McGee Andersen
Owner and Principal
ejma Planning + Development

Date: _____

EXHIBIT "A"
SCOPE OF SERVICES

I. Project Scope

A. Cannabis Program Development – CONSULTANT will consult with City staff and project consultants on the regulation of Cannabis in accordance with state law in the City. CONSULTANT will support the City and its consultants with the preparation of cannabis ordinance development, and in the event it is necessary, applicant screening process, cannabis policies and procedures, application development, applicant education, community outreach and development, permit processing timelines and schedules, and other cannabis program implementation tasks, as needed, requested, and/or if applicable to any CITY cannabis ordinance implementation.

B. Land Use Entitlement – CONSULTANT will assist City staff with the review of all cannabis related land use entitlement applications and process pursuant to the City's municipal code and applicable zoning, environmental and cannabis regulations.

C. Environmental Review – CONSULTANT will assist City staff with the review all land use projects pursuant to CEQA and prepare the appropriate CEQA documents on behalf of the City.

D. Building Inspections and Permitting– CONSULTANT will assist City staff with preliminary building evaluations, plan check services and final building permit services to ensure all cannabis facilities are designed and constructed in accordance with state and local regulations.

E. Public Hearings – CONSULTANT will assist City staff with the preparation of public hearing notices, staff reports, resolutions and ordinances necessary for public hearings for all cannabis projects. Public hearing notices will be prepared with assistance for City Planning staff.

F. Inspections, Monitoring and Condition Compliance – CONSULTANT will conduct initial land use compatibility site visits for proposed cannabis businesses. At least semi-annually, condition compliance inspections will be conducted to ensure Permittees are operating in accordance with the approved permit conditions, zoning code, and state regulations.

G. Reports – CONSULTANT will provide the City with annual compliance reports for each cannabis facility. The reports will include any violations observed, abatement recommendations, an abatement schedule and any other information the City requests.

H. Enforcement Proceedings – CONSULTANT will assist the City with all enforcement efforts, as needed, in accordance with the City's municipal code.

II. Project Services

Specific project tasks may include, but are not limited to the following:

- A. Ordinance and resolution preparation
- B. Permit fee evaluation
- C. Development Agreement review and oversight
- D. Discretionary permit application development, review and issuance
- E. Zoning verification
- F. Permit application development
- G. Permit License application review and screening
- H. Community Outreach
- I. CEQA review + document preparation
- J. Staff report development
- K. General project management services
- L. Preliminary Building Evaluations
- M. Building Plan Check (Early Plan Check, upon request)
- N. Compliance and Enforcement

III. Deliverables

All deliverables will be provided to the City by CONSULTANT by timelines established by the City. Deliverables may include, staff reports, CEQA documents, ordinances and resolutions, or other project-related documents, as stipulated by the City.

IV. Specific Exclusions from Scope TBD in consultation with the City.

V. Implementation Plan

- A. Assist City staff with the Development of the City's desired ordinance to regulate cannabis uses; and if applicable and so desired;
- B. Assist City staff with the permit application process
- B. Prepare submission requirements and timeline
- C. Post marketing materials on City website
- D. Assist applicants with the planning and development process
- E. Provide community and industry education regarding the City's cannabis regulation, if implemented
- F. Provide contract staff for Planning department, as needed, throughout application process for applicant questions, applicant intake, and/or project evaluation
- G. Assist with applicant pre-screen and interviews
- H. Develop and draft standard Conditions of Approval for Development Agreements and/or land use entitlements
- I. Develop development standards and design guidelines
- J. Review and analyze cannabis project applications in accordance with applicable zoning code requirements and development standards, or any other screening or scoring criteria, if applicable
- K. Conduct CEQA review and prepare CEQA documents
- L. Support building plan check and inspection services
- M. Conduct ongoing monitoring and condition compliance
- N. Prepare compliance reports and enforce documents

VI. Timeline/Schedule

To be established by the City.

VII. Team Leads

- A. Ebony J. McGee Andersen, Sr., Project Manager + Principal Planner
- B. Nicholas G. Burge, Fire + Hazardous Materials Safety Manager

C. Gonzalo De Vera, Building and Construction Project Manger

D. Nam Ngo, Project Engineer

Additional Planning + Building staff will be added as project demand

EXHIBIT "B"
RATES

Following is a rate list by anticipated tasks:

Project Task Rate	Project Tasks
\$200/hr.	Legal + Compliance Advising Consultant (Community Development)
\$195/hr.	Senior Project Management
\$175/hr.	Mechanical, electrical, Structural, Architectural and plumbing Plan Check or Consultation
\$165/hr.	Building Inspections / Compliance Inspections
\$160/hr.	Project Manager
\$150/hr.	Senior Planner
\$125 /hr.	Associate Planner
\$110/hr.	Fire + Hazmat Safety Manger (Project Review)
\$110/hr.	Building/CD Plan Check
\$155/hr.	Project Design/Drafting
\$30-\$50/hr.	Administrative Assistant

*Overtime, expedited review time and mileage will not be billed to the client unless expressly indicated in the executed service agreement.

Each week/month, CONSULTANT shall furnish the CITY with an invoice of services rendered for the previous week/month. The CITY shall review submitted invoices against the completed work submitted by CONSULTANT to determine that said services were initiated, commenced, in progress and/or completed.

Invoices will be processed for payment at the end of each calendar month.

At no time will total compensation under this AGREEMENT exceed \$25,000, unless amended in writing by the parties pursuant to the terms of this AGREEMENT.

EXHIBIT "C"

CONSULTANT shall maintain throughout the duration of the term of the Agreement, liability insurance covering CONSULTANT and designating CITY, including its elected or appointed officials, directors, officers, agents, employees, volunteers, or CONSULTANTS, as additional insured against any and all claims resulting in injury or damage to persons or property (both real and personal) caused by any aspect of CONSULTANTS work, in amounts no less than the following and with such deductibles as are ordinary and reasonable in keeping with industry standards. It shall be stated, in the Additional Insured Endorsement, that CONSULTANT's insurance policies shall be primary as respects any claims related to or as the result of CONSULTANT's work. Any insurance, pooled coverage, or self-insurance maintained by CITY, its elected or appointed officials, directors, officers, agents, employees, volunteers, or SUBRECIPIENTS shall be non-contributory. The Additional Insured Endorsement shall not apply to the Professional Liability Insurance.

General Liability:

a.	General Aggregate	\$2,000,000
b.	Products Comp/Op Aggregate	\$2,000,000
c.	Personal & Advertising Injury	\$1,000,000
d.	Each Occurrence	\$1,000,000
e.	Fire Damage (any one fire)	\$ 50,000
f.	Medical Expense (any one person)	\$ 5,000

Workers' Compensation:

a.	Workers' Compensation	Statutory Limits
b.	EL Each Accident	\$1,000,000
c.	EL Disease - Policy Limit	\$1,000,000
d.	EL Disease - Each Employee	\$1,000,000

Automobile Liability:

- a. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (per accident). No endorsement shall be attached limiting the coverage.

Professional Liability Insurance:

- a. Professional Liability Insurance \$1,000,000
for licensed professional performing
work pursuant to this AGREEMENT

CONSULTANT shall provide thirty (30) calendar days advance notice to CITY in the event of material changes or cancellation of any coverage. Certificates of insurance and additional insured endorsements shall be furnished to CITY thirty (30) calendar days prior to the effective date of this Agreement. Refusal to submit such certificates shall constitute a material breach of this Agreement entitling CITY to any and all remedies at law or in equity, including termination of this Agreement. If proof of insurance required under this Agreement is not delivered as required or if such insurance is canceled and not adequately replaced, CITY shall have the right but not the duty to obtain replacement insurance and to charge the CONSULTANT for any premium due for such coverage. CITY has the option to deduct any such premium from the sums due to the CONSULTANT.

Insurance is to be placed with insurers authorized and admitted to write insurance in California and with a current A.M. Best's rating of A- or better. Acceptance of insurance from a carrier with a rating lower than A-:VII is subject to approval by CITY ADMINISTRATOR. CONSULTANT shall immediately advise CITY of any litigation that may affect these insurance policies.