

OFFICE OF THE CITY ATTORNEY  
CHARLES PARKIN, City Attorney  
333 West Ocean Boulevard, 11th Floor  
Long Beach, CA 90802-4664

AGREEMENT

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THIS AGREEMENT is made and entered, in duplicate, as of July 31, 2014 for reference purposes only, pursuant to a minute order adopted by the City Council of the City of Long Beach at its meeting on July 22, 2014, by and between HIRSCH & ASSOCIATES, INC., a California corporation, with a place of business at 2221 E. Winston Road, Suite A, Anaheim, California 92806 ("Consultant"), and the CITY OF LONG BEACH, a municipal corporation ("City").

WHEREAS, the City requires specialized services requiring unique skills to be performed in connection with as-needed landscape architectural services ("Project"); and

WHEREAS, City has selected Consultant in accordance with City's administrative procedures and City has determined that Consultant and its employees are qualified, licensed, if so required, and experienced in performing these specialized services; and

WHEREAS, City desires to have Consultant perform these specialized services, and Consultant is willing and able to do so on the terms and conditions in this Agreement;

NOW, THEREFORE, in consideration of the mutual terms, covenants, and conditions in this Agreement, the parties agree as follows:

1. SCOPE OF WORK OR SERVICES.

A. Consultant shall furnish specialized services more particularly described in Exhibit "A", attached to this Agreement and incorporated by this reference, in accordance with the standards of the profession, and City shall pay for these services in the manner described below, not to exceed Two Hundred Fifty Thousand Dollars (\$250,000), at the rates or charges shown in Exhibit "B".

B. The City's obligation to pay the sum stated above for any one fiscal year shall be contingent upon the City Council of the City appropriating the

1 necessary funds for such payment by the City in each fiscal year during the term  
2 of this Agreement. For the purposes of this Section, a fiscal year commences on  
3 October 1 of the year and continues through September 30 of the following year.  
4 In the event that the City Council of the City fails to appropriate the necessary  
5 funds for any fiscal year, then, and in that event, the Agreement will terminate at  
6 no additional cost or obligation to the City.

7 C. Consultant may select the time and place of performance for  
8 these services provided, however, that access to City documents, records, and the  
9 like, if needed by Consultant, shall be available only during City's normal business  
10 hours and provided that milestones for performance, if any, are met.

11 D. Consultant has requested to receive regular payments. City  
12 shall pay Consultant in due course of payments following receipt from Consultant  
13 and approval by City of invoices showing the services or task performed, the time  
14 expended (if billing is hourly), and the name of the Project. Consultant shall certify  
15 on the invoices that Consultant has performed the services in full conformance  
16 with this Agreement and is entitled to receive payment. Each invoice shall be  
17 accompanied by a progress report indicating the progress to date of services  
18 performed and covered by the invoice, including a brief statement of any Project  
19 problems and potential causes of delay in performance, and listing those services  
20 that are projected for performance by Consultant during the next invoice cycle.  
21 Where billing is done and payment is made on an hourly basis, the parties  
22 acknowledge that this arrangement is either customary practice for Consultant's  
23 profession, industry, or business, or is necessary to satisfy audit and legal  
24 requirements which may arise due to the fact that City is a municipality.

25 E. Consultant represents that Consultant has obtained all  
26 necessary information on conditions and circumstances that may affect its  
27 performance and has conducted site visits, if necessary.

28 F. CAUTION: Consultant shall not begin work until this

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1 Agreement has been signed by both parties and until Consultant's evidence of  
2 insurance has been delivered to and approved by the City.

3 2. TERM. The term of this Agreement shall commence at midnight on  
4 August 1, 2014, and shall terminate at 11:59 p.m. on August 1, 2016, unless sooner  
5 terminated as provided in this Agreement, or unless the services or the Project is  
6 completed sooner.

7 3. COORDINATION AND ORGANIZATION.

8 A. Consultant shall coordinate its performance with City's  
9 representative, if any, named in Exhibit "C", attached to this Agreement and  
10 incorporated by this reference. Consultant shall advise and inform City's  
11 representative of the work in progress on the Project in sufficient detail so as to  
12 assist City's representative in making presentations and in holding meetings on  
13 the Project. City shall furnish to Consultant information or materials, if any,  
14 described in Exhibit "D" attached to this Agreement and incorporated by this  
15 reference, and shall perform any other tasks described in the Exhibit.

16 B. The parties acknowledge that a substantial inducement to City  
17 for entering this Agreement was and is the reputation and skill of Consultant's key  
18 employee, Patrick L. Hirsch. City shall have the right to approve any person  
19 proposed by Consultant to replace that key employee.

20 4. INDEPENDENT CONTRACTOR. In performing its services,  
21 Consultant is and shall act as an independent contractor and not an employee,  
22 representative, or agent of City. Consultant shall have control of Consultant's work and  
23 the manner in which it is performed. Consultant shall be free to contract for similar  
24 services to be performed for others during this Agreement provided, however, that  
25 Consultant acts in accordance with Section 9 and Section 11 of this Agreement.  
26 Consultant acknowledges and agrees that a) City will not withhold taxes of any kind from  
27 Consultant's compensation, b) City will not secure workers' compensation or pay  
28 unemployment insurance to, for or on Consultant's behalf, and c) City will not provide and

1 Consultant is not entitled to any of the usual and customary rights, benefits or privileges  
2 of City employees. Consultant expressly warrants that neither Consultant nor any of  
3 Consultant's employees or agents shall represent themselves to be employees or agents  
4 of City.

5 5. INSURANCE.

6 A. As a condition precedent to the effectiveness of this  
7 Agreement, Consultant shall procure and maintain, at Consultant's expense for the  
8 duration of this Agreement, from insurance companies that are admitted to write  
9 insurance in California and have ratings of or equivalent to A:V by A.M. Best  
10 Company or from authorized non-admitted insurance companies subject to  
11 Section 1763 of the California Insurance Code and that have ratings of or  
12 equivalent to A:VIII by A.M. Best Company the following insurance:

13 (a) Commercial general liability insurance (equivalent in scope to  
14 ISO form CG 00 01 11 85 or CG 00 01 10 93) in an amount not less than  
15 \$1,000,000 per each occurrence and \$2,000,000 general aggregate. This  
16 coverage shall include but not be limited to broad form contractual liability,  
17 cross liability, independent contractors liability, and products and  
18 completed operations liability. The City, its boards and commissions, and  
19 their officials, employees and agents shall be named as additional  
20 insureds by endorsement (on City's endorsement form or on an  
21 endorsement equivalent in scope to ISO form CG 20 10 11 85 or CG 20  
22 26 11 85 or both CG 20 10 07 04 and CG 20 37 07 04 or both CG 20 33  
23 07 04 and CG 20 37 07 04), and this insurance shall contain no special  
24 limitations on the scope of protection given to the City, its boards and  
25 commissions; and their officials, employees and agents. This policy shall  
26 be endorsed to state that the insurer waives its right of subrogation  
27 against City, its boards and commissions, and their officials, employees  
28 and agents.

1 (b) Workers' Compensation insurance as required by the California  
2 Labor Code and employer's liability insurance in an amount not less than  
3 \$1,000,000. This policy shall be endorsed to state that the insurer waives  
4 its right of subrogation against City, its boards and commissions, and their  
5 officials, employees and agents.

6 (c) Professional liability or errors and omissions insurance in an  
7 amount not less than \$1,000,000 per claim.

8 (d) Commercial automobile liability insurance (equivalent in scope  
9 to ISO form CA 00 01 06 92), covering Auto Symbol 1 (Any Auto) in an  
10 amount not less than \$500,000 combined single limit per accident.

11 B. Any self-insurance program, self-insured retention, or  
12 deductible must be separately approved in writing by City's Risk Manager or  
13 designee and shall protect City, its officials, employees and agents in the same  
14 manner and to the same extent as they would have been protected had the policy  
15 or policies not contained retention or deductible provisions.

16 C. Each insurance policy shall be endorsed to state that  
17 coverage shall not be reduced, non-renewed, or canceled except after thirty (30)  
18 days prior written notice to City, shall be primary and not contributing to any other  
19 insurance or self-insurance maintained by City, and shall be endorsed to state that  
20 coverage maintained by City shall be excess to and shall not contribute to  
21 insurance or self-insurance maintained by Consultant. Consultant shall notify the  
22 City in writing within five (5) days after any insurance has been voided by the  
23 insurer or cancelled by the insured.

24 D. If this coverage is written on a "claims made" basis, it must  
25 provide for an extended reporting period of not less than one hundred eighty (180)  
26 days, commencing on the date this Agreement expires or is terminated, unless  
27 Consultant guarantees that Consultant will provide to the City evidence of  
28 uninterrupted, continuing coverage for a period of not less than three (3) years,

1 commencing on the date this Agreement expires or is terminated.

2 E. Consultant shall require that all subconsultants or contractors  
3 which Consultant uses in the performance of these services maintain insurance in  
4 compliance with this Section unless otherwise agreed in writing by City's Risk  
5 Manager or designee.

6 F. Prior to the start of performance, Consultant shall deliver to  
7 City certificates of insurance and the endorsements for approval as to sufficiency  
8 and form. In addition, Consultant, shall, within thirty (30) days prior to expiration of  
9 the insurance, furnish to City certificates of insurance and endorsements  
10 evidencing renewal of the insurance. City reserves the right to require complete  
11 certified copies of all policies of Consultant and Consultant's subconsultants and  
12 contractors, at any time. Consultant shall make available to City's Risk Manager  
13 or designee all books, records and other information relating to this insurance,  
14 during normal business hours.

15 G. Any modification or waiver of these insurance requirements  
16 shall only be made with the approval of City's Risk Manager or designee. Not  
17 more frequently than once a year, the City's Risk Manager or designee may  
18 require that Consultant, Consultant's subconsultants and contractors change the  
19 amount, scope or types of coverages required in this Section if, in his or her sole  
20 opinion, the amount, scope, or types of coverages are not adequate.

21 H. The procuring or existence of insurance shall not be  
22 construed or deemed as a limitation on liability relating to Consultant's  
23 performance or as full performance of or compliance with the indemnification  
24 provisions of this Agreement.

25 6. ASSIGNMENT AND SUBCONTRACTING. This Agreement  
26 contemplates the personal services of Consultant and Consultant's employees, and the  
27 parties acknowledge that a substantial inducement to City for entering this Agreement  
28 was and is the professional reputation and competence of Consultant and Consultant's

1 employees. Consultant shall not assign its rights or delegate its duties under this  
2 Agreement, or any interest in this Agreement, or any portion of it, without the prior  
3 approval of City, except that Consultant may with the prior approval of the City Manager  
4 of City, assign any moneys due or to become due the Consultant under this Agreement.  
5 Any attempted assignment or delegation shall be void, and any assignee or delegate  
6 shall acquire no right or interest by reason of an attempted assignment or delegation.  
7 Furthermore, Consultant shall not subcontract any portion of its performance without the  
8 prior approval of the City Manager or designee, or substitute an approved subconsultant  
9 or contractor without approval prior to the substitution. Nothing stated in this Section  
10 shall prevent Consultant from employing as many employees as Consultant deems  
11 necessary for performance of this Agreement.

12 7. CONFLICT OF INTEREST. Consultant, by executing this  
13 Agreement, certifies that, at the time Consultant executes this Agreement and for its  
14 duration, Consultant does not and will not perform services for any other client which  
15 would create a conflict, whether monetary or otherwise, as between the interests of City  
16 and the interests of that other client. And, Consultant shall obtain similar certifications  
17 from Consultant's employees, subconsultants and contractors.

18 8. MATERIALS. Consultant shall furnish all labor and supervision,  
19 supplies, materials, tools, machinery, equipment, appliances, transportation, and services  
20 necessary to or used in the performance of Consultant's obligations under this  
21 Agreement, except as stated in Exhibit "D".

22 9. OWNERSHIP OF DATA. All materials, information and data  
23 prepared, developed, or assembled by Consultant or furnished to Consultant in  
24 connection with this Agreement, including but not limited to documents, estimates,  
25 calculations, studies, maps, graphs, charts, computer disks, computer source  
26 documentation, samples, models, reports, summaries, drawings, designs, notes, plans,  
27 information, material, and memorandum ("Data") shall be the exclusive property of City.  
28 Data shall be given to City, and City shall have the unrestricted right to use and disclose

1 the Data in any manner and for any purpose without payment of further compensation to  
2 Consultant. Copies of Data may be retained by Consultant but Consultant warrants that  
3 Data shall not be made available to any person or entity for use without the prior approval  
4 of City. This warranty shall survive termination of this Agreement for five (5) years.

5 10. TERMINATION. Either party shall have the right to terminate this  
6 Agreement for any reason or no reason at any time by giving fifteen (15) calendar days  
7 prior written notice to the other party. In the event of termination under this Section, City  
8 shall pay Consultant for services satisfactorily performed and costs incurred up to the  
9 effective date of termination for which Consultant has not been previously paid. The  
10 procedures for payment in Section 1.B. with regard to invoices shall apply. On the  
11 effective date of termination, Consultant shall deliver to City all Data developed or  
12 accumulated in the performance of this Agreement, whether in draft or final form, or in  
13 process. And, Consultant acknowledges and agrees that City's obligation to make final  
14 payment is conditioned on Consultant's delivery of the Data to the City.

15 11. CONFIDENTIALITY. Consultant shall keep the Data confidential  
16 and shall not disclose the Data or use the Data directly or indirectly other than in the  
17 course of performing its services, during the term of this Agreement and for five (5) years  
18 following expiration or termination of this Agreement. In addition, Consultant shall keep  
19 confidential all information, whether written, oral, or visual, obtained by any means  
20 whatsoever in the course of performing its services for the same period of time.  
21 Consultant shall not disclose any or all of the Data to any third party, or use it for  
22 Consultant's own benefit or the benefit of others except for the purpose of this  
23 Agreement.

24 12. BREACH OF CONFIDENTIALITY. Consultant shall not be liable for  
25 a breach of confidentiality with respect to Data that: (a) Consultant demonstrates  
26 Consultant knew prior to the time City disclosed it; or (b) is or becomes publicly available  
27 without breach of this Agreement by Consultant; or (c) a third party who has a right to  
28 disclose does so to Consultant without restrictions on further disclosure; or (d) must be



1 disclosed pursuant to subpoena or court order.

2 13. ADDITIONAL COSTS AND REDESIGN.

3 A. Any costs incurred by the City due to Consultant's failure to  
4 meet the standards required by the scope of work or Consultant's failure to  
5 perform fully the tasks described in the scope of work which, in either case,  
6 causes the City to request that Consultant perform again all or part of the Scope of  
7 Work shall be at the sole cost of Consultant and City shall not pay any additional  
8 compensation to Consultant for its re-performance.

9 B. If the Project involves construction and the scope of work  
10 requires Consultant to prepare plans and specifications with an estimate of the  
11 cost of construction, then Consultant may be required to modify the plans and  
12 specifications, any construction documents relating to the plans and specifications,  
13 and Consultant's estimate, at no cost to City, when the lowest bid for construction  
14 received by City exceeds by more than ten percent (10%) Consultant's estimate.  
15 This modification shall be submitted in a timely fashion to allow City to receive new  
16 bids within four (4) months after the date on which the original plans and  
17 specifications were submitted by Consultant.

18 14. AMENDMENT. This Agreement, including all Exhibits, shall not be  
19 amended, nor any provision or breach waived, except in writing signed by the parties  
20 which expressly refers to this Agreement.

21 15. LAW. This Agreement shall be governed by and construed pursuant  
22 to the laws of the State of California (except those provisions of California law pertaining  
23 to conflicts of laws). Consultant shall comply with all laws, ordinances, rules and  
24 regulations of and obtain all permits, licenses, and certificates required by all federal,  
25 state and local governmental authorities.

26 16. ENTIRE AGREEMENT. This Agreement, including all Exhibits,  
27 constitutes the entire understanding between the parties and supersedes all other  
28 agreements, oral or written, with respect to the subject matter in this Agreement.

1                   17.    INDEMNITY.

2                   A.    Consultant shall indemnify, protect and hold harmless City, its  
3                   Boards, Commissions, and their officials, employees and agents ("Indemnified  
4                   Parties"), from and against any and all liability, claims, demands, damage, loss,  
5                   obligations, causes of action, proceedings, awards, fines, judgments, penalties,  
6                   costs and expenses, including attorneys' fees, court costs, expert and witness  
7                   fees, and other costs and fees of litigation, arising or alleged to have arisen, in  
8                   whole or in part, out of or in connection with (1) Consultant's breach or failure to  
9                   comply with any of its obligations contained in this Agreement, or (2) negligent or  
10                  willful acts, errors, omissions or misrepresentations committed by Consultant, its  
11                  officers, employees, agents, subcontractors, or anyone under Consultant's control,  
12                  in the performance of work or services under this Agreement (collectively "Claims"  
13                  or individually "Claim").

14                  B.    In addition to Consultant's duty to indemnify, Consultant shall  
15                  have a separate and wholly independent duty to defend Indemnified Parties at  
16                  Consultant's expense by legal counsel approved by City, from and against all  
17                  Claims, and shall continue this defense until the Claims are resolved, whether by  
18                  settlement, judgment or otherwise. No finding or judgment of negligence, fault,  
19                  breach, or the like on the part of Consultant shall be required for the duty to defend  
20                  to arise. City shall notify Consultant of any Claim, shall tender the defense of the  
21                  Claim to Consultant, and shall assist Consultant, as may be reasonably requested,  
22                  in the defense.

23                  C.    If a court of competent jurisdiction determines that a Claim  
24                  was caused by the sole negligence or willful misconduct of Indemnified Parties,  
25                  Consultant's costs of defense and indemnity shall be (1) reimbursed in full if the  
26                  court determines sole negligence by the Indemnified Parties, or (2) reduced by the  
27                  percentage of willful misconduct attributed by the court to the Indemnified Parties.

28                  D.    To the extent this Agreement is a professional service

1 agreement for work or services performed by a design professional (architect,  
2 landscape architect, professional engineer or professional land surveyor), the  
3 provisions of this Section regarding Consultant's duty to defend and indemnify  
4 shall be limited as provided in California Civil Code Section 2782.8, and shall  
5 apply only to Claims that arise out of, pertain to, or relate to the negligence,  
6 recklessness, or willful misconduct of the Consultant.

7 E. The provisions of this Section shall survive the expiration or  
8 termination of this Agreement.

9 18. AMBIGUITY. In the event of any conflict or ambiguity between this  
10 Agreement and any Exhibit, the provisions of this Agreement shall govern.

11 19. NONDISCRIMINATION.

12 A. In connection with performance of this Agreement and subject  
13 to applicable rules and regulations, Consultant shall not discriminate against any  
14 employee or applicant for employment because of race, religion, national origin,  
15 color, age, sex, sexual orientation, gender identity, AIDS, HIV status, handicap, or  
16 disability. Consultant shall ensure that applicants are employed, and that  
17 employees are treated during their employment, without regard to these bases.  
18 These actions shall include, but not be limited to, the following: employment,  
19 upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or  
20 termination, rates of pay or other forms of compensation, and selection for training,  
21 including apprenticeship.

22 B. It is the policy of City to encourage the participation of  
23 Disadvantaged, Minority and Women-owned Business Enterprises in City's  
24 procurement process, and Consultant agrees to use its best efforts to carry out  
25 this policy in its use of subconsultants and contractors to the fullest extent  
26 consistent with the efficient performance of this Agreement. Consultant may rely  
27 on written representations by subconsultants and contractors regarding their  
28 status. Consultant shall report to City in May and in December or, in the case of

1 short-term agreements, prior to invoicing for final payment, the names of all  
2 subconsultants and contractors hired by Consultant for this Project and information  
3 on whether or not they are a Disadvantaged, Minority or Women-Owned Business  
4 Enterprise, as defined in Section 8 of the Small Business Act (15 U.S.C. Sec.  
5 637).

6 20. EQUAL BENEFITS ORDINANCE. Unless otherwise exempted in  
7 accordance with the provisions of the Ordinance, this Agreement is subject to the  
8 applicable provisions of the Equal Benefits Ordinance (EBO), section 2.73 et seq. of the  
9 Long Beach Municipal Code, as amended from time to time.

10 A. During the performance of this Agreement, the Consultant  
11 certifies and represents that the Consultant will comply with the EBO. The  
12 Consultant agrees to post the following statement in conspicuous places at its  
13 place of business available to employees and applicants for employment:

14 "During the performance of a contract with the City of Long Beach,  
15 the Consultant will provide equal benefits to employees with spouses and its  
16 employees with domestic partners. Additional information about the City of  
17 Long Beach's Equal Benefits Ordinance may be obtained from the City of  
18 Long Beach Business Services Division at 562-570-6200."

19 B. The failure of the Consultant to comply with the EBO will be  
20 deemed to be a material breach of the Agreement by the City.

21 C. If the Consultant fails to comply with the EBO, the City may  
22 cancel, terminate or suspend the Agreement, in whole or in part, and monies due  
23 or to become due under the Agreement may be retained by the City. The City  
24 may also pursue any and all other remedies at law or in equity for any breach.

25 D. Failure to comply with the EBO may be used as evidence  
26 against the Consultant in actions taken pursuant to the provisions of Long Beach  
27 Municipal Code 2.93 et seq., Contractor Responsibility.

28 E. If the City determines that the Consultant has set up or used

1 its contracting entity for the purpose of evading the intent of the EBO, the City may  
2 terminate the Agreement on behalf of the City. Violation of this provision may be  
3 used as evidence against the Consultant in actions taken pursuant to the  
4 provisions of Long Beach Municipal Code section 2.93 et seq., Contractor  
5 Responsibility.

6 21. NOTICES. Any notice or approval required by this Agreement shall  
7 be in writing and personally delivered or deposited in the U.S. Postal Service, first class,  
8 postage prepaid, addressed to Consultant at the address first stated above, and to the  
9 City at 333 West Ocean Boulevard, Long Beach, California 90802, Attn: City Manager  
10 with a copy to the City Engineer at the same address. Notice of change of address shall  
11 be given in the same manner as stated for other notices. Notice shall be deemed given  
12 on the date deposited in the mail or on the date personal delivery is made, whichever  
13 occurs first.

14 22. COPYRIGHTS AND PATENT RIGHTS.

15 A. Consultant shall place the following copyright protection on all  
16 Data: © City of Long Beach, California \_\_\_\_, inserting the appropriate year.

17 B. City reserves the exclusive right to seek and obtain a patent  
18 or copyright registration on any Data or other result arising from Consultant's  
19 performance of this Agreement. By executing this Agreement, Consultant assigns  
20 any ownership interest Consultant may have in the Data to the City.

21 C. Consultant warrants that the Data does not violate or infringe  
22 any patent, copyright, trade secret or other proprietary right of any other party.  
23 Consultant agrees to and shall protect, defend, indemnify and hold City, its officials  
24 and employees harmless from any and all claims, demands, damages, loss,  
25 liability, causes of action, costs or expenses (including reasonable attorneys' fees)  
26 whether or not reduced to judgment, arising from any breach or alleged breach of  
27 this warranty.

28 23. COVENANT AGAINST CONTINGENT FEES. Consultant warrants

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1 that Consultant has not employed or retained any entity or person to solicit or obtain this  
2 Agreement and that Consultant has not paid or agreed to pay any entity or person any  
3 fee, commission, or other monies based on or from the award of this Agreement. If  
4 Consultant breaches this warranty, City shall have the right to terminate this Agreement  
5 immediately notwithstanding the provisions of Section 10 or, in its discretion, to deduct  
6 from payments due under this Agreement or otherwise recover the full amount of the fee,  
7 commission, or other monies.

8           24. WAIVER. The acceptance of any services or the payment of any  
9 money by City shall not operate as a waiver of any provision of this Agreement or of any  
10 right to damages or indemnity stated in this Agreement. The waiver of any breach of this  
11 Agreement shall not constitute a waiver of any other or subsequent breach of this  
12 Agreement.

13           25. CONTINUATION. Termination or expiration of this Agreement shall  
14 not affect rights or liabilities of the parties which accrued pursuant to Sections 7, 10, 11,  
15 17, 19, 22, and 28 prior to termination or expiration of this Agreement.

16           26. TAX REPORTING. As required by federal and state law, City is  
17 obligated to and will report the payment of compensation to Consultant on Form 1099-  
18 Misc. Consultant shall be solely responsible for payment of all federal and state taxes  
19 resulting from payments under this Agreement. Consultant shall submit Consultant's  
20 Employer Identification Number (EIN), or Consultant's Social Security Number if  
21 Consultant does not have an EIN, in writing to City's Accounts Payable, Department of  
22 Financial Management. Consultant acknowledges and agrees that City has no obligation  
23 to pay Consultant until Consultant provides one of these numbers.

24           27. ADVERTISING. Consultant shall not use the name of City, its  
25 officials or employees in any advertising or solicitation for business or as a reference,  
26 without the prior approval of the City Manager or designee.

27           28. AUDIT. City shall have the right at all reasonable times during the  
28 term of this Agreement and for a period of five (5) years after termination or expiration of

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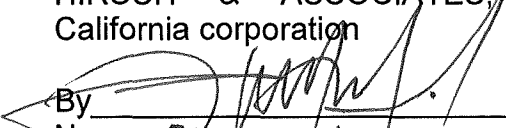
1 this Agreement to examine, audit, inspect, review, extract information from, and copy all  
2 books, records, accounts, and other documents of Consultant relating to this Agreement.

3 29. THIRD PARTY BENEFICIARY. This Agreement is not intended or  
4 designed to or entered for the purpose of creating any benefit or right for any person or  
5 entity of any kind that is not a party to this Agreement.

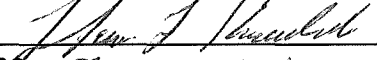
6 IN WITNESS WHEREOF, the parties have caused this document to be duly  
7 executed with all formalities required by law as of the date first stated above.

8 HIRSCH & ASSOCIATES, INC., a  
9 California corporation

10 August 13, 2014

By   
Name PATRICK L. HIRSCH  
Title PRESIDENT & CEO

11 \_\_\_\_\_  
12 August 13, 2014

By   
Name THOMAS F. KOWALEWSKI  
Title CEO

14 "Consultant"

15 CITY OF LONG BEACH, a municipal  
16 corporation  
17 **Assistant City Manager**

18 August 22, 2014


By   
City Manager

EXECUTED PURSUANT  
TO SECTION 301 OF  
THE CITY CHARTER.

19 "City"

20 This Agreement is approved as to form on August 14,  
21 2014.

22 CHARLES PARKIN, City Attorney

23 By   
24 Deputy  
25  
26  
27  
28

# EXHIBIT “A”

Scope of Work or Services



**As-Needed Architectural Landscape  
Scope of Services**

**A. BASIC SERVICES**

**1.0 OVERALL ARCHITECTURAL DESIGN SERVICES**

- a) Prepare a Quality Assurance/Quality Control (QA/QC) Plan prior to initiating any project with the City of Long Beach. The QA/QC Plan shall be made available to any Project Manager upon request, and must be updated regularly.
- b) Review and apply City documentation standards for drawings and specifications.
- c) Prepare drawings, specifications, and cost estimates (PS&E's).
- d) Prepare conceptual schematic design studies and reports to the LEED certification standards (if any) directed by the City, consisting of but not necessarily limited to:
  - I. Site and Building Plans
  - II. Elevations and Building Sections
  - III. Primary Material & Color Recommendations
  - IV. Schematic Design Report
- e) Prepare design schedule in Microsoft Project Format.
- f) Prepare Architectural and coordinate the preparation of Landscaping & Engineering Design Development drawings and 30% Construction Documents (including interior design and furniture selection) consisting of but not necessarily limited to:
  - I. Drawing index
  - II. Site and Building Plans
  - III. Elevations and Building Sections
  - IV. Design Details
  - V. Primary Material & Color Selections
- g) Preliminary furniture selections
- h) Prepare Architectural and coordinate the preparation of Landscaping and Engineering 60% Construction Documents (including interior design and furniture selection) consisting of but not necessarily limited to:
  - I. Cover Sheet, General Notes & Legends, Conditions of Approval
  - II. Site and Building Plans
  - III. Elevations and Building Sections
  - IV. Details
  - V. Fixture & Equipment Schedules
  - VI. Landscaping & Irrigation
  - VII. Technical Specifications in the latest Construction Specifications Institute (CSI) or Greenbook Format as designated by the City of Long Beach.
- i) Prepare Architectural and coordinate the preparation of Landscaping and Engineering 90% Plan Check and Construction Drawings and Specifications (including interior design, furniture, finishes & equipment selection and integration of security and security system requirements in conjunction with the City Technology Services Department); Applications and all other necessary professional instruments and certifications. Plan check fees will be paid by the City.
- j) Prepare Architectural and coordinate the preparation of Landscaping and Engineering 100% Bid and Construction Drawings and Specifications (including interior design and furniture selection).
- k) Prepare all necessary documentation for the designated LEED certification.
- l) Prepare plan check corrections and resubmissions in a timely manner for review by City of Long Beach Planning and Building Departments and other agencies having jurisdiction
- m) Meet and coordinate with City representatives and other consultants for design reviews and approvals during the above phases.
- n) Prepare construction cost estimates for each design phase. For example, cost estimates at the 30% phase shall be accurate to within 15-25%; 60% phase to 10-15%; and 90% cost estimates shall be your best effort to achieve accuracy within 5% of the anticipated lowest qualified public bid.
- o) Provide stamped and signed plan originals (mylars), calculations, and specifications by appropriately licensed California architects and engineers.

### 1.1 Construction Bidding Services

Assist the City's project manager at the project manager's specific direction with the following:

- a) Preparation of bid documents.
- b) Attendance at mandatory pre-bid meetings.
- c) Assist in responding to bid phase questions.
- d) Assist in preparing addenda items.

### 1.2 Services During Construction

Assist the City's project manager at the project manager's specific direction with the following:

- a) Attend construction meetings
- b) Review contractor material submittals and shop drawings
- c) Conduct construction observation site visits
- d) Assist in responding to contractor Requests For Information in a timely fashion
- e) Prepare drawing and specification field revisions
- f) Review Contract Change Order and Payment requests
- g) Prepare as-built drawings
- h) Conduct punch list inspections
- i) Review or issue Certificate of Practical Completion
- j) Assist City with warranty-related work or other construction deficiencies.

### 1.3 Additional and optional types of services

- a) Additional Architectural Services may also include: Improvement of existing facilities.
- b) Accessibility improvements.
- c) Interior building design including tenant improvements, furniture, finishes and equipment selection.
- d) Interior and exterior facility signage designs including wayfinding and ADA signage.
- e) Architectural Facility Assessments including site's ability to accommodate the improvements
- f) Integration of security and security system requirements
- g) LEED certified designs as per the U.S. Green Building Council.
- h) Maintenance and training program consultation
- i) Post occupancy evaluations
- j) Maintenance and training program consultation
- k) Post occupancy evaluations

## 2.0 OVERALL LANDSCAPE ARCHITECTURE DESIGN SERVICES

- a) Prepare a Quality Assurance/Quality Control (QA/QC) Plan prior to initiating any project with the City of Long Beach. The QA/QC Plan shall be made available to any City Project Manager upon request, and must be updated regularly.
- b) Review and apply City documentation standards for drawings and specifications.
- c) Prepare design schedule in Microsoft Project format.
- d) Prepare drawings, specifications, and cost estimates (PS&E's) for Landscape Design, Site Planning, Urban Design, Streetscapes, Greenways & Trails, Parks & Recreation Facilities, and Signage & Wayfinding projects in the City.
- e) Prepare Site Analysis reports consisting of but not necessarily limited to:
  - I. Regulatory and Agency requirements
  - II. Site Survey
  - III. Vegetation Survey
  - IV. Soil Survey
  - V. Site Analysis
  - VI. Off-Site Services
  - VII. Environmental Assessments
- f) Prepare Landscape Architecture conceptual designs and reports to the LEED certification standards (if any) directed by the City, consisting of but not necessarily limited to:
  - I. Site Master Planning
  - II. Landscape Design
  - III. Associated consultants' schematics, such as LEED, Architectural, Structural, Mechanical, Environmental, Horticultural, Irrigation, Hydraulic, Electrical and Civil.
  - IV. Presentation materials such as renderings, samples, photographs, elevations and sections

- V. Primary plant, paving, site furnishings & materials and color recommendations
- VI. Design Report and Public outreach information
- g) Prepare Landscape Architecture Design Development drawings (30% Construction Documents) consisting of but not necessarily limited to:
  - I. Drawing index
  - II. Site, Demolition, Grading, Construction and Plant Plans
  - III. Elevations and Sections
  - IV. Design Details
  - V. LEED, Architectural, Structural, Mechanical, Environmental, Horticultural, Irrigation, Hydraulic, Electrical and Civil documentation
  - VI. Plant, staking, paving, site furnishings & materials and color selections
  - VII. Attend public outreach, planning commission and regulatory agency hearings
- h) Prepare Landscape Architecture 60% Construction Documents consisting of but not necessarily limited to:
  - I. Cover Sheet, General Notes & Legends, Conditions of Approval
  - II. Landscape Architecture documentation
  - III. Other documentation (LEED, Architectural, Structural, Mechanical, Environmental, Horticultural, Irrigation, Hydraulic, Electrical and Civil drawings).
  - IV. Details, Artwork & Mock-ups
  - V. Adjoining property defects report(s)
  - VI. Fixture & Equipment Schedules
  - VII. Preliminary Technical Specifications in the latest Construction Specifications Institute (CSI) or Greenbook Format as designated by the City of Long Beach.
- i) Prepare Landscape Architecture 90% Plan Check, Construction Drawings and Specifications (including integration of security and security system requirements in conjunction with the City Technology Services Department); Applications and all other necessary professional instruments and certifications. Plan check fees will be paid by the City.
- j) Prepare Landscape Architecture 100% Bid and Construction Drawings and Specifications incorporating revisions or corrections required by governing and regulatory agencies.
- k) Prepare all necessary documentation for the designated LEED certification.
- l) Meet and coordinate with City representatives and other consultants for design reviews and approvals during the above phases.
- m) Prepare construction cost estimates for each design phase. For example, cost estimates at the Conceptual and 30% phase shall be accurate to within 15-25%; 60% phase to 10-15%; and 90% cost estimates shall be your best effort to achieve accuracy within 5% of the anticipated lowest qualified public bid.
- n) Provide stamped and signed plan originals (mylars), calculations, and specifications by appropriately licensed California architects and engineers.

## 2.1 Construction Bidding Services

Assist the City's project manager at the project manager's specific direction with the following:

- a) Preparation of bid documents.
- b) Attendance at mandatory pre-bid meetings.
- c) Assist in responding to bid phase questions.
- d) Assist in preparing bid addenda items.

## 2.2 Services During Construction

Assist the City's project manager at the project manager's specific direction with the following:

- a) Attend construction meetings
- b) Review contractor material submittals and shop drawings
- c) Conduct construction observation site visits
- d) Assist in responding to contractor Requests For Information in a timely fashion
- e) Prepare drawing and specification field revisions
- f) Review Contract Change Order and Payment requests
- g) Prepare as-built drawings
- h) Conduct punch list inspections
- i) Review or issue Certificate of Practical Completion
- j) Assist City with warranty-related work or other construction deficiencies.

## 2.3 Additional and optional types of services

Additional Landscape Architecture services may include:

- a) Land use planning
- b) Urban design
- c) Historic and cultural landscape restoration
- d) Landscape planning & management
- e) Improvement of existing facilities
- f) Accessibility improvements.
- g) Site furniture, fixtures and finishes and equipment selection.
- h) Signage designs including wayfinding ADA signage.
- i) Assessments including a site's ability to accommodate improvements
- j) Integration of security and security system requirements
- k) Sustainable landscapes and LEED certified designs as per the U.S. Green Building Council.
- l) Maintenance and training program consultation
- m) Post occupancy evaluations

## 3.0 SUSTAINABLE DESIGN REQUIREMENTS

- a) Sustainable Design Principles
  - I. Approach to Green building design

Projects shall be designed and constructed using the highest available design quality and integration of all sustainable features and principles within the overall conceptual and formal architectural design (within practical funding constraints) and an integrated team approach to provide facilities that:

- Make appropriate use of the land
- Use water, energy, material, and other resources efficiently
- Enhance human health
- Conserve plants and natural habitats
- Protect cultural resources
- Be economical to build and operate

### II. Sustainable Project Objectives

While various types of environmentally sound innovative building projects may be proposed, we are particularly interested in technologies that address the following general areas:

- Ecological site design; on-site erosion control, storm water management, etc.
- Transportation: promoting bicycle, pedestrian, and transit use
- Waste reduction: building reuse, job site recycling, and efficient use of materials
- Energy efficiency: optimal energy performance, efficient thermal envelopes, efficient space and water heating, lighting controls and monitoring, etc.
- Renewable energy: Photovoltaic, etc.
- Water efficiency
- Materials and resources
- Indoor environmental quality
- Operations and maintenance

### III. Required expertise shall include but are not limited to:

- Life cycle cost analyses and assessments
- Recycled content and sustainable building product selection, specification, and procurement
- Waste reduction strategies, such as construction and demolition waste management plans, deconstruction plans, storage and collection of recyclables, and other reuse opportunities

- Use of the USGBC LEED Building Rating System
- Use of creative financing for green buildings and facilities
- Green operating and maintenance plans
- Commissioning a green building
- Energy modeling and analysis
- Monitoring and tracking of final projects once they are operational

IV. Familiarity with the USGBC LEED™ Green Building Rating System.

The architect team shall be thoroughly familiar and experienced with the latest LEED™ Green Building Rating System Product Portfolios for new construction, LEED for Existing Buildings, and LEED for Core and Shell as well as the entire USGBC LEED certification process. This shall include all areas of planning, design, construction, LEED registration, credit interpretation rulings, project LEED applications, appeals, fees, and final rulings. The firm team shall also be familiar with the role and importance of project commissioning and of the commissioning agent throughout the entire design and construction process for a minimum of LEED silver certification.

a) Typical Sustainable Architect's Project Scope of a green project may include, but is not limited to:

- Project vision articulation
- Site and resource analysis
- Schematic (or concept) design
- Design development
- Project registration with USGBC
- Construction documents, including the plans, specifications, and construction cost estimates.
- Project permit acquisitions including any and all required Planning and Building Bureau plan checks and clearances.
- Assistance in the public bid process
- Design services during construction
- Project application(s) for LEED certification
- Final construction punch walk
- Project close-out including final building commissioning

**4.0 Facility Mechanical Engineering Services design coordination include, but are not limited to:**

- a) Heating and ventilation plans, specifications, calculations, forms, notes and cut sheets including equipment schedules, capacities, design criteria, control diagrams, duct sizes, hangers, insulation, and duct connections. Heating is required for the classroom only.
- b) Plumbing plans including all pipes and piping materials, plumbing equipment and fixtures, riser diagrams for waste and vent, cold and hot water piping, gas piping plans, regulator, backflow prevention devices, gas earthquake shut-off valves, water meter, plumbing hydraulic calculations, etc.
- c) Hydraulic calculations showing all piping materials, sizes and devices,
- d) Waste system documentation
- e) Building storm drain roof runoff designs
- f) Mechanical feasibility studies.

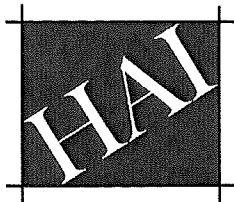
**5.0 Facility Electrical Engineering Services design coordination include, but are not limited to:**

- a) Electrical photometric plans for facility and area lighting designs.
- b) Calculation of electrical loads, including coordination for coincidental and non-coincidental loads, load shedding, short circuit calculations, and voltage drop calculations
- c) Electrical site layout plans including wiring and grounding systems layouts, details, and properly sizing of wiring for current carrying and ground wiring
- d) Single line electrical diagrams
- e) Sound and signal system designs including security system requirements
- f) Electrical feasibility studies for facilities as needed

- 6.0 Facility Structural Engineering Services design coordination include, but are not limited to:**
- a) Review Geotechnical report
  - b) Plans, elevations, sections and details for facility and area foundation and framing designs
  - c) Structural notes and calculations
- 7.0 Facility Civil Engineering Services design coordination include, but are not limited to:**
- a) Review survey
  - b) Site control, grading and utility plans, sections and details
  - c) Storm drainage and sanitary sewerage system documentation
  - d) Erosion control recommendations
- 8.0 Facility Geotechnical Engineering Services design coordination include, but are not limited to:**
- a) Geotechnical report
  - b) Advisory services during preparation of the construction documents and construction of the foundation
- 9.0 Other Professional Services include, but are not limited to:**
- a) Design project management
  - b) Construction cost estimates at all design phases
  - c) Design services during construction including attending construction meetings, and assisting with reviews of material submittals and shop drawings, responding to contractor's requests for information, and preparing field revisions at the direction of the City's project manager.
  - d) Coordinating the plan check process with Long Beach Planning Bureau and Building Bureau, Public Works, and any other authorities having jurisdiction.

# EXHIBIT "B"

Rates or Charges



**HIRSCH & ASSOCIATES, INC.**

LANDSCAPE ARCHITECTURE & PLANNING

**Schedule of Rates for Services Sheet for City of Long Beach  
PW14-005 As Needed Landscape Architecture  
August 2014 to August 2016**

Please find our hourly fee schedule below. Professional fees for services stated are based upon the scope of work and include all costs for general overhead, profit, telephone, clerical, travel and incidental expenses not separately requested by the City of Long Beach. Rates shall remain firm for the duration of the contract.

**Professional Fee Schedule**

Landscape Architect	\$150/hr
Director of Projects	\$130/hr
In House Project Manager	\$75/hr
Technical Staff	\$65/hr
Computer Graphic Designer	\$55/hr
Clerical	\$50/hr
Project Meetings	\$350/ea
Construction Inspection	\$400/ea
Council/Commission Meetings	\$600/ea
Structural Engineer	\$185/hr
Civil Engineer	\$185/hr
Electrical Engineer	\$140/hr
Geotechnical Engineer	\$125/hr
Aquatic Architect	\$170/hr
Aquatic Engineer	\$170/hr
Marine Engineer	\$234/hr

Mileage as allowed by the IRS \$0.56 per mile  
Reimbursable items at cost  
Consultants billed at cost  
Rates may only be changed by mutual consent



EXHIBIT C- CITY'S REPRESENTATIVE  
DEREK WIESKE, ASST CITY ENGINEER  
562/570-6386

# EXHIBIT "D"

Materials/Information Furnished: None