

# LANDSCAPE ARCHITECTURE PLAN CHECK PROFESSIONAL SERVICES AGREEMENTS

## (RENEWALS)

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

## **DESIGN PROFESSIONAL SERVICES AGREEMENT ON-CALL FOR LANDSCAPE ARCHITECTURE PLAN CHECK**

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 Plan Checking**

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

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

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

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

## EXHIBIT B

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

Name/Job Title/Classification <sup>1</sup>	Hourly Billing Rates <sup>2</sup>			Effective date of hourly rate		Actual or Avg. hourly rate <sup>3</sup>	% or \$ increase	Hourly range - for classifications only
	Straight	OT(1.5x)	OT(2x)	From	To			
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%	

## CALCULATION INFORMATION

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

## NOTES:

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

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

Name/Job Title/Classification <sup>1</sup>	Hourly Billing Rates <sup>2</sup>		Effective date of hourly rate		Actual or Avg. hourly rate <sup>3</sup>	% or \$ increase	Hourly range - for classifications only
	Straight	OT(1.5x)	OT(2x)	From To			
Danny Wang Landscape Designer	\$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 (\*)
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**BILLING INFORMATION**

Name/Job Title/Classification <sup>1</sup>	Hourly Billing Rates <sup>2</sup>		Effective date of hourly rate		Actual or Avg. hourly rate <sup>3</sup>	% or \$ increase	Hourly range - for classifications only
	Straight	OT(1.5x)	OT(2x)	From To			
Senior Landscape Architect							\$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

**CALCULATION INFORMATION**

- 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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**NOTES:**

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

Date 11/7/2018

[illegible]

**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 toolings, 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.

4850-8686-0922, v. 1



## **DESIGN PROFESSIONAL SERVICES AGREEMENT ON-CALL FOR LANDSCAPE ARCHITECTURE PLAN CHECK**

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

12.19.18  
\_\_\_\_\_  
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.**

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### **LANDSCAPE ARCHITECTURE & PLANNING**

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

#### **LANDSCAPE ARCHITECTURE PLAN CHECK SERVICES**

#### **EXHIBIT A**

#### **APPROACH**

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

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

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

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

#### **PROJECT TYPE**

##### **Parks**

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

##### **Municipal**

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

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

## **GENERAL SCOPE OF SERVICES**

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

**Basic Services.** Hirsch & Associates agrees to perform all the necessary professional landscape architectural plan check services in a timely and professional manner, consistent with the standards of the profession.

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

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

The City shall supply Hirsch & Associates with the information and Hirsch & Associates will make a good-faith effort to verify the accuracy of such information by means of a thorough plan check.

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

## **PLAN CHECK PROCESS**

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

**Project Schedule.** Hirsch & Associates shall meet with the City to establish a preliminary project schedule at the beginning of the project, but after collection of the City provide information as indicated. The Project schedule shall be update from time to time during the plan check process. A preliminary plan check schedule will be provided to the City prior to starting plan check.

**Geotechnical Investigation.** Hirsch & Associates will review the preliminary geotechnical investigation report. The report will contain all findings, conclusions and recommendations for site preparation including over-excavation/removal depth, allowable bearing value, foundation/footing/slab-on-grade depth and thickness, cement type, excavation characteristics,

earth pressures for retaining walls design, general grading specifications, tentative pavement design, percolation rate of the soil and UBC (1997) seismic design coefficients.

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

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

- Project Cover Sheet.
- General Requirements and Notes
- Demolition (Clearing and Grubbing).
- Precise Grading Plans and Details.
- Erosion Control Plan and Details
- On Site Storm Drain Plans and Details
- Sewer and Water Plans and Details.
- Horizontal Control Plan
- Site Construction Plans and Details.
- Parking Lot Improvement Plans and Details.
- Landscape and Irrigation Plans with Details.
- Electrical and Lighting Plans and Details.
- Photometric Light Level and Spill Light Plans

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

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

**Copies of Final Working Drawings and Specifications and Other Documents.** The City shall pay for all printing, coping, delivery, and travel required for plan check services.

## **PROJECT MANAGEMENT AND SUPPORT**

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

**Observation.** The Hirsch & Associates shall observe work executed from the Final Working Drawings and Specifications in person at such times as designated by the City.

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

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

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

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

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

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

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

**Change Requests and Material Changes.** Hirsch & Associates shall evaluate and advise City, in a timely manner and in writing, of any change requests and material change(s) that may be requested or necessary in the project plans and specifications. Hirsch & Associates shall provide the City with its opinion as to whether such change requests should be approved, denied or revised. Hirsch & Associates shall not order Contractors to make any changes affecting the contract price or schedule without approval by City of such, pursuant to the terms of the Construction Documents.

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

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

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

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

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

required from the general contractor and subcontractors pursuant to the Construction Documents. Hirsch & Associates shall coordinate and provide these materials to the City for City projects only.

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

## **RECORD DRAWINGS**

**Record Drawings and Specifications.** Not later than thirty (30) days after substantial completion of the Project, Hirsch & Associates shall review and forward the Final Working Drawings and Specifications prepared by others, indicating all changes made by change orders or otherwise pursuant to the Construction Documents, as well as all information called for on the specifications, thus producing an "record" set of Final Working Drawings and Specifications ("Record Drawings and Specifications"). The Record Drawings and Specifications shall show, among other things, the location of all concealed pipe, buried conduit runs and other similar elements within the completed Project that differ from the locations indicated on the Final Plans and Specification for the project. Hirsch & Associates shall review the Record Drawings and Specifications to determine that they are a correct representation of the information supplied to Hirsch & Associates by any inspectors and contractor, and shall obtain certifications from any inspectors and contractors that the drawings are correct.



## **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.

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