

LANDSCAPE ARCHITECTURE PROFESSIONAL SERVICE AGREEMENTS

(RENEWALS)

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

DESIGN PROFESSIONAL SERVICES AGREEMENT ON-CALL FOR LANDSCAPE ARCHITECTURE

This agreement ("Agreement") is made as of _____, 2018 by and between the **City of Commerce**, a municipal corporation ("City") and **David Evans and Associates, Inc.** ("Consultant"). City and Consultant are sometimes hereinafter individually referred to as a "Party" and collectively referred to as the "Parties."

RECITALS

WHEREAS, City desires to utilize the services of Consultant as an independent contractor to [insert brief description of work] as set forth in the Scope of Services attached hereto as **Exhibit A**; and

WHEREAS, Consultant represents that it is fully qualified to perform such consulting services by virtue of its experience and the training, education and expertise of its principals and employees.

NOW, THEREFORE, in consideration of performance by the parties of the covenants and conditions herein contained, the parties hereto agree as follows:

1. Company's Scope of Services. The nature and scope of the specific services to be performed by Consultant are as described in **Exhibit A**.

2. Term of Agreement. This Agreement shall commence on **January 5, 2019** (the "Commencement Date") and shall remain and continue in effect until **January 4, 2022**, unless sooner terminated pursuant to the provisions of this Agreement.

3. Compensation.

A. City agrees to compensate Consultant for services under this Agreement in compliance with the schedule set forth in **Exhibit A**. Consultant shall maintain appropriate and necessary documentation supporting the all invoices submitted to the City detailing the type of service provided. Such documentation shall be available for review by the City at all reasonable times upon request.

B. If at the request of the City, Consultant is required to incur out of pocket expenses (including but not limited to, out-of-town travel and lodging) which are above and beyond the ordinary expenses associated with performance of this Agreement, Consultant shall be entitled to reimbursement of such expenses. Consultant shall only be reimbursed for those expenses which: (I) appear on Consultant's monthly invoices; (II) are accompanied by a copy of the City's written authorization for Consultant to incur such expenses; and (III) receipts documenting such expenses.

4. General Terms and Conditions. The General Terms and Conditions set forth in **Exhibit B** are incorporated as part of this Agreement. In the event of any

inconsistency between the General Terms and Conditions and any other exhibit to this Agreement, the General Terms and Conditions shall control unless it is clear from the context that both parties intend the provisions of the other exhibit(s) to control.

5. Addresses.

City of Commerce

City of Commerce
2535 Commerce Way
Commerce, CA 90040
Attn: Edgar P. Cisneros, City Administrator

Company

David Evans and Associates, Inc.
Attn: Kim Rhodes
4141 E. Inland Empire Blvd., Ste. 250
Ontario, CA 91764

6. Exhibits. All exhibits referred to in this Agreement are listed here and are incorporated and made part of this Agreement by this reference.

Exhibit A – Scope of Services and Compensation Schedule

Exhibit B – General Terms and Conditions

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates written below.

CITY

CITY OF COMMERCE

By: _____
Hugo A. Argumedo, Mayor Date _____

By: _____
Edgar P. Cisneros, City Administrator Date _____

CONSULTANT

David Evans and Associates, Inc.

By: Kim Rhodes
Kim Rhodes Date 12-13-18

ATTEST:

By: _____
Lena Shumway, City Clerk Date _____

APPROVED AS TO FORM:

By: _____
Noel Tapia, City Attorney Date _____

EXHIBIT A
SCOPE OF WORK

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

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 11/7/2018

Fringe Benefit % 61.74% + Overhead % 115.00% + General Administration % 0.40% = Combined Indirect Cost Rate (ICR) % 177.14%
 (= 0% if Included in OH) FEE % = 10%

BILLING INFORMATION**CALCULATION INFORMATION**

Name/Job Title/Classification ¹	Straight	Hourly Billing Rates ²		Effective date of hourly rate		Actual or Avg. hourly rate ³	% or \$ increase	Hourly range - for classifications only
		OT(1.5x)	OT(2x)	From	To			
Kim Rhodes – Project Manager Senior Landscape Architect	\$207.00	\$310.49	\$413.99			\$67.90	0%	Not Applicable
	\$213.21	\$319.81	\$426.41			\$69.94	3.00%	
	\$219.60	\$329.40	\$439.20			\$72.04	3.00%	
Todd Holmes, PLA Landscape Architect	\$158.52	\$237.79	\$317.05			\$52.00	0	Not Applicable
	\$163.28	\$244.92	\$326.56			\$53.56	3.00%	
	\$168.18	\$252.27	\$336.36			\$55.17	3.00%	
Heath Habig, PLA Landscape Architect	\$153.89	\$230.84	\$307.78			\$50.48	0	Not Applicable
	\$158.51	\$237.76	\$317.01			\$51.99	3.00%	
	\$163.26	\$244.89	\$326.52			\$53.55	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

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BILLING INFORMATION**CALCULATION INFORMATION**

Name/Job Title/Classification ¹	Straight	Hourly Billing Rates ²		Effective date of hourly rate		Actual or Avg. hourly rate ³	% or \$ increase	Hourly range - for classifications only
		OT(1.5x)	OT(2x)	From	To			
Danny Wang Landscape Designer	\$106.70 \$109.90 \$113.20	\$160.05 \$164.85 \$169.80	\$213.40 \$219.80 \$226.39			\$35.00 \$36.05 \$37.13	0% 3.00% 3.00%	Not Applicable
Jon Oen, CID Irrigation Designer	\$118.89 \$122.46 \$126.13	\$178.34 \$183.69 \$189.20	\$237.79 \$244.92 \$252.27			\$39.00 \$40.17 \$41.38	0 3.00% 3.00%	Not Applicable
Angie Jun Landscape Designer	\$124.87 \$80.82 \$83.25	\$187.31 \$121.24 \$124.87	\$249.74 \$161.65 \$166.50			\$25.74 \$26.51 \$27.31	0 3.00% 3.00%	Not Applicable
Zaneta Kam Landscape Designer	\$82.31 \$84.78 \$87.32	\$123.47 \$127.17 \$130.98	\$164.62 \$169.56 \$174.65			\$27.00 \$27.81 \$28.64	0 3.00% 3.00%	Not Applicable
Kevin Perez Landscape Designer	\$82.31 \$84.78 \$87.32	\$123.47 \$127.17 \$130.98	\$164.62 \$169.56 \$174.65			\$27.00 \$27.81 \$28.64	0 3.00% 3.00%	Not Applicable
Monique Quintero Landscape Designer	\$73.16 \$75.36 \$77.62	\$109.75 \$113.04 \$116.43	\$146.33 \$150.72 \$155.24			\$24.00 \$24.72 \$25.46	0 3.00% 3.00%	Not Applicable
Carina Vitug Project Accountant	\$83.47 \$85.97 \$88.55	\$125.20 \$128.96 \$132.83	\$166.94 \$171.95 \$177.10			\$27.38 \$28.20 \$29.05	0 3.00% 3.00%	Not Applicable
Allison Thanongsinh Project Coordinator	\$60.97 \$62.80 \$64.68	\$91.46 \$94.20 \$97.03	\$121.94 \$125.60 \$129.37			\$20.00 \$20.60 \$21.22	0 3.00% 3.00%	Not Applicable

EXHIBIT B

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

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Name/Job Title/Classification ¹	Straight	Hourly Billing Rates ²		Effective date of hourly rate		Actual or Avg. hourly rate ³	% or \$ increase	Hourly range - for classifications only
		OT(1.5x)	OT(2x)	From	To			
Senior Landscape Architect								\$50.00-\$62.00
Landscape Architect								\$45.00-\$50.00
Landscape Designer								\$28.00-\$38.00
Jr. Landscape Designer								\$20.00-\$27.00
Administrative Assistant								\$30.00-\$35.00

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

Date 11/7/2018

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 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).

EXHIBIT B
GENERAL TERMS AND CONDITIONS

1. Status as Independent Contractor.

A. Consultant is, and shall at all times remain as to City, a wholly independent contractor. Consultant shall have no power to incur any debt, obligation, or liability on behalf of the City of Commerce or otherwise act on behalf of Commerce as an agent. Neither the City of Commerce nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of the City of Commerce.

B. Consultant agrees to pay all required taxes on amounts paid to Consultant under this Agreement, and to indemnify and hold City harmless from any and all taxes, assessments, penalties, and interests asserted against City by reason of the independent Consultant relationship created by this Agreement. In the event that City is audited by any Federal or State agency regarding the independent status of Consultant and the audit in any way fails to sustain the validity of a wholly independent Consultant relationship between City and Consultant, then Consultant agrees to reimburse City for all costs, including accounting and attorney's fees, arising out of such audit and any appeals relating thereto.

C. Consultant shall fully comply with the workers' compensation law regarding Consultant and Consultant's employees. Consultant further agrees to indemnify and hold City harmless from any failure of Consultant to comply with applicable worker's compensation laws. City shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this Section 1.

D. Consultant represents to the City, and City relies on Consultant's representations, that Consultant shall serve solely in the capacity of an independent contractor to the City. Neither the City nor any of its agents will have control over the conduct of Consultant or any of Consultant's employees, except as otherwise set forth in the Agreement. Consultant may not, at any time or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of the City. The City has no duty, obligation, or responsibility to the Consultant's agents or employees, including the Affordable Care Act coverage requirements. Consultant is solely responsible for any tax penalties associated with the failure to offer affordable coverage to its agents and employees under the Affordable Care Act with respect to Consultant's agents and employees. Consultant warrants and represents that the City will not be responsible and will not be held liable for issues related to Consultant's status as an independent contractor, including Consultant's failure to comply with Consultant's duties, obligations, and responsibilities under the Affordable Care Act. Consultant further agrees to defend, indemnify, and hold the City harmless

for any and all taxes, claims, and penalties against the City related to Consultant's obligations under the Affordable Care Act.

2. Standard of Performance

Consultant shall perform all work to the highest professional standards and in a manner reasonably satisfactory to the City Administrator or his/her designee. No additional or different tasks or services shall be performed by Consultant other than those specified in **Exhibit A**.

3. Indemnification.

A. To the fullest extent permitted by law, Consultant shall indemnify, defend and hold harmless City and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all claims, losses, liabilities, damages, costs and expenses, including reasonable attorney's fees and costs, to the extent they arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant. Consultant's duty to defend shall consist of reimbursement of defense costs incurred by City in direct proportion to the Consultant's proportionate percentage of fault. Consultant's percentage of fault shall be determined, as applicable, by a court of law, jury or arbitrator. In the event any loss, liability or damage is incurred by way of settlement or resolution without a court, jury or arbitrator having made a determination of the Consultant's percentage of fault, the parties agree to mediation with a third party neutral to determine the Consultant's proportionate percentage of fault for purposes of determining the amount of indemnity and defense cost reimbursement owed to the City.

B. Notwithstanding the foregoing and without diminishing any rights of City under Section 3(a), for any liability, claim, demand, allegation against City arising out of, related to, or pertaining to any act or omission of Consultant, but which is not a design professional service, Consultant shall defend, indemnify, and hold harmless City, its officials, employees, and agents ("Indemnified Parties") from and against any and all damages, costs, expenses (including reasonable attorney fees and expert witness fees), judgments, settlements, and/or arbitration awards, whether for personal or bodily injury, property damage, or economic injury, and arising out of, related to, any concurrent or contributory negligence on the part of City, except for the sole or active negligence of, or willful misconduct of City. If it is determined the City's negligence or willful misconduct contributed to the liability or damage, Consultant shall be required to provide indemnification to the City and reimbursement of defense costs incurred by City in direct proportion to the Consultant's proportionate percentage of fault.

C. It is understood that the duty of Consultant to indemnify and hold harmless is subject to and includes the duty to defend as set forth in Section 2782.8 of the California Civil Code as further addressed in Section 3(a) above. Acceptance by the City of insurance certificates and endorsements required under this Agreement does not relieve Consultant 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, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

4. Insurance.

A. Without limiting Consultant's indemnification of Indemnities pursuant to Section 3 of this Agreement, Consultant shall obtain and provide and maintain at its own expense during the term of this Agreement the types and amounts of insurance as described below:

(I) Consultant shall maintain Commercial General Liability Insurance with coverage at least as broad as Insurance Services Office Commercial General Liability Form CG 00 01 in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage. Defense costs must be paid in addition to limits. There shall be no cross liability exclusion for claims or suits by one insured against another. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

(II) Consultant shall maintain Business Auto Coverage on ISO Business Auto Coverage Form CA 00 01 covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$1,000,000 combined single limit for each accident.

(III) Consultant shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance with on a state approved policy form providing statutory benefits as required by law with employer's liability limits no less than \$1,000,000 per accident for all covered losses;

(IV) Consultant shall maintain Professional Liability or Errors and Omissions Insurance that covers the services to be performed in connection with this Agreement, in the minimum amount of \$1,000,000 per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this Agreement and Consultant agrees to maintain

continuous coverage through a period no less than three (3) years after completion of the services required by this Agreement.

B. City, its officers, officials, employees and volunteers shall be named as additional insureds on the policy(ies) as to commercial general liability and automotive liability.

C. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VI (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.

D. All insurance policies shall provide that the insurance coverage shall not be non-renewed, canceled, reduced, or otherwise modified (except through the addition of additional insureds to the policy) by the insurance carrier without the insurance carrier giving City thirty (30) days' prior written notice thereof. Any such thirty (30) day notice shall be submitted to CITY via certified mail, return receipt requested, addressed to "Director of Human Resources & Risk Management," City of Commerce, 2535 Commerce Way, Commerce, California, 90040. Consultant agrees that it will not cancel, reduce or otherwise modify said insurance coverage.

E. Consultant shall submit to City (I) insurance certificates indicating compliance with the minimum worker's compensation insurance requirements above, and (II) insurance policy endorsements indicating compliance with all other minimum insurance requirements above, not less than one (1) day prior to beginning of performance under this Agreement. Endorsements shall be executed on City's appropriate standard forms entitled "Additional Insured Endorsement".

F. Consultant's insurance shall be primary as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees and volunteers shall be excess of Consultant's insurance and shall not contribute with it.

G. Consultant agrees that if it does not keep the aforesaid insurance in full force and effect, and such insurance is available at a reasonable cost. City may take out the necessary insurance and pay the premium thereon, and the repayment thereof shall be deemed an obligation of Consultant's and the cost of such insurance may be deducted, at the option of City, from payments due Consultant.

5. Release of Information/Confidentiality.

A. Consultant in the course of its duties may have access to confidential data of City, private individuals, or employees of the City. Consultant covenants that all data, documents, discussion, or other information developed or received by Consultant

or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without written authorization by City. City shall grant such authorization if disclosure is required by law. All City data shall be returned to City upon the termination of this Agreement. Consultant, its officers, employees, agents, or subconsultants, shall not without written authorization from the City Administrator, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the work performed under this Agreement or relating to any project or property located within the City. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives City notice of such court order or subpoena. Consultant's covenant under this section shall survive the termination of this Agreement.

B. Consultant shall promptly notify City should Consultant, its officers, employees, agents, or subconsultants be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions, or other discovery request, court order, or subpoena from any person or party regarding this Agreement and the work performed thereunder. City retains the right, but has no obligation, to represent Consultant and/or be present at any deposition, hearing, or similar proceeding. Consultant agrees to cooperate fully with City and to provide the opportunity to review any response to discovery requests provided by Consultant. However, City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response

6. Ownership of Work Product.

A. Consultant shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by the City that relate to the performance of services under this Agreement. Consultant shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to the representatives of the City or its designees at reasonable times to such books and records; shall give the City the right to examine and audit said books and records; shall permit the City to make transcripts therefrom as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

B. Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of the City and may be used, reused, or otherwise disposed of by the City without the permission of the Consultant. With respect to computer files, Consultant shall make available to the City, at the Consultant's office and upon reasonable written request by the City, the necessary computer software and hardware for purposes of

accessing, compiling, transferring, and printing computer files.

7. Conflict of Interest.

A. Consultant covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which may be affected by the services to be performed by Consultant under this Agreement, or which would conflict in any manner with the performance of its services hereunder. Consultant further covenants that, in performance of this Agreement, no person having any such interest shall be employed by it. Furthermore, Consultant shall avoid the appearance of having any interest which would conflict in any manner with the performance of its services pursuant to this Agreement.

B. Consultant covenants not to give or receive any compensation, monetary or otherwise, to or from the ultimate vendor(s) of services to City as a result of the performance of this Agreement, or the services that may be procured by the City as a result of the recommendations made by Consultant's covenants under this section shall survive the termination of this Agreement.

8. Termination. Notwithstanding any other provision, this Agreement may be duly terminated at any time by the City at its sole discretion with or without cause by serving upon the consultant at least ten (10) days prior written notice ("Notice of Termination"). Upon receipt of said notice, the Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. Unless expressly agreed upon in writing by the City, the City shall not be obligated to pay for any services rendered nor any costs or expenses paid or incurred after the date of termination. The effective date of termination shall be upon the date specified in the written Notice of Termination. Consultant agrees that in the event of such termination, Consultant must refund the City its prorated share, except for services satisfactorily rendered prior to the effective date of termination. Immediately upon receiving written Notice of Termination, Consultant shall discontinue performing services, preserve the product of the services and upon payment for services, turn over to City the product of the services in accordance with written instructions of City.

In the event this Agreement is terminated pursuant to this Section, the City shall pay to Consultant the actual value of the work performed up to the time of termination, provided that the work performed is of value to the City. Upon termination of the Agreement pursuant to this Section, the Consultant will submit an invoice to the City.

9. Personnel. Consultant represents that it has, or will secure at its own expense, all personnel required to perform the services under this Agreement. All of the services required under this Agreement will be performed by Consultant or under its supervision, and all personnel engaged in the work shall be qualified to perform such services. Consultant reserves the right to determine the assignment of its own employees to the performance of Consultant's services under this Agreement, but City reserves the right, for good cause, to require Consultant to exclude any employee from performing

services on City's premises.

10. Non-Discrimination and Equal Employment Opportunity.

A. Consultant shall not discriminate as to race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition, or sexual orientation, in the performance of its services and duties pursuant to this Agreement, and will comply with all rules and regulations of City relating thereto. Such nondiscrimination shall include but not be limited to the following: employment, upgrading, demotion, transfers, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

B. Consultant will, in all solicitations or advertisements for employees placed by or on behalf of Consultant state either that it is an equal opportunity employer or that all qualified applicants will receive consideration for employment without regard to race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition, or sexual orientation.

C. Consultant will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Agreement except contracts or subcontracts for standard commercial supplies or raw materials.

11. Assignment. Consultant shall not assign or transfer any interest in this Agreement nor the performance of any of Consultant obligations hereunder, without the prior written consent of City, and any attempt by Consultant to assign this Agreement or any rights, duties, or obligations arising hereunder shall be void and of no effect.

12. Performance Evaluation. For any Agreement in effect for twelve months or longer, the City Administrator may require a written annual administrative performance evaluation within ninety (90) days of the first anniversary of the effective date of this Agreement, and each year thereafter throughout the term of this Agreement. The work product required by this Agreement shall be utilized as the basis for review, and any comments or complaints received by City during the review period, either orally or in writing, shall be considered. City shall meet with Consultant prior to preparing the written report. If any noncompliance with the Agreement is found, City may direct Consultant to correct the inadequacies, or, in the alternative, may terminate this Agreement as provided herein.

13. Compliance with Laws. Consultant shall keep itself informed of State, Federal and Local laws, ordinances, codes and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. Consultant shall at all times comply with such laws, ordinances, codes and regulations. The City, its officers and employees shall not be liable at law or in equity occasioned by failure of Consultant to comply with this Section.

14. Licenses. At all times during the term of this Agreement, Consultant shall have in full force and effect all licenses (including a City business license) required of it by law for performance of the services hereunder.

15. Non-Waiver of Terms, Rights and Remedies. Waiver by either party of any one or more of the conditions of performance under this Agreement shall not be a waiver of any other condition of performance under this Agreement. In no event shall the making by City of any payment to Consultant constitute or be construed as a waiver by City of any breach of covenant, or any default which may then exist on the part of Consultant, and the making of any such payment by City shall in no way impair or prejudice any right or remedy available to City with regard to such breach or default.

16. Attorney's Fees. In the event that either party to this Agreement shall commence any legal or equitable action or proceeding to enforce or interpret the provisions of this Agreement, the prevailing party in such action or proceeding shall be entitled to recover its costs of suit, including reasonable attorney's fees and costs, including costs of expert witnesses and Consultant.

17. Notices. Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on (a) the day of delivery if delivered by hand during Consultant regular business hours or by facsimile before or during Consultant regular business hours; or (b) on the third business day following deposit in the United States mail, postage prepaid, to the addresses heretofore set forth in the Agreement, or to such other addresses as the parties may, from time to time, designate in writing pursuant to the provisions of this section.

18. Governing Law. This Agreement shall be construed and interpreted both as to validity and to performance of the Parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Los Angeles, State of California. However, the Parties may agree to submit any dispute to non-binding arbitration.

19. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be the original, and all of which together shall constitute one and the same instrument.

20. Severability. If any provision or any part of any provision of this Agreement is found to be invalid or unenforceable, the balance of this Agreement shall remain in full force and effect.

21. Entire Agreement. This Agreement, and any other documents incorporated herein by specific reference, represents the entire and integrated agreement between Consultant and City. This Agreement supersedes all prior oral or written negotiations, representations or agreements. This Agreement may not be amended, nor any provision or breach hereof waived, except in a writing signed by the Parties which

expressly refers to this Agreement. Amendments on behalf of the City will only be valid if signed by the Mayor and attested by the City Clerk.

22. **Authority.** The person or persons executing this Agreement on behalf of Consultant warrants and represents that he/she has the authority to execute this Agreement on behalf of Consultant and has the authority to bind Consultant to the performance of its obligations hereunder.

DESIGN PROFESSIONAL SERVICES AGREEMENT ON-CALL FOR LANDSCAPE ARCHITECTURE

This agreement ("Agreement") is made as of January 2, 2019 by and between the **City of Commerce**, a municipal corporation ("City") and **David Volz Design Landscape Architects, Inc. ("Consultant")**. City and Consultant are sometimes hereinafter individually referred to as a "Party" and collectively referred to as the "Parties."

RECITALS

WHEREAS, City desires to utilize the services of Consultant as an independent contractor to [insert brief description of work] as set forth in the Scope of Services attached hereto as **Exhibit A**; and

WHEREAS, Consultant represents that it is fully qualified to perform such consulting services by virtue of its experience and the training, education and expertise of its principals and employees.

NOW, THEREFORE, in consideration of performance by the parties of the covenants and conditions herein contained, the parties hereto agree as follows:

1. **Company's Scope of Services.** The nature and scope of the specific services to be performed by Consultant are as described in **Exhibit A**.

2. **Term of Agreement.** This Agreement shall commence on January 5, 2019 (the "Commencement Date") and shall remain and continue in effect until January 4, 2022, unless sooner terminated pursuant to the provisions of this Agreement.

3. **Compensation.**

A. City agrees to compensate Consultant for services under this Agreement in compliance with the schedule set forth in **Exhibit A**. Consultant shall maintain appropriate and necessary documentation supporting the all invoices submitted to the City detailing the type of service provided. Such documentation shall be available for review by the City at all reasonable times upon request.

B. If at the request of the City, Consultant is required to incur out of pocket expenses (including but not limited to, out-of-town travel and lodging) which are above and beyond the ordinary expenses associated with performance of this Agreement, Consultant shall be entitled to reimbursement of such expenses. Consultant shall only be reimbursed for those expenses which: (I) appear on Consultant's monthly invoices; (II) are accompanied by a copy of the City's written authorization for Consultant to incur such expenses; and (III) receipts documenting such expenses.

4. **General Terms and Conditions.** The General Terms and Conditions set forth in **Exhibit B** are incorporated as part of this Agreement. In the event of any

inconsistency between the General Terms and Conditions and any other exhibit to this Agreement, the General Terms and Conditions shall control unless it is clear from the context that both parties intend the provisions of the other exhibit(s) to control.

5. Addresses.

City of Commerce

City of Commerce
2535 Commerce Way
Commerce, CA 90040
Attn: Edgar P. Cisneros, City Administrator

Company

David Volz Design Landscape Architects, Inc.
Attn: David Volz
151 Kalmus Drive
Costa Mesa, CA 92626

6. Exhibits. All exhibits referred to in this Agreement are listed here and are incorporated and made part of this Agreement by this reference.

Exhibit A – Scope of Services and Compensation Schedule

Exhibit B – General Terms and Conditions

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates written below.

CITY

CITY OF COMMERCE

By: _____
Hugo A. Argumedo, Mayor Date _____

By: _____
Edgar P. Cisneros, City Administrator Date _____

CONSULTANT

David Volz Design Landscape Architects, Inc.

By:  _____
David Volz January 2, 2019
Date _____

ATTEST:

By: _____
Lena Shumway, City Clerk Date _____

APPROVED AS TO FORM:

By: _____
Noel Tapia, City Attorney Date _____

EXHIBIT A
SCOPE OF WORK

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 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 January 1, 2019

Fringe Benefit 50.00% +
(= 0% if Included in OH)Overhead 60.00% +
(= 0% if Included in OH)

General Administration 110.00% = 220.00% Combined Indirect Cost Rate (ICR)

FEE = 10.00%

BILLING INFORMATION

CALCULATION INFORMATION

Name/Job Title/Classification ¹	Hourly Billing Rates ²		Effective date of hourly rate		Actual or Avg. hourly rate ³	% or \$ increase	Hourly range - for classifications only
	Straight	OT(1.5x) OT(2x)	From	To			
Principal	\$ 220.00		1/01/2019	12/31/2021	\$ 89.13	0.00% 3.00% 0.00%	\$209 - \$231
Senior Project Manager	\$ 193.00		1/01/2019	12/31/2021	\$ 53.41	0.00% 3.00% 0.00%	\$183 - \$203
Project Manager	\$ 135.00		1/01/2019	12/31/2021	\$ 39.51	0.00% 3.00% 0.00%	\$128 - 142
Landscape Architect	\$ 155.00		1/01/2019	12/31/2021	\$ 45.67	0.00% 3.00% 0.00%	\$147 - \$163
Project Designer / CADD Technician	\$ 121.00	\$ 181.50 \$ 242.00	1/01/2019	12/31/2021	\$ 33.06	0.00% 3.00% 0.00%	\$115 - \$127
Administrative	\$ 110.00	\$ 165.00 \$ 220.00	1/01/2019	12/31/2021	\$ 30.19	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 January 1, 2019

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.

EXHIBIT B GENERAL TERMS AND CONDITIONS

1. Status as Independent Contractor.

A. Consultant is, and shall at all times remain as to City, a wholly independent contractor. Consultant shall have no power to incur any debt, obligation, or liability on behalf of the City of Commerce or otherwise act on behalf of Commerce as an agent. Neither the City of Commerce nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of the City of Commerce.

B. Consultant agrees to pay all required taxes on amounts paid to Consultant under this Agreement, and to indemnify and hold City harmless from any and all taxes, assessments, penalties, and interests asserted against City by reason of the independent Consultant relationship created by this Agreement. In the event that City is audited by any Federal or State agency regarding the independent status of Consultant and the audit in any way fails to sustain the validity of a wholly independent Consultant relationship between City and Consultant, then Consultant agrees to reimburse City for all costs, including accounting and attorney's fees, arising out of such audit and any appeals relating thereto.

C. Consultant shall fully comply with the workers' compensation law regarding Consultant and Consultant's employees. Consultant further agrees to indemnify and hold City harmless from any failure of Consultant to comply with applicable worker's compensation laws. City shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this Section 1.

D. Consultant represents to the City, and City relies on Consultant's representations, that Consultant shall serve solely in the capacity of an independent contractor to the City. Neither the City nor any of its agents will have control over the conduct of Consultant or any of Consultant's employees, except as otherwise set forth in the Agreement. Consultant may not, at any time or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of the City. The City has no duty, obligation, or responsibility to the Consultant's agents or employees, including the Affordable Care Act coverage requirements. Consultant is solely responsible for any tax penalties associated with the failure to offer affordable coverage to its agents and employees under the Affordable Care Act with respect to Consultant's agents and employees. Consultant warrants and represents that the City will not be responsible and will not be held liable for issues related to Consultant's status as an independent contractor, including Consultant's failure to comply with Consultant's duties, obligations, and responsibilities under the Affordable Care Act. Consultant further agrees to defend, indemnify, and hold the City harmless

for any and all taxes, claims, and penalties against the City related to Consultant's obligations under the Affordable Care Act.

2. Standard of Performance

Consultant shall perform all work to the highest professional standards and in a manner reasonably satisfactory to the City Administrator or his/her designee. No additional or different tasks or services shall be performed by Consultant other than those specified in **Exhibit A**.

3. Indemnification.

A. To the fullest extent permitted by law, Consultant shall indemnify, defend and hold harmless City and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all claims, losses, liabilities, damages, costs and expenses, including reasonable attorney's fees and costs, to the extent they arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant. Consultant's duty to defend shall consist of reimbursement of defense costs incurred by City in direct proportion to the Consultant's proportionate percentage of fault. Consultant's percentage of fault shall be determined, as applicable, by a court of law, jury or arbitrator. In the event any loss, liability or damage is incurred by way of settlement or resolution without a court, jury or arbitrator having made a determination of the Consultant's percentage of fault, the parties agree to mediation with a third party neutral to determine the Consultant's proportionate percentage of fault for purposes of determining the amount of indemnity and defense cost reimbursement owed to the City.

B. Notwithstanding the foregoing and without diminishing any rights of City under Section 3(a), for any liability, claim, demand, allegation against City arising out of, related to, or pertaining to any act or omission of Consultant, but which is not a design professional service, Consultant shall defend, indemnify, and hold harmless City, its officials, employees, and agents ("Indemnified Parties") from and against any and all damages, costs, expenses (including reasonable attorney fees and expert witness fees), judgments, settlements, and/or arbitration awards, whether for personal or bodily injury, property damage, or economic injury, and arising out of, related to, any concurrent or contributory negligence on the part of City, except for the sole or active negligence of, or willful misconduct of City. If it is determined the City's negligence or willful misconduct contributed to the liability or damage, Consultant shall be required to provide indemnification to the City and reimbursement of defense costs incurred by City in direct proportion to the Consultant's proportionate percentage of fault.

C. It is understood that the duty of Consultant to indemnify and hold harmless is subject to and includes the duty to defend as set forth in Section 2782.8 of the California Civil Code as further addressed in Section 3(a) above. Acceptance by the City of insurance certificates and endorsements required under this Agreement does not relieve Consultant 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, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

4. Insurance.

A. Without limiting Consultant's indemnification of Indemnities pursuant to Section 3 of this Agreement, Consultant shall obtain and provide and maintain at its own expense during the term of this Agreement the types and amounts of insurance as described below:

(I) Consultant shall maintain Commercial General Liability Insurance with coverage at least as broad as Insurance Services Office Commercial General Liability Form CG 00 01 in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage. Defense costs must be paid in addition to limits. There shall be no cross liability exclusion for claims or suits by one insured against another. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

(II) Consultant shall maintain Business Auto Coverage on ISO Business Auto Coverage Form CA 00 01 covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$1,000,000 combined single limit for each accident.

(III) Consultant shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance with on a state approved policy form providing statutory benefits as required by law with employer's liability limits no less than \$1,000,000 per accident for all covered losses;

(IV) Consultant shall maintain Professional Liability or Errors and Omissions Insurance that covers the services to be performed in connection with this Agreement, in the minimum amount of \$1,000,000 per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this Agreement and Consultant agrees to maintain

continuous coverage through a period no less than three (3) years after completion of the services required by this Agreement.

B. City, its officers, officials, employees and volunteers shall be named as additional insureds on the policy(ies) as to commercial general liability and automotive liability.

C. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VI (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.

D. All insurance policies shall provide that the insurance coverage shall not be non-renewed, canceled, reduced, or otherwise modified (except through the addition of additional insureds to the policy) by the insurance carrier without the insurance carrier giving City thirty (30) days' prior written notice thereof. Any such thirty (30) day notice shall be submitted to CITY via certified mail, return receipt requested, addressed to "Director of Human Resources & Risk Management," City of Commerce, 2535 Commerce Way, Commerce, California, 90040. Consultant agrees that it will not cancel, reduce or otherwise modify said insurance coverage.

E. Consultant shall submit to City (I) insurance certificates indicating compliance with the minimum worker's compensation insurance requirements above, and (II) insurance policy endorsements indicating compliance with all other minimum insurance requirements above, not less than one (1) day prior to beginning of performance under this Agreement. Endorsements shall be executed on City's appropriate standard forms entitled "Additional Insured Endorsement".

F. Consultant's insurance shall be primary as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees and volunteers shall be excess of Consultant's insurance and shall not contribute with it.

G. Consultant agrees that if it does not keep the aforesaid insurance in full force and effect, and such insurance is available at a reasonable cost. City may take out the necessary insurance and pay the premium thereon, and the repayment thereof shall be deemed an obligation of Consultant's and the cost of such insurance may be deducted, at the option of City, from payments due Consultant.

5. Release of Information/Confidentiality.

A. Consultant in the course of its duties may have access to confidential data of City, private individuals, or employees of the City. Consultant covenants that all data, documents, discussion, or other information developed or received by Consultant

or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without written authorization by City. City shall grant such authorization if disclosure is required by law. All City data shall be returned to City upon the termination of this Agreement. Consultant, its officers, employees, agents, or subconsultants, shall not without written authorization from the City Administrator, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the work performed under this Agreement or relating to any project or property located within the City. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives City notice of such court order or subpoena. Consultant's covenant under this section shall survive the termination of this Agreement.

B. Consultant shall promptly notify City should Consultant, its officers, employees, agents, or subconsultants be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions, or other discovery request, court order, or subpoena from any person or party regarding this Agreement and the work performed thereunder. City retains the right, but has no obligation, to represent Consultant and/or be present at any deposition, hearing, or similar proceeding. Consultant agrees to cooperate fully with City and to provide the opportunity to review any response to discovery requests provided by Consultant. However, City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response

6. Ownership of Work Product.

A. Consultant shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by the City that relate to the performance of services under this Agreement. Consultant shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to the representatives of the City or its designees at reasonable times to such books and records; shall give the City the right to examine and audit said books and records; shall permit the City to make transcripts therefrom as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

B. Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of the City and may be used, reused, or otherwise disposed of by the City without the permission of the Consultant. With respect to computer files, Consultant shall make available to the City, at the Consultant's office and upon reasonable written request by the City, the necessary computer software and hardware for purposes of

accessing, compiling, transferring, and printing computer files.

7. Conflict of Interest.

A. Consultant covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which may be affected by the services to be performed by Consultant under this Agreement, or which would conflict in any manner with the performance of its services hereunder. Consultant further covenants that, in performance of this Agreement, no person having any such interest shall be employed by it. Furthermore, Consultant shall avoid the appearance of having any interest which would conflict in any manner with the performance of its services pursuant to this Agreement.

B. Consultant covenants not to give or receive any compensation, monetary or otherwise, to or from the ultimate vendor(s) of services to City as a result of the performance of this Agreement, or the services that may be procured by the City as a result of the recommendations made by Consultant's covenants under this section shall survive the termination of this Agreement.

8. Termination. Notwithstanding any other provision, this Agreement may be duly terminated at any time by the City at its sole discretion with or without cause by serving upon the consultant at least ten (10) days prior written notice ("Notice of Termination"). Upon receipt of said notice, the Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. Unless expressly agreed upon in writing by the City, the City shall not be obligated to pay for any services rendered nor any costs or expenses paid or incurred after the date of termination. The effective date of termination shall be upon the date specified in the written Notice of Termination. Consultant agrees that in the event of such termination, Consultant must refund the City its prorated share, except for services satisfactorily rendered prior to the effective date of termination. Immediately upon receiving written Notice of Termination, Consultant shall discontinue performing services, preserve the product of the services and upon payment for services, turn over to City the product of the services in accordance with written instructions of City.

In the event this Agreement is terminated pursuant to this Section, the City shall pay to Consultant the actual value of the work performed up to the time of termination, provided that the work performed is of value to the City. Upon termination of the Agreement pursuant to this Section, the Consultant will submit an invoice to the City.

9. Personnel. Consultant represents that it has, or will secure at its own expense, all personnel required to perform the services under this Agreement. All of the services required under this Agreement will be performed by Consultant or under its supervision, and all personnel engaged in the work shall be qualified to perform such services. Consultant reserves the right to determine the assignment of its own employees to the performance of Consultant's services under this Agreement, but City reserves the right, for good cause, to require Consultant to exclude any employee from performing

services on City's premises.

10. Non-Discrimination and Equal Employment Opportunity.

A. Consultant shall not discriminate as to race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition, or sexual orientation, in the performance of its services and duties pursuant to this Agreement, and will comply with all rules and regulations of City relating thereto. Such nondiscrimination shall include but not be limited to the following: employment, upgrading, demotion, transfers, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

B. Consultant will, in all solicitations or advertisements for employees placed by or on behalf of Consultant state either that it is an equal opportunity employer or that all qualified applicants will receive consideration for employment without regard to race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition, or sexual orientation.

C. Consultant will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Agreement except contracts or subcontracts for standard commercial supplies or raw materials.

11. Assignment. Consultant shall not assign or transfer any interest in this Agreement nor the performance of any of Consultant obligations hereunder, without the prior written consent of City, and any attempt by Consultant to assign this Agreement or any rights, duties, or obligations arising hereunder shall be void and of no effect.

12. Performance Evaluation. For any Agreement in effect for twelve months or longer, the City Administrator may require a written annual administrative performance evaluation within ninety (90) days of the first anniversary of the effective date of this Agreement, and each year thereafter throughout the term of this Agreement. The work product required by this Agreement shall be utilized as the basis for review, and any comments or complaints received by City during the review period, either orally or in writing, shall be considered. City shall meet with Consultant prior to preparing the written report. If any noncompliance with the Agreement is found, City may direct Consultant to correct the inadequacies, or, in the alternative, may terminate this Agreement as provided herein.

13. Compliance with Laws. Consultant shall keep itself informed of State, Federal and Local laws, ordinances, codes and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. Consultant shall at all times comply with such laws, ordinances, codes and regulations. The City, its officers and employees shall not be liable at law or in equity occasioned by failure of Consultant to comply with this Section.

- 14. Licenses.** At all times during the term of this Agreement, Consultant shall have in full force and effect all licenses (including a City business license) required of it by law for performance of the services hereunder.
- 15. Non-Waiver of Terms, Rights and Remedies.** Waiver by either party of any one or more of the conditions of performance under this Agreement shall not be a waiver of any other condition of performance under this Agreement. In no event shall the making by City of any payment to Consultant constitute or be construed as a waiver by City of any breach of covenant, or any default which may then exist on the part of Consultant, and the making of any such payment by City shall in no way impair or prejudice any right or remedy available to City with regard to such breach or default.
- 16. Attorney's Fees.** In the event that either party to this Agreement shall commence any legal or equitable action or proceeding to enforce or interpret the provisions of this Agreement, the prevailing party in such action or proceeding shall be entitled to recover its costs of suit, including reasonable attorney's fees and costs, including costs of expert witnesses and Consultant.
- 17. Notices.** Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on (a) the day of delivery if delivered by hand during Consultant regular business hours or by facsimile before or during Consultant regular business hours; or (b) on the third business day following deposit in the United States mail, postage prepaid, to the addresses heretofore set forth in the Agreement, or to such other addresses as the parties may, from time to time, designate in writing pursuant to the provisions of this section.
- 18. Governing Law.** This Agreement shall be construed and interpreted both as to validity and to performance of the Parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Los Angeles, State of California. However, the Parties may agree to submit any dispute to non-binding arbitration.
- 19. Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be the original, and all of which together shall constitute one and the same instrument.
- 20. Severability.** If any provision or any part of any provision of this Agreement is found to be invalid or unenforceable, the balance of this Agreement shall remain in full force and effect.
- 21. Entire Agreement.** This Agreement, and any other documents incorporated herein by specific reference, represents the entire and integrated agreement between Consultant and City. This Agreement supersedes all prior oral or written negotiations, representations or agreements. This Agreement may not be amended, nor any provision or breach hereof waived, except in a writing signed by the Parties which

expressly refers to this Agreement. Amendments on behalf of the City will only be valid if signed by the Mayor and attested by the City Clerk.

22. **Authority.** The person or persons executing this Agreement on behalf of Consultant warrants and represents that he/she has the authority to execute this Agreement on behalf of Consultant and has the authority to bind Consultant to the performance of its obligations hereunder.

4850-8686-0922, v. 1

DESIGN PROFESSIONAL SERVICES AGREEMENT ON-CALL FOR LANDSCAPE ARCHITECTURE

This agreement ("Agreement") is made as of _____, 2018 by and between the **City of Commerce**, a municipal corporation ("City") and Hirsch & Associates ("Consultant"). City and Consultant are sometimes hereinafter individually referred to as a "Party" and collectively referred to as the "Parties."

RECITALS

WHEREAS, City desires to utilize the services of Consultant as an independent contractor to [insert brief description of work] as set forth in the Scope of Services attached hereto as **Exhibit A**; and

WHEREAS, Consultant represents that it is fully qualified to perform such consulting services by virtue of its experience and the training, education and expertise of its principals and employees.

NOW, THEREFORE, in consideration of performance by the parties of the covenants and conditions herein contained, the parties hereto agree as follows:

1. Company's Scope of Services. The nature and scope of the specific services to be performed by Consultant are as described in **Exhibit A**.

2. Term of Agreement. This Agreement shall commence on January 5, 2019 (the "Commencement Date") and shall remain and continue in effect until January 4, 2022, unless sooner terminated pursuant to the provisions of this Agreement.

3. Compensation.

A. City agrees to compensate Consultant for services under this Agreement in compliance with the schedule set forth in **Exhibit A**. Consultant shall maintain appropriate and necessary documentation supporting the all invoices submitted to the City detailing the type of service provided. Such documentation shall be available for review by the City at all reasonable times upon request.

B. If at the request of the City, Consultant is required to incur out of pocket expenses (including but not limited to, out-of-town travel and lodging) which are above and beyond the ordinary expenses associated with performance of this Agreement, Consultant shall be entitled to reimbursement of such expenses. Consultant shall only be reimbursed for those expenses which: (I) appear on Consultant's monthly invoices; (II) are accompanied by a copy of the City's written authorization for Consultant to incur such expenses; and (III) receipts documenting such expenses.

4. General Terms and Conditions. The General Terms and Conditions set forth in **Exhibit B** are incorporated as part of this Agreement. In the event of any inconsistency between the General Terms and Conditions and any other exhibit to this

Agreement, the General Terms and Conditions shall control unless it is clear from the context that both parties intend the provisions of the other exhibit(s) to control.

5. Addresses.

City of Commerce

City of Commerce
2535 Commerce Way
Commerce, CA 90040
Attn: Edgar P. Cisneros, City Administrator

Company

Hirsch & Associates
Attn: Patrick Hirsch
2221 East Winston Road, Suite A
Anaheim, CA 92806

6. Exhibits. All exhibits referred to in this Agreement are listed here and are incorporated and made part of this Agreement by this reference.

Exhibit A – Scope of Services and Compensation Schedule

Exhibit B – General Terms and Conditions

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates written below.

CITY

CITY OF COMMERCE

By: _____
Hugo A. Argumedo, Mayor

Date

By: _____
Edgar P. Cisneros, City Administrator

Date

CONSULTANT

Hirsch & Associates

By:  _____
Patrick Hirsch

12.19.12

Date

ATTEST:

By: _____
Lena Shumway, City Clerk

Date

APPROVED AS TO FORM:

By: _____
Noel Tapia, City Attorney

Date

EXHIBIT A
SCOPE OF WORK



HIRSCH & ASSOCIATES, INC.

LANDSCAPE ARCHITECTURE & PLANNING

CITY OF COMMERCE ON-CALL SERVICES

EXHIBIT A

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.



HIRSCH & ASSOCIATES, INC.
LANDSCAPE ARCHITECTURE & PLANNING

CITY OF COMMERCE ON-CALL SERVICES

EXHIBIT B

PROFESSIONAL FEES (fiscal year 2018 to 2019)

Professional fees include all costs for general overhead, profit, telephone, clerical, and incidental expenses not separately requested by the City. Professional fees are subject to an adjustment per the Consumer Price Index as published in the Wall Street Journal on a twelve-month basis. HAI's fiscal year is from July 1 to June 30 of each year.

*	Principal Landscape Architect	\$155/hr.
*	Director of Projects	\$125/hr.
*	Senior Project Manager	\$100/hr.
*	Project Manager	\$90/hr.
*	Senior Designer	\$85/hr.
*	Designer	\$78/hr.
*	Office / Clerical	\$58/hr.
*	Travel.....	\$0.58/mi.
*	Printing	Cost plus 10%

EXHIBIT B
GENERAL TERMS AND CONDITIONS

1. Status as Independent Contractor.

A. Consultant is, and shall at all times remain as to City, a wholly independent contractor. Consultant shall have no power to incur any debt, obligation, or liability on behalf of the City of Commerce or otherwise act on behalf of Commerce as an agent. Neither the City of Commerce nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of the City of Commerce.

B. Consultant agrees to pay all required taxes on amounts paid to Consultant under this Agreement, and to indemnify and hold City harmless from any and all taxes, assessments, penalties, and interests asserted against City by reason of the independent Consultant relationship created by this Agreement. In the event that City is audited by any Federal or State agency regarding the independent status of Consultant and the audit in any way fails to sustain the validity of a wholly independent Consultant relationship between City and Consultant, then Consultant agrees to reimburse City for all costs, including accounting and attorney's fees, arising out of such audit and any appeals relating thereto.

C. Consultant shall fully comply with the workers' compensation law regarding Consultant and Consultant's employees. Consultant further agrees to indemnify and hold City harmless from any failure of Consultant to comply with applicable worker's compensation laws. City shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this Section 1.

D. Consultant represents to the City, and City relies on Consultant's representations, that Consultant shall serve solely in the capacity of an independent contractor to the City. Neither the City nor any of its agents will have control over the conduct of Consultant or any of Consultant's employees, except as otherwise set forth in the Agreement. Consultant may not, at any time or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of the City. The City has no duty, obligation, or responsibility to the Consultant's agents or employees, including the Affordable Care Act coverage requirements. Consultant is solely responsible for any tax penalties associated with the failure to offer affordable coverage to its agents and employees under the Affordable Care Act with respect to Consultant's agents and employees. Consultant warrants and represents that the City will not be responsible and will not be held liable for issues related to Consultant's status as an independent contractor, including Consultant's failure to comply with Consultant's duties, obligations, and responsibilities under the Affordable Care Act. Consultant further agrees to defend, indemnify, and hold the City harmless

for any and all taxes, claims, and penalties against the City related to Consultant's obligations under the Affordable Care Act.

2. Standard of Performance

Consultant shall perform all work to the highest professional standards and in a manner reasonably satisfactory to the City Administrator or his/her designee. No additional or different tasks or services shall be performed by Consultant other than those specified in **Exhibit A**.

3. Indemnification.

A. To the fullest extent permitted by law, Consultant shall indemnify, defend and hold harmless City and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all claims, losses, liabilities, damages, costs and expenses, including reasonable attorney's fees and costs, to the extent they arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant. Consultant's duty to defend shall consist of reimbursement of defense costs incurred by City in direct proportion to the Consultant's proportionate percentage of fault. Consultant's percentage of fault shall be determined, as applicable, by a court of law, jury or arbitrator. In the event any loss, liability or damage is incurred by way of settlement or resolution without a court, jury or arbitrator having made a determination of the Consultant's percentage of fault, the parties agree to mediation with a third party neutral to determine the Consultant's proportionate percentage of fault for purposes of determining the amount of indemnity and defense cost reimbursement owed to the City.

B. Notwithstanding the foregoing and without diminishing any rights of City under Section 3(a), for any liability, claim, demand, allegation against City arising out of, related to, or pertaining to any act or omission of Consultant, but which is not a design professional service, Consultant shall defend, indemnify, and hold harmless City, its officials, employees, and agents ("Indemnified Parties") from and against any and all damages, costs, expenses (including reasonable attorney fees and expert witness fees), judgments, settlements, and/or arbitration awards, whether for personal or bodily injury, property damage, or economic injury, and arising out of, related to, any concurrent or contributory negligence on the part of City, except for the sole or active negligence of, or willful misconduct of City. If it is determined the City's negligence or willful misconduct contributed to the liability or damage, Consultant shall be required to provide indemnification to the City and reimbursement of defense costs incurred by City in direct proportion to the Consultant's proportionate percentage of fault.

C. It is understood that the duty of Consultant to indemnify and hold harmless is subject to and includes the duty to defend as set forth in Section 2782.8 of the California Civil Code as further addressed in Section 3(a) above. Acceptance by the City of insurance certificates and endorsements required under this Agreement does not relieve Consultant 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, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

4. Insurance.

A. Without limiting Consultant's indemnification of Indemnities pursuant to Section 3 of this Agreement, Consultant shall obtain and provide and maintain at its own expense during the term of this Agreement the types and amounts of insurance as described below:

(I) Consultant shall maintain Commercial General Liability Insurance with coverage at least as broad as Insurance Services Office Commercial General Liability Form CG 00 01 in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage. Defense costs must be paid in addition to limits. There shall be no cross liability exclusion for claims or suits by one insured against another. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

(II) Consultant shall maintain Business Auto Coverage on ISO Business Auto Coverage Form CA 00 01 covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$1,000,000 combined single limit for each accident.

(III) Consultant shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance with on a state approved policy form providing statutory benefits as required by law with employer's liability limits no less than \$1,000,000 per accident for all covered losses;

(IV) Consultant shall maintain Professional Liability or Errors and Omissions Insurance that covers the services to be performed in connection with this Agreement, in the minimum amount of \$1,000,000 per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this Agreement and Consultant agrees to maintain

continuous coverage through a period no less than three (3) years after completion of the services required by this Agreement.

B. City, its officers, officials, employees and volunteers shall be named as additional insureds on the policy(ies) as to commercial general liability and automotive liability.

C. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VI (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.

D. All insurance policies shall provide that the insurance coverage shall not be non-renewed, canceled, reduced, or otherwise modified (except through the addition of additional insureds to the policy) by the insurance carrier without the insurance carrier giving City thirty (30) days' prior written notice thereof. Any such thirty (30) day notice shall be submitted to CITY via certified mail, return receipt requested, addressed to "Director of Human Resources & Risk Management," City of Commerce, 2535 Commerce Way, Commerce, California, 90040. Consultant agrees that it will not cancel, reduce or otherwise modify said insurance coverage.

E. Consultant shall submit to City (I) insurance certificates indicating compliance with the minimum worker's compensation insurance requirements above, and (II) insurance policy endorsements indicating compliance with all other minimum insurance requirements above, not less than one (1) day prior to beginning of performance under this Agreement. Endorsements shall be executed on City's appropriate standard forms entitled "Additional Insured Endorsement".

F. Consultant's insurance shall be primary as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees and volunteers shall be excess of Consultant's insurance and shall not contribute with it.

G. Consultant agrees that if it does not keep the aforesaid insurance in full force and effect, and such insurance is available at a reasonable cost. City may take out the necessary insurance and pay the premium thereon, and the repayment thereof shall be deemed an obligation of Consultant's and the cost of such insurance may be deducted, at the option of City, from payments due Consultant.

5. Release of Information/Confidentiality.

A. Consultant in the course of its duties may have access to confidential data of City, private individuals, or employees of the City. Consultant covenants that all data, documents, discussion, or other information developed or received by Consultant

or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without written authorization by City. City shall grant such authorization if disclosure is required by law. All City data shall be returned to City upon the termination of this Agreement. Consultant, its officers, employees, agents, or subconsultants, shall not without written authorization from the City Administrator, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the work performed under this Agreement or relating to any project or property located within the City. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives City notice of such court order or subpoena. Consultant's covenant under this section shall survive the termination of this Agreement.

B. Consultant shall promptly notify City should Consultant, its officers, employees, agents, or subconsultants be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions, or other discovery request, court order, or subpoena from any person or party regarding this Agreement and the work performed thereunder. City retains the right, but has no obligation, to represent Consultant and/or be present at any deposition, hearing, or similar proceeding. Consultant agrees to cooperate fully with City and to provide the opportunity to review any response to discovery requests provided by Consultant. However, City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response

6. Ownership of Work Product.

A. Consultant shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by the City that relate to the performance of services under this Agreement. Consultant shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to the representatives of the City or its designees at reasonable times to such books and records; shall give the City the right to examine and audit said books and records; shall permit the City to make transcripts therefrom as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

B. Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of the City and may be used, reused, or otherwise disposed of by the City without the permission of the Consultant. With respect to computer files, Consultant shall make available to the City, at the Consultant's office and upon reasonable written request by the City, the necessary computer software and hardware for purposes of

accessing, compiling, transferring, and printing computer files.

7. Conflict of Interest.

A. Consultant covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which may be affected by the services to be performed by Consultant under this Agreement, or which would conflict in any manner with the performance of its services hereunder. Consultant further covenants that, in performance of this Agreement, no person having any such interest shall be employed by it. Furthermore, Consultant shall avoid the appearance of having any interest which would conflict in any manner with the performance of its services pursuant to this Agreement.

B. Consultant covenants not to give or receive any compensation, monetary or otherwise, to or from the ultimate vendor(s) of services to City as a result of the performance of this Agreement, or the services that may be procured by the City as a result of the recommendations made by Consultant's covenants under this section shall survive the termination of this Agreement.

8. Termination. Notwithstanding any other provision, this Agreement may be duly terminated at any time by the City at its sole discretion with or without cause by serving upon the consultant at least ten (10) days prior written notice ("Notice of Termination"). Upon receipt of said notice, the Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. Unless expressly agreed upon in writing by the City, the City shall not be obligated to pay for any services rendered nor any costs or expenses paid or incurred after the date of termination. The effective date of termination shall be upon the date specified in the written Notice of Termination. Consultant agrees that in the event of such termination, Consultant must refund the City its prorated share, except for services satisfactorily rendered prior to the effective date of termination. Immediately upon receiving written Notice of Termination, Consultant shall discontinue performing services, preserve the product of the services and upon payment for services, turn over to City the product of the services in accordance with written instructions of City.

In the event this Agreement is terminated pursuant to this Section, the City shall pay to Consultant the actual value of the work performed up to the time of termination, provided that the work performed is of value to the City. Upon termination of the Agreement pursuant to this Section, the Consultant will submit an invoice to the City.

9. Personnel. Consultant represents that it has, or will secure at its own expense, all personnel required to perform the services under this Agreement. All of the services required under this Agreement will be performed by Consultant or under its supervision, and all personnel engaged in the work shall be qualified to perform such services. Consultant reserves the right to determine the assignment of its own employees to the performance of Consultant's services under this Agreement, but City reserves the right, for good cause, to require Consultant to exclude any employee from performing

services on City's premises.

10. Non-Discrimination and Equal Employment Opportunity.

A. Consultant shall not discriminate as to race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition, or sexual orientation, in the performance of its services and duties pursuant to this Agreement, and will comply with all rules and regulations of City relating thereto. Such nondiscrimination shall include but not be limited to the following: employment, upgrading, demotion, transfers, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

B. Consultant will, in all solicitations or advertisements for employees placed by or on behalf of Consultant state either that it is an equal opportunity employer or that all qualified applicants will receive consideration for employment without regard to race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition, or sexual orientation.

C. Consultant will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Agreement except contracts or subcontracts for standard commercial supplies or raw materials.

11. Assignment. Consultant shall not assign or transfer any interest in this Agreement nor the performance of any of Consultant obligations hereunder, without the prior written consent of City, and any attempt by Consultant to assign this Agreement or any rights, duties, or obligations arising hereunder shall be void and of no effect.

12. Performance Evaluation. For any Agreement in effect for twelve months or longer, the City Administrator may require a written annual administrative performance evaluation within ninety (90) days of the first anniversary of the effective date of this Agreement, and each year thereafter throughout the term of this Agreement. The work product required by this Agreement shall be utilized as the basis for review, and any comments or complaints received by City during the review period, either orally or in writing, shall be considered. City shall meet with Consultant prior to preparing the written report. If any noncompliance with the Agreement is found, City may direct Consultant to correct the inadequacies, or, in the alternative, may terminate this Agreement as provided herein.

13. Compliance with Laws. Consultant shall keep itself informed of State, Federal and Local laws, ordinances, codes and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. Consultant shall at all times comply with such laws, ordinances, codes and regulations. The City, its officers and employees shall not be liable at law or in equity occasioned by failure of Consultant to comply with this Section.

14. Licenses. At all times during the term of this Agreement, Consultant shall have in full force and effect all licenses (including a City business license) required of it by law for performance of the services hereunder.

15. Non-Waiver of Terms, Rights and Remedies. Waiver by either party of any one or more of the conditions of performance under this Agreement shall not be a waiver of any other condition of performance under this Agreement. In no event shall the making by City of any payment to Consultant constitute or be construed as a waiver by City of any breach of covenant, or any default which may then exist on the part of Consultant, and the making of any such payment by City shall in no way impair or prejudice any right or remedy available to City with regard to such breach or default.

16. Attorney's Fees. In the event that either party to this Agreement shall commence any legal or equitable action or proceeding to enforce or interpret the provisions of this Agreement, the prevailing party in such action or proceeding shall be entitled to recover its costs of suit, including reasonable attorney's fees and costs, including costs of expert witnesses and Consultant.

17. Notices. Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on (a) the day of delivery if delivered by hand during Consultant regular business hours or by facsimile before or during Consultant regular business hours; or (b) on the third business day following deposit in the United States mail, postage prepaid, to the addresses heretofore set forth in the Agreement, or to such other addresses as the parties may, from time to time, designate in writing pursuant to the provisions of this section.

18. Governing Law. This Agreement shall be construed and interpreted both as to validity and to performance of the Parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Los Angeles, State of California. However, the Parties may agree to submit any dispute to non-binding arbitration.

19. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be the original, and all of which together shall constitute one and the same instrument.

20. Severability. If any provision or any part of any provision of this Agreement is found to be invalid or unenforceable, the balance of this Agreement shall remain in full force and effect.

21. Entire Agreement. This Agreement, and any other documents incorporated herein by specific reference, represents the entire and integrated agreement between Consultant and City. This Agreement supersedes all prior oral or written negotiations, representations or agreements. This Agreement may not be amended, nor any provision or breach hereof waived, except in a writing signed by the Parties which

expressly refers to this Agreement. Amendments on behalf of the City will only be valid if signed by the Mayor and attested by the City Clerk.

22. **Authority.** The person or persons executing this Agreement on behalf of Consultant warrants and represents that he/she has the authority to execute this Agreement on behalf of Consultant and has the authority to bind Consultant to the performance of its obligations hereunder.

4850-8686-0922, v. 1

DESIGN PROFESSIONAL SERVICES AGREEMENT ON-CALL FOR LANDSCAPE ARCHITECTURE

This agreement ("Agreement") is made as of _____, 2018 by and between the **City of Commerce**, a municipal corporation ("City") and **Moore Iacofano Goltsman, Inc.** ("Consultant"). City and Consultant are sometimes hereinafter individually referred to as a "Party" and collectively referred to as the "Parties."

RECITALS

WHEREAS, City desires to utilize the services of Consultant as an independent contractor to [insert brief description of work] as set forth in the Scope of Services attached hereto as **Exhibit A**; and

WHEREAS, Consultant represents that it is fully qualified to perform such consulting services by virtue of its experience and the training, education and expertise of its principals and employees.

NOW, THEREFORE, in consideration of performance by the parties of the covenants and conditions herein contained, the parties hereto agree as follows:

1. **Company's Scope of Services.** The nature and scope of the specific services to be performed by Consultant are as described in **Exhibit A**.

2. **Term of Agreement.** This Agreement shall commence on January 5, 2019 (the "Commencement Date") and shall remain and continue in effect until January 4, 2022, unless sooner terminated pursuant to the provisions of this Agreement.

3. **Compensation.**

A. City agrees to compensate Consultant for services under this Agreement in compliance with the schedule set forth in **Exhibit A**. Consultant shall maintain appropriate and necessary documentation supporting the all invoices submitted to the City detailing the type of service provided. Such documentation shall be available for review by the City at all reasonable times upon request.

B. If at the request of the City, Consultant is required to incur out of pocket expenses (including but not limited to, out-of-town travel and lodging) which are above and beyond the ordinary expenses associated with performance of this Agreement, Consultant shall be entitled to reimbursement of such expenses. Consultant shall only be reimbursed for those expenses which: (I) appear on Consultant's monthly invoices; (II) are accompanied by a copy of the City's written authorization for Consultant to incur such expenses; and (III) receipts documenting such expenses.

4. **General Terms and Conditions.** The General Terms and Conditions set forth in **Exhibit B** are incorporated as part of this Agreement. In the event of any inconsistency between the General Terms and Conditions and any other exhibit to this

Agreement, the General Terms and Conditions shall control unless it is clear from the context that both parties intend the provisions of the other exhibit(s) to control.

5. Addresses.

City of Commerce

City of Commerce
2535 Commerce Way
Commerce, CA 90040
Attn: Edgar P. Cisneros, City Administrator

Company

Moore Iacofano Goltsman, Inc.
Attn: Steve Lang
109 W. Union Avenue
Fullerton, CA 92832

6. Exhibits. All exhibits referred to in this Agreement are listed here and are incorporated and made part of this Agreement by this reference.

Exhibit A – Scope of Services and Compensation Schedule

Exhibit B – General Terms and Conditions

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates written below.

CITY

CITY OF COMMERCE

By: _____
Hugo A. Argumedo, Mayor

Date

By: _____
Edgar P. Cisneros, City Administrator

Date

CONSULTANT

Moore Iacofano Goltsman, Inc.

By: 
~~Steve Lang~~ Daniel Iacofano,
LEO

1/2/2019

Date

ATTEST:

By: _____
Lena Shumway, City Clerk

Date

APPROVED AS TO FORM:

By: _____
Noel Tapia, City Attorney

Date

EXHIBIT A
SCOPE OF WORK

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 11/13/18

Fringe 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 ¹	Hourly Billing Rates ²		Effective date of hourly rate		Actual or Avg. hourly rate ³	% or \$ increase	Hourly range - for classifications only
	Straight	OT(1.5x) OT(2x)	From	To			
Principal	\$ 191.95		January 2019	December 2021	\$ 64.91	3.00% 3.00% 3.00%	60-100
Project Manager	\$ 174.85		.	.	\$ 59.13	3.00% 3.00% 3.00%	47-60
Landscape Architect	\$ 145.56		.	.	\$ 49.22	3.00% 3.00% 3.00%	45-55
Irrigation Designer	\$ 149.96		.	.	\$ 50.71	3.00% 3.00% 3.00%	48-58
Associate	\$ 123.04		.	.	\$ 41.61	3.00% 3.00% 3.00%	38-46
Administrative Support	\$ 114.17		.	.	\$ 35.61	3.00% 3.00%	30-42

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 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 Goltman (MIG)

Contract No.

Date 11/13/18

Fringe Benefit 45.00% +
(= 0% if Included in OH)Overhead 39.03% +
(= 0% if Included in OH)

General Administration 80.00% = 164.02% Combined Indirect Cost Rate (ICR)

FEE = 12.00%

BILLING INFORMATION

CALCULATION INFORMATION

Name/Job Title/Classification ¹	Hourly Billing Rates ²		Effective date of hourly rate		Actual or Avg. hourly rate ³	% or \$ increase	Hourly range - for classifications only
	Straight	OT(1.5x) OT(2x)	From	To			
Steve Lang, Principal	\$ 189.53		January 2019	December 2021	\$ 64.09	3.00% 3.00% 3.00%	60-100
Oscar Johnson, Project Manager	\$ 174.85		"	"	\$ 59.13	3.00% 3.00% 3.00%	47-80
Darren Rector, Landscape Architect	\$ 145.56		"	"	\$ 49.22	3.00% 3.00% 0.00%	45-55
Jose Leal, Irrigation Designer	\$ 149.96		"	"	\$ 50.71	3.00% 3.00% 3.00%	48-58
Project Associate	\$ 123.04		"	"	\$ 41.61	3.00% 3.00% 3.00%	38-46
Administrative Support	\$ 114.17		"	"	\$ 38.61	3.00% 3.00%	30-42

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 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 11/13/18

Fringe 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 ¹	Hourly Billing Rates ²		Effective date of hourly rate		Actual or Avg. hourly rate ³	% or \$ increase	Hourly range - for classifications only
	Straight	OT(1.5x) OT(2x)	From	To			
Principal	\$ 220.63		January 2019	December 2021	\$ 74.61	3.00% 3.00% 3.00%	195-245
Director	\$ 204.64		"	"	\$ 69.61	3.00% 3.00% 3.00%	180-205
Project Manager	\$ 170.36		"	"	\$ 57.61	3.00% 3.00% 3.00%	146-80
Associate	\$ 129.52		"	"	\$ 43.61	3.00% 3.00% 3.00%	110-135
Assistant/Tech Specialist	\$ 117.13		"	"	\$ 39.61	3.00% 3.00% 3.00%	100-125
Administrative Support	\$ 117.13		"	"	\$ 39.61	3.00% 3.00%	105-125

- 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 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 (Environmental Services) Contract No. Date 11/13/18

Fringe 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 ¹	Hourly Billing Rates ²		Effective date of hourly rate		Actual or Avg. hourly rate ³	% or \$ increase	Hourly range - for classifications only
	Straight	OT(1.5x) OT(2x)	From	To			
Principal	\$ 220.63		January 2019	December 2021	\$ 74.61	3.00% 3.00% 3.00%	195-245
Project Manager	\$ 191.06		"	"	\$ 64.61	3.00% 3.00% 3.00%	150-205
Associate	\$ 123.04		"	"	\$ 41.61	3.00% 3.00% 3.00%	100-130
Sr. Tech Specialist	\$ 161.49		"	"	\$ 54.61	3.00% 3.00% 3.00%	150-180
Tech Specialist	\$ 134.87		"	"	\$ 54.61	3.00% 3.00% 3.00%	125-150
Administrative Support	\$ 117.13		"	"	\$ 39.61	3.00% 3.00%	100-125

- 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
GENERAL TERMS AND CONDITIONS

1. Status as Independent Contractor.

A. Consultant is, and shall at all times remain as to City, a wholly independent contractor. Consultant shall have no power to incur any debt, obligation, or liability on behalf of the City of Commerce or otherwise act on behalf of Commerce as an agent. Neither the City of Commerce nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of the City of Commerce.

B. Consultant agrees to pay all required taxes on amounts paid to Consultant under this Agreement, and to indemnify and hold City harmless from any and all taxes, assessments, penalties, and interests asserted against City by reason of the independent Consultant relationship created by this Agreement. In the event that City is audited by any Federal or State agency regarding the independent status of Consultant and the audit in any way fails to sustain the validity of a wholly independent Consultant relationship between City and Consultant, then Consultant agrees to reimburse City for all costs, including accounting and attorney's fees, arising out of such audit and any appeals relating thereto.

C. Consultant shall fully comply with the workers' compensation law regarding Consultant and Consultant's employees. Consultant further agrees to indemnify and hold City harmless from any failure of Consultant to comply with applicable worker's compensation laws. City shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this Section 1.

D. Consultant represents to the City, and City relies on Consultant's representations, that Consultant shall serve solely in the capacity of an independent contractor to the City. Neither the City nor any of its agents will have control over the conduct of Consultant or any of Consultant's employees, except as otherwise set forth in the Agreement. Consultant may not, at any time or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of the City. The City has no duty, obligation, or responsibility to the Consultant's agents or employees, including the Affordable Care Act coverage requirements. Consultant is solely responsible for any tax penalties associated with the failure to offer affordable coverage to its agents and employees under the Affordable Care Act with respect to Consultant's agents and employees. Consultant warrants and represents that the City will not be responsible and will not be held liable for issues related to Consultant's status as an independent contractor, including Consultant's failure to comply with Consultant's duties, obligations, and responsibilities under the Affordable Care Act. Consultant further agrees to defend, indemnify, and hold the City harmless

for any and all taxes, claims, and penalties against the City related to Consultant's obligations under the Affordable Care Act.

2. Standard of Performance

Consultant shall perform all work to the highest professional standards and in a manner reasonably satisfactory to the City Administrator or his/her designee. No additional or different tasks or services shall be performed by Consultant other than those specified in **Exhibit A**.

3. Indemnification.

A. To the fullest extent permitted by law, Consultant shall indemnify, defend and hold harmless City and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all claims, losses, liabilities, damages, costs and expenses, including reasonable attorney's fees and costs, to the extent they arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant. Consultant's duty to defend shall consist of reimbursement of defense costs incurred by City in direct proportion to the Consultant's proportionate percentage of fault. Consultant's percentage of fault shall be determined, as applicable, by a court of law, jury or arbitrator. In the event any loss, liability or damage is incurred by way of settlement or resolution without a court, jury or arbitrator having made a determination of the Consultant's percentage of fault, the parties agree to mediation with a third party neutral to determine the Consultant's proportionate percentage of fault for purposes of determining the amount of indemnity and defense cost reimbursement owed to the City.

B. Notwithstanding the foregoing and without diminishing any rights of City under Section 3(a), for any liability, claim, demand, allegation against City arising out of, related to, or pertaining to any act or omission of Consultant, but which is not a design professional service, Consultant shall defend, indemnify, and hold harmless City, its officials, employees, and agents ("Indemnified Parties") from and against any and all damages, costs, expenses (including reasonable attorney fees and expert witness fees), judgments, settlements, and/or arbitration awards, whether for personal or bodily injury, property damage, or economic injury, and arising out of, related to, any concurrent or contributory negligence on the part of City, except for the sole or active negligence of, or willful misconduct of City. If it is determined the City's negligence or willful misconduct contributed to the liability or damage, Consultant shall be required to provide indemnification to the City and reimbursement of defense costs incurred by City in direct proportion to the Consultant's proportionate percentage of fault.

C. It is understood that the duty of Consultant to indemnify and hold harmless is subject to and includes the duty to defend as set forth in Section 2782.8 of the California Civil Code as further addressed in Section 3(a) above. Acceptance by the City of insurance certificates and endorsements required under this Agreement does not relieve Consultant 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, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

4. Insurance.

A. Without limiting Consultant's indemnification of Indemnities pursuant to Section 3 of this Agreement, Consultant shall obtain and provide and maintain at its own expense during the term of this Agreement the types and amounts of insurance as described below:

(I) Consultant shall maintain Commercial General Liability Insurance with coverage at least as broad as Insurance Services Office Commercial General Liability Form CG 00 01 in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage. Defense costs must be paid in addition to limits. There shall be no cross liability exclusion for claims or suits by one insured against another. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

(II) Consultant shall maintain Business Auto Coverage on ISO Business Auto Coverage Form CA 00 01 covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$1,000,000 combined single limit for each accident.

(III) Consultant shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance with on a state approved policy form providing statutory benefits as required by law with employer's liability limits no less than \$1,000,000 per accident for all covered losses;

(IV) Consultant shall maintain Professional Liability or Errors and Omissions Insurance that covers the services to be performed in connection with this Agreement, in the minimum amount of \$1,000,000 per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this Agreement and Consultant agrees to maintain

continuous coverage through a period no less than three (3) years after completion of the services required by this Agreement.

B. City, its officers, officials, employees and volunteers shall be named as additional insureds on the policy(ies) as to commercial general liability and automotive liability.

C. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VI (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.

D. All insurance policies shall provide that the insurance coverage shall not be non-renewed, canceled, reduced, or otherwise modified (except through the addition of additional insureds to the policy) by the insurance carrier without the insurance carrier giving City thirty (30) days' prior written notice thereof. Any such thirty (30) day notice shall be submitted to CITY via certified mail, return receipt requested, addressed to "Director of Human Resources & Risk Management," City of Commerce, 2535 Commerce Way, Commerce, California, 90040. Consultant agrees that it will not cancel, reduce or otherwise modify said insurance coverage.

E. Consultant shall submit to City (I) insurance certificates indicating compliance with the minimum worker's compensation insurance requirements above, and (II) insurance policy endorsements indicating compliance with all other minimum insurance requirements above, not less than one (1) day prior to beginning of performance under this Agreement. Endorsements shall be executed on City's appropriate standard forms entitled "Additional Insured Endorsement".

F. Consultant's insurance shall be primary as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees and volunteers shall be excess of Consultant's insurance and shall not contribute with it.

G. Consultant agrees that if it does not keep the aforesaid insurance in full force and effect, and such insurance is available at a reasonable cost. City may take out the necessary insurance and pay the premium thereon, and the repayment thereof shall be deemed an obligation of Consultant's and the cost of such insurance may be deducted, at the option of City, from payments due Consultant.

5. Release of Information/Confidentiality.

A. Consultant in the course of its duties may have access to confidential data of City, private individuals, or employees of the City. Consultant covenants that all data, documents, discussion, or other information developed or received by Consultant

or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without written authorization by City. City shall grant such authorization if disclosure is required by law. All City data shall be returned to City upon the termination of this Agreement. Consultant, its officers, employees, agents, or subconsultants, shall not without written authorization from the City Administrator, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the work performed under this Agreement or relating to any project or property located within the City. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives City notice of such court order or subpoena. Consultant's covenant under this section shall survive the termination of this Agreement.

B. Consultant shall promptly notify City should Consultant, its officers, employees, agents, or subconsultants be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions, or other discovery request, court order, or subpoena from any person or party regarding this Agreement and the work performed thereunder. City retains the right, but has no obligation, to represent Consultant and/or be present at any deposition, hearing, or similar proceeding. Consultant agrees to cooperate fully with City and to provide the opportunity to review any response to discovery requests provided by Consultant. However, City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response

6. Ownership of Work Product.

A. Consultant shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by the City that relate to the performance of services under this Agreement. Consultant shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to the representatives of the City or its designees at reasonable times to such books and records; shall give the City the right to examine and audit said books and records; shall permit the City to make transcripts therefrom as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

B. Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of the City and may be used, reused, or otherwise disposed of by the City without the permission of the Consultant. With respect to computer files, Consultant shall make available to the City, at the Consultant's office and upon reasonable written request by the City, the necessary computer software and hardware for purposes of

accessing, compiling, transferring, and printing computer files.

7. Conflict of Interest.

A. Consultant covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which may be affected by the services to be performed by Consultant under this Agreement, or which would conflict in any manner with the performance of its services hereunder. Consultant further covenants that, in performance of this Agreement, no person having any such interest shall be employed by it. Furthermore, Consultant shall avoid the appearance of having any interest which would conflict in any manner with the performance of its services pursuant to this Agreement.

B. Consultant covenants not to give or receive any compensation, monetary or otherwise, to or from the ultimate vendor(s) of services to City as a result of the performance of this Agreement, or the services that may be procured by the City as a result of the recommendations made by Consultant's covenants under this section shall survive the termination of this Agreement.

8. Termination. Notwithstanding any other provision, this Agreement may be duly terminated at any time by the City at its sole discretion with or without cause by serving upon the consultant at least ten (10) days prior written notice ("Notice of Termination"). Upon receipt of said notice, the Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. Unless expressly agreed upon in writing by the City, the City shall not be obligated to pay for any services rendered nor any costs or expenses paid or incurred after the date of termination. The effective date of termination shall be upon the date specified in the written Notice of Termination. Consultant agrees that in the event of such termination, Consultant must refund the City its prorated share, except for services satisfactorily rendered prior to the effective date of termination. Immediately upon receiving written Notice of Termination, Consultant shall discontinue performing services, preserve the product of the services and upon payment for services, turn over to City the product of the services in accordance with written instructions of City.

In the event this Agreement is terminated pursuant to this Section, the City shall pay to Consultant the actual value of the work performed up to the time of termination, provided that the work performed is of value to the City. Upon termination of the Agreement pursuant to this Section, the Consultant will submit an invoice to the City.

9. Personnel. Consultant represents that it has, or will secure at its own expense, all personnel required to perform the services under this Agreement. All of the services required under this Agreement will be performed by Consultant or under its supervision, and all personnel engaged in the work shall be qualified to perform such services. Consultant reserves the right to determine the assignment of its own employees to the performance of Consultant's services under this Agreement, but City reserves the right, for good cause, to require Consultant to exclude any employee from performing

services on City's premises.

10. Non-Discrimination and Equal Employment Opportunity.

A. Consultant shall not discriminate as to race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition, or sexual orientation, in the performance of its services and duties pursuant to this Agreement, and will comply with all rules and regulations of City relating thereto. Such nondiscrimination shall include but not be limited to the following: employment, upgrading, demotion, transfers, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

B. Consultant will, in all solicitations or advertisements for employees placed by or on behalf of Consultant state either that it is an equal opportunity employer or that all qualified applicants will receive consideration for employment without regard to race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition, or sexual orientation.

C. Consultant will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Agreement except contracts or subcontracts for standard commercial supplies or raw materials.

11. Assignment. Consultant shall not assign or transfer any interest in this Agreement nor the performance of any of Consultant obligations hereunder, without the prior written consent of City, and any attempt by Consultant to assign this Agreement or any rights, duties, or obligations arising hereunder shall be void and of no effect.

12. Performance Evaluation. For any Agreement in effect for twelve months or longer, the City Administrator may require a written annual administrative performance evaluation within ninety (90) days of the first anniversary of the effective date of this Agreement, and each year thereafter throughout the term of this Agreement. The work product required by this Agreement shall be utilized as the basis for review, and any comments or complaints received by City during the review period, either orally or in writing, shall be considered. City shall meet with Consultant prior to preparing the written report. If any noncompliance with the Agreement is found, City may direct Consultant to correct the inadequacies, or, in the alternative, may terminate this Agreement as provided herein.

13. Compliance with Laws. Consultant shall keep itself informed of State, Federal and Local laws, ordinances, codes and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. Consultant shall at all times comply with such laws, ordinances, codes and regulations. The City, its officers and employees shall not be liable at law or in equity occasioned by failure of Consultant to comply with this Section.

14. Licenses. At all times during the term of this Agreement, Consultant shall have in full force and effect all licenses (including a City business license) required of it by law for performance of the services hereunder.

15. Non-Waiver of Terms, Rights and Remedies. Waiver by either party of any one or more of the conditions of performance under this Agreement shall not be a waiver of any other condition of performance under this Agreement. In no event shall the making by City of any payment to Consultant constitute or be construed as a waiver by City of any breach of covenant, or any default which may then exist on the part of Consultant, and the making of any such payment by City shall in no way impair or prejudice any right or remedy available to City with regard to such breach or default.

16. Attorney's Fees. In the event that either party to this Agreement shall commence any legal or equitable action or proceeding to enforce or interpret the provisions of this Agreement, the prevailing party in such action or proceeding shall be entitled to recover its costs of suit, including reasonable attorney's fees and costs, including costs of expert witnesses and Consultant.

17. Notices. Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on (a) the day of delivery if delivered by hand during Consultant regular business hours or by facsimile before or during Consultant regular business hours; or (b) on the third business day following deposit in the United States mail, postage prepaid, to the addresses heretofore set forth in the Agreement, or to such other addresses as the parties may, from time to time, designate in writing pursuant to the provisions of this section.

18. Governing Law. This Agreement shall be construed and interpreted both as to validity and to performance of the Parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Los Angeles, State of California. However, the Parties may agree to submit any dispute to non-binding arbitration.

19. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be the original, and all of which together shall constitute one and the same instrument.

20. Severability. If any provision or any part of any provision of this Agreement is found to be invalid or unenforceable, the balance of this Agreement shall remain in full force and effect.

21. Entire Agreement. This Agreement, and any other documents incorporated herein by specific reference, represents the entire and integrated agreement between Consultant and City. This Agreement supersedes all prior oral or written negotiations, representations or agreements. This Agreement may not be amended, nor any provision or breach hereof waived, except in a writing signed by the Parties which

expressly refers to this Agreement. Amendments on behalf of the City will only be valid if signed by the Mayor and attested by the City Clerk.

22. **Authority.** The person or persons executing this Agreement on behalf of Consultant warrants and represents that he/she has the authority to execute this Agreement on behalf of Consultant and has the authority to bind Consultant to the performance of its obligations hereunder.

4850-8686-0922, v. 1