

# LANDSCAPE ARCHITECTURE PLAN CHECK

## ORIGINAL PROFESSIONAL SERVICES AGREEMENTS

- David Evans and Associates
- Hirsch and Associates, Inc.

## PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT for Professional Services ("Agreement") is made this day of January 5, 2016 ("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. 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 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 Concours 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

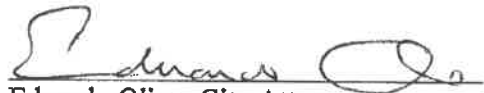
CONTRACTOR

  
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 Plan Checking**

Utilizing outside consultants such as DEA assists agencies in streamlining internal processes – allowing our team to assist with day-to-day plan checking, inspection, coordination with applicants, in addition to providing design services as needed.

We anticipate the annual contract could include primarily planting and irrigation plan checking, however, the following typical tasks may be included on an as-needed basis as requested by the city:

- DRC Review
- Meetings with Project Planners
- Plan Review including consistency with the General Plan, Development Code, applicable Ordinances, and Design Guidelines.
- Site Visits
- Preparation of Plan Check Comments (Digital and Hard Copy)
- Notification to and/or coordination with project Applicants
- Supplemental Plan Checks after initial review
- Review of Construction Plans and Documents (First by Landscape Architect, Second by team members with expertise in site planning and grading)
- Inspection Services
- Preparation of Site Inspection Report for Project Planner and Coordination with Applicant
- Landscape Advisory Resource
- Attendance at Meetings (DRC, Planning Commission, City Council)

Based on the above noted tasks and our on-going relationship with the City of Commerce, DEA can continue to provide the necessary services with our in-house team and therefore no outside subconsultants will be required. If selected, our team will meet with City staff and obtain pertinent documents, procedures, applications, or any other items deemed necessary to gain a thorough understanding of the guidelines and policies required to perform the work.

## 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****CALCULATION INFORMATION**

Name/Job Title/Classification <sup>1</sup>	Straight	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
		OT(1.5x)	OT(2x)	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%	

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

Name/Job Title/Classification <sup>1</sup>	Straight	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
		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%	Not Applicable
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%	Not Applicable
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%	Not Applicable
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%	Not Applicable
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%	Not Applicable

- 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>	Straight	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
		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

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 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 CommerDate 12/7/2015

PRIME CONSULTANT					SCHEDULE OF OTHER DIRECT COST ITEMS				
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	EA	(5)							
Mileage									
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 January 5, 2016 ("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.

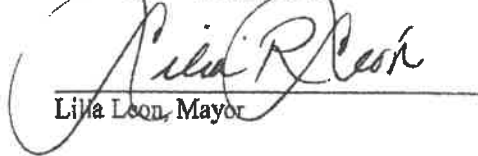
## **SECTION 11. MISCELLANEOUS PROVISIONS.**

- 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.

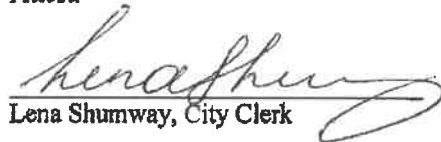
CITY OF COMMERCE

  
Lila Leon, Mayor

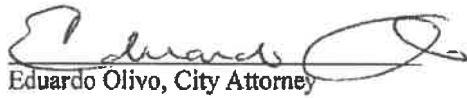
CONTRACTOR

  
Patrick Hirsch, President

Attest:

  
Lena Shumway, City Clerk

Approved as to Form:

  
Eduardo Olivo, City Attorney

## **EXHIBIT A – SCOPE OF SERVICES**





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

### **LANDSCAPE ARCHITECTURE & PLANNING**

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

#### **LANDSCAPE AND IRRIGATION PLAN CHECK SERVICES**

##### **APPROACH**

Hirsch & Associates Inc has plan checked multiple projects for each project category listed below. Landscape Plan Check services will apply to all categories listed under "Project Diversity" and include items listed under 'General Scope of Services'.

Through our strong commitment to professional integrity and personal service, Hirsch & Associates, Inc. is dedicated to providing the comprehensive Landscape Plan Check services necessary to achieve a final project that meets with the City's Landscape Development Guide Lines.

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

Landscape Plan Check services include all of the categories listed under 'Project Type'

##### **PROJECT TYPE**

###### **Parks**

Park Master Planning  
Regional Parks  
Community Parks  
Neighborhood Parks  
Mini Parks  
Sports Facilities  
Synthetic Turf Sports Fields  
Turf and Water Reduction Projects  
Non-Native Plant Replacement with Native Plant Installation Project  
Universally Accessible Children's Play Areas  
Splash Pads  
Recreational Trails

###### **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 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 plan check services in a timely and professional manner, consistent with the standards of the profession.

**Project Management.** Hirsch & Associates will meet with City staff and others as directed to establish communications and develop a project time line for services.

**City Provided Information.** The City will provide all existing documentation it has on file for the projects that may include landscape and irrigation plans, civil engineering plans, 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 plan check.

**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 plan check services 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 a project.

## **PLAN CHECK PROCESS**

**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.

**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 plan check process. A preliminary plan check schedule will be provided to the City prior to starting plan check.

**Geotechnical Investigation.** Hirsch & Associates will review the 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 review the soil analysis report prepare for the site to determine the soil texture and agricultural suitability of the on-site soil.

**Final Working Drawings and Specifications.** Hirsch & Associates will plan check the following plans submitted to us by the City.

- Project 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
- Sewer and Water Plans and Details.
- Horizontal Control Plan
- Site Construction Plans and Details.
- Parking Lot Improvement Plans and Details.
- Landscape and Irrigation Plans with Details.
- Electrical and Lighting Plans and Details.
- Photometric Light Level and Spill Light Plans

**Form.** The Final Working Drawings and Specifications shall be in such form as will enable Hirsch & Associates to determine if they meet the City's Development Guide Lines. The Final Working Drawings and Specifications shall be clear and legible on standard architectural size paper, properly indexed and numbered, and assembled in a professional manner.

**Approval and Revisions.** Hirsch & Associates shall submit all plan check comments and redlined plans back to the City. The City shall review, study, and check the Final Working Drawings and Specifications presented to it by Hirsch & Associates, and request any necessary revisions. Hirsch & Associates shall make all requested changes and correction in the plan check comments for the Final Working Drawings and Specifications and forward them to the City.

**Copies of Final Working Drawings and Specifications and Other Documents.** All printing, coping, delivery, and travel required for plan check services, shall be paid for by the City.

## **PROJECT MANAGEMENT AND SUPPORT**

During the construction phase of a 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 at such times as designated by the City.

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

**Site Observation of Contractor's Work.** Hirsch & Associates shall attend site visits to observe the work of the landscape contractor for general conformance with the Final Working Drawings and Specifications. Such site meetings shall be scheduled by the City and conducted as appropriate to the stage of construction.

**Written Reports.** Hirsch & Associates shall make written reports to City after each site observation visit to inform City of problems arising during construction, changes contemplated as a result of any such problems, all site conditions, work observed, work approved and work that needs correction or removal and forward the reports to the City.

**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.

**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 project owner, general contractor and subcontractors for compliance with, or alterations and additions to, the Final Working Drawings and Specifications. 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 Final Working Drawings and Specifications. Hirsch & Associates shall immediately notify the City 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. Hirsch & Associates shall not order Contractors to make any changes affecting the contract price or schedule without approval by City of such, pursuant to the terms of the Construction Documents.

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

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

**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 City in writing that all Punch List Items must be corrected prior to final acceptance of the Project and final payment.

**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 for City projects only.

**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.

#### **RECORD DRAWINGS**

**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 prepared by others, indicating 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 that differ from the locations indicated on the Final Plans and Specification for the project. Hirsch & Associates shall 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 contractor, and shall obtain certifications from any inspectors and contractors that the drawings are correct.

## **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 &amp; 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		Actual or Ave. hourly rate <sup>3</sup>	% or \$ increase	Hourly range - for classifications only
	Straight	OT(1.5x)	From	To			
Charles Foley Landscape Architect	\$110.00 \$112.20 \$114.44	\$165.00 \$183.60 \$187.27	07/1/2015 07/1/2016 07/1/2017	6/30/2016 6/30/2017 6/30/2018	\$110.00 \$112.20 \$114.44	2% 2% 2%	Not Applicable
Mark Hirsch Sr. Project Manager	\$90.00 \$91.80 \$93.63	\$135.00 \$137.70 \$140.45	07/1/2015 07/1/2016 07/1/2017	6/30/2016 6/30/2017 6/30/2018	90.00 \$91.80 \$93.63	2% 2% 2%	Not Applicable
Pamela Brown, Senior Designer	\$65.00 \$66.30 \$67.62	\$97.50 \$99.45 \$101.44	07/1/2015 07/1/2016 07/1/2017	6/30/2016 6/30/2017 6/30/2018	\$65.00 \$66.30 \$67.62	2% 2% 2%	Not Applicable
Robert Jenkins Designer	\$60.00 \$61.20 \$62.42	\$90.00 \$91.80 \$93.64	07/1/2015 07/1/2016 07/1/2017	6/30/2016 6/30/2017 6/30/2018	\$60.00 \$61.20 \$62.42	2% 2% 2%	Not Applicable
Chanel Hernandez, Clerical	\$25.00 \$25.50 \$26.00	\$37.50 \$38.25 \$39.00	07/1/2015 07/1/2016 07/1/2017	6/30/2016 6/30/2017 6/30/2018	\$25.00 \$25.50 \$26.00	2% 2% 2%	Not Applicable

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 asterisk (\*)
- For "Other Direct Cost" listing, see page 2 of this Exhibit