

**CITY OF CHULA VISTA  
CONSULTANT SERVICES AGREEMENT  
WITH KITCHELL CEM, INC.  
TO PROVIDE ON-CALL CONSTRUCTION MANAGEMENT CONSULTING SERVICES**

This Agreement is entered into effective as of **November 21, 2017** (“Effective Date”) by and between the City of Chula Vista, a chartered municipal corporation (“City”) and Kitchell CEM, Inc., a California Corporation (“Consultant”) (collectively, the “Parties” and, individually, a “Party”) with reference to the following facts:

**RECITALS**

WHEREAS, the City desires to procure qualified project management and construction management consultant services to assist the City’s engineering staff with management of significant new facility construction and facility renovations associated with grants and the recently voter approved Measure P in Chula Vista; and

WHEREAS, On August 4, 2017, the City issued a Request for Qualifications (RFQ) for Professional Services for the Construction Management of New Facilities, Facility Renovations, Fire Stations and Parks; and

WHEREAS, the City of Chula Vista received six (6) proposals from firms interested in providing Professional Services for the Construction Management of New Facilities, Facility Renovations, Fire Stations and Parks; and

WHEREAS, after the City completed its review of the proposals, four (4) firms were selected for interviews, which were conducted on October 4, 2017; and

WHEREAS, after the interview process for all four (4) firms, the consultant selection committee determined Consultant as one of two (2) best qualified firms to provide the services described in the Agreement; and

WHEREAS, the consultant selection process has been conducted in accordance with Section 2.56.110.C of the Chula Vista Municipal Code; and

WHEREAS, Consultant warrants and represents that it is experienced and staffed in a manner such that it can deliver the services required of Consultant to City in accordance with the time frames and the terms and conditions of this Agreement.

**[End of Recitals. Next Page Starts Obligatory Provisions.]**

## OBLIGATORY PROVISIONS

NOW, THEREFORE, in consideration of the above recitals, the covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, City and Consultant hereby agree as follows:

### 1. SERVICES

1.1 Required Services. Consultant agrees to perform the services, and deliver to City the “Deliverables” (if any) described in the attached Exhibit A, incorporated into the Agreement by this reference, within the time frames set forth therein, time being of the essence for this Agreement. The services and/or Deliverables described in Exhibit A shall be referred to herein as the “Required Services.”

1.2 Reductions in Scope of Work. City may independently, or upon request from Consultant, from time to time, reduce the Required Services to be performed by the Consultant under this Agreement. Upon doing so, City and Consultant agree to meet and confer in good faith for the purpose of negotiating a corresponding reduction in the compensation associated with the reduction.

1.3 Additional Services. Subject to compliance with the City’s Charter, codes, policies, procedures and ordinances governing procurement and purchasing authority, City may request Consultant provide additional services related to the Required Services (“Additional Services”). If so, City and Consultant agree to meet and confer in good faith for the purpose of negotiating an amendment to Exhibit A, to add the Additional Services. Unless otherwise agreed, compensation for the Additional Services shall be charged and paid consistent with the rates and terms already provided therein. Once added to Exhibit A, “Additional Services” shall also become “Required Services” for purposes of this Agreement.

1.4 Standard of Care. Consultant expressly warrants and agrees that any and all Required Services hereunder shall be performed in accordance with the standard of care exercised by members of the profession currently practicing under similar conditions and in similar locations.

1.5 No Waiver of Standard of Care. Where approval by City is required, it is understood to be conceptual approval only and does not relieve the Consultant of responsibility for complying with all laws, codes, industry standards, and liability for damages caused by negligent acts, errors, omissions, noncompliance with industry standards, or the willful misconduct of the Consultant or its subcontractors.

1.6 Security for Performance. In the event that Exhibit A Section 4 indicates the need for Consultant to provide additional security for performance of its duties under this Agreement, Consultant shall provide such additional security prior to commencement of its Required Services in the form and on the terms prescribed on Exhibit A, or as otherwise prescribed by the City Attorney.

1.7 Compliance with Laws. In its performance of the Required Services, Consultant shall comply with any and all applicable federal, state and local laws, including the Chula Vista Municipal Code.

1.8 Business License. Prior to commencement of work, Consultant shall obtain a business license from City.

1.9 Subcontractors. Prior to commencement of any work, Consultant shall submit for City’s information and approval a list of any and all subcontractors to be used by Consultant in the performance of the Required Services. Consultant agrees to take appropriate measures necessary to ensure that all

subcontractors and personnel utilized by the Consultant to complete its obligations under this Agreement comply with all applicable laws, regulations, ordinances, and policies, whether federal, state, or local. In addition, if any subcontractor is expected to fulfill any responsibilities of the Consultant under this Agreement, Consultant shall ensure that each and every subcontractor carries out the Consultant's responsibilities as set forth in this Agreement.

1.10 Term. This Agreement shall commence on the earlier to occur of the Effective Date or Consultant's commencement of the Required Services hereunder, and shall terminate when the Parties have complied with all their obligations hereunder; provided, however, provisions which expressly survive termination shall remain in effect.

## 2. COMPENSATION

2.1 General. For satisfactory performance of the Required Services, City agrees to compensate Consultant in the amount(s) and on the terms set forth in Exhibit A, Section 4. Standard terms for billing and payment are set forth in this Section 2.

2.2 Detailed Invoicing. Consultant agrees to provide City with a detailed invoice for services performed each month, within thirty (30) days of the end of the month in which the services were performed, unless otherwise specified in Exhibit A. Invoicing shall begin on the first of the month following the Effective Date of the Agreement. All charges must be presented in a line item format with each task separately explained in reasonable detail. Each invoice shall include the current monthly amount being billed, the amount invoiced to date, and the remaining amount available under any approved budget. Consultant must obtain prior written authorization from City for any fees or expenses that exceed the estimated budget.

2.3 Payment to Consultant. Upon receipt of a properly prepared invoice and confirmation that the Required Services detailed in the invoice have been satisfactorily performed, City shall pay Consultant for the invoice amount within thirty (30) days. Payment shall be made in accordance with the terms and conditions set forth in Exhibit A and section 2.4, below. At City's discretion, invoices not timely submitted may be subject to a penalty of up to five percent (5%) of the amount invoiced.

~~2.4 Retention Policy. City shall retain ten percent (10%) of the amount due for Required Services detailed on each invoice (the "holdback amount"). Upon City review and determination of Project Completion, the holdback amount will be issued to Consultant.~~

2.5 Reimbursement of Costs. City may reimburse Consultant's out-of-pocket costs incurred by Consultant in the performance of the Required Services if negotiated in advance and included in Exhibit A. Unless specifically provided in Exhibit A, Consultant shall be responsible for any and all out-of-pocket costs incurred by Consultant in the performance of the Required Services.

2.6 Exclusions. City shall not be responsible for payment to Consultant for any fees or costs in excess of any agreed upon budget, rate or other maximum amount(s) provided for in Exhibit A. City shall also not be responsible for any cost: (a) incurred prior to the Effective Date; or (b) arising out of or related to the errors, omissions, negligence or acts of willful misconduct of Consultant, its agents, employees, or subcontractors.

2.7 Payment Not Final Approval. Consultant understands and agrees that payment to the Consultant or reimbursement for any Consultant costs related to the performance of Required Services does not constitute a City final decision regarding whether such payment or cost reimbursement is allowable and eligible for

payment under this Agreement, nor does it constitute a waiver of any violation by Consultant of the terms of this Agreement. If City determines that Consultant is not entitled to receive any amount of compensation already paid, City will notify Consultant in writing and Consultant shall promptly return such amount.

### 3. INSURANCE

3.1 Required Insurance. Consultant must procure and maintain, during the period of performance of Required Services under this Agreement, and for twelve months after completion of Required Services, the policies of insurance described on the attached Exhibit B, incorporated into the Agreement by this reference (the "Required Insurance"). The Required Insurance shall also comply with all other terms of this Section.

3.2 Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions relating to the Required Insurance must be disclosed to and approved by City in advance of the commencement of work.

3.3 Standards for Insurers. Required Insurance must be placed with licensed insurers admitted to transact business in the State of California with a current A.M. Best's rating of A V or better, or, if insurance is placed with a surplus lines insurer, insurer must be listed on the State of California List of Eligible Surplus Lines Insurers (LESLI) with a current A.M. Best's rating of no less than A X. For Workers' Compensation Insurance, insurance issued by the State Compensation Fund is also acceptable.

3.4 Subcontractors. Consultant must include all sub-consultants/sub-contractors as insureds under its policies and/or furnish separate certificates and endorsements demonstrating separate coverage for those not under its policies. Any separate coverage for sub-consultants must also comply with the terms of this Agreement.

3.5 Additional Insureds. City, its officers, officials, employees, agents, and volunteers must be named as additional insureds with respect to any policy of general liability, automobile, or pollution insurance specified as required in Exhibit B or as may otherwise be specified by City's Risk Manager.. The general liability additional insured coverage must be provided in the form of an endorsement to the Consultant's insurance using ISO CG 2010 (11/85) or its equivalent; such endorsement must not exclude Products/Completed Operations coverage.

3.6 General Liability Coverage to be "Primary." Consultant's general liability coverage must be primary insurance as it pertains to the City, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers is wholly separate from the insurance provided by Consultant and in no way relieves Consultant from its responsibility to provide insurance.

3.7 No Cancellation. No Required Insurance policy may be canceled by either Party during the required insured period under this Agreement, except after thirty days' prior written notice to the City by certified mail, return receipt requested. Prior to the effective date of any such cancellation Consultant must procure and put into effect equivalent coverage(s).

3.8 Waiver of Subrogation. Consultant's insurer(s) will provide a Waiver of Subrogation in favor of the City for each Required Insurance policy under this Agreement. In addition, Consultant waives any right it may have or may obtain to subrogation for a claim against City.

3.9 Verification of Coverage. Prior to commencement of any work, Consultant shall furnish City with original certificates of insurance and any amendatory endorsements necessary to demonstrate to City that

Consultant has obtained the Required Insurance in compliance with the terms of this Agreement. The words “will endeavor” and “but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents, or representatives” or any similar language must be deleted from all certificates. The required certificates and endorsements should otherwise be on industry standard forms. The City reserves the right to require, at any time, complete, certified copies of all required insurance policies, including endorsements evidencing the coverage required by these specifications.

3.10 Claims Made Policy Requirements. If General Liability, Pollution and/or Asbestos Pollution Liability and/or Errors & Omissions coverage are required and are provided on a claims-made form, the following requirements also apply:

a. The “Retro Date” must be shown, and must be before the date of this Agreement or the beginning of the work required by this Agreement.

b. Insurance must be maintained, and evidence of insurance must be provided, for at least five (5) years after completion of the work required by this Agreement.

c. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a “Retro Date” prior to the effective date of this Agreement, the Consultant must purchase “extended reporting” coverage for a minimum of five (5) years after completion of the work required by this Agreement.

d. A copy of the claims reporting requirements must be submitted to the City for review.

3.11 Not a Limitation of Other Obligations. Insurance provisions under this section shall not be construed to limit the Consultant’s obligations under this Agreement, including Indemnity.

3.12 Additional Coverage. To the extent that insurance coverage provided by Consultant maintains higher limits than the minimums appearing in Exhibit B, City requires and shall be entitled to coverage for higher limits maintained.

#### 4. INDEMNIFICATION

4.1. General. To the maximum extent allowed by law, Consultant shall protect, defend, indemnify and hold harmless City, its elected and appointed officers, agents, employees and volunteers (collectively, “Indemnified Parties”), from and against any and all claims, demands, causes of action, costs, expenses, (including reasonable attorneys’ fees and court costs), liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged acts, omissions, negligence, or willful misconduct of Consultant, its officials, officers, employees, agents, and contractors, arising out of or in connection with the performance of the Required Services, the results of such performance, or this Agreement. This indemnity provision does not include any claims, damages, liability, costs and expenses arising from the sole negligence or willful misconduct of the Indemnified Parties. Also covered is liability arising from, connected with, caused by or claimed to be caused by the active or passive negligent acts or omissions of the Indemnified Parties which may be in combination with the active or passive negligent acts or omissions of the Consultant, its employees, agents or officers, or any third party.

4.2. Modified Indemnity Where Agreement Involves Design Professional Services. Notwithstanding the foregoing, if the services provided under this Agreement are design professional services, as defined by

California Civil Code section 2782.8, as may be amended from time to time, the defense and indemnity obligation under Section 1, above, shall be limited to the extent required by California Civil Code section 2782.8.

4.3 Costs of Defense and Award. Included in Consultant's obligations under this Section 4 is Consultant's obligation to defend, at Consultant's own cost, expense and risk, any and all suits, actions or other legal proceedings that may be brought or instituted against one or more of the Indemnified Parties. Subject to the limitations in this Section 4, Consultant shall pay and satisfy any judgment, award or decree that may be rendered against one or more of the Indemnified Parties for any and all related legal expenses and costs incurred by any of them.

4.4. Consultant's Obligations Not Limited or Modified. Consultant's obligations under this Section 4 shall not be limited to insurance proceeds, if any, received by the Indemnified Parties, or by any prior or subsequent declaration by the Consultant. Furthermore, Consultant's obligations under this Section 4 shall in no way limit, modify or excuse any of Consultant's other obligations or duties under this Agreement.

4.5. Enforcement Costs. Consultant agrees to pay any and all costs City incurs in enforcing Consultant's obligations under this Section 4.

4.6 Survival. Consultant's obligations under this Section 4 shall survive the termination of this Agreement.

## 5. FINANCIAL INTERESTS OF CONSULTANT.

5.1 Form 700 Filing. The California Political Reform Act and the Chula Vista Conflict of Interest Code require certain government officials and consultants performing work for government agencies to publicly disclose certain of their personal assets and income using a Statement of Economic Interests form (Form 700). In order to assure compliance with these requirements, Consultant shall comply with the disclosure requirements identified in the attached Exhibit C, incorporated into the Agreement by this reference.

5.2 Disclosures; Prohibited Interests. Independent of whether Consultant is required to file a Form 700, Consultant warrants and represents that it has disclosed to City any economic interests held by Consultant, or its employees or subcontractors who will be performing the Required Services, in any real property or project which is the subject of this Agreement. Consultant warrants and represents that it has not employed or retained any company or person, other than a bona fide employee or approved subcontractor working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants and represents that it has not paid or agreed to pay any company or person, other than a bona fide employee or approved subcontractor working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Consultant further warrants and represents that no officer or employee of City, has any interest, whether contractual, non-contractual, financial or otherwise, in this transaction, the proceeds hereof, or in the business of Consultant or Consultant's subcontractors. Consultant further agrees to notify City in the event any such interest is discovered whether or not such interest is prohibited by law or this Agreement. For breach or violation of any of these warranties, City shall have the right to rescind this Agreement without liability.

//  
//

## 6. REMEDIES

6.1 Termination for Cause. If for any reason whatsoever Consultant shall fail to perform the Required Services under this Agreement, in a proper or timely manner, or if Consultant shall violate any of the other covenants, agreements or conditions of this Agreement (each a "Default"), in addition to any and all other rights and remedies City may have under this Agreement, at law or in equity, City shall have the right to terminate this Agreement by giving five (5) days written notice to Consultant. Such notice shall identify the Default and the Agreement termination date. If Consultant notifies City of its intent to cure such Default prior to City's specified termination date, and City agrees that the specified Default is capable of being cured, City may grant Consultant up to ten (10) additional days after the designated termination date to effectuate such cure. In the event of a termination under this Section 6.1, Consultant shall immediately provide City any and all "Work Product" (defined in Section 7 below) prepared by Consultant as part of the Required Services. Such Work Product shall be City's sole and exclusive property as provided in Section 7 hereof. Consultant may be entitled to compensation for work satisfactorily performed prior to Consultant's receipt of the Default notice; provided, however, in no event shall such compensation exceed the amount that would have been payable under this Agreement for such work, and any such compensation shall be reduced by any costs incurred or projected to be incurred by City as a result of the Default.

6.2 Termination or Suspension for Convenience of City. City may suspend or terminate this Agreement, or any portion of the Required Services, at any time and for any reason, with or without cause, by giving specific written notice to Consultant of such termination or suspension at least fifteen (15) days prior to the effective date thereof. Upon receipt of such notice, Consultant shall immediately cease all work under the Agreement and promptly deliver all "Work Product" (defined in Section 7 below) to City. Such Work Product shall be City's sole and exclusive property as provided in Section 7 hereof. Consultant shall be entitled to receive just and equitable compensation for this Work Product in an amount equal to the amount due and payable under this Agreement for work satisfactorily performed as of the date of the termination/suspension notice plus any additional remaining Required Services requested or approved by City in advance that would maximize City's value under the Agreement.

6.3 Waiver of Claims. In the event City terminates the Agreement in accordance with the terms of this Section, Consultant hereby expressly waives any and all claims for damages or compensation as a result of such termination except as expressly provided in this Section 6.

6.4 Administrative Claims Requirements and Procedures. No suit or arbitration shall be brought arising out of this Agreement against City unless a claim has first been presented in writing and filed with City and acted upon by City in accordance with the procedures set forth in Chapter 1.34 of the Chula Vista Municipal Code, as same may be amended, the provisions of which, including such policies and procedures used by City in the implementation of same, are incorporated herein by this reference. Upon request by City, Consultant shall meet and confer in good faith with City for the purpose of resolving any dispute over the terms of this Agreement.

6.5 Governing Law/Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any action arising under or relating to this Agreement shall be brought only in San Diego County, State of California.

6.6 Service of Process. Consultant agrees that it is subject to personal jurisdiction in California. If Consultant is a foreign corporation, limited liability company, or partnership that is not registered with the California Secretary of State, Consultant irrevocably consents to service of process on Consultant by first

class mail directed to the individual and address listed under "For Legal Notice," in section 1.B. of Exhibit A to this Agreement, and that such service shall be effective five days after mailing.

## 7. OWNERSHIP AND USE OF WORK PRODUCT

All reports, studies, information, data, statistics, forms, designs, plans, procedures, systems and any other materials or properties produced in whole or in part under this Agreement in connection with the performance of the Required Services (collectively "Work Product") shall be the sole and exclusive property of City. No such Work Product shall be subject to private use, copyrights or patent rights by Consultant in the United States or in any other country without the express, prior written consent of City. City shall have unrestricted authority to publish, disclose, distribute, and otherwise use, copyright or patent, in whole or in part, any such Work Product, without requiring any permission of Consultant, except as may be limited by the provisions of the Public Records Act or expressly prohibited by other applicable laws. With respect to computer files containing data generated as Work Product, Consultant shall make available to City, upon reasonable written request by City, the necessary functional computer software and hardware for purposes of accessing, compiling, transferring and printing computer files.

## 8. GENERAL PROVISIONS

8.1 Amendment. This Agreement may be amended, but only in writing signed by both Parties.

8.2 Assignment. City would not have entered into this Agreement but for Consultant's unique qualifications and traits. Consultant shall not assign any of its rights or responsibilities under this Agreement, nor any part hereof, without City's prior written consent, which City may grant, condition or deny in its sole discretion.

8.3 Authority. The person(s) executing this Agreement for Consultant warrants and represents that they have the authority to execute same on behalf of Consultant and to bind Consultant to its obligations hereunder without any further action or direction from Consultant or any board, principle or officer thereof.

8.4 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one Agreement after each Party has signed such a counterpart.

8.5 Entire Agreement. This Agreement together with all exhibits attached hereto and other agreements expressly referred to herein, constitutes the entire Agreement between the Parties with respect to the subject matter contained herein. All exhibits referenced herein shall be attached hereto and are incorporated herein by reference. All prior or contemporaneous agreements, understandings, representations, warranties and statements, oral or written, are superseded.

8.6 Record Retention. During the course of the Agreement and for three (3) years following completion of the Required Services, Consultant agrees to maintain, intact and readily accessible, all data, documents, reports, records, contracts, and supporting materials relating to the performance of the Agreement, including accounting for costs and expenses charged to City, including such records in the possession of sub-contractors/sub-consultants.

8.7 Further Assurances. The Parties agree to perform such further acts and to execute and deliver such additional documents and instruments as may be reasonably required in order to carry out the provisions of this Agreement and the intentions of the Parties.



8.8 Independent Contractor. Consultant is and shall at all times remain as to City a wholly independent contractor. Neither City nor any of its officers, employees, agents or volunteers shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents ("Consultant Related Individuals"), except as set forth in this Agreement. No Consultant Related Individuals shall be deemed employees of City, and none of them shall be entitled to any benefits to which City employees are entitled, including but not limited to, overtime, retirement benefits, worker's compensation benefits, injury leave or other leave benefits. Furthermore, City will not withhold state or federal income tax, social security tax or any other payroll tax with respect to any Consultant Related Individuals; instead, Consultant shall be solely responsible for the payment of same and shall hold the City harmless with respect to same. Consultant shall not at any time or in any manner represent that it or any of its Consultant Related Individuals are employees or agents of City. Consultant shall not incur or have the power to incur any debt, obligation or liability whatsoever against City, or bind City in any manner.

8.9 Notices. All notices, demands or requests provided for or permitted to be given pursuant to this Agreement must be in writing. All notices, demands and requests to be sent to any Party shall be deemed to have been properly given or served if personally served or deposited in the United States mail, addressed to such Party, postage prepaid, registered or certified, with return receipt requested, at the addresses identified in this Agreement at the places of business for each of the designated Parties as indicated in Exhibit A, or otherwise provided in writing.


**(End of page. Next page is signature page.)**

**SIGNATURE PAGE  
CONSULTANT SERVICES AGREEMENT**

IN WITNESS WHEREOF, by executing this Agreement where indicated below, City and Consultant agree that they have read and understood all terms and conditions of the Agreement, that they fully agree and consent to bound by same, and that they are freely entering into this Agreement as of the Effective Date.

KITCHELL CEM, INC.

CITY OF CHULA VISTA

BY:  10/25/2017  
\_\_\_\_\_  
RUSSEL FOX  
PRESIDENT

BY: \_\_\_\_\_  
MARY CASILLAS SALAS  
MAYOR

ATTEST

BY: \_\_\_\_\_  
KERRY K. BIGELOW, MMC  
City Clerk

APPROVED AS TO FORM

BY: \_\_\_\_\_  
GLEN R. GOOGINS  
City Attorney

**EXHIBIT A**  
**SCOPE OF WORK AND PAYMENT TERMS**

**1. Contact People for Contract Administration and Legal Notice**

A. City Contract Administration:

Jonathan Salsman  
1800 Maxwell Road, Chula Vista CA 91911  
619-397-6115  
Jsalsman@chulavistaca.gov

For Legal Notice Copy to:

City of Chula Vista  
City Attorney  
276 Fourth Avenue, Chula Vista, CA 91910  
619-691-5037  
CityAttorney@chulavistaca.gov

B. Consultant Contract Administration:

**KITCHELL CEM, INC.**

Wendy Cohen  
4719 Viewridge Avenue, Suite 130  
San Diego, CA 92123  
619-456-7372  
wcohen@kitchell.com

For Legal Notice Copy to:

Wendy Cohen,  
4719 Viewridge Avenue, Suite 130  
San Diego, CA 92123  
619-456-7372  
wcohen@kitchell.com

**2. Required Services**

A. General Description:

Consultant shall provide project management and construction management consultant services at the direction and to the satisfaction of the City Engineer for City of Chula Vista construction projects.

Services will vary with each Task Order ranging from complete construction project management and administration to minor associated construction management tasks depending on the needs of the City. Typical projects for which Consulting Services may be required include: construction of new Parks, Sports Fields/Courts, Animal Facilities, Community Centers/Recreation Centers, Energy Retrofit Projects, and Renovation/Upgrades to existing facilities, and similar work.

B. Detailed Description:

- 1 The number and scope of the projects and assignments for which consultant service are required will vary at the sole discretion of the City from year-to-year.
- 2 Consultant will provide project management and construction management services for new facilities, facility renovations, fire stations, parks and other City projects in response to the City's request for such services. Projects will typically utilize the Design Build delivery method. Consultant acknowledges and agrees that service requests from the City under this Agreement will be on an "as-needed" and/or per project or assignment basis at the sole discretion of the City. Each project or assignment will include a not-to-exceed fee for all time, materials, and costs permitted to be incurred for that project or assignment. Consultant acknowledges and agrees that the City is not required to request any services from Consultant under this Agreement. Consultant acknowledges and agrees that it is not entitled to any compensation under this Agreement until such time that it has provided Required Services as explicitly authorized and approved by the City pursuant to the process identified herein.
- 3 Consultant will provide qualified project managers, construction managers, inspectors, engineers and/or construction specialists experienced in a wide variety of construction methods, project management, contract administration and other related duties. The City shall have the right to make a determination as to the qualifications or performance of individual personnel and shall have the right to require substitution of personnel or cancel task order and procure services from another firm.
- 4 Consultant will submit billing forms and comply with all procedures acceptable to the City. Consultant shall provide separate invoices for each City project or assignment identified. Every invoice will list all work performed on project or assignment. Each invoice shall show total amount billed to date for project or assignment, payments received, and amount due. All work elements shall be itemized. Consultant shall only be paid for work done at the request of the City's Project Manager. If additional work is requested by others, Consultant shall obtain a written authorization from the Project Manager. The Consultant shall forfeit and will not receive payment for work performed and billed to City more than sixty (60) calendar days after performance of work the Required Services.
- 5 Consultant will coordinate through the City's assigned Project Manager. The City's Project Manager shall be the single point of contact for the City. The City shall reserve the right of refusing personnel assigned to a project or assignment by the Consultant.
- 6 Consultant will provide the following services as needed on each project or assignment:
  - 6.1 Planning
    - 6.1.1 Support City of Chula Vista during Design Build Project Team selection/procurement process including:
      - 6.1.1.1 Preparing Requests for Statements of Qualifications to be used for soliciting qualified Design Build Project Teams.
      - 6.1.1.2 Evaluating Project Team Qualifications and Proposals received and assisting in selection of respondents to be provided the opportunity to submit final Proposals.

- 6.1.1.3 Preparing Requests for Proposals, reviewing and assisting in the selection of the most qualified team.
  - 6.1.2 Reviewing bids/proposals, recommending award of the contract, assisting with contract negotiations, and assistance in preparing contract documents and exhibits.
  - 6.1.3 Coordinate with City of Chula Vista, the Project Team and various Consultants before and during design and construction as necessary including kickoff meeting, status update meetings, deficiency meetings, and document control and distribution.
- 6.2 Pre-Construction and Construction Management
- 6.2.1 Provide Construction Management oversight services during construction including but not limited to: submittal review, scheduling, budgeting, cost estimating, review payment requests and change orders, meeting coordination, maintenance of project documents, and oversight of Contractor.
  - 6.2.2 Attend meetings between the City and the Project Team during all phases of the project, including programming, schematic design, design development, cost estimating, subcontractor and other bidding & formulation of guaranteed maximum price, construction documents, construction and post construction. CM to review deliverables at all stages and make recommendations to the City regarding the acceptability, applicability, feasibility and constructability. CM shall consider the site constraints, building systems, building materials, code compliance, alternate methods, economics, materials and labor availability and schedules.
  - 6.2.3 Oversee the Project Team's design services to ensure compatibility with governing agency requirements, to coordinate code compliance and ensure compliance with the project schedule.
  - 6.2.4 Assist in Issuance of Notices of Award, coordinate Project Team Design and Construction contract execution, and issuance of Notice to Proceed.
  - 6.2.5 Maintenance of construction schedule and status reporting. Prepare progress reports that include a comprehensive description of the main accomplishments and current construction activities. Representative photographs shall be included within the progress report as appropriate to the phase of the project.
  - 6.2.6 Review and evaluate Project Team's work plans, schedules, budgets and cash flow projections. Lead the evaluation of value engineering proposals submitted by the Project Team.
  - 6.2.7 CM is to inspect, monitor and document the activities of contractors, subcontractors and suppliers to ensure compliance with the requirements of contract documents. Key activities may require full time oversight by qualified construction management staff.
  - 6.2.8 CM may be requested to provide qualified Special Inspectors as needed or oversee DB supplied special inspectors. Projects for Essential Facilities such as fire stations are expected to require Special inspection.
  - 6.2.9 Create and maintain the document-control filing system for the Project during the Construction Phase.
  - 6.2.10 Submittal logging and review.
  - 6.2.11 Schedule and participate in preconstruction and regular meetings with Project Team and City staff regarding construction issues, progress reporting, interpretation of plans and specifications, and contractor performance.
  - 6.2.12 Oversee construction activities and provide management and oversight services to ensure that contractors' work is performed in accordance with construction plans and specifications, and is consistent with the intent of the design. Interface with the Design Build Team to facilitate resolution of technical issues, processing of design changes to

suit conditions encountered in the field. Maintain construction site records. Review all contractor reports and records, including shift reports, daily material placement reports, daily progress reports, and job safety reports.

- 6.2.13 Review pay requests submitted by the contractor and issue pay certificates to the City.
- 6.2.14 Identify, prepare, log, monitor and negotiate all claims, changes, extra work, and change orders. Prepare independent cost estimates, change order justification, and recommend action on all change order requests. Prepare necessary change orders for all construction contracts.
- 6.2.15 Assignments may involve Design Build projects with a Guaranteed Maximum Price and the expectation is there will be little or no changes once the Guaranteed Maximum Price is set.
- 6.2.16 CM shall implement procedures for the systematic and timely completion, start-up and testing, acceptance and transfer of all facilities constructed, as well as the closeout of the contract.
- 6.2.17 Prepare detailed project punch lists toward closeout of the project.
- 6.2.18 Assist in negotiating and closing out the Project. Verify that all project payments have been made to the contractors and that all required releases have been obtained.
- 6.2.19 Prepare final change orders as required. Finalize and verify that the project record drawings are complete and accurate including stamp and original signature of any Architect and Professional Engineer licensed in California. Organize, bind, and submit all project documents to the City.
- 6.2.20 Prepare and submit final Construction Summary Reports for the project. The report shall be organized and may serve as a future historic document on the Project. Copies shall be prepared for distribution to the City as requested in a formatting as specified.
- 6.2.21 Provide other miscellaneous specialty services as required during construction such as, witness and evaluation of electrical instrumentation, controls, water quality, noise and air quality monitoring services, geotechnical, structural, civil design and other technical specialties.
- 6.2.22 CM is responsible for document control and is expected to maintain a log of all correspondence submitted by the contractors and the responses applicable to that correspondence. Manage the receipt, logging, control, tracking and timely processing of all technical documents, shop drawings, submittals, manuals, and samples received as part of the construction. Review shop drawings and submittals, including the evaluation of construction schedules, and where applicable analyze and submit reports to the City/design engineer for review.
- 6.2.23 Review and provide written responses to contractor Requests for Information (RFI's).
- 6.2.24 Maintain up-to-date, secured, marked-up prints of construction drawings showing all field changes and as-built conditions. Maintain an up-to-date, secured, conformed copy of all construction contracts, including all approved modifications and changes.
- 6.2.25 Verify contractor compliance with all labor laws. Verify certified payroll prevailing wage, apprenticeship compliance. Conduct labor compliance interviews.

### 6.3 Deliverables

- 6.3.1 The CM Consultant shall make project documentation available to City of Chula Vista at any time during the project. At the conclusion of the project, the CM Consultant shall provide City with all project documentation including, but not limited to:
  - 6.3.1.1 Correspondence
  - 6.3.1.2 Submittals
  - 6.3.1.3 Requests for Information

- 6.3.1.4 Pay requests
- 6.3.1.5 Design change notifications
- 6.3.1.6 As-built drawings and specifications
- 6.3.1.7 Quality Assurance/Code test and inspection results
- 6.3.1.8 Deficiency notices
- 6.3.1.9 Change orders
- 6.3.1.10 Meeting minutes
- 6.3.1.11 Daily field reports
- 6.3.2 The CM Consultant shall compile the construction documents in a final Construction Summary Report. Copies containing the report shall be submitted to City no more than 30 days following construction completion.

6.4 Performance

- 6.4.1 Provide services in accordance with specific projects on an As-Needed basis.
- 6.4.2 Commencement of work under this Agreement shall occur only upon receipt of a Task Order signed by the City.
- 6.4.3 The cost of each Task Order under this Agreement shall be the negotiated cost for a specific project during the term of the Agreement using firm fixed price, or not to exceed price, or hourly rates.
- 6.4.4 Deliverables required are project specific and will be determined in the Task Order.
- 6.4.5 Consultant will provide for their staff all vehicles, tools, safety equipment, computer equipment, software, consumables and accessories required for the work.

7 Work not listed in Schedule - If an occasion arises whereby the City requests work to be done which is not listed in this schedule, the price of providing this work shall be negotiated in good faith between the City and the Consultant. The negotiated price(s) shall not exceed the Schedule of Charges labeled as Exhibit DA1 to this Agreement between the City and Consultant.

3. **Term:** In accordance with Section 1.10 of this Agreement, the term of this Agreement shall begin November 21, 2017 and end on November 21, 2019 for completion of all Required Services.

4. **Compensation:**

**A. Form of Compensation**

Time and Materials. For performance of the Required Services by Consultant as identified in Section 2.B., above, City shall pay Consultant for the productive hours of time spent by Consultant in the performance of the Required Services, at the rates or amounts as indicated below:

See Exhibit D for applicable Hourly Rates under this agreement.

**B. Reimbursement of Costs**

Invoiced or agreed-upon amounts as follows:

For the cost of out of pocket expenses incurred by Consultant in the performance of services herein required, City shall pay Consultant at the rates or amounts set forth below:

Initial Scope meeting	No Cost
In County Travel Time	No Cost
Reports, Original, Mylar	No Cost
Copies, Reproductions of Final Reports/Mylars	Cost Plus 10%
Outside Services	Cost Plus 15%
Delivery	Cost Plus 10%
Long Distance Telephone Charges	No Cost
Other Actual Identifiable City- Approved Direct Costs	Cost Plus 10%
Mileage - Office Personnel	IRS Standard Mileage Rate
Mileage - Field Personnel	No Cost – All vehicle and mileage costs included in hourly rate

Notwithstanding the foregoing, the maximum amount to be paid to the Consultant for services performed through November 21, 2019 shall not exceed \$2,000,000.00.

#### 5. Special Provisions:

Permitted Sub-Consultants: List Permitted Sub-Consultants is found in Exhibit E.

Security for Performance: “None”

Notwithstanding the completion date set forth in Section 3 above, City has option to extend this Agreement for three (3) additional terms, defined as a one-year increment, (defined as November 22 to November 21) or until November 21, 2022. The City Manager or Director of Finance/Treasurer shall be authorized to exercise the extensions on behalf of the City. If the City exercises an option to extend, each extension shall be on the same terms and conditions contained herein, provided that the amounts specified in Section 4 above may be increased by up to three and a half percent (3.5%) for each extension. The City shall give written notice to Consultant of the City’s election to exercise the extension via the Notice of Exercise of Option to Extend document.

Other:

Consultant and each of its subconsultants/subcontractors will comply with the State of California’s prevailing wage rate requirements in accordance with California Labor Code, and all Federal, State, and local laws and ordinances applicable to persons employed by them for public works in a covered work classification. When payment of prevailing wages apply to the Required Services the wage rates and transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations, State of California (DIR). The State’s prevailing wage rates determinations are available from the DIR home page at [www.dir.ca.gov/oprl/](http://www.dir.ca.gov/oprl/). The City has ascertained that general prevailing wage rates may be applicable to all or a portion of the work to be performed for the Required Services. To verify compliance with State prevailing wage requirements, the DIR maintains an online registry of contractors to which Consultant and/or its subconsultants/subcontractors will be required to submit certified payrolls. Subject to the exceptions provided in the California Labor code, no Consultant or any of its subconsultants/subcontractors shall be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work unless currently registered with the DIR and qualified to perform public work pursuant to California Labor Code section 1725.5. When payment of prevailing wages applies to the Required Services, this Agreement becomes subject to compliance monitoring



and enforcement by the DIR. Nothing contained above shall be construed to any way limit Consultant's obligations to comply with all laws and regulations.

**EXHIBIT B  
INSURANCE REQUIREMENTS**

Consultant shall adhere to all terms and conditions of Section 3 of the Agreement and agrees to provide the following types and minimum amounts of insurance, as indicated by checking the applicable boxes (x).

	Type of Insurance	Minimum Amount	Form
<input checked="" type="checkbox"/>	General Liability: Including products and completed operations, personal and advertising injury	\$2,000,000 per occurrence for bodily injury, personal injury (including death), and property damage. If Commercial General Liability insurance with a general aggregate limit is used, either the general aggregate limit must apply separately to this Agreement or the general aggregate limit must be twice the required occurrence limit  Additional Insured Endorsement or Blanket AI Endorsement for City*  Waiver of Recovery Endorsement	Insurance Services Office Form CG 00 01  <i>*Must be primary and must not exclude Products/Completed Operations</i>
<input checked="" type="checkbox"/>	Automobile Liability	\$1,000,000 per accident for bodily injury, including death, and property damage	Insurance Services Office Form CA 00 01 Code 1-Any Auto Code 8-Hired Code 9-Non Owned
<input checked="" type="checkbox"/>	Workers' Compensation Employer's Liability	\$1,000,000 each accident \$1,000,000 disease policy limit \$1,000,000 disease each employee Waiver of Recovery Endorsement	
<input checked="" type="checkbox"/>	Professional Liability (Errors & Omissions)	\$1,000,000 each occurrence \$2,000,000 aggregate	

Other Negotiated Insurance Terms: NONE

**EXHIBIT C**  
**CONSULTANT CONFLICT OF INTEREST DESIGNATION**

The Political Reform Act<sup>1</sup> and the Chula Vista Conflict of Interest Code<sup>2</sup> (“Code”) require designated state and local government officials, including some consultants, to make certain public disclosures using a Statement of Economic Interests form (Form 700). Once filed, a Form 700 is a public document, accessible to any member of the public. In addition, consultants designated to file the Form 700 are also required to comply with certain ethics training requirements.<sup>3</sup>

- A. Consultant IS a corporation or limited liability company and is therefore EXCLUDED<sup>4</sup> from disclosure.
- B. Consultant NOT a corporation or limited liability company and disclosure designation is as follows:

**APPLICABLE DESIGNATIONS FOR INDIVIDUAL(S) ASSIGNED TO PROVIDE SERVICES**  
(Category descriptions available at [www.chulavistaca.gov/departments/city-clerk/conflict-of-interest-code](http://www.chulavistaca.gov/departments/city-clerk/conflict-of-interest-code).)

<i>Name</i>	<i>Email Address</i>	<i>Applicable Designation</i>
Enter Name of Each Individual Who Will Be Providing Service Under the Contract – <i>If individuals have different disclosure requirements, duplicate this row and complete separately for each individual</i>	Enter email address(es)	<input type="checkbox"/> <b>A. Full Disclosure</b> <input type="checkbox"/> <b>B. Limited Disclosure</b> ( <i>select one or more of the categories under which the consultant shall file</i> ): <input type="checkbox"/> 1. <input type="checkbox"/> 2. <input type="checkbox"/> 3. <input type="checkbox"/> 4. <input type="checkbox"/> 5. <input type="checkbox"/> 6. <input type="checkbox"/> 7. Justification:  <input type="checkbox"/> <b>C. Excluded from Disclosure</b>

**1. Required Filers**

Each individual who will be performing services for the City pursuant to the Agreement and who meets the definition of “Consultant,” pursuant to FPPC Regulation 18700.3, must file a Form 700.

**2. Required Filing Deadlines**

Each initial Form 700 required under this Agreement shall be filed with the Office of the City Clerk via the City's online filing system, NetFile, within 30 days of the approval of the Agreement. Additional Form 700 filings will be required annually on April 1 during the term of the Agreement, and within 30 days of the termination of the Agreement.

**3. Filing Designation**

The City Department Director will designate each individual who will be providing services to the City pursuant to the Agreement as *full disclosure*, *limited disclosure*, or *excluded from disclosure*, based on an analysis of the services the Consultant will provide. Notwithstanding this designation or anything in the Agreement, the Consultant is ultimately responsible for complying with FPPC regulations and filing requirements. If you have any questions regarding filing requirements, please do not hesitate to contact the City Clerk at (619)691-5041, or the FPPC at 1-866-ASK-FPPC, or (866) 275-3772 \*2.

Pursuant to the duly adopted City of Chula Vista Conflict of Interest Code, this document shall serve as the written determination of the consultant’s requirement to comply with the disclosure requirements set forth in the Code.

**Completed by: Jonathan Salsman**

1 Cal. Gov. Code §§81000 *et seq.*; FPPC Regs. 18700.3 and 18704.

2 Chula Vista Municipal Code §§2.02.010-2.02.040.

3 Cal. Gov. Code §§53234, *et seq.*

4 CA FPPC Adv. A-15-147 (*Chadwick*) (2015); *Davis v. Fresno Unified School District* (2015) 237 Cal.App.4<sup>th</sup> 261; FPPC Reg. 18700.3 (Consultant defined as an “individual” who participates in making a governmental decision; “individual” does not include corporation or limited liability company).

**EXHIBIT D  
RATE SCHEDULE**

**KITCHELL CORPORATION**

<b><u>TITLE</u></b>	<b><u>HOURLY RATE</u></b>
PROJECT EXECUTIVE*	\$195*
PROJECT DIRECTOR	\$185
PROJECT MANAGER	\$175
PROJECT ENGINEER	\$134
COMMISSIONING AGENT	\$159
ENGINEERING AND ARCHITECTURAL SERVICES DEPT. MANAGER	\$195
ESTIMATING MANAGER	\$175
PROJECT CONTROLS MANAGER	\$175
ESSENTIAL SERVICES BUILDING EXPERT	\$185
QUALITY CONTROL INSPECTION MANAGER	\$148
QSP SERVICES	\$140
GEOTECHNICAL INVESTIGATION	\$145
SITE SURVEY	\$135
INDUSTRIAL HYGENIEST	\$155
SUBSURFACE UTILITY INVESTIGATION	\$150

\*The Project Executive is considered included in overhead and will not be billed unless prior written authorization is given by City.

ALL RATES ARE \$/HOUR