

# LANDSCAPE ARCHITECTURE AGREEMENTS

## ORIGINAL PROFESSIONAL SERVICES AGREEMENTS

- David Evans and Associates
- David Volz Design Landscape Architects, Inc.
  - Hirsch and Associates, Inc.
- Moore Iacofano Goltsman, Inc. (MIG)

## PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT for Professional Services ("Agreement") is made this day of 5<sup>th</sup> January, 2011 ("Effective Date") by and between the City of Commerce ("City") and David Evans and Associates, Inc. ("Contractor") together sometimes referred to the ("Parties").

**SECTION 1. SERVICES.** Subject to the terms and conditions set forth in this Agreement, Contractor shall provide to City the services described in the Scope of Work attached as Exhibit A and incorporated here. Such work shall be provided at the time and place and in the manner specified in Exhibit A. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, this Agreement shall prevail.

- 1.1 **Term of Services.** The term of this Agreement shall begin on the Effective Date and shall end three years after the Effective Date. Contractor shall complete the work described in Exhibit A prior to that date, unless the term of the Agreement is otherwise terminated or extended as provided for in Section 7. The time provided to Contractor to complete the services required by this Agreement shall not affect City's right to terminate the Agreement, as provided for in Section 7.
- 1.2 **Standard of Performance.** Contractor shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner including the necessary expertise or knowledge of the profession in which Contractor is engaged in the geographical area in which Contractor practices its profession and to the sole satisfaction of the Contract Administrator.
- 1.3 **Assignment of Personnel.** Contractor shall assign only competent personnel to perform services pursuant to Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons. Contractor shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.
- 1.4 **Time.** Contractor shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to satisfy Contractor's obligations hereunder.
- 1.5 **Authorization to Perform Services.** Contractor is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from City's project representative.

**SECTION 2. COMPENSATION.** City hereby agrees to pay Contractor in accordance with the payment schedule as set forth in Exhibit B, attached hereto and incorporated herein by reference as though set forth in full, based upon work completed, as defined in Exhibit A. In the event of a conflict between this Agreement and Exhibit A regarding the amount of compensation, this Agreement shall prevail. City shall pay Contractor for services rendered

pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Contractor for services rendered pursuant to this Agreement. Contractor shall submit all invoices to City in the manner specified herein. Except as specifically authorized in advance by City, Contractor shall not bill City for duplicate services performed by more than one person.

- 2.1 **Invoices.** Contractor shall submit invoices monthly during the term of this Agreement, based on the work completed. Invoices shall identify the project being worked on and detail of services performed.
- 2.2 **Payment.** City shall make monthly payments, based on invoices received, for services satisfactorily performed and for authorized reimbursable costs incurred. City shall have 30 days from the receipt of an invoice that complies with all of the requirements above to pay Contractor.
- 2.3 **Total Payment.** City shall not pay any additional sum for any expense or cost whatsoever incurred by Contractor in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.
- 2.4 **Payment of Taxes.** Contractor is solely responsible for the payment of employment taxes incurred under this Agreement and any federal or state taxes.
- 2.5 **Payment upon Termination.** In the event that City or Contractor terminates this Agreement pursuant to Section 7, City shall compensate the Contractor for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Contractor shall maintain adequate logs and timesheets in order to verify costs incurred to that date.

**SECTION 3. EQUIPMENT.** Except as otherwise provided, Contractor shall, at its sole cost and expense, provide all supplies and equipment necessary to perform the services required by this Agreement.

**SECTION 4. INSURANCE REQUIREMENTS.** Before beginning any work under this Agreement, Contractor, at its own cost and expense, shall procure the types and amounts of insurance checked below and provide Certificates of Insurance, indicating that Contractor has obtained or currently maintains insurance that meets the requirements of this section and which is satisfactory, in all respects, to City. Contractor shall maintain the insurance policies required by this section throughout the term of this Agreement. Contractor shall not allow any subcontractor to commence work on any subcontract until Contractor has obtained all insurance required herein for the subcontractor(s) and provided evidence thereof to City. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution. All insurance coverage and limits provided by Contractor and available or applicable under this Agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement limits the application of such insurance coverage.

**4.1 Workers' Compensation.** Contractor shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Contractor. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance Shall be provided with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per accident. In the alternative, Contractor may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the Contract Administrator. The insurer, if insurance is provided, or the Contractor, if a program of self-insurance is provided, shall waive all rights of subrogation against City and its officers, officials, employees, and authorized volunteers for loss arising from work performed under this Agreement.

**4.2 Commercial General Insurance and Automobile Liability Insurance.**

**4.2.1 Commercial General Liability Insurance:** Contractor, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than TWO MILLION DOLLARS (\$2,000,000.00) per occurrence, combined single limit coverage of \$2,000,000 in the general aggregate, for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

**4.2.2 Minimum scope of coverage.** Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (per occurrence). 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.

**4.2.3 Additional requirements.** Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:

- a. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.

- b. Any failure of Contractor to comply with reporting provisions of the policy shall not affect coverage provided to City and its officers, employees, agents, and volunteers.

#### **4.3 Professional Liability Insurance.**

**4.3.1 General requirements.** Contractor, at its own cost and expense, shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000) covering the licensed professionals' errors and omissions.

**4.3.2 Claims-made limitations.** The following provisions shall apply if the professional liability coverage is written on a claims-made form:

- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
- b. Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the Agreement or the work, so long as commercially available at reasonable rates.
- c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Contractor must provide extended reporting coverage for a minimum of five years after completion of the Agreement or the work. City shall have the right to exercise, at the Contractor's sole cost and expense, any extended reporting provisions of the policy, if the Contractor cancels or does not renew the coverage.
- d. A copy of the claim reporting requirements must be submitted to City prior to the commencement of any work under this Agreement.

#### **4.4 All Policies Requirements.**

**4.4.1 Acceptability of insurers.** All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A-.

**4.4.2 Verification of coverage.** Prior to beginning any work under this Agreement, Contractor shall furnish City with Certificates of Insurance, and upon request, complete certified copies of all policies, including complete certified copies of all endorsements. All copies of policies and certified endorsements shall show the signature of a person authorized by that insurer to bind coverage on its behalf.

**4.4.3 Notice of Reduction in or Cancellation of Coverage.** A certified endorsement shall be attached to all insurance obtained pursuant to this Agreement stating that coverage shall not be suspended, voided, canceled by either party, or reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified, mail, return receipt requested, has been given to City. In the event that any coverage required by this section is reduced, limited, cancelled, or materially affected in any other manner, Contractor shall provide written notice to City at Contractor's earliest possible opportunity and in no case later than ten (10) working days after Contractor is notified of the change in coverage.

**4.4.4 Additional insured; primary insurance.** City and its officers, employees, agents, and authorized volunteers shall be covered as additional insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Contractor, including the insured's general supervision of Contractor; products and completed operations of Contractor, as applicable; premises owned, occupied, or used by Contractor; and automobiles owned, leased, or used by the Contractor in the course of providing services pursuant to this Agreement. The coverage shall contain no special limitations on the scope of protection afforded to City or its officers, employees, agents, or authorized volunteers.

A certified endorsement must be attached to all policies stating that coverage is primary insurance with respect to City and its officers, officials, employees and volunteers, and that no insurance or self-insurance maintained by City shall be called upon to contribute to a loss under the coverage.

**4.4.5 Subcontractors.** Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

**4.4.6 Variation.** The City Attorney may approve in writing a variation in the foregoing insurance requirements, upon a determination that the coverage, scope, limits, and forms of such insurance are either not commercially available, or that City's interests are otherwise fully protected.

**4.4.7** No policy required hereunder shall prohibit Contractor from waiving any right with regard to the Indemnities set out below in Section 5.

**4.5 Remedies.** In addition to any other remedies City may have if Contractor

fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option, exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Contractor's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Contractor to stop work under this Agreement or withhold any payment that becomes due to Contractor hereunder, or both stop work and withhold any payment, until Contractor demonstrates compliance with the requirements hereof; and/or
- Terminate this Agreement.

#### **SECTION 5. INDEMNIFICATION**

Contractor 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 Contractor or by any individual or entity for which Contractor is legally liable, including but not limited to officers, agents, employees or subcontractors of Contractor. Such indemnification, defense and hold harmless extend to Contractor'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 Contractor 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 Contractor 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 Contractor 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 Contractor from liability under this indemnification and hold harmless clause. This indemnification 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, Contractor acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

## **SECTION 6. LEGAL REQUIREMENTS.**

- 6.1 **Governing Law.** The laws of the State of California shall govern this Agreement.
- 6.2 **Compliance with Applicable Laws.** Contractor and any subcontractor shall comply with all applicable local, state and federal laws and regulations applicable to the performance of the work hereunder.
- 6.3 **Licenses and Permits.** Contractor represents and warrants to City that Contractor and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that is legally required to practice their respective professions. Contractor represents and warrants to City that Contractor and its employees, agents and any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Contractor and any subcontractors shall obtain and maintain during the term of this Agreement valid business licenses from City.

## **SECTION 7. TERMINATION AND MODIFICATION.**

- 7.1 **Termination.** City and Contractor hereby agree that this Agreement may be cancelled upon 30 days' written notice.
- In the event of termination, Contractor shall be entitled to compensation for services performed to the effective date of termination; City, however, may condition payment of such compensation upon Contractor delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Contractor or prepared by or for Contractor or City in connection with this Agreement.
- 7.2 **Extension.** Both parties agree that extending the Agreement beyond that provided for in Subsection 1.1 may be in the best interest of all concerned. Any such extension shall require a written amendment to this Agreement, as provided for herein. City and Contractor understand and agree that, if both parties agree to such an extension, all terms and conditions of the original Agreement shall remain the same, and extended to the date provided for in said amendment.
- 7.3 **Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.
- 7.4 **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Contractor shall survive the termination of this Agreement.



**7.5 Options upon Breach by Contractor.** If Contractor materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, any or all the following:

**7.5.1** Immediately terminate the Agreement;

**7.5.2** Retain the documents, and any other work product prepared by Contractor pursuant to this Agreement;

**7.5.3** Retain a different Contractor to complete the work described in Exhibit A not finished by Contractor; or

**7.5.4** Charge Contractor the difference between the costs to complete the work described in Exhibit A that is unfinished at the time of breach and the amount that City would have paid Contractor pursuant to Section 2 if Contractor had completed the work.

## **SECTION 8. KEEPING AND STATUS OF RECORDS.**

**8.1 Records Created as Part of Contractor's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form that Contractor prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of City. Contractor hereby agrees to deliver those documents to City upon termination of the Agreement.

**8.2 Contractor's Books and Records.** Contractor shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Contractor to this Agreement.

**8.3 Inspection and Audit of Records.** Any records or documents that Section 8.2 of this Agreement requires Contractor to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds Ten Thousand Dollars (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of City, for a period of three (3) years after final payment under the Agreement.

## **SECTION 9. UNAUTHORIZED ALIENS.**

Contractor hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, et seq., as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Contractor so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should any liability or sanctions be imposed against City for such use of unauthorized aliens, Contractor hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by City.

## **SECTION 10. CONFLICTS OF INTEREST.**

Contractor 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 interests of City or which would in any way hinder Consultant's performance of services under this Agreement. Contractor 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. Contractor agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement.

## **SECTION 11. MISCELLANEOUS PROVISIONS.**

- 11.1 **Assignment.** The expertise and experience of Contractor are material considerations for this Agreement. City has an interest in the qualifications of and capability of the persons and entities that will fulfill the duties and obligations imposed upon Contractor under this Agreement. In recognition of that interest, Contractor shall not assign or transfer this Agreement or any portion of this Agreement or the performance of any of Consultant's duties or obligations under this Agreement without the prior written consent of the City Council. Any attempted assignment shall be ineffective, null and void, and shall constitute a material breach of this Agreement entitling City to any and all remedies at law or in equity, including summary termination of this Agreement.
- 11.2 **Attorneys' Fees.** If either party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 11.3 **Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in Los Angeles County.


- 11.4 **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 11.5 **No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 11.6 **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and permitted assigns of the parties.
- 11.7 **Contractor Representative.** All matters under this Agreement shall be handled for Contractor by Kim Rhodes.
- 11.8 **City Contract Administration.** This Agreement shall be administered by Maryam Babaki, Director of Public Works and Development Services, or her designee ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.
- 11.9 **Notices.** Any written notice to Contractor shall be sent to:
- David Evans and Associates, Inc  
ATTN: Kim Rhodes  
4200 Concourse Street, Suite 150  
Ontario, CA 91764
- Any written notice to City shall be sent to:
- Maryam Babaki  
Director of Public Works and Development Services  
2535 Commerce Way  
Commerce, CA 90040
- 11.10 **Integration.** This Agreement, including the scope of work attached hereto and incorporated herein as Exhibit A, represents the entire and integrated agreement between City and Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral.
- 11.11 **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

The Parties have executed this Agreement as of the Effective Date.

CITY OF COMMERCE

  
Lilia Leon, Mayor

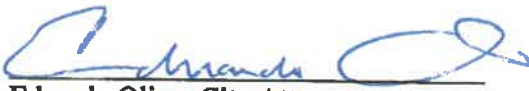
CONTRACTOR

  
Kim Rhodes, Vice President

Attest:

  
Lena Shumway, City Clerk

Approved as to Form:

  
Eduardo Olivo, City Attorney

## **EXHIBIT A – SCOPE OF SERVICES**

## **EXHIBIT A**

### **Landscape Architecture**

### **SAMPLE Scope of Services**

The following **sample** scope of services is provided to share with you how our team would approach preparing construction documents for a **STREETSCAPE/STREET IMPROVEMENT PROJECT**.

#### **Phase I - Construction Documents**

##### **Landscape Related Demolition, Construction Layout and Detail Coordination**

DEA will provide information to (and coordinate with) the engineer for landscape related items such as trees wells, benches, trash receptacles, planters, and accent paving in the medians and major intersection crosswalks, that will be included on the engineering demolition and construction plans. DEA will prepare and provide to the engineer construction details for the landscape related enhancement elements.

##### **Irrigation Plans**

The irrigation plan will identify the point of connection and meter location, irrigation equipment location and type (backflow preventer, controller, gate valves, remote control valves, main line, lateral lines, sleeves, and irrigation heads), irrigation equipment legend, and construction notes. This task will include coordination with the water purveyor in addition to obtaining plan approval. Irrigation notes and details will also be included.

##### **Planting Plans**

The planting plan will indicate location of new trees, shrubs, and groundcover in both the parkways and medians. A planting legend will denote symbols, botanical and common names, size, quantities, and remarks. Planting notes and details will also be included.

##### **Electrical and Lighting Plans (subconsultant)**

##### **Project Specifications and Bid Schedule**

Final technical specifications will be prepared in the desired format for the proposed streetscape elements. These specifications will be provided in a boiler plate format and DEA will modify the document accordingly. A complete bid list of all quantities will be provided indicating item descriptions, unit costs and totals.

##### **Final Opinion of Probable Construction Cost**

A final opinion of probable construction cost will be provided for items of construction. A detailed line item estimate of the site elements will be prepared for use as a guide in the final determination of items to be constructed under the allowed budget.

##### **Plan Reviews**

DEA will review plans, specifications, and estimate with staff at 65% and 95% completion and make necessary corrections to plans. DEA will submit two sets at each review. Final submittal will include two bond sets of plans for re-check.

##### **Final Construction Documents**

DEA will provide the city with mylars of drawings and electronic copies on a computer disk with all CADD drawings along with estimates, specifications and plans in the specified format.

##### **Bidding Process**

DEA's project manager will assist staff in the bidding process by attending the pre-bid conference and responding to questions raised by prospective bidders.

## **Phase II - Construction Observation**

### **Submittal and Reviews**

DEA's project manager will review products and materials submitted to the city for approval and respond within 7 working days.

### **Request for Information**

DEA's project manager will respond promptly to the contractor's request for information and prepare supplemental clarification drawings as needed.

### **Site Visits/Observation**

DEA team members will provide site visits as needed by a project manager, or landscape architect, as appropriate during the construction process with the general contractor and staff. Observations by the team include weekly observation, progress reports, quality control of installation and location of amenities, inspection of plant material at the site prior to installation, inspection of installed material quality, inspection of construction conformance to design documents, and construction schedule monitoring. It is our understanding that the city will provide a full-time inspector for the project in addition to necessary building /engineering inspectors to check forms, steel placement, concrete, plumbing and utilities.

## **Additional Services**

### **Trails**

DEA provides trail master planning and design with involvement often beginning at the community facilitation stage and then continues with preliminary trail design; development standards; right-of-way acquisition, if necessary; and final design and implementation. Our trails scope of services includes the following:

#### **Master Plans**

- Citywide Bicycle master plans
- Pedestrian trails
- Equestrian trails
- Bicycle trails

#### **Design and Planning**

- Class I, II, and III bike routes,
- Nature trails
- River trails
- Recreational trails
- Primitive trails
- Staging areas
- Trailheads
- Interpretive signage and wayfinding

### **Parks**

DEA provides sports/ recreational facilities planning and design services including sports fields, open space, trails, playgrounds, and associated recreational support facilities. New park designs include all aspects of active and passive elements such as sports courts, community centers, skate parks, water features, picnic shelters and tables, parking, amphitheaters, paths and trails, art in public places and age-appropriate play equipment.

### **Scenic Corridors**

The DEA team has been involved in numerous streetscape enhancement projects, downtown revitalization efforts, transportation corridor master plans, scenic bikeways, visual impact assessments, median and parkway improvements, traffic calming and roundabout projects. Our highway interchange experience encompasses renovation of landscaped areas in addition to providing bridge aesthetics, and preparing corridor master plans, project reports and interpretive signage. We consider the following elements:

- Landscape enhancements;
- Analysis of existing street trees (health, location, appropriateness, maintenance, water requirements, thematic elements);
- Integration / installation of new street furniture;
- Major intersection treatments and gateways;
- Placement of "Art in Public Places" if desired;
- Analysis and improvements of any ADA deficiencies;
- Upgrades to bus stops (access, visibility, design compatibility with street furniture and lighting);
- Consideration of planned and future development;
- Costs of improvements and phased implementation;
- Sidewalk treatment to maximize pedestrian flow and incorporate street furniture and landscaping;
- Analysis of street crossings to maximize safety and access (median refuge islands and bulb-outs);
- Improvements to bus stop locations (considering existing and future transit use);
- Pedestrian and vehicular lighting;
- Incorporation of bicycle traffic / signal detection;
- Wayfinding / Branding;
- Encouragement of Alternative Mode usage for regional connection and local circulation;
- Use of "green" materials;
- Urban greening; and
- Cumulative reduction in greenhouse gas emissions.

### **Construction Management**

DEA provides construction management services. Assigned tasks may include but are not limited to:

- Perform inspection of landscape construction for compliance with contract plans, specifications, and special provisions on all phases of construction, including commissioning of electrical irrigation controllers and other types of automatic water coverage and monitoring systems.
- Field inspection of clearing and grubbing work, fine grading, soil preparation, irrigation trenching, plant material inspection planting operations, and irrigation functional testing
- Utility coordination, calculations for hydraulic analysis, piping mechanics and strengths of materials as these relate to the design, construction and operation of irrigation systems, and quality assurance review of As-Built drawings submitted by the contractor.
- Preparation of daily, weekly and monthly reports as required
- Assist the construction manager in the preparation of contract change orders, contract estimates, progress pay estimates, and other documents or reports required for the project



## **EXHIBIT B – FEE SCHEDULE**

**EXHIBIT B**

Cost Proposal

**EXHIBIT 10-H COST PROPOSAL (EXAMPLE #2) PAGE 1 OF 2**  
**SPECIFIC RATE OF COMPENSATION (USE FOR ON-CALL OR AS-NEEDED CONTRACTS)**  
 (CONSTRUCTION ENGINEERING AND INSPECTION CONTRACTS)

Consultant or Subconsultant David Evans and Associates, Inc. Contract No. City of Commerce Date 12/7/2015

Fringe Benefit % 61.73% + Overhead % 119.91% + General Administration % 0.34% = Combined Indirect Cost Rate (ICR) % 181.98%  
 (= 0% if Included in OH) FEE % = 10%

**BILLING INFORMATION**

Name/Job Title/Classification <sup>1</sup>	Hourly Billing Rates <sup>2</sup>		OT(2x)	Effective date of hourly rate		Actual or Avg. hourly rate <sup>3</sup>	% or \$ increase	Hourly range - for classifications only
	Straight	OT(1.5x)		From	To			
Kim Rhodes - Project Manager Landscape Architect	\$195.41	\$293.12	\$390.82	Inception	12/31/16	\$63.00	0%	Not Applicable
	\$201.27	\$301.91	\$402.55	01/01/17	12/31/17	\$64.89	3.00%	
	\$207.31	\$310.97	\$414.63	01/01/18	12/31/18	\$66.84	3.00%	
Chris Giannini Landscape Architect	\$195.41	\$293.12	\$390.82	Inception	12/31/16	\$63.00	0	Not Applicable
	\$201.27	\$301.91	\$402.55	01/01/17	12/31/17	\$64.89	3.00%	
	\$207.31	\$310.97	\$414.63	01/01/18	12/31/18	\$66.84	3.00%	
Greg Clark Landscape Architect	\$164.39	\$246.59	\$328.79	Inception	12/31/16	\$53.00	0	Not Applicable
	\$169.33	\$253.99	\$338.65	01/01/17	12/31/17	\$54.59	3.00%	
	\$174.41	\$261.61	\$348.81	01/01/18	12/31/18	\$56.23	3.00%	
Almabeth Anderson Landscape Architect	\$133.38	\$200.06	\$266.75	Inception	12/31/16	\$43.00	0	Not Applicable
	\$137.38	\$206.07	\$274.76	01/01/17	12/31/17	\$44.29	3.00%	
	\$141.50	\$212.25	\$283.00	01/01/18	12/31/18	\$45.62	3.00%	
Bob Marshall Landscape Architect	\$127.17	\$190.76	\$254.35	Inception	12/31/16	\$41.00	0	Not Applicable
	\$130.99	\$196.48	\$261.98	01/01/17	12/31/17	\$42.23	3.00%	
	\$134.92	\$202.38	\$269.84	01/01/18	12/31/18	\$43.50	3.00%	

**CALCULATION INFORMATION**

- Names and classifications of consultant (key staff) team members must be listed. Provide separate sheets for prime and all subconsultant firms.
- Billing rate = actual hourly rate \* (1+ ICR) \* (1+ Fee). Agreed upon billing rates are not adjustable for the term of contract.
- For named employees enter the actual hourly rate. For classifications only, enter the Average Hourly Rate for that classification.

**NOTES:**

- Denote all employees subject to prevailing wage with an asterisks (\*)
- For "Other Direct Cost" listing, see page 2 of this Exhibit

**EXHIBIT B**

Cost Proposal

**EXHIBIT 10-H COST PROPOSAL (EXAMPLE #2) PAGE 1 OF 2**  
**SPECIFIC RATE OF COMPENSATION (USE FOR ON-CALL OR AS-NEEDED CONTRACTS)**  
 (CONSTRUCTION ENGINEERING AND INSPECTION CONTRACTS)

Consultant or Subconsultant

David Evans and Associates, Inc.

Contract No. City of Commerce

Date 12/7/2015

Fringe Benefit %

(= 0% if Included in OH)

61.73%

+

Overhead %

119.91%

+

General Administration %

0.34%

=

Combined Indirect Cost Rate (ICR) %

181.98%

FEE % = 10%

**BILLING INFORMATION****CALCULATION INFORMATION**

Name/Job Title/Classification <sup>1</sup>	Hourly Billing Rates <sup>2</sup>		Effective date of hourly rate		Actual or Avg. hourly rate <sup>3</sup>	% or \$ increase	Hourly range - for classifications only
	Straight	OT(1.5x)	OT(2x)	From To			
Danny Wang Landscape Designer	\$99.26 \$102.23 \$105.30	\$148.89 \$153.35 \$157.95	\$198.51 \$204.47 \$210.60	Inception 01/01/17 01/01/18	12/31/16 12/31/17 12/31/18	\$32.00 \$32.96 \$33.95	0% 3.00% 3.00%
Jon Oen Irrigation Designer	\$113.21 \$116.61 \$120.11	\$169.82 \$174.92 \$180.16	\$226.43 \$233.22 \$240.22	Inception 01/01/17 01/01/18	12/31/16 12/31/17 12/31/18	\$36.50 \$37.60 \$38.72	0 3.00% 3.00%
Ted Young Construction Inspector	\$124.07 \$127.79 \$131.63	\$186.11 \$191.69 \$197.44	\$248.14 \$255.59 \$263.25	Inception 01/01/17 01/01/18	12/31/16 12/31/17 12/31/18	\$40.00 \$41.20 \$42.44	0 3.00% 3.00%
Mark Perez Landscape Designer	\$107.79 \$111.02 \$114.35	\$161.68 \$166.53 \$171.53	\$215.57 \$222.04 \$228.70	Inception 01/01/17 01/01/18	12/31/16 12/31/17 12/31/18	\$34.75 \$35.79 \$36.87	0 3.00% 3.00%
Zaneta Kam Landscape Designer	\$65.14 \$67.09 \$69.10	\$97.71 \$100.64 \$103.66	\$130.27 \$134.18 \$138.21	Inception 01/01/17 01/01/18	12/31/16 12/31/17 12/31/18	\$21.00 \$21.63 \$22.28	0 3.00% 3.00%

- Names and classifications of consultant (key staff) team members must be listed. Provide separate sheets for prime and all subconsultant firms.
- Billing rate = actual hourly rate \* (1+ ICR) \* (1+ Fee). Agreed upon billing rates are not adjustable for the term of contract.
- For named employees enter the actual hourly rate. For classifications only, enter the Average Hourly Rate for that classification.

**NOTES:**

- Denote all employees subject to prevailing wage with an asterisks (\*)
- For "Other Direct Cost" listing, see page 2 of this Exhibit

**EXHIBIT B**

Cost Proposal

**EXHIBIT 10-H COST PROPOSAL (EXAMPLE #2) PAGE 1 OF 2**  
**SPECIFIC RATE OF COMPENSATION (USE FOR ON-CALL OR AS-NEEDED CONTRACTS)**  
 (CONSTRUCTION ENGINEERING AND INSPECTION CONTRACTS)

Consultant or Subconsultant David Evans and Associates, Inc. Contract No. City of Commerce Date 12/7/2015

Fringe Benefit % 61.73% + Overhead % 119.91% + General Administration % 0.34% = Combined Indirect Cost Rate (ICR) % 181.98%  
 (= 0% if Included in OH) FEE % = 10%

**BILLING INFORMATION**

Name/Job Title/Classification <sup>1</sup>	Hourly Billing Rates <sup>2</sup>		Effective date of hourly rate		Actual or Avg. hourly rate <sup>3</sup>	% or \$ increase	Hourly range - for classifications only
	Straight	OT(1.5x)	OT(2x)	From To			
Senior Landscape Architect							\$45.00-\$60.00
Landscape Architect							\$39.00-\$45.00
Landscape Designer							\$28.00-\$38.00
Jr. Landscape Designer							\$20.00-\$27.00
Administrative Assistant							\$30.00-\$33.00

**CALCULATION INFORMATION**

- Names and classifications of consultant (key staff) team members must be listed. Provide separate sheets for prime and all subconsultant firms.
- Billing rate = actual hourly rate \* (1+ ICR) \* (1+ Fee). Agreed upon billing rates are not adjustable for the term of contract.
- For named employees enter the actual hourly rate. For classifications only, enter the Average Hourly Rate for that classification.

**NOTES:**

- Denote all employees subject to prevailing wage with an asterisks (\*)
- For "Other Direct Cost" listing, see page 2 of this Exhibit

**EXHIBIT B**

Cost Proposal

**EXHIBIT 10-H COST PROPOSAL PAGE 2 OF 2**  
**SPECIFIC RATE OF COMPENSATION (USE FOR ON-CALL OR AS-NEEDED CONTRACTS)**  
 (CONSTRUCTION ENGINEERING AND INSPECTION CONTRACTS)

Consultant or Subconsultant

David Evans and Associates, Inc.

Contract No. City of Commer

Date 12/7/2015

**SCHEDULE OF OTHER DIRECT COST ITEMS**

PRIME CONSULTANT							
DESCRIPTION OF ITEMS	UNIT	UNIT COST	TOTAL				
Printing and Reproductions							
A. Outside Vendor Printing	EA	(1)					
B. Graphic Reproduction	EA	(1)					
Vehicle Expenses							
A. Personal Vehicle Mileage	EA	(5)					
Delivery Services							
A. Overnight Mail Service	EA	(1)					
B. Courier Service	EA	(1)					
Miscellaneous							
A. Travel Expenses	EA	(5)					
PRIME TOTAL ODCs =			\$0				

**IMPORTANT NOTES:**

1. These costs should be competitive in their respective industries, supported with appropriate documentations, and detailed in executed Task Orders.
2. Proposed items should be consistently billed directly to all clients (Commercial entities, Federal Govt., State Govt., and Local Govt. Agency), and not just when the client will pay for them as a direct cost.
3. Items when incurred for the same purpose, in like circumstance, should not be included in any indirect cost pool or in the overhead rate.
4. Items such as special tooling, will be reimbursed at actual cost with supporting documentation (invoice)
5. Travel related costs should be pre-approved by the City Contract Manager, reimbursed in accordance to Travel and Expense Claims Guidelines for Consultants, and detailed in executed Task Orders.
6. If an item needs to be listed here as "tools of the trade" that is part of indirect cost and not applicable as a direct cost, note as Not Applicable (NA).



## PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT for Professional Services ("Agreement") is made this day of \_\_\_\_\_ ("Effective Date") by and between the City of Commerce ("City") and David Volz Design Landscape Architects, Inc. ("Contractor") together sometimes referred to the ("Parties").

**SECTION 1. SERVICES.** Subject to the terms and conditions set forth in this Agreement, Contractor shall provide to City the services described in the Scope of Work attached as Exhibit A and incorporated here. Such work shall be provided at the time and place and in the manner specified in Exhibit A. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, this Agreement shall prevail.

- 1.1 **Term of Services.** The term of this Agreement shall begin on the Effective Date and shall end three years after the Effective Date. Contractor shall complete the work described in Exhibit A prior to that date, unless the term of the Agreement is otherwise terminated or extended as provided for in Section 7. The time provided to Contractor to complete the services required by this Agreement shall not affect City's right to terminate the Agreement, as provided for in Section 7.
- 1.2 **Standard of Performance.** Contractor shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner including the necessary expertise or knowledge of the profession in which Contractor is engaged in the geographical area in which Contractor practices its profession and to the sole satisfaction of the Contract Administrator.
- 1.3 **Assignment of Personnel.** Contractor shall assign only competent personnel to perform services pursuant to Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons. Contractor shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.
- 1.4 **Time.** Contractor shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to satisfy Contractor's obligations hereunder.
- 1.5 **Authorization to Perform Services.** Contractor is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from City's project representative.

**SECTION 2. COMPENSATION.** City hereby agrees to pay Contractor in accordance with the payment schedule as set forth in Exhibit B, attached hereto and incorporated herein by reference as though set forth in full, based upon work completed, as defined in Exhibit A. In the event of a conflict between this Agreement and Exhibit A regarding the amount of

compensation, this Agreement shall prevail. City shall pay Contractor for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Contractor for services rendered pursuant to this Agreement. Contractor shall submit all invoices to City in the manner specified herein. Except as specifically authorized in advance by City, Contractor shall not bill City for duplicate services performed by more than one person.

- 2.1 **Invoices.** Contractor shall submit invoices monthly during the term of this Agreement, based on the work completed. Invoices shall identify the project being worked on and detail of services performed.
- 2.2 **Payment.** City shall make monthly payments, based on invoices received, for services satisfactorily performed and for authorized reimbursable costs incurred. City shall have 30 days from the receipt of an invoice that complies with all of the requirements above to pay Contractor.
- 2.3 **Total Payment.** City shall not pay any additional sum for any expense or cost whatsoever incurred by Contractor in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.
- 2.4 **Payment of Taxes.** Contractor is solely responsible for the payment of employment taxes incurred under this Agreement and any federal or state taxes.
- 2.5 **Payment upon Termination.** In the event that City or Contractor terminates this Agreement pursuant to Section 7, City shall compensate the Contractor for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Contractor shall maintain adequate logs and timesheets in order to verify costs incurred to that date.

**SECTION 3. EQUIPMENT.** Except as otherwise provided, Contractor shall, at its sole cost and expense, provide all supplies and equipment necessary to perform the services required by this Agreement.

**SECTION 4. INSURANCE REQUIREMENTS.** Before beginning any work under this Agreement, Contractor, at its own cost and expense, shall procure the types and amounts of insurance checked below and provide Certificates of Insurance, indicating that Contractor has obtained or currently maintains insurance that meets the requirements of this section and which is satisfactory, in all respects, to City. Contractor shall maintain the insurance policies required by this section throughout the term of this Agreement. Contractor shall not allow any subcontractor to commence work on any subcontract until Contractor has obtained all insurance required herein for the subcontractor(s) and provided evidence thereof to City. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution. All insurance coverage and limits provided by Contractor and available or applicable under this



Agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement limits the application of such insurance coverage.

- 4.1 Workers' Compensation.** Contractor shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Contractor. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance Shall be provided with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per accident. In the alternative, Contractor may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the Contract Administrator. The insurer, if insurance is provided, or the Contractor, if a program of self-insurance is provided, shall waive all rights of subrogation against City and its officers, officials, employees, and authorized volunteers for loss arising from work performed under this Agreement.

**4.2 Commercial General Insurance and Automobile Liability Insurance.**

- 4.2.1 Commercial General Liability Insurance:** Contractor, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than TWO MILLION DOLLARS (\$2,000,000.00) per occurrence, combined single limit coverage of \$2,000,000 in the general aggregate, for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.
- 4.2.2 Minimum scope of coverage.** Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (per occurrence). 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.
- 4.2.3 Additional requirements.** Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:

- a. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- b. Any failure of Contractor to comply with reporting provisions of the policy shall not affect coverage provided to City and its officers, employees, agents, and volunteers.

#### **4.3 Professional Liability Insurance.**

**4.3.1 General requirements.** Contractor, at its own cost and expense, shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000) covering the licensed professionals' errors and omissions.

**4.3.2 Claims-made limitations.** The following provisions shall apply if the professional liability coverage is written on a claims-made form:

- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
- b. Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the Agreement or the work, so long as commercially available at reasonable rates.
- c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Contractor must provide extended reporting coverage for a minimum of five years after completion of the Agreement or the work. City shall have the right to exercise, at the Contractor's sole cost and expense, any extended reporting provisions of the policy, if the Contractor cancels or does not renew the coverage.
- d. A copy of the claim reporting requirements must be submitted to City prior to the commencement of any work under this Agreement.

#### **4.4 All Policies Requirements.**

**4.4.1 Acceptability of insurers.** All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A-.

**4.4.2 Verification of coverage.** Prior to beginning any work under this Agreement, Contractor shall furnish City with Certificates of Insurance, and upon request, complete certified copies of all policies, including

complete certified copies of all endorsements. All copies of policies and certified endorsements shall show the signature of a person authorized by that insurer to bind coverage on its behalf.

**4.4.3 Notice of Reduction in or Cancellation of Coverage.** A certified endorsement shall be attached to all insurance obtained pursuant to this Agreement stating that coverage shall not be suspended, voided, canceled by either party, or reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified, mail, return receipt requested, has been given to City. In the event that any coverage required by this section is reduced, limited, cancelled, or materially affected in any other manner, Contractor shall provide written notice to City at Contractor's earliest possible opportunity and in no case later than ten (10) working days after Contractor is notified of the change in coverage.

**4.4.4 Additional insured; primary insurance.** City and its officers, employees, agents, and authorized volunteers shall be covered as additional insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Contractor, including the insured's general supervision of Contractor; products and completed operations of Contractor, as applicable; premises owned, occupied, or used by Contractor; and automobiles owned, leased, or used by the Contractor in the course of providing services pursuant to this Agreement. The coverage shall contain no special limitations on the scope of protection afforded to City or its officers, employees, agents, or authorized volunteers.

A certified endorsement must be attached to all policies stating that coverage is primary insurance with respect to City and its officers, officials, employees and volunteers, and that no insurance or self-insurance maintained by City shall be called upon to contribute to a loss under the coverage.

**4.4.5 Subcontractors.** Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

**4.4.6 Variation.** The City Attorney may approve in writing a variation in the foregoing insurance requirements, upon a determination that the coverage, scope, limits, and forms of such insurance are either not commercially available, or that City's interests are otherwise fully protected.

**4.4.7** No policy required hereunder shall prohibit Contractor from waiving any right with regard to the Indemnities set out below in Section 5.

**4.5 Remedies.** In addition to any other remedies City may have if Contractor fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option, exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Contractor's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Contractor to stop work under this Agreement or withhold any payment that becomes due to Contractor hereunder, or both stop work and withhold any payment, until Contractor demonstrates compliance with the requirements hereof; and/or
- Terminate this Agreement.

## **SECTION 5. INDEMNIFICATION**

Contractor 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 Contractor or by any individual or entity for which Contractor is legally liable, including but not limited to officers, agents, employees or subcontractors of Contractor. Such indemnification, defense and hold harmless extend to Contractor'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 Contractor 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 Contractor 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 Contractor 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 Contractor from liability under this indemnification and hold harmless clause. This indemnification 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, Contractor acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

## **SECTION 6. LEGAL REQUIREMENTS.**

- 6.1 **Governing Law.** The laws of the State of California shall govern this Agreement.
- 6.2 **Compliance with Applicable Laws.** Contractor and any subcontractor shall comply with all applicable local, state and federal laws and regulations applicable to the performance of the work hereunder.
- 6.3 **Licenses and Permits.** Contractor represents and warrants to City that Contractor and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that is legally required to practice their respective professions. Contractor represents and warrants to City that Contractor and its employees, agents and any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Contractor and any subcontractors shall obtain and maintain during the term of this Agreement valid business licenses from City.

## **SECTION 7. TERMINATION AND MODIFICATION.**

- 7.1 **Termination.** City and Contractor hereby agree that this Agreement may be cancelled upon 30 days' written notice.

In the event of termination, Contractor shall be entitled to compensation for services performed to the effective date of termination; City, however, may condition payment of such compensation upon Contractor delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Contractor or prepared by or for Contractor or City in connection with this Agreement.

- 7.2 **Extension.** Both parties agree that extending the Agreement beyond that provided for in Subsection 1.1 may be in the best interest of all concerned. Any such extension shall require a written amendment to this Agreement, as provided for herein. City and Contractor understand and agree that, if both parties agree to such an extension, all terms and conditions of the original Agreement shall remain the same, and extended to the date provided for in said amendment.
- 7.3 **Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.
- 7.4 **Survival.** All obligations arising prior to the termination of this Agreement and

all provisions of this Agreement allocating liability between City and Contractor shall survive the termination of this Agreement.

- 7.5 Options upon Breach by Contractor.** If Contractor materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, any or all the following:

- 7.5.1** Immediately terminate the Agreement;
- 7.5.2** Retain the documents, and any other work product prepared by Contractor pursuant to this Agreement;
- 7.5.3** Retain a different Contractor to complete the work described in Exhibit A not finished by Contractor; or
- 7.5.4** Charge Contractor the difference between the costs to complete the work described in Exhibit A that is unfinished at the time of breach and the amount that City would have paid Contractor pursuant to Section 2 if Contractor had completed the work.

## **SECTION 8. KEEPING AND STATUS OF RECORDS.**

- 8.1 Records Created as Part of Contractor's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form that Contractor prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of City. Contractor hereby agrees to deliver those documents to City upon termination of the Agreement.
- 8.2 Contractor's Books and Records.** Contractor shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Contractor to this Agreement.
- 8.3 Inspection and Audit of Records.** Any records or documents that Section 8.2 of this Agreement requires Contractor to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds Ten Thousand Dollars (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any

audit of City, for a period of three (3) years after final payment under the Agreement.

#### **SECTION 9. UNAUTHROIZED ALIENS.**

Contractor hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, et seq., as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Contractor so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should any liability or sanctions be imposed against City for such use of unauthorized aliens, Contractor hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by City.

#### **SECTION 10. CONFLICTS OF INTEREST.**

Contractor 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 interests of City or which would in any way hinder Consultant's performance of services under this Agreement. Contractor 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. Contractor agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement.

#### **SECTION 11. MISCELLANEOUS PROVISIONS.**

**11.1 Assignment.** The expertise and experience of Contractor are material considerations for this Agreement. City has an interest in the qualifications of and capability of the persons and entities that will fulfill the duties and obligations imposed upon Contractor under this Agreement. In recognition of that interest, Contractor shall not assign or transfer this Agreement or any portion of this Agreement or the performance of any of Consultant's duties or obligations under this Agreement without the prior written consent of the City Council. Any attempted assignment shall be ineffective, null and void, and shall constitute a material breach of this Agreement entitling City to any and all remedies at law or in equity, including summary termination of this Agreement.

**11.2 Attorneys' Fees.** If either party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

- 11.3 **Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in Los Angeles County.
- 11.4 **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 11.5 **No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 11.6 **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and permitted assigns of the parties.
- 11.7 **Contractor Representative.** All matters under this Agreement shall be handled for Contractor by David Volz.
- 11.8 **City Contract Administration.** This Agreement shall be administered by Maryam Babaki, Director of Public Works and Development Services, or her designee ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.
- 11.9 **Notices.** Any written notice to Contractor shall be sent to:
- David Volz Design Landscape Architects, Inc.  
ATTN: Jamie Graham  
151 Kalmus Dr  
Costa Mesa, CA 92626
- Any written notice to City shall be sent to:
- Maryam Babaki  
Director of Public Works and Development Services  
2535 Commerce Way  
Commerce, CA 90040
- 11.10 **Integration.** This Agreement, including the scope of work attached hereto and incorporated herein as Exhibit A, represents the entire and integrated agreement between City and Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral.



**11.11 Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

The Parties have executed this Agreement as of the Effective Date.

CITY OF COMMERCE

  
Lila Leon, Mayor

CONTRACTOR

  
David Volz, President

Attest:

  
Lena Shumway, City Clerk

Approved as to Form:

  
Eduardo Olivo, City Attorney

## **EXHIBIT A – SCOPE OF SERVICES**

## EXHIBIT A

### Scope of Services



David Volz Design will provide professional landscape architectural services for city projects. These services could include concept plans, master plans, studies, reports, estimates, construction documents and construction period services for any city lands or green space. These services could include design and administration services for any of the following elements.

- Site survey
- Street median and row plantings
- Aesthetic improvements
- Urban planning and design
- Environmental studies
- Community outreach
- Engineering
- Amenity and furnishings design
- Restrooms and park structures and buildings
- Sports fields and courts
- Playgrounds and exercise equipment
- Recreation facilities
- ADA improvements
- Water features
- Gardens, drought tolerant plantings, turf reduction design
- Lighting design
- Irrigation design
- Arborist, soils, geotechnical and other landscape related services
- Community outreach, surveys
- Signs and graphics, wayfinding
- Planting plans, tree tagging services
- Project management and coordination
- Concession stands, picnic shelters
- Park design
- Shop drawing review
- Construction administration, inspection
- Miscellaneous planning and design services related to public properties

## **EXHIBIT B – FEE SCHEDULE**

## EXHIBIT 10-H SAMPLE COST PROPOSAL (EXAMPLE #2) Page 1 of 2

SPECIFIC RATE OF COMPENSATION (USE FOR ON-CALL OR AS-NEEDED CONTRACTS)  
(CONSTRUCTION ENGINEERING AND INSPECTION CONTRACTS)

Note: Mark-ups are Not Allowed

Consultant or Subconsultant

David Volz Design Landscape Architects, Inc.

Contract No.

Date December 8, 2015

Fringe Benefit 50.00% + Overhead 60.00% + General Administration 110.00% = 220.00% Combined Indirect Cost Rate (ICR)  
(= 0% if Included in OH) (= 0% if Included in OH)

FEE = 10.00%

## BILLING INFORMATION

## CALCULATION INFORMATION

Name/Job Title/Classification <sup>1</sup>	Hourly Billing Rates <sup>2</sup>		Effective date of hourly rate		Actual or Avg. hourly rate <sup>3</sup>	% or \$ increase	Hourly range - for classifications only
	Straight	OT(1.5x) OT(2x)	From	To			
David Volz, Principal	\$ 220.00		12/01/2015	12/31/2018	\$ 62.50	0.00% 3.00% 0.00%	\$208 - \$231
Gary Vasquez, Senior Project Manager	\$ 193.00		12/01/2015	12/31/2018	\$ 54.83	0.00% 3.00% 0.00%	\$183 - \$203
Project Manager	\$ 135.00		12/01/2015	12/31/2018	\$ 38.35	0.00% 3.00% 0.00%	\$128 - 142
Landscape Architect	\$ 155.00		12/01/2015	12/31/2018	\$ 44.03	0.00% 3.00% 0.00%	\$147 - \$163
Project Designer / CADD Technician	\$ 121.00	\$ 181.50	12/01/2015	12/31/2018	\$ 37.81	0.00% 3.00% 0.00%	\$115 - \$127
Administrative	\$ 110.00	\$ 165.00	12/01/2015	12/31/2018	\$ 31.25	3.00% 0.00%	\$105 - \$116

1. Names and classifications of consultant (key staff) team members must be listed. Provide separate sheets for prime and all subconsultant firms.

2. Billing rate = actual hourly rate \* (1 + ICR) \* (1 + Fee). Agreed upon billing rates are not adjustable for the term of contract.

3. For named employees enter the actual hourly rate. For classifications only, enter the Average Hourly Rate for that classification.

## NOTES:

- Denote all employees subject to prevailing wage with an asterisks (\*)
- For "Other Direct Cost" listing, see page 2 of this Exhibit

## EXHIBIT 10-H SAMPLE COST PROPOSAL (EXAMPLE #2) Page 2 of 2

SPECIFIC RATE OF COMPENSATION (USE FOR ON-CALL OR AS-NEEDED CONTRACTS)

(CONSTRUCTION ENGINEERING AND INSPECTION CONTRACTS)

Consultant or Subconsultant

David Volz Design Landscape Architects, Inc.

Contract No.

Date December 8, 2015

## SCHEDULE OF OTHER DIRECT COST ITEMS

PRIME CONSULTANT				SUBCONSULTANT #1				SUBCONSULTANT #2			
DESCRIPTION OF ITEMS	UNIT	UNIT COST	TOTAL	DESCRIPTION OF ITEMS	UNIT	UNIT COST	TOTAL	DESCRIPTION OF ITEMS	UNIT	UNIT COST	TOTAL
Bond 24x36 B/W		\$ 4.50	\$ 0.00				\$ 0.00				\$ 0.00
Bond 30x42 B/W		\$ 6.00	\$ 0.00				\$ 0.00				\$ 0.00
Bond 24x36 CLR		\$ 10.00	\$ 0.00				\$ 0.00				\$ 0.00
Bond 30x42 CLR		\$ 15.00	\$ 0.00				\$ 0.00				\$ 0.00
11x17 B/W		\$ 0.55	\$ 0.00				\$ 0.00				\$ 0.00
11x17 CLR		\$ 2.75	\$ 0.00				\$ 0.00				\$ 0.00
Photo 24x36 CLR		\$ 15.00	\$ 0.00				\$ 0.00				\$ 0.00
Photo 24x60 CLR		\$ 18.50	\$ 0.00				\$ 0.00				\$ 0.00
Photo 30x42 CLR		\$ 22.00	\$ 0.00				\$ 0.00				\$ 0.00
Letter B/W		\$ 0.15	\$ 0.00				\$ 0.00				\$ 0.00
PRIME TOTAL ODCs =			\$ 0.00	SUBCONSULTANT #1 ODCs =			\$ 0.00	SUBCONSULTANT #2 ODCs =			\$ 0.00

## IMPORTANT NOTES:

1. List direct cost items with estimated costs. These costs should be competitive in their respective industries and supported with appropriate documentations.
2. Proposed items should be consistently billed directly to all clients (Commercial entities, Federal Govt., State Govt., and Local Govt. Agency), and not just when the client will pay for them as a direct cost.
3. Items when incurred for the same purpose, in like circumstance, should not be included in any indirect cost pool or in the overhead rate.
4. Items such as special tooling, will be reimbursed at actual cost with supporting documentation (invoice).
5. Items listed above that would be considered "tools of the trade" are not reimbursable as other direct cost.
6. Travel related costs should be pre-approved by the contracting agency.
7. If mileage is claimed, the rate should be properly supported by the consultant's calculation of their actual costs for company vehicles. In addition, the miles claimed should be supported by mileage logs.
8. If a consultant proposes rental costs for a vehicle, the company must demonstrate that this is their standard procedure for all of their contracts and that they do not own any vehicles that could be used for the same purpose.



## PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT for Professional Services ("Agreement") is made this day of \_\_\_\_\_ ("Effective Date") by and between the City of Commerce ("City") and Hirsch and Associates, Inc. ("Contractor") together sometimes referred to the ("Parties").

**SECTION 1. SERVICES.** Subject to the terms and conditions set forth in this Agreement, Contractor shall provide to City the services described in the Scope of Work attached as Exhibit A and incorporated here. Such work shall be provided at the time and place and in the manner specified in Exhibit A. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, this Agreement shall prevail.

- 1.1 **Term of Services.** The term of this Agreement shall begin on the Effective Date and shall end three years after the Effective Date. Contractor shall complete the work described in Exhibit A prior to that date, unless the term of the Agreement is otherwise terminated or extended as provided for in Section 7. The time provided to Contractor to complete the services required by this Agreement shall not affect City's right to terminate the Agreement, as provided for in Section 7.
- 1.2 **Standard of Performance.** Contractor shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner including the necessary expertise or knowledge of the profession in which Contractor is engaged in the geographical area in which Contractor practices its profession and to the sole satisfaction of the Contract Administrator.
- 1.3 **Assignment of Personnel.** Contractor shall assign only competent personnel to perform services pursuant to Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons. Contractor shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.
- 1.4 **Time.** Contractor shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to satisfy Contractor's obligations hereunder.
- 1.5 **Authorization to Perform Services.** Contractor is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from City's project representative.

**SECTION 2. COMPENSATION.** City hereby agrees to pay Contractor in accordance with the payment schedule as set forth in Exhibit B, attached hereto and incorporated herein by reference as though set forth in full, based upon work completed, as defined in Exhibit A. In the event of a conflict between this Agreement and Exhibit A regarding the amount of compensation, this Agreement shall prevail. City shall pay Contractor for services rendered



pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Contractor for services rendered pursuant to this Agreement. Contractor shall submit all invoices to City in the manner specified herein. Except as specifically authorized in advance by City, Contractor shall not bill City for duplicate services performed by more than one person.

- 2.1 **Invoices.** Contractor shall submit invoices monthly during the term of this Agreement, based on the work completed. Invoices shall identify the project being worked on and detail of services performed.
- 2.2 **Payment.** City shall make monthly payments, based on invoices received, for services satisfactorily performed and for authorized reimbursable costs incurred. City shall have 30 days from the receipt of an invoice that complies with all of the requirements above to pay Contractor.
- 2.3 **Total Payment.** City shall not pay any additional sum for any expense or cost whatsoever incurred by Contractor in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.
- 2.4 **Payment of Taxes.** Contractor is solely responsible for the payment of employment taxes incurred under this Agreement and any federal or state taxes.
- 2.5 **Payment upon Termination.** In the event that City or Contractor terminates this Agreement pursuant to Section 7, City shall compensate the Contractor for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Contractor shall maintain adequate logs and timesheets in order to verify costs incurred to that date.

**SECTION 3. EQUIPMENT.** Except as otherwise provided, Contractor shall, at its sole cost and expense, provide all supplies and equipment necessary to perform the services required by this Agreement.

**SECTION 4. INSURANCE REQUIREMENTS.** Before beginning any work under this Agreement, Contractor, at its own cost and expense, shall procure the types and amounts of insurance checked below and provide Certificates of Insurance, indicating that Contractor has obtained or currently maintains insurance that meets the requirements of this section and which is satisfactory, in all respects, to City. Contractor shall maintain the insurance policies required by this section throughout the term of this Agreement. Contractor shall not allow any subcontractor to commence work on any subcontract until Contractor has obtained all insurance required herein for the subcontractor(s) and provided evidence thereof to City. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution. All insurance coverage and limits provided by Contractor and available or applicable under this Agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement limits the application of such insurance coverage.

**4.1 Workers' Compensation.** Contractor shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Contractor. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance Shall be provided with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per accident. In the alternative, Contractor may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the Contract Administrator. The insurer, if insurance is provided, or the Contractor, if a program of self-insurance is provided, shall waive all rights of subrogation against City and its officers, officials, employees, and authorized volunteers for loss arising from work performed under this Agreement.

**4.2 Commercial General Insurance and Automobile Liability Insurance.**

**4.2.1 Commercial General Liability Insurance:** Contractor, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than TWO MILLION DOLLARS (\$2,000,000.00) per occurrence, combined single limit coverage of \$2,000,000 in the general aggregate, for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

**4.2.2 Minimum scope of coverage.** Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (per occurrence). 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.

**4.2.3 Additional requirements.** Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:

- a. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.

- b. Any failure of Contractor to comply with reporting provisions of the policy shall not affect coverage provided to City and its officers, employees, agents, and volunteers.

#### **4.3 Professional Liability Insurance.**

**4.3.1 General requirements.** Contractor, at its own cost and expense, shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000) covering the licensed professionals' errors and omissions.

**4.3.2 Claims-made limitations.** The following provisions shall apply if the professional liability coverage is written on a claims-made form:

- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
- b. Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the Agreement or the work, so long as commercially available at reasonable rates.
- c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Contractor must provide extended reporting coverage for a minimum of five years after completion of the Agreement or the work. City shall have the right to exercise, at the Contractor's sole cost and expense, any extended reporting provisions of the policy, if the Contractor cancels or does not renew the coverage.
- d. A copy of the claim reporting requirements must be submitted to City prior to the commencement of any work under this Agreement.

#### **4.4 All Policies Requirements.**

**4.4.1 Acceptability of insurers.** All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A-.

**4.4.2 Verification of coverage.** Prior to beginning any work under this Agreement, Contractor shall furnish City with Certificates of Insurance, and upon request, complete certified copies of all policies, including complete certified copies of all endorsements. All copies of policies and certified endorsements shall show the signature of a person authorized by that insurer to bind coverage on its behalf.

**4.4.3 Notice of Reduction in or Cancellation of Coverage.** A certified endorsement shall be attached to all insurance obtained pursuant to this Agreement stating that coverage shall not be suspended, voided, canceled by either party, or reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified, mail, return receipt requested, has been given to City. In the event that any coverage required by this section is reduced, limited, cancelled, or materially affected in any other manner, Contractor shall provide written notice to City at Contractor's earliest possible opportunity and in no case later than ten (10) working days after Contractor is notified of the change in coverage.

**4.4.4 Additional insured; primary insurance.** City and its officers, employees, agents, and authorized volunteers shall be covered as additional insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Contractor, including the insured's general supervision of Contractor; products and completed operations of Contractor, as applicable; premises owned, occupied, or used by Contractor; and automobiles owned, leased, or used by the Contractor in the course of providing services pursuant to this Agreement. The coverage shall contain no special limitations on the scope of protection afforded to City or its officers, employees, agents, or authorized volunteers.

A certified endorsement must be attached to all policies stating that coverage is primary insurance with respect to City and its officers, officials, employees and volunteers, and that no insurance or self-insurance maintained by City shall be called upon to contribute to a loss under the coverage.

**4.4.5 Subcontractors.** Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

**4.4.6 Variation.** The City Attorney may approve in writing a variation in the foregoing insurance requirements, upon a determination that the coverage, scope, limits, and forms of such insurance are either not commercially available, or that City's interests are otherwise fully protected.

**4.4.7** No policy required hereunder shall prohibit Contractor from waiving any right with regard to the Indemnities set out below in Section 5.

**4.5 Remedies.** In addition to any other remedies City may have if Contractor

fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option, exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Contractor's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Contractor to stop work under this Agreement or withhold any payment that becomes due to Contractor hereunder, or both stop work and withhold any payment, until Contractor demonstrates compliance with the requirements hereof; and/or
- Terminate this Agreement.

#### **SECTION 5. INDEMNIFICATION**

Contractor 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 Contractor or by any individual or entity for which Contractor is legally liable, including but not limited to officers, agents, employees or subcontractors of Contractor. Such indemnification, defense and hold harmless extend to Contractor'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 Contractor 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 Contractor 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 Contractor 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 Contractor from liability under this indemnification and hold harmless clause. This indemnification 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, Contractor acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

## **SECTION 6. LEGAL REQUIREMENTS.**

- 6.1 **Governing Law.** The laws of the State of California shall govern this Agreement.
- 6.2 **Compliance with Applicable Laws.** Contractor and any subcontractor shall comply with all applicable local, state and federal laws and regulations applicable to the performance of the work hereunder.
- 6.3 **Licenses and Permits.** Contractor represents and warrants to City that Contractor and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that is legally required to practice their respective professions. Contractor represents and warrants to City that Contractor and its employees, agents and any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Contractor and any subcontractors shall obtain and maintain during the term of this Agreement valid business licenses from City.

## **SECTION 7. TERMINATION AND MODIFICATION.**

- 7.1 **Termination.** City and Contractor hereby agree that this Agreement may be cancelled upon 30 days' written notice.
- In the event of termination, Contractor shall be entitled to compensation for services performed to the effective date of termination; City, however, may condition payment of such compensation upon Contractor delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Contractor or prepared by or for Contractor or City in connection with this Agreement.
- 7.2 **Extension.** Both parties agree that extending the Agreement beyond that provided for in Subsection 1.1 may be in the best interest of all concerned. Any such extension shall require a written amendment to this Agreement, as provided for herein. City and Contractor understand and agree that, if both parties agree to such an extension, all terms and conditions of the original Agreement shall remain the same, and extended to the date provided for in said amendment.
- 7.3 **Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.
- 7.4 **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Contractor shall survive the termination of this Agreement.

**7.5** **Options upon Breach by Contractor.** If Contractor materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, any or all the following:

**7.5.1** Immediately terminate the Agreement;

**7.5.2** Retain the documents, and any other work product prepared by Contractor pursuant to this Agreement;

**7.5.3** Retain a different Contractor to complete the work described in Exhibit A not finished by Contractor; or

**7.5.4** Charge Contractor the difference between the costs to complete the work described in Exhibit A that is unfinished at the time of breach and the amount that City would have paid Contractor pursuant to Section 2 if Contractor had completed the work.

## **SECTION 8. KEEPING AND STATUS OF RECORDS.**

**8.1** **Records Created as Part of Contractor's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form that Contractor prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of City. Contractor hereby agrees to deliver those documents to City upon termination of the Agreement.

**8.2** **Contractor's Books and Records.** Contractor shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Contractor to this Agreement.

**8.3** **Inspection and Audit of Records.** Any records or documents that Section 8.2 of this Agreement requires Contractor to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds Ten Thousand Dollars (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of City, for a period of three (3) years after final payment under the Agreement.

## **SECTION 9. UNAUTHORIZED ALIENS.**

Contractor hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, et seq., as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Contractor so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should any liability or sanctions be imposed against City for such use of unauthorized aliens, Contractor hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by City.

## **SECTION 10. CONFLICTS OF INTEREST.**

Contractor 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 interests of City or which would in any way hinder Consultant's performance of services under this Agreement. Contractor 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. Contractor agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement.

## **SECTION 11. MISCELLANEOUS PROVISIONS.**

- 11.1 **Assignment.** The expertise and experience of Contractor are material considerations for this Agreement. City has an interest in the qualifications of and capability of the persons and entities that will fulfill the duties and obligations imposed upon Contractor under this Agreement. In recognition of that interest, Contractor shall not assign or transfer this Agreement or any portion of this Agreement or the performance of any of Consultant's duties or obligations under this Agreement without the prior written consent of the City Council. Any attempted assignment shall be ineffective, null and void, and shall constitute a material breach of this Agreement entitling City to any and all remedies at law or in equity, including summary termination of this Agreement.
- 11.2 **Attorneys' Fees.** If either party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 11.3 **Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in Los Angeles County.




- 11.4 **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 11.5 **No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 11.6 **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and permitted assigns of the parties.
- 11.7 **Contractor Representative.** All matters under this Agreement shall be handled for Contractor by Patrick Hirsch.
- 11.8 **City Contract Administration.** This Agreement shall be administered by Maryam Babaki, Director of Public Works and Development Services, or her designee ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.
- 11.9 **Notices.** Any written notice to Contractor shall be sent to:
- Hirsch and Associates, Inc.  
ATTN: Patrick Hirsch  
2221 Winston Road, Suite A  
Anaheim, CA 92806
- Any written notice to City shall be sent to:
- Maryam Babaki  
Director of Public Works and Development Services  
2535 Commerce Way  
Commerce, CA 90040
- 11.10 **Integration.** This Agreement, including the scope of work attached hereto and incorporated herein as Exhibit A, represents the entire and integrated agreement between City and Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral.
- 11.11 **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

The Parties have executed this Agreement as of the Effective Date.

CITY OF COMMERCE

  
Lilja Leon, Mayor

CONTRACTOR

  
Patrick Hirsch, President

Attest:

  
Lena Shumway, City Clerk

Approved as to Form:

  
Eduardo Olivo, City Attorney

## **EXHIBIT A – SCOPE OF SERVICES**



## **HIRSCH & ASSOCIATES, INC.**

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### **LANDSCAPE ARCHITECTURE & PLANNING**

#### **CITY OF COMMERCE ON-CALL SERVICES**

#### **LANDSCAPE ARCHITECTURE**

#### **APPROACH**

Hirsch & Associates Inc has designed multiple projects for each project category listed below. Landscape Architectural services will apply to all categories listed under 'Project Diversity', and include items listed under 'General Services Applicable to all Projects'. Categories listed under 'Services Provided by Associated Sub-Consultants' will be incorporated into the scope of services for the project as required.

Through our strong commitment to professional integrity and personal service, Hirsch & Associates, Inc. is dedicated to providing the comprehensive services necessary to achieve a final project from conceptualization through completion of construction. Our innovation and employment of advanced technologies, proven multi-discipline approach and demonstrated success of each project support this commitment.

Hirsch & Associates, Inc. understands the many and varied responsibilities and pressures placed upon our clients through the design and development process. Accurate design and quick response from highly qualified professional staff members is hallmark to the services we provide. Long-term client relationships are our ultimate goal.

All plans and communications are computer generated, and all consultant team members are connected via the Internet, so data transfer is quick and efficient. We can interface our services with our clients in the same manner.

Our approach to the planning and design of each project is to work closely with City Staff, Stakeholders and Community in the schematic planning stage of the project. This task will consist of gathering information from City staff as it relates to sports organizations, citizen organizations, community groups, special user groups to ensure the completed park reflects the true needs of the citizens.

Within this operational framework the following key points will be defined.

- Establish a sensitive, yet practical, design theme and character utilizing landscape and architectural features to identify a project as a unique recreational resource.
- Consider various circulation factors affecting development; bicycle, pedestrian, automobile and handicapped access.
- Create environmental and historical learning opportunities.
- Incorporate passive (solar) and economically feasible active energy and water conservation measures that comply with the California Model Water Efficient Landscape Ordinance.
- Evaluate emergency requirements influencing the design: fire protection, police and night security.

- We are cognizant of operational and maintenance associated with Municipal project. Therefore, we provide design and maintenance solutions that are sympathetic to both aesthetic and economic considerations.

### **PROJECT DIVERSITY**

#### **Municipal**

Civic Centers Landscape Design  
Redevelopment Projects  
Public Plazas & Fountains  
War Memorials  
Turf and Water Reduction Projects

#### **Transportation**

Streetscapes  
Freeway Landscape Design  
City Identification Signage  
Project Identification Signage  
Turf and Water Reduction Projects

#### **General Services Applicable to all Projects**

Conceptual Studies  
Feasibility Studies  
Sustainable Site Planning  
Low Impact Development  
Water Harvesting  
Domestic Water Irrigation Design  
Recycled Water Irrigation Design  
Irrigation System Audits  
ADA Retrofit  
Cost Estimating  
Community Outreach  
Community Workshops  
Filing of applications for approval to the City and other governmental agencies.

#### **Services Provided by Associated Sub-consultants**

CEQA Documentation  
Environmental Assessments  
Building Architecture  
Civil Engineering  
Electrical Engineering  
Geotechnical Engineering  
Traffic Engineering  
Acoustical Engineering  
Structural Engineering  
Land Survey and Topographical Aerial Mapping  
Agricultural Soil Suitability Testing  
Hydrology Studies  
SUSMP, SWPPP, NOI  
Preparation of Sports Field Lighting Photometric and Spill Light Levels  
Material testing and reports

#### **Computer Programs Applicable to all Projects**

AutoCAD 2015  
Microsoft Word  
Adobe In-Design Graphics

Adobe Photoshop  
Adobe Illustrator  
Sketch-up 3D Graphics  
Adobe Illustrator Suites  
Microsoft Projects (Project Scheduling)  
Microsoft Excel  
Microsoft Power Point  
Color Plotting and Printing

### **GENERAL SCOPE OF SERVICES**

(Definition; The words 'Hirsch & Associates' means HAI, Hirsch & Associates Inc and consultant team members. The word 'City' means the designated City, City representative or department).

**Basic Services.** Hirsch & Associates agrees to perform all the necessary professional landscape architectural, building architectural, engineering (e.g. mechanical, electrical, plumbing, structural, civil engineering) along with supporting earthwork, hydrology and hydraulic, structural, irrigation and incidental calculations to support the design of all on-site improvements, and construction administration services for the project as outlined in the following Scope of Services in a timely and professional manner, consistent with the standards of the profession.

**Project Management.** Hirsch & Associates will provide overall project management and project scheduling for the project design and consult team members throughout the entire length of the project. Hirsch & Associates will meet with City staff and others as directed to establish communications and formalized working relationships.

**City Provided Information.** The City will provide all existing documentation it has on file for the projects that may include topographical survey data and plans, utility locations and depths, survey information, copy of geotechnical engineering reports, copies of easement documentation, list of agencies having jurisdiction over the project and the contact person for the agency, all recorded parcel, tract or lot maps, legal descriptions, street improvement plans, storm drain plans for storm drains, and current flooding information.

The City shall supply Hirsch & Associates with the information and Hirsch & Associates will make a good-faith effort to verify the accuracy of such information by means of a thorough exterior visual survey of site conditions.

**Communication with City.** Hirsch & Associates shall participate in consultations and conferences with authorized representative of City and/or other local, regional, or state agencies concerned with the Project, which may be necessary for the completion of the Project or the development of the drawings, specifications and documents in accordance with the applicable standards and requirements of the City. Such consultations and conferences shall continue throughout the planning and construction of the Project and the contractor's warranty period. Hirsch & Associates shall take direction only from the City's Representative, or any other representative specifically designated by the City for this Project, including any construction manager hired by the City.

**Coordination and Cooperation with Construction Manager.** The City may hire a construction manager to administer and coordinate all or any part of the Project on its behalf. If the City does so, it shall provide a copy of the Scope of Work of its agreement with the construction manager so that Hirsch & Associates will be fully aware of the duties and responsibilities of the construction manager. Hirsch & Associates shall cooperate with the construction manager and respond to any request or directives authorized by the City to be made or given by the construction manager. Hirsch & Associates shall request clarification from the City in writing if the

Hirsch & Associates should have any questions regarding the authority of the construction manager.

### **INITIAL PLANNING**

During the initial planning phase of the Project, Hirsch & Associates shall do all of the following, as well as any incidental services thereto:

**Project Feasibility.** Hirsch & Associates will provide advice and assistance to City in determining the feasibility of the Project, analysis of the type and quality of materials and construction to be selected, the site location, and other initial planning matters.

**Meeting Budget and Project Goals.** Hirsch & Associates shall notify City in writing of potential complications, cost overruns, unusual conditions, and general needs that potentially impact the Project budget and time line, including the City's Preliminary Construction Budget. Hirsch & Associates will use our best judgment in determining the balance between the size, type and quality of construction to achieve a satisfactory solution to meet the Project's budget and construction allowance.

**Permits, Approvals and Authorizations.** Hirsch & Associates shall assist City in securing easements, encroachment permits, right of way, dedications, infrastructures and road improvement, as well as coordinating with utilities and adjacent property owners.

**Project Schedule.** Hirsch & Associates shall meet with the City to establish a preliminary project schedule at the beginning of the project, but after collection of the City provide information as indicated. The Project schedule shall be update from time to time during the Design Development Phase, and the Construction Document Phase. A preliminary project schedule is provided within our proposal for City's review and consideration.

**Topographic and Boundary Survey.** Hirsch & Associates will search City and County records for property and topographic information and will prepare a topographic and boundary survey of the Project site and the adjacent surrounding area to create a base map for design and preparation of improvement drawings. Conduct site inspection and analysis of survey to verify contents and photograph the existing conditions.

Five (5) control Points will be established to control the site. All control will be tied to the State Grid coordinates and GPS data for the area.

The topographic map will be prepared at a scale of 1"=40' showing a one (1) foot contour interval. The mapping will show all the visible planimeter features and will meet or exceed National Map Accuracy Standards.

**Geotechnical Investigation.** Hirsch & Associates will prepare a preliminary geotechnical investigation report. The report will contain all findings, conclusions and recommendations for site preparation including over-excavation/removal depth, allowable bearing value, foundation/footing/slab-on-grade depth and thickness, cement type, excavation characteristics, earth pressures for retaining walls design, general grading specifications, tentative pavement design, percolation rate of the soil and UBC (1997) seismic design coefficients.

**Agricultural Soil Suitability Test.** Hirsch & Associates will have a soil analysis prepare for the site to determine the soil texture and agricultural suitability of the on-site soil.

**Phase One Environmental Assessment.** Hirsch & Associates will have a Phase One Environmental Assessment prepare for the project site if requested by the City.

## **SCHEMATIC PLANNING**

During the schematic planning phase of the Project, Hirsch & Associates shall do all of the following, as well as any incidental services thereto:

**Funding Documents.** Hirsch & Associates shall provide a site plan and all other Project-related information necessary and required for an application by City to any federal, state, regional or local agencies for funds to finance the construction Project.

**Schematic Plans.** In cooperation with the City, Hirsch & Associates shall prepare preliminary plans and studies, schematic drawings, site utilization plans, and phasing plans showing the scale and relationship of the components of the Project, the plot plan development for the site, and the proposed architectural concept of the buildings ("Schematic Plans"). Hirsch & Associates shall incorporate the functional requirements of City into the Schematic Plans. The Schematic Building Plans shall show all rooms incorporated in each building of the Project in single-line drawings and shall include all revision required by City or by any federal, state, regional or local agency having jurisdiction over the Project. All drawings for the Project shall be in a form suitable for reproduction.

**Preliminary Project Budget.** Hirsch & Associates shall work with the City to establish a realistic preliminary project budget. The purpose of the Preliminary Project Budget is to show the probably project cost in relation to City's budget and available funding, and the construction standards of any applicable funding agency. If Hirsch & Associates perceives any site conditions, which render the Project expensive or cost prohibitive, Hirsch & Associates shall disclose such conditions in writing to City immediately.

**Copies of Schematic Plans and Other Documents.** Hirsch & Associates shall provide a one complete set of the Schematic Plans described herein for City's review and approval at Hirsch & Associates expense. Additionally, at City expense, Hirsch & Associates shall provide such documents as may be required by any federal, state, regional or local agencies concerned with the Project. Any additional copies required shall be provided and paid for by the City.

**Public Meetings.** Hirsch & Associates shall present schematic design plans to the Community, City's Park and Recreation Commission, Planning Commission, School Board, and City Council to receive comment and approval. (4 meetings are included for this item within our scope of work and fees).

**Renderings and Image Boards.** Hirsch & Associates will prepare final site master plan, material and image boards for the Project that are colored and mounted for public presentation along with a Power Point presentation for use at community, commission, board and council meetings.

## **DESIGN DEVELOPMENT**

During the design development phase of the Project, Hirsch & Associates shall do all of the following, as well as any incidental services thereto:

**Design Development Documents.** Once City provides us with specific written approval of the Schematic Plans described herein, Hirsch & Associates shall prepare design development documents consisting of: (1) site and floor plans; (2) elevations, and (3) drawings and documents sufficient to fix and describe the types and makeup of materials, as well as the size and character of the project's structural, mechanical and electrical systems, and an outline of the project specifications ("Design Development Documents"). The Design Development Documents shall be prepared in sufficient detail to present to the City for approval.

**Copies of Design Development and Other Documents.** Hirsch & Associates will provide, at our expenses one complete set of the Design Development Documents described herein for



City's review and approval. Additionally, at City's expense, Hirsch & Associates shall provide such documents as may be required by any federal, state, regional or local agencies concerned with the Project. Any additional copies required shall be provided and paid for by the City.

**Updated Project Budget.** Hirsch & Associates will use our Preliminary Project Budget and expertise and experience with the Project to establish an updated estimate of probable construction costs, containing detail consistent with the Design Development Documents as set forth herein and containing a breakdown based on types of materials and specification identified herein ("Updated Project Budget").

**Timetable.** Hirsch & Associates will update the project schedule for full and adequate completion of the Project after approval of the Design Development Plans by the City.

**Application for Approvals.** Hirsch & Associates shall assist City in applying for and obtaining required approvals from all federal, state (CEQA), regional or local agencies having jurisdiction over the project. Hirsch & Associates will furnish and process all architectural and engineering information required to prepare and process applications to applicable agencies and utility providers in order to secure approvals to aid in the construction of the Project and to obtain final Project approval and acceptance as may be required.

**Color and Other Aesthetic Issues.** Hirsch & Associates will provide, for City's review and approval, a preliminary schedule of all color materials and selection of textures, finishes and other matters involving an aesthetic decision about the Project.

**Photometric Light Level Study.** A photometric light level study will be prepared that illustrates foot-candle light levels for walkways and parking lots, and sports fields. This study will also indicate the foot-candle light level of spillover light within 40 feet of the perimeter of the Project.

#### **FINAL WORKING DRAWINGS AND SPECIFICATIONS (PS&E)**

During the final working drawings and specifications phase of the Project, Hirsch & Associates shall do all of the following, as well as any incidental services thereto:

**Final Working Drawings and Specifications.** Once City provides us with specific written approval of the Design Development Documents described herein, Hirsch & Associates will prepare such complete working drawings and specifications as are necessary for developing complete bids and for properly executing the Project work in an efficient and thorough manner ("Final Working Drawings and Specifications"). Such Final Working Drawings and Specifications shall be development from the Schematic Plans and Design Development Documents approved by City. The Final Working Drawings and Specifications shall set forth in detail all of the following: (1) the Project construction work to be done; (2) the materials, workmanship, finishes, and equipment required for the architectural, structural, mechanical, and electrical systems; and (3) the utility service connection equipment and all site work, water, power and storm drain improvements. Final working drawings will generally consist of the following.

- Cover Sheet.
- General Requirements and Notes
- Demolition (Clearing and Grubbing).
- Precise Grading Plans and Details.
- Erosion Control Plan and Details
- On Site Storm Drain Plans and Details
- SUSMP, SWPPP Documents
- Sewer and Water Plans and Details.
- Horizontal Control Plan
- Site Construction Plans and Details.
- Parking Lot Improvement Plans and Details.

- Architectural Plans and Details.
- Landscape and Irrigation Plans with Details.
- Electrical and Lighting Plans and Details.

**Form.** The Final Working Drawings and Specifications shall be in such form as will enable Hirsch & Associates and City to secure the required permits and approvals from all federal, state, regional or local agencies concerned with the Project. In addition, the Final Working Drawings and Specifications shall be in such form as will enable City to obtain, by competitive bidding, a responsible and responsive bid within the applicable budgetary limitations and cost standards. The Final Working Drawings and Specifications shall be clear and legible so that uniform copies may be on standard architectural size paper, properly indexed and numbered, and shall be capable of being clearly copied and assembled in a professional manner by Hirsch & Associates. All plans will be prepared in AutoCAD 2015. All specification will be prepared per the Construction Specification Index (CSI), 16-part specification, and reference the Standard Specifications for Public Works Construction latest addition.

**Approval and Revisions.** Hirsch & Associates shall submit the Final Working Drawings and Specifications to the City and all local agencies having jurisdiction over the project for review and approval. The City shall review, study, and check the Final Working Drawings and Specifications presented to it by Hirsch & Associates, and request any necessary revisions or obtain any necessary approvals by the City Council, subject to the approval of all federal, state, regional or local agencies having jurisdiction over the project. Hirsch & Associates shall make all requested changes and correction in the Final Working Drawings and Specifications at no additional cost, so long as they are not in conflict with the requirements of public agencies having jurisdiction or prior approval, or inconsistent with earlier City direction. Hirsch & Associates shall bring any such conflicts and/or inconsistencies to the attention of City. Prior to proceeding with corrections or changes the City and Hirsch & Associates agree that Hirsch & Associates, and not the City possess the requisite expertise to determine the constructability of the Final Working Drawings and Specifications.

However, the City reserves the right to conduct one or more constructability review processes with the Final Working Drawings and Specifications, and to hire an independent consultant to perform such reviews. Any such independent constructability review shall be at City's expense. Hirsch & Associates shall make all City-requested changes and correction in the Final Working Drawings and Specifications which may result from any constructability review, at no additional cost to the City, so long as they are not in conflict with the requirements of public agencies having jurisdiction or prior approval, or inconsistent with earlier City direction or Hirsch & Associates professional judgment. If such changes are inconsistent with prior City direction, Hirsch & Associates shall make such alterations and be compensated therefore pursuant to the Additional Services provision of this Agreement. The City prior to performance of such services will approve all additional compensation for services.

**Costs of Construction.** Hirsch & Associates shall work with the City to establish a realistic 'Final Project Budget' based upon the Final Working Drawings and Specifications. The Final Project Budget will be based upon quantities with unit prices extended to determine the final cost.

The City shall specify the sum of money set aside to cover the total cost of construction of the work, exclusive of Hirsch & Associates fees. Should the Final Project Budget determine that the total construction cost will exceed the specified sum, Hirsch & Associates shall at once present a statement in writing to the City's Representative setting forth this fact and giving a full statement of the cost estimates on which the conclusion is based. After review of the Final Project Cost, City shall provide direction to Hirsch & Associates on how to proceed with its work.

**Copies of Final Working Drawings and Specifications and Other Documents.** Hirsch & Associates, at its own expense, shall provide one complete set of the Final Working Drawings and Specifications described herein for City's review and approval. Additionally, at City's

expense, shall provide such documents as may be required by any federal, state, regional or local agencies concerned with the Project. Any additional copies required by City shall be provided at actual cost to City.

### **CONSTRUCTION CONTRACT DOCUMENTS**

During the construction contract documents phase of the Project, Hirsch & Associates shall do all of the following, as well as any incidental services thereto:

**Bid and Contract Documents.** In Conjunction with the City, Hirsch & Associates shall assist City in the completion of all bid and construction documents, including but not limited to, the Notice Inviting Bids, Instruction to Bidders, Contract Bid Forms (including Alternate Bids as requested by City), Contract, General Conditions, Supplementary General Conditions, Special Conditions, Performance Bond, Payment Bond, and any other certifications and documents required by federal, state and local laws, rules and regulations which may be reasonably required in order to obtain bids responsive to the specifications and drawings. All such documents shall be subject to the approval of City and City's legal counsel.

**Final Estimate.** At the time of delivery of the Construction Contract Documents, which shall include the Final Working Drawings and Specifications (collectively referred to herein as the "Construction Documents"), Hirsch & Associates shall provide City with its final estimate of probable construction cost ("Final Estimate").

### **PROJECT BIDDING**

During the project bidding phase of the Project, Hirsch & Associates shall do all the following, as well as any incidental services thereto:

**Reproducible Construction Documents.** Once City provides Hirsch & Associates with specific written approval of the Construction Documents and the Final Estimate, Hirsch & Associates shall provide to City one set of reproducible Construction Documents.

**Distribution of Contract Documents and Review of Bids.** City shall distribute the Construction Documents to bidders and conduct the bid opening and review of bids for the Project. Hirsch & Associates shall review bids received and provide comments to the City as to question concerning cost and budget.

**Over-budget.** If the apparent lowest responsive and responsible bid on the Project exceeds the Final Estimate by more than 10%, the City may request Hirsch & Associates to amend the Final Drawings and Specifications in order to re-bid the Project and receive a lowest responsive and responsible bid equal to or less than the Final Estimate. All revisions necessary to bring the lowest responsive and responsible bid within the Final Estimate, including any deletions, deferrals or alternates, shall be made in consultation with, and subject to the approval of the City.

### **PROJECT MANAGEMENT AND SUPPORT**

During the construction phase of the Project, Hirsch & Associates shall do all of the following, as well as any incidental services thereto:

**Observation.** The Hirsch & Associates shall observe work executed from the Final Working Drawings and Specifications in person.

**General Administration.** Hirsch & Associates shall provide general administration of the Construction Documents and the work performed by the general contractors. It is understood that each phase of the Project will be constructed under one general construction contract and not divided into several construction contracts or phased developments.

**Pre-Construction Meeting.** Hirsch & Associates shall conduct one or more pre-construction meetings, as the City determines is needed for the Project, with all interested parties.

**Site Visits of Contractor's Work.** Hirsch & Associates shall attend site visits to observe the work of the general contractor for general conformance with the Construction Documents and with any approved construction schedule or milestones. Such site meetings shall be conducted bi-weekly basis and appropriate to the stage of construction.

**Coordination of Hirsch & Associates Consultants.** Hirsch & Associates shall cause all consultants, as may be hired by Hirsch & Associates to observe the work completed under their disciplines as required, and approve and review all test results for general conformance with the Construction Documents.

**Reports.** Hirsch & Associates shall make regular reports as may be required by applicable federal, state or local laws, rules and regulations, as well as the federal, state, regional or local agencies concerned with the Project.

**Construction Meetings Minutes.** Hirsch & Associates shall attend all construction meetings and provide written reports/minutes to the City after each construction meeting in order to keep City informed of the progress of the work. Such meetings shall occur at a frequency necessary for the progress of the Project work, according to the City's sole discretion, but no less than bi-weekly.

**Written Reports.** Hirsch & Associates shall make written reports to City as necessary to inform City of problems arising during construction, changes contemplated as a result of any such problems, and progress of the Project work.

**Time Schedule.** Hirsch & Associates shall keep accurate written records of the progress and the time schedules, and shall advise the City and Contractors of any deviations from the time schedule that could delay timely completion of the Project.

**Material and Test Reports.** Hirsch & Associates shall check, in a timely manner, all required material and test reports prepared by others for the Project work. In addition, Hirsch & Associates shall provide notice of any deficiencies in material or work reflected in such reports, as well as its recommendation for correction of such deficiencies, to the City and Contractor. City shall employ a testing laboratory to perform all testing required for the Project. The City shall pay for all cost for collection of material samples and testing.

**Review and Response to Submission.** Hirsch & Associates shall review and respond, in a timely manner, to all schedules, submittals, shop drawings, samples, information requests (RFI), change requests, and other submissions of the general contractor and subcontractors for compliance with, or alterations and additions to, the Construction Documents. Hirsch & Associates review and response shall be done in such a manner so as to ensure the timely and uninterrupted progress of the Project work.

**Rejection of Work.** Hirsch & Associates shall promptly reject, after discussions with the City, work or materials that do not conform to the Construction Documents. Hirsch & Associates shall immediately notify the City and Contractor of such rejections. Hirsch & Associates shall also have the authority to recommend to the City that additional inspection or testing of the work be performed, whether or not such work is fabricated, installed or completed.

**Substitutions.** Hirsch & Associates shall consult with City, in a timely manner, with regard to substitution of materials, equipment and laboratory reports thereof, prior to the City's final written approval of such substitutions. Hirsch & Associates consultation shall be done in such a manner so as to ensure the timely and uninterrupted progress of the Project work.

**Change Requests and Material Changes.** Hirsch & Associates shall evaluate and advise City, in a timely manner and in writing, of any change requests and material change(s) that may be requested or necessary in the Project plans and specifications. Hirsch & Associates shall provide the City with its opinion as to whether such change requests should be approved, denied or revised. If the City has not hired a construction manager or other person to do so, the Hirsch & Associates shall prepare all change orders and submit them to the City for authorization. If the City has designated a construction manager or other person to prepare all change orders, the Hirsch & Associates shall review all change orders prepared by such person, and deliver them to the City for authorization if they meet with the Hirsch & Associates approval, or submit them to the City with recommendations for revision or denial if necessary. Hirsch & Associates shall not order Contractors to make any changes affecting the contract price without approval by City of such a written change order, pursuant to the terms of the Construction Documents.

**Applications for Payment.** Hirsch & Associates shall examine, review and approve contractor's applications for payment.

**Final Color and Product Selection.** Hirsch & Associates shall coordinate final color and product selection with City's in conjunction with the original design concept.

**Substantial Completion.** Hirsch & Associates shall determine the date of substantial completion, in consultation with the City.

**Punch List.** After determining that the Project is substantially complete, Hirsch & Associates shall participate in the inspection of the Project and shall review all remaining deficiencies and minor items needed to be corrected or completed on the Project, including those identified on the punch list prepared by the general contractor ("Punch List Items"). Hirsch & Associates shall notify general contractor in writing that all Punch List Items must be corrected prior to final acceptance of the Project and final payment. Hirsch & Associates shall also notify City of all Punch List Items.

**Warranties.** Hirsch & Associates shall review materials assembled by the general contractor and provided by the subcontractors with regard to all written warranties, guarantees, owners' manuals, instruction books, diagrams, record "as-built" drawings, and any other materials required from the general contractor and subcontractors pursuant to the Construction Documents. Hirsch & Associates shall coordinate and provide these materials to the City.

**Certificate of Completion.** Hirsch & Associates shall participate in any further inspections of the Project necessary to issue Certificate of Completion and final certificate for payment.

**Documents for Project Closeout.** Hirsch & Associates shall cause all other consultants, as may be hired by Hirsch & Associates, to file any and all required documentation with the City or other governmental authorities necessary to close out the Project. Hirsch & Associates shall assist the City in obtaining such documentation.

## **RECORD DRAWINGS**

During the record drawing phase of the Project, Hirsch & Associates shall do all the following, as well as any incidental services thereto:

**Record Drawings and Specifications.** Not later than thirty (30) days after substantial completion of the Project, Hirsch & Associates shall review and forward the Final Working Drawings and Specifications, indicating on them all changes made by change orders or otherwise pursuant to the Construction Documents, as well as all information called for on the specifications, thus producing an "record" set of Final Working Drawings and Specifications ("Record Drawings and Specifications"). The Record Drawings and Specifications shall show,

among other things, the location of all concealed pipe, buried conduit runs and other similar elements within the completed Project. Hirsch & Associates shall personally review the Record Drawings and Specifications to determine that they are a correct representation of the information supplied to Hirsch & Associates by any inspectors and the Contractor, and shall obtain certifications from any inspectors and the contractors that the drawings are correct.

**Approval.** Once City provides Hirsch & Associates with specific written approval of the Record Drawings and Specifications, Hirsch & Associates shall forward to City the complete set of original Records Drawings and Specifications. The tracing shall be of such quality that clear and legible prints may be made without appreciable and objectionable loss of detail.

**Final Documents.** Hirsch & Associates shall forward to City all of the following: (1) one clear and legible set of the Record Drawings and Specifications as required herein, (2) Certificate of Completion and (3) final geotechnical report.

#### **WARRANTY PERIOD.**

During the warranty period phase of the Project, Hirsch & Associates shall do all of the following, as well as any incidental services thereto:

**Advice.** Hirsch & Associates shall provide advice to City on apparent deficiencies in the Project during any applicable warranty periods for the Project.

## **EXHIBIT B – FEE SCHEDULE**

**EXHIBIT 10-H SAMPLE COST PROPOSAL (EXAMPLE #2)** Page 1 of 2  
**SPECIFIC RATE OF COMPENSATION (USE FOR ON-CALL OR AS-NEEDED CONTRACTS)**  
**(CONSTRUCTION ENGINEERING AND INSPECTION CONTRACTS)**

Note: Mark-ups are Not Allowed

Consultant: **HAI, Hirsch & Associates Inc.** Contract No. \_\_\_\_\_

Date December 8, 2015

Fringe Benefit % **15%+**      Overhead % **20%+**      General Administration % **65%**      Combined Indirect Cost Rate (ICR) **100%**  
 (= 0% if Included in OH)      (= 0% if Included in OH)

FEE % = **8.5%****BILLING INFORMATION****CALCULATION INFORMATION**

Name/Job Title/Classification <sup>1</sup>	Hourly Billing Rates <sup>2</sup>			Effective date of hourly rate From                      To		Actual or Avg. hourly rate <sup>3</sup>	% or \$ increase	Hourly range - for classifications only
	Straight	OT(1.5x)	OT(2x)					
Charles Foley Landscape Architect	\$110.00	\$165.00	\$220.00	07/1/2015	6/30/2016	\$110.00		Not Applicable
	\$112.20	\$183.60	\$224.40	07/1/2016	6/30/2017	\$112.20	2%	
	\$114.44	\$187.27	\$228.88	07/1/2017	6/30/2018	\$114.44	2%	
Mark Hirsch Sr. Project Manager	\$90.00	\$135.00	\$180.00	07/1/2015	6/30/2016	90.00		Not Applicable
	\$91.80	\$137.70	\$183.60	07/1/2016	6/30/2017	\$91.80	2%	
	\$93.63	\$140.45	\$187.27	07/1/2017	6/30/2018	\$93.63	2%	
Pamela Brown, Senior Designer	\$65.00	\$97.50	\$130.00	07/1/2015	6/30/2016	\$65.00		Not Applicable
	\$66.30	\$99.45	\$132.60	07/1/2016	6/30/2017	\$66.30	2%	
	\$67.62	\$101.44	\$135.52	07/1/2017	6/30/2018	\$67.62	2%	
Robert Jenkins Designer	\$60.00	\$90.00	\$120.00	07/1/2015	6/30/2016	\$60.00		Not Applicable
	\$61.20	\$91.80	\$122.40	07/1/2016	6/30/2017	\$61.20	2%	
	\$62.42	\$93.64	\$124.84	07/1/2017	6/30/2018	\$62.42	2%	
Chanel Hernandez, Clerical	\$25.00	\$37.50	\$50.00	07/1/2015	6/30/2016	\$25.00		Not Applicable
	\$25.50	\$38.25	\$51.00	07/1/2016	6/30/2017	\$25.50	2%	
	\$26.00	\$39.00	\$52.00	07/1/2017	6/30/2018	\$26.00	2%	

- Names and classifications of consultant (key staff) team members must be listed. Provide separate sheets for prime and all subconsultant firms.
- Billing rate = actual hourly rate \* (1+ ICR) \* (1+ Fee). Agreed upon billing rates are not adjustable for the term of contract.
- For named employees enter the actual hourly rate. For classifications only, enter the Average Hourly Rate for that classification.

**NOTES:**

- \* Debits all employees subject to prevailing wage with an asterisk (\*)
- \* For "Other Direct Cost" listing, see page 2 of this Exhibit





## PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT for Professional Services ("Agreement") is made this day of \_\_\_\_\_ ("Effective Date") by and between the City of Commerce ("City") and Moore Iacofano Goltsman, Inc. ("Contractor") together sometimes referred to the ("Parties").

**SECTION 1. SERVICES.** Subject to the terms and conditions set forth in this Agreement, Contractor shall provide to City the services described in the Scope of Work attached as Exhibit A and incorporated here. Such work shall be provided at the time and place and in the manner specified in Exhibit A. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, this Agreement shall prevail.

- 1.1 **Term of Services.** The term of this Agreement shall begin on the Effective Date and shall end three years after the Effective Date. Contractor shall complete the work described in Exhibit A prior to that date, unless the term of the Agreement is otherwise terminated or extended as provided for in Section 7. The time provided to Contractor to complete the services required by this Agreement shall not affect City's right to terminate the Agreement, as provided for in Section 7.
- 1.2 **Standard of Performance.** Contractor shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner including the necessary expertise or knowledge of the profession in which Contractor is engaged in the geographical area in which Contractor practices its profession and to the sole satisfaction of the Contract Administrator.
- 1.3 **Assignment of Personnel.** Contractor shall assign only competent personnel to perform services pursuant to Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons. Contractor shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.
- 1.4 **Time.** Contractor shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to satisfy Contractor's obligations hereunder.
- 1.5 **Authorization to Perform Services.** Contractor is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from City's project representative.

**SECTION 2. COMPENSATION.** City hereby agrees to pay Contractor in accordance with the payment schedule as set forth in Exhibit B, attached hereto and incorporated herein by reference as though set forth in full, based upon work completed, as defined in Exhibit A. In the event of a conflict between this Agreement and Exhibit A regarding the amount of compensation, this Agreement shall prevail. City shall pay Contractor for services rendered

pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Contractor for services rendered pursuant to this Agreement. Contractor shall submit all invoices to City in the manner specified herein. Except as specifically authorized in advance by City, Contractor shall not bill City for duplicate services performed by more than one person.

- 2.1 **Invoices.** Contractor shall submit invoices monthly during the term of this Agreement, based on the work completed. Invoices shall identify the project being worked on and detail of services performed.
- 2.2 **Payment.** City shall make monthly payments, based on invoices received, for services satisfactorily performed and for authorized reimbursable costs incurred. City shall have 30 days from the receipt of an invoice that complies with all of the requirements above to pay Contractor.
- 2.3 **Total Payment.** City shall not pay any additional sum for any expense or cost whatsoever incurred by Contractor in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.
- 2.4 **Payment of Taxes.** Contractor is solely responsible for the payment of employment taxes incurred under this Agreement and any federal or state taxes.
- 2.5 **Payment upon Termination.** In the event that City or Contractor terminates this Agreement pursuant to Section 7, City shall compensate the Contractor for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Contractor shall maintain adequate logs and timesheets in order to verify costs incurred to that date.

**SECTION 3. EQUIPMENT.** Except as otherwise provided, Contractor shall, at its sole cost and expense, provide all supplies and equipment necessary to perform the services required by this Agreement.

**SECTION 4. INSURANCE REQUIREMENTS.** Before beginning any work under this Agreement, Contractor, at its own cost and expense, shall procure the types and amounts of insurance checked below and provide Certificates of Insurance, indicating that Contractor has obtained or currently maintains insurance that meets the requirements of this section and which is satisfactory, in all respects, to City. Contractor shall maintain the insurance policies required by this section throughout the term of this Agreement. Contractor shall not allow any subcontractor to commence work on any subcontract until Contractor has obtained all insurance required herein for the subcontractor(s) and provided evidence thereof to City. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution. All insurance coverage and limits provided by Contractor and available or applicable under this Agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement limits the application of such insurance coverage.

**4.1 Workers' Compensation.** Contractor shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Contractor. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance Shall be provided with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per accident. In the alternative, Contractor may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the Contract Administrator. The insurer, if insurance is provided, or the Contractor, if a program of self-insurance is provided, shall waive all rights of subrogation against City and its officers, officials, employees, and authorized volunteers for loss arising from work performed under this Agreement.

**4.2 Commercial General Insurance and Automobile Liability Insurance.**

**4.2.1 Commercial General Liability Insurance:** Contractor, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than TWO MILLION DOLLARS (\$2,000,000.00) per occurrence, combined single limit coverage of \$2,000,000 in the general aggregate, for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

**4.2.2 Minimum scope of coverage.** Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (per occurrence). 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.

**4.2.3 Additional requirements.** Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:

- a. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.

- b. Any failure of Contractor to comply with reporting provisions of the policy shall not affect coverage provided to City and its officers, employees, agents, and volunteers.

#### **4.3 Professional Liability Insurance.**

**4.3.1 General requirements.** Contractor, at its own cost and expense, shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000) covering the licensed professionals' errors and omissions.

**4.3.2 Claims-made limitations.** The following provisions shall apply if the professional liability coverage is written on a claims-made form:

- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
- b. Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the Agreement or the work, so long as commercially available at reasonable rates.
- c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Contractor must provide extended reporting coverage for a minimum of five years after completion of the Agreement or the work. City shall have the right to exercise, at the Contractor's sole cost and expense, any extended reporting provisions of the policy, if the Contractor cancels or does not renew the coverage.
- d. A copy of the claim reporting requirements must be submitted to City prior to the commencement of any work under this Agreement.

#### **4.4 All Policies Requirements.**

**4.4.1 Acceptability of insurers.** All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A-.

**4.4.2 Verification of coverage.** Prior to beginning any work under this Agreement, Contractor shall furnish City with Certificates of Insurance, and upon request, complete certified copies of all policies, including complete certified copies of all endorsements. All copies of policies and certified endorsements shall show the signature of a person authorized by that insurer to bind coverage on its behalf.

**4.4.3 Notice of Reduction in or Cancellation of Coverage.** A certified endorsement shall be attached to all insurance obtained pursuant to this Agreement stating that coverage shall not be suspended, voided, canceled by either party, or reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified, mail, return receipt requested, has been given to City. In the event that any coverage required by this section is reduced, limited, cancelled, or materially affected in any other manner, Contractor shall provide written notice to City at Contractor's earliest possible opportunity and in no case later than ten (10) working days after Contractor is notified of the change in coverage.

**4.4.4 Additional insured; primary insurance.** City and its officers, employees, agents, and authorized volunteers shall be covered as additional insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Contractor, including the insured's general supervision of Contractor; products and completed operations of Contractor, as applicable; premises owned, occupied, or used by Contractor; and automobiles owned, leased, or used by the Contractor in the course of providing services pursuant to this Agreement. The coverage shall contain no special limitations on the scope of protection afforded to City or its officers, employees, agents, or authorized volunteers.

A certified endorsement must be attached to all policies stating that coverage is primary insurance with respect to City and its officers, officials, employees and volunteers, and that no insurance or self-insurance maintained by City shall be called upon to contribute to a loss under the coverage.

**4.4.5 Subcontractors.** Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

**4.4.6 Variation.** The City Attorney may approve in writing a variation in the foregoing insurance requirements, upon a determination that the coverage, scope, limits, and forms of such insurance are either not commercially available, or that City's interests are otherwise fully protected.

**4.4.7** No policy required hereunder shall prohibit Contractor from waiving any right with regard to the Indemnities set out below in Section 5.

**4.5 Remedies.** In addition to any other remedies City may have if Contractor

fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option, exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Contractor's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Contractor to stop work under this Agreement or withhold any payment that becomes due to Contractor hereunder, or both stop work and withhold any payment, until Contractor demonstrates compliance with the requirements hereof; and/or
- Terminate this Agreement.

#### **SECTION 5. INDEMNIFICATION**

Contractor 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 Contractor or by any individual or entity for which Contractor is legally liable, including but not limited to officers, agents, employees or subcontractors of Contractor. Such indemnification, defense and hold harmless extend to Contractor'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 Contractor 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 Contractor 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 Contractor 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 Contractor from liability under this indemnification and hold harmless clause. This indemnification 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, Contractor acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

## **SECTION 6. LEGAL REQUIREMENTS.**

- 6.1 **Governing Law.** The laws of the State of California shall govern this Agreement.
- 6.2 **Compliance with Applicable Laws.** Contractor and any subcontractor shall comply with all applicable local, state and federal laws and regulations applicable to the performance of the work hereunder.
- 6.3 **Licenses and Permits.** Contractor represents and warrants to City that Contractor and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that is legally required to practice their respective professions. Contractor represents and warrants to City that Contractor and its employees, agents and any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Contractor and any subcontractors shall obtain and maintain during the term of this Agreement valid business licenses from City.

## **SECTION 7. TERMINATION AND MODIFICATION.**

- 7.1 **Termination.** City and Contractor hereby agree that this Agreement may be cancelled upon 30 days' written notice.

In the event of termination, Contractor shall be entitled to compensation for services performed to the effective date of termination; City, however, may condition payment of such compensation upon Contractor delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Contractor or prepared by or for Contractor or City in connection with this Agreement.

- 7.2 **Extension.** Both parties agree that extending the Agreement beyond that provided for in Subsection 1.1 may be in the best interest of all concerned. Any such extension shall require a written amendment to this Agreement, as provided for herein. City and Contractor understand and agree that, if both parties agree to such an extension, all terms and conditions of the original Agreement shall remain the same, and extended to the date provided for in said amendment.
- 7.3 **Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.
- 7.4 **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Contractor shall survive the termination of this Agreement.



**7.5** **Options upon Breach by Contractor.** If Contractor materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, any or all the following:

**7.5.1** Immediately terminate the Agreement;

**7.5.2** Retain the documents, and any other work product prepared by Contractor pursuant to this Agreement;

**7.5.3** Retain a different Contractor to complete the work described in Exhibit A not finished by Contractor; or

**7.5.4** Charge Contractor the difference between the costs to complete the work described in Exhibit A that is unfinished at the time of breach and the amount that City would have paid Contractor pursuant to Section 2 if Contractor had completed the work.

## **SECTION 8. KEEPING AND STATUS OF RECORDS.**

**8.1** **Records Created as Part of Contractor's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form that Contractor prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of City. Contractor hereby agrees to deliver those documents to City upon termination of the Agreement.

**8.2** **Contractor's Books and Records.** Contractor shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Contractor to this Agreement.

**8.3** **Inspection and Audit of Records.** Any records or documents that Section 8.2 of this Agreement requires Contractor to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds Ten Thousand Dollars (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of City, for a period of three (3) years after final payment under the Agreement.

## **SECTION 9. UNAUTHROIZED ALIENS.**

Contractor hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, et seq., as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Contractor so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should any liability or sanctions be imposed against City for such use of unauthorized aliens, Contractor hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by City.

## **SECTION 10. CONFLICTS OF INTEREST.**

Contractor 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 interests of City or which would in any way hinder Consultant's performance of services under this Agreement. Contractor 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. Contractor agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement.

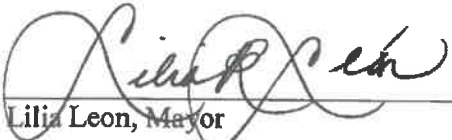
## **SECTION 11. MISCELLANEOUS PROVISIONS.**

- 11.1 **Assignment.** The expertise and experience of Contractor are material considerations for this Agreement. City has an interest in the qualifications of and capability of the persons and entities that will fulfill the duties and obligations imposed upon Contractor under this Agreement. In recognition of that interest, Contractor shall not assign or transfer this Agreement or any portion of this Agreement or the performance of any of Consultant's duties or obligations under this Agreement without the prior written consent of the City Council. Any attempted assignment shall be ineffective, null and void, and shall constitute a material breach of this Agreement entitling City to any and all remedies at law or in equity, including summary termination of this Agreement.
- 11.2 **Attorneys' Fees.** If either party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 11.3 **Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in Los Angeles County.

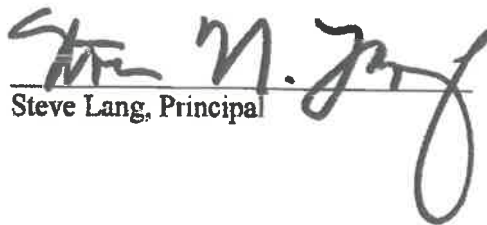
- 11.4 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 11.5 No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 11.6 Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and permitted assigns of the parties.
- 11.7 Contractor Representative.** All matters under this Agreement shall be handled for Contractor by Steve Lang.
- 11.8 City Contract Administration.** This Agreement shall be administered by Maryam Babaki, Director of Public Works and Development Services, or her designee ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.
- 11.9 Notices.** Any written notice to Contractor shall be sent to:
- Moore Iacofano Goltsman, Inc.  
ATTN: Steve Lang  
109 W. Union Avenue  
Fullerton, CA 92832
- Any written notice to City shall be sent to:
- Maryam Babaki  
Director of Public Works and Development Services  
2535 Commerce Way  
Commerce, CA 90040
- 11.10 Integration.** This Agreement, including the scope of work attached hereto and incorporated herein as Exhibit A, represents the entire and integrated agreement between City and Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral.
- 11.11 Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

The Parties have executed this Agreement as of the Effective Date.

CITY OF COMMERCE

  
Lilia Leon, Mayor

CONTRACTOR

  
Steve Lang, Principal

Attest:

  
Lena Shumway, City Clerk

Approved as to Form:

  
Eduardo Olivo, City Attorney

## **EXHIBIT A – SCOPE OF SERVICES**

## EXHIBIT A

### City of Commerce “As Needed” Landscape Architect Design Services

#### SCOPE OF WORK

The specific scope of work will be determined based on the particular requirements of each project. **The following tasks describe the general approach MIG will take on your landscape design, irrigation design, universal access assessment and design, and regenerative landscape projects.**

##### PHASE I – Conceptual Design Documents

###### ***Task 1 – Project Initiation / Project Definition***

The MIG team will schedule and conduct a project initiation meeting with the City of Commerce project manager and staff to review the project assignment and MIG specific proposal in response to the City’s project assignment. MIG will seek information from the City on any current data, survey maps, boundary surveys, reports, analysis, or drawings associated with the subject project. We will review work to be completed, staff’s goals and objectives, possible amendments to the project assignment, any alternatives to be considered, budgets and any subsequent refinements to the project design program. All parties must agree on the project proposal, scope of services, project schedule, milestones, and meeting calendar.

###### ***Task 2 - Data Collection***

MIG will collect available data from the City on all key aspects of the proposed project. Depending on the project type and required tasks, this may include: infrastructure/utility drawings, topographic survey, record as-builts, locations of easements, geologic data and geotechnical reports, and other information relevant to existing conditions, reports, previous analyses, management and operation records, etc. MIG’s designated project manager will continually check on their progress through regular emails and project team meetings.

The MIG team will obtain all City design standards, codes and ordinances to assure that the project is in compliance with the latest City Standards.

If the City has no existing topographic plans for the site, The MIG team will prepare topographic surveys as necessary and confirm with City and utilities electrical services for lighting and irrigation controllers.

###### ***Task 3- Site Reconnaissance***

The MIG Team will conduct a site reconnaissance to review site constraints and opportunities, grading boundaries, adjacent uses, surrounding conditions and area context. Existing site conditions and field opportunities and constraints will be considered when preparing conceptual/preliminary site design.

##### PHASE II – Schematic Design Documents and Services

###### ***Task 1 – Existing Condition Assessment/ Conceptual and Schematic Design/Preliminary Reports***

Base on input from City staff, data collection, research and analysis, the MIG team will develop assessments of existing conditions, conceptual design plans and or preliminary design reports to bring back to the City staff for review and input for further refinement. Depending on the nature and scope of the project, tasks could include: explore functional and visual relationships of desired improvements by looking at such components as facility program, uses, circulation, views/vistas, pedestrian access, vehicular access, existing land forms, existing improvements to remain, edge treatments, topography, landscape materials, irrigation systems, security, preferred equipment, perimeter improvements, and ADA compliance.

MIG will facilitate needs assessment interviews and meetings as required to garner the desires and concerns of the community.

Color rendered conceptual and preliminary drawings, colored perspective sketches and design exhibits shall be prepared and submitted in the City's plan format. All drawings will conform to the City of Commerce design standards.

***Task 2 - Cost Estimates/Fiscal Analysis***

Depending on the project type and scope, the project team will prepare either preliminary opinions of probable construction costs or initial fiscal analyses based on the conceptual plans or preliminary report findings for City staff review and input.

***Task 3 – Submittal and Review by City Staff***

MIG will submit the existing condition assessment, design report and conceptual drawings and design exhibits site and the preliminary opinion of probable construction costs to City staff for review and input.

***Task 4 – Public Input as Directed by the City Staff***

Dependant upon the project assignment and the sensitivity of the proposed project, the design team will facilitate a public input meeting(s) or public workshop(s) to gain input, review the conceptual or preliminary work, and seek consensus. MIG will prepare powerpoint presentations, presentation boards, material boards and meeting minutes for community and stakeholder meetings.

***Task 5 - Final Plan/Report and Cost Estimate***

The MIG team will prepare a final design report, analysis or conceptual plans that reflect staff review comments. The team will update the cost estimate or financial analysis to reflect the project refinements. The final preliminary plans, design exhibits and/or report will be submitted to City staff for final review and input.

***Task 6 – Submittal to City Staff***

MIG will submit an electronic data file of the final design report and/or conceptual drawings and design exhibits and the preliminary opinion of probable construction costs to the City of Commerce.

**PHASE III - Design Development Documents and Services**

***Task 1 – Design Development***

Once the City staff has approved the final preliminary plans and preliminary opinions of probable construction costs, the MIG team will develop design development documents to include color renderings, sketches and all required drawings and outline specifications. MIG will meet with City staff to review design development documents, design features and technology with respect to resource management, water conservation, energy conservation and the efficiency of maintenance and operation of the proposed facility. Any changes in design will be reflected in an updated opinion of probable costs. Upon approval of the design development documents by City staff, MIG shall proceed with preparation of construction documents (drawings and specifications).

**PHASE IV – Construction Documents**

***Task 1 - Construction Documents***

The base sheets will identify all existing physical and topographic conditions as well as all existing proposed improvements. Using the design development drawings and outline specifications, the MIG team will prepare construction documents. Construction drawings will be prepared utilizing AutoCAD 2012, the City's Design Standards, and applicable building and development codes Technical Specifications will be prepared in CSI format. As an example, the document package may include the following construction drawings:

- Cover Sheet / General Notes
- Demolition Plan (existing conditions plan)

- Construction Layout Site Plans
- Construction Details
- Irrigation Plan and Details
- Landscape Planting Plan and Details
- Technical Specifications

***Task 3- In House Quality Control – Review of Construction Documents***

MIG will conduct a thorough in-house quality assurance / quality control review of all construction documents. We will utilize in-house quality control checklists to review all construction documents prior to submittal to the City. MIG will insure all review and plan check comments have been resolved, addressed and incorporated into the construction document package.

***Task 4- Construction Document Design Submittal***

MIG will electronically submit all completed and in-house checked construction documents to the City at agreed project milestones (typical 50%, 90% and 100% completion.)

***Task 5-Plan Check Review Comments***

The MIG team will respond to all plan check comments resulting from the City consolidated construction document submittal. MIG will address all comments with City clarification on any conflicting reviews as necessary, and prepare the construction documents for final design submittal.

***Task 6 –Opinion of Probable Construction Costs***

The MIG team will prepare a detailed opinion of probable landscape architectural construction costs with quantities and unit prices.

***Task 7 – Final Design Submittal***

The final design submittal shall include final drawings and specifications, reports, analysis, project construction schedules, and final opinion of probable construction costs. The final design submittal shall also include an electronic data file of all submittal documents for the City's bid use. All final documents shall be stamped and signed by the appropriate design professional.

**PHASE V - Bidding Support Services**

***Task 1 – Bidding Assistance***

The design team will be available during the bid process to assist City staff, provide clarification, prepare addendum, and respond to Requests for Information (RFI's) and Requests for Clarification (RFC's), analysis of alternates, supplementary drawings, specifications review, attendance at pre-bid meeting and bids review.

**PHASE VI - Construction Support Services**

***Task 1 – Construction Support***

MIG will review and approve addenda, change orders, material submittal, contractor equipment submittal, shop drawings, clarifications to drawings and specifications, provide every other week site visits and provide monthly report on construction progress and change order status. The MIG team will attend a pre-construction site review meeting with the awarded contractor and City staff. MIG will meet at the City's request at the project site and review installation. MIG will participate in construction progress meetings and final site reviews as required and prepare meeting minutes. All site improvement inspections will be performed by the public service agency inspectors representing the City. MIG will prepare the punch list for final completion, prepare "as built" drawings received from record drawings provided by the Contractor and co-approve with the City the certificate of final completion.



## **EXHIBIT B – FEE SCHEDULE**

## EXHIBIT 10-H SAMPLE COST PROPOSAL (EXAMPLE #2) Page 1 of 2

SPECIFIC RATE OF COMPENSATION (USE FOR ON-CALL OR AS-NEEDED CONTRACTS)  
(CONSTRUCTION ENGINEERING AND INSPECTION CONTRACTS)

Note: Mark-ups are Not Allowed

Consultant or Subconsultant Moore, Iacofano, Goltsman (MIG) Contract No. \_\_\_\_\_ Date 12/8/15Fringe Benefit 45.00% + Overhead 39.03% + General Administration 80.00% = 164.03% Combined Indirect Cost Rate (ICR)  
(= 0% if Included in OH) (= 0% if Included in OH)

FEE = 12.00%

## BILLING INFORMATION

## CALCULATION INFORMATION

Name/Job Title/Classification <sup>1</sup>	Hourly Billing Rates <sup>2</sup>		Effective date of hourly rate		Actual or Avg. hourly rate <sup>3</sup>	% or \$ increase	Hourly range - for classifications only
	Straight	OT(1.5x) OT(2x)	From	To			
Steven Lang, Principal	\$ 161.10		January 2015	December 2018	\$ 54.48	3.00% 3.00% 3.00%	50-80
Oscar Johnson, Project Manager	\$ 148.44		"	"	\$ 49.52	3.00% 3.00% 3.00%	37-50
Darren Rector, Landsc. Arch.	\$ 117.13		"	"	\$ 39.81	3.00% 3.00% 3.00%	35-45
Jose Leal, Irrigation Designer	\$ 121.54		"	"	\$ 41.10	3.00% 3.00% 3.00%	38-48
Project Associate	\$ 84.83		"	"	\$ 32.00	3.00% 3.00% 3.00%	28-38
Administrative Support	\$ 85.76		"	"	\$ 29.00	3.00% 3.00%	20-32

1. Names and classifications of consultant (key staff) team members must be listed. Provide separate sheets for prime and all subconsultant firms.

2. Billing rate = actual hourly rate \* (1+ ICR) \* (1+ Fee). Agreed upon billing rates are not adjustable for the term of contract.

3. For named employees enter the actual hourly rate. For classifications only, enter the Average Hourly Rate for that classification.

## NOTES:

- Denote all employees subject to prevailing wage with an asterisks (\*)
- For "Other Direct Cost" listing, see page 2 of this Exhibit

## Page 2 of 2

(CONSTRUCTION ENGINEERING AND INSPECTION CONTRACTS)

**Moore, Iacofano, Goltsman (MIG)**

**Contract No.**

12/8/15

## SCHEDULE OF OTHER DIRECT COST ITEMS

[illegible]

1. List direct cost items with estimated costs. These costs should be competitive in their respective industries and supported with appropriate documentations.
2. Proposed items should be consistently billed directly to all clients (Commercial entities, Federal Govt., State Govt., and Local Govt. Agency), and not just when the client will pay for them as a direct cost.
3. Items when incurred for the same purpose, in like circumstance, should not be included in any indirect cost pool or in the overhead rate.
4. Items such as special tooling, will be reimbursed at actual cost with supporting documentation (invoice).
5. Items listed above that would be considered "tools of the trade" are not reimbursable as other direct cost.
6. Travel related costs should be pre-approved by the contracting agency.
7. If mileage is claimed, the rate should be properly supported by the consultant's calculation of their actual costs for company vehicles. In addition, the miles claimed should be supported by mileage logs.
8. If a consultant proposes rental costs for a vehicle, the company must demonstrate that this is their standard procedure for all of their contracts and that they do not own any vehicles that could be used for the same purpose.