

**RFQ: DESIGN OF PALISADES GARDEN WALK AND TOWN SQUARE
ATTACHMENT C**

CONTRACT NO. ____ (CCS)
[if approved by City Council]

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement, entered into this ____ day of _____, _____ (the "Execution Date"), by and between the CITY OF SANTA MONICA, a municipal corporation ("City"), and _____ ("Consultant"), is made with reference to the following:

RECITALS:

A. The City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of the City.

B. The Consultant is qualified to do business, and is doing business, in the State of California. Consultant represents it has the background, knowledge, experience and expertise necessary to provide the services set forth in this Agreement.

C. The City and Consultant desire to enter into an agreement for the Consultant to provide professional services to the City as set forth herein, upon the terms and conditions set forth below.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

AGREEMENT

SECTION 1. TERM.

This Agreement shall commence on the Execution Date, and shall terminate upon the completion of the services required by this Agreement, or the ____ day of _____, whichever is earlier, unless terminated earlier as set forth herein.

SECTION 2. SERVICES TO BE PERFORMED BY CONSULTANT.

Consultant shall perform all of the services ("Services") that are more fully set forth in Exhibit A, Scope of Services, attached hereto and incorporated herein. The Services shall be completed in accordance with Exhibit B, Budget, attached hereto and incorporated herein.

SECTION 3. SERVICES TO BE PERFORMED BY CITY.

City shall perform the following services:

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- A. Make available to Consultant any currently existing documents, data or information pertinent to the Services.
- B. Designate a representative authorized to act on behalf of City.
- C. Promptly examine and render findings on all documents submitted for staff review by Consultant.

SECTION 4. COMPENSATION.

Consultant shall be compensated for Services performed pursuant to this Agreement in an amount not to exceed _____ Dollars (\$ _____), as set forth in Exhibit B, Budget.

SECTION 5. NOTICES.

All notices, demands, requests or approvals to be given under this Agreement, shall be given in writing and conclusively shall be deemed served when delivered personally or on the third business day after deposit in the United States mail, postage prepaid, registered or certified, addressed as follows:

- A. All notices, demands, requests or approvals from Consultant to City shall be addressed to City at:

_____ **[Department/Division Name]**
City of Santa Monica
1685 Main Street
Santa Monica, California 90401
Attention: _____ **[add name]**

with a copy to:

[Insert if any, otherwise delete]

- B. All notices, demands, requests or approvals from City to Consultant shall be addressed to Consultant at:

Attention: _____

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SECTION 6. INDEPENDENT PARTIES.

Both parties to this Agreement will be acting in an independent capacity and not as agents, employees, partners, or joint venturers of one another. Neither the City nor its officers or employees shall have any control over the conduct of Consultant or any of Consultant's agents, employees, or subconsultants, except as otherwise provided herein.

SECTION 7. INTEGRATED CONTACT.

This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions hereof. Any modifications of this Agreement will be effective only by written execution signed by both City and Consultant, and approved as to form by the City Attorney.

SECTION 8. INSURANCE.

Prior to commencing work, Consultant shall procure, maintain and pay for insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work or services hereunder by Consultant and Consultant's agents, representatives, employees or subconsultants for the duration of this Agreement. The requirements of insurance are set forth in Exhibit C, Insurance Requirements and Verifications, which is attached hereto and incorporated herein.

SECTION 9. COST OF LITIGATION.

If any legal action is necessary to enforce any provision of this Agreement or for damages by reason of any alleged breach of any provision of this Agreement, the prevailing party shall be entitled to receive from the losing party all reasonable costs, disbursements and expenses, and such amount as the court may adjudge to be reasonable attorney's fees.

SECTION 10. DEFENSE, INDEMNIFICATION AND HOLD HARMLESS.

Consultant shall indemnify, defend and hold harmless City, its City Council, boards and commissions, officers, agents and employees (collectively hereafter the "City") against any or all loss, damages, liability, claims, suits, costs, expenses, and judgments, whatsoever, including reasonable attorney's fees, arising from the negligent or willful acts, errors or omissions of Consultant or Consultant's officers, agents, employees or subconsultants, in the performance of services, activities or work conducted pursuant to this Agreement.

Consultant shall indemnify, defend and hold harmless City, from and against any and all claims and losses whatsoever, including reasonable attorney's fees occurring to or resulting from any and all persons, firms, or corporations employed or contracted by the Consultant or Consultant's subconsultants in connection with Consultant's services under this Agreement.

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SECTION 11. PROHIBITION AGAINST TRANSFERS.

Consultant shall not assign, hypothecate, or transfer this Agreement or any interest therein directly or indirectly, by operation of law or otherwise without the prior written consent of City. Any attempt to do so without the City's consent shall be null and void, and any assignee, sublessee, hypothecatee or transferee shall acquire no right or interest by reason of such attempted assignment, sublease, hypothecation or transfer.

The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Consultant or of any general partner or joint venturer or syndicate member of Consultant, if a partnership or joint venture or syndicate exists, which shall result in changing the control of Consultant, shall be construed as an assignment of this Agreement. Control means fifty percent (50%) or more of the voting power of the corporation.

SECTION 12. PERMITS AND LICENSES.

Consultant, at its sole expense, shall obtain and maintain during the term of this Agreement all required business and professional permits, licenses and certificates.

SECTION 13. WAIVER.

A waiver by either party to this Agreement of any breach of any term, covenant, or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained herein.

SECTION 14. TERMINATION.

In the event Consultant fails or refuses to perform any of the provisions of this Agreement, and if the default is not cured within a period of five (5) days after receipt by Consultant of City's written notice of default specifying the nature of the default and the steps necessary to cure the default, City may immediately terminate this Agreement by written notice. City shall have the option, at its sole discretion and without cause, of terminating this Agreement by giving ten (10) days written notice to Consultant. Upon termination of this Agreement, City shall pay to Consultant compensation earned and unpaid up to the effective date of termination.

SECTION 15. COMPLIANCE WITH LAW.

Consultant shall comply with all laws of the State of California and the United States, and all ordinances, rules and regulations enacted or issued by City. If such ordinances, rules or regulations enacted or issued by the City after the effective date of this Agreement significantly impact Consultant's performance of its obligations under this Agreement, equitable adjustment may be made to the time of performance, the compensation, or both, as appropriate.

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SECTION 16. SANTA MONICA LIVING WAGE ORDINANCE.

This Agreement (☐ is ☐ is not) subject to the City of Santa Monica's Living Wage Ordinance, Santa Monica Municipal Code Chapter 4.65 ("Living Wage Ordinance") which requires the payment of Minimum Wage for work done on any contract to any worker who does not actually work as a manager, supervisor or confidential employee, and who is not required to possess an occupational license. The Living Wage Ordinance sets the Minimum Wage at \$13.05 per hour and provides for an annual adjustment each July 1st, by an amount corresponding to the previous calendar year's change in the Consumer Price Index for Urban Wage Earners and Clerical Workers in Los Angeles, Riverside and Orange Counties. If this Agreement is subject to such Living Wage Ordinance, then the Consultant shall comply with all of its provisions. Failure to comply with the provisions of the Living Wage Ordinance shall be grounds for termination of this Agreement. Questions concerning the Living Wage Ordinance may be directed to the City Finance Department at (310) 458-8281.

SECTION 17. DISCRIMINATION.

Consultant shall not discriminate in the provision of services hereunder because of race, color, religion, national origin, ancestry, sex, age, sexual orientation, marital status, AIDS or disability, and shall comply with the requirements of City, state and federal law.

SECTION 18. NUISANCE.

Consultant shall not maintain, commit, or permit the maintenance or commission of any nuisance in connection with the performance of services under this Agreement.

SECTION 19. RECORDS.

Consultant shall maintain complete and accurate records with respect to costs, expenses, receipts and other such information required by the City for any services provided where compensation is on the basis of hourly rates, subconsultant costs, and/or other direct costs.

Consultant shall maintain records of service provided in sufficient detail to permit an evaluation of services. All records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Representatives of City or its designees shall be allowed free access to Consultant's books and records, and shall have the right to examine, audit and make transcripts therefrom as necessary, and to inspect all work, data, documents, proceedings and activities related to this Agreement. Such records, together with supporting documents, shall be kept separate from other documents and records and shall be maintained for a period of three (3) years after receipt of final payment.

If City's audit discloses an error of five percent (5%) or more in information reported by Consultant and City's audit is correct, Consultant shall pay the cost of City's audit computed on the basis of four (4) times the direct payroll of the audit staff completing the audit and audit report.

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SECTION 20. REPORTS.

Each and every final report, work product, map, record and other document reproduced, prepared or caused to be prepared by Consultant pursuant to or in connection with this Agreement and delivered to the City shall be the exclusive property of City, including the originals of all notes, memoranda, sketches, letters and documents developed and received by Consultant.

Consultant shall furnish reports concerning the status of services required under this Agreement at City's request. No report, work product, map, record or other document given to or prepared or assembled by Consultant pursuant to this Agreement shall be made available to any individual or organization by Consultant without prior written approval by City. City shall not reuse or make any modifications to the designs, plans and specifications prepared by Consultant without the prior authorization of Consultant. The provisions of this Section shall apply to all materials developed by subconsultants pursuant to this Agreement unless otherwise authorized in writing by City prior to execution of any agreement with said subconsultants.

SECTION 21. STANDARD OF CARE.

Consultant agrees that all services performed hereunder, including services performed by any subconsultant, shall be provided in a manner consistent with that level of care and skill ordinarily exercised by members of Consultant's profession currently practicing in the same locality under similar conditions.

SECTION 22. SUBCONSULTANTS.

Requests for subconsultants shall be submitted in writing, describing the scope of work to be contracted, the name of the proposed subconsultant, and the total price or hourly rates used in preparing an estimated cost for the subconsultant's services. The City may issue approval of the subconsultant in the form of a Work Order.

Consultant shall be responsible for the quality of all subconsultant work performed pursuant to this Agreement. Consultant may terminate and replace the services of any subconsultant, subject to the prior written approval by the City which shall not be unreasonably withheld or delayed. Every subcontract or agreement of any kind entered into between Consultant and subconsultant (or between any subconsultant and others) shall contain the following provision:

This agreement is consistent with the specified terms and conditions of the Agreement entered into between the City of Santa Monica and _____ on _____ (hereinafter referred to as the "Agreement") including, but not limited to: Section 2, Services to be Performed by Consultant; Section 4, Compensation; and Section 8, Insurance.

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SECTION 23. GOVERNING LAW.

This Agreement shall be construed in accordance with and governed by the laws of the State of California.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed the day and year first above written.

ATTEST:

CITY OF SANTA MONICA,
a municipal corporation

MARIA STEWART
City Clerk

By: _____
P. LAMONT EWELL
City Manager

APPROVED AS TO FORM:

MARSHA JONES MOUTRIE
City Attorney

Consultant:
[ADD CONSULTANT'S NAME]

By: _____

Title: _____

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EXHIBIT A

SCOPE OF SERVICES

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EXHIBIT B

BUDGET

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EXHIBIT C

INSURANCE REQUIREMENTS AND VERIFICATION

**Professional Services Insurance Requirements
(for Non Public Works Contracts)**

Consultant's Insurance

Prior to commencing work, the Consultant shall procure and maintain at Consultant's own cost and expense for the duration of the Agreement insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work or services hereunder by the Consultant and its agents, representatives, employees, or subconsultants. The cost of such insurance shall be included in Consultant's bid.

Without in any way affecting the indemnity provided, the Consultant shall secure before commencement of the work and throughout the Agreement the following types and amounts of insurance:

Minimum Limits of Insurance

Consultant shall obtain insurance of the types and in the amounts described below:

- 1) **Commercial General Liability Insurance**
Consultant shall maintain commercial general liability insurance (CGL) with a limit of not less than \$1,000,000 each occurrence/\$2,000,000 in the annual aggregate.
- 2) **Business Auto Liability Insurance**
Consultant shall maintain business auto liability insurance with a limit of not less than \$1,000,000 each accident.
- 3) **Professional Liability (Errors and Omissions) Insurance**
Consultant shall maintain professional liability insurance appropriate to the consultant's profession with a limit not less than \$1,000,000 each occurrence/\$1,000,000 in the annual aggregate. Architects' and engineers' coverage is to be endorsed to include contractual liability.
- 4) **Workers' Compensation and Employer's Liability Insurance**
Consultant shall maintain workers' compensation insurance as required by the State of California and Employer's Liability Insurance in the amount of \$1,000,000 per accident for bodily injury or disease.

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Minimum Scope of Insurance

- 1) CGL insurance shall be written on Insurance Services Office form CG 00 01 (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury liability assumed under an insured contract (including the tort liability of another assumed in a business contract), and explosion, collapse and underground hazards.
- 2) Business Auto Insurance shall cover liability arising out of any auto (including owned, hired, and non-owned autos). Coverage shall be written on Insurance Services Office form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.
- 3) If the Professional Liability Insurance policy is written on a claims made basis, it shall be maintained continuously for a period of no less than three (3) years after final completion. The “Retro Date” must be shown, and must be before the date of the contract or beginning of contract work.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City of Santa Monica. At the option of the City of Santa Monica, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City of Santa Monica, its officers, officials, employees, or volunteers; or the Consultant shall provide a financial guarantee satisfactory to the City of Santa Monica guaranteeing payment of losses and related investigation, claim administration and defense expenses.

Other Insurance Provisions

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

- 1) The City of Santa Monica, its officers, officials, employees, and volunteers are to be covered as additional insureds with respect to liability arising out of automobiles owned, leased, hired, or borrowed by or on behalf of the Consultant; and with respect to liability arising out of work or operations performed by or on behalf of the

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Consultant including materials, parts or equipment furnished in connection with such work or operations. Under the CGL policy, using the Insurance Services Office additional insured endorsement form CG 20 26 or a substitute providing equivalent coverage. City and other additional insureds mentioned in this paragraph shall not, by reason of their inclusion as additional insureds, become liable for any payment of premiums to carriers for such coverage.

- 2) For any claims related to this project, the Consultant's insurance coverage shall be primary as respects the City of Santa Monica, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City of Santa Monica, its officers, officials, employees, or volunteers shall be in excess of the Consultant's insurance and shall not contribute with it.
- 3) Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under subdivision (b) of Section 2782 of the Civil Code.

General Liability, Workers' Compensation and Employer's Liability

The insurer shall agree to waive all rights of subrogation against the City of Santa Monica, its officers, officials, employees, and volunteers for losses arising from activities and operations of Consultant in the performance of services under the contract.

All Coverages

- 1) Each insurance required by this clause shall be endorsed to state that coverage shall not be canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City as set forth in the notice requirement of this Agreement.
- 2) If Consultant, for any reason, fails to maintain insurance coverage which is required pursuant to this Agreement, the same shall be deemed a material breach of contract. City, at its sole option, may terminate this Agreement and obtain damages from the Consultant resulting from said breach. Alternatively, City may purchase such coverage (but has no special obligation to do so), and without further notice to the Consultant, City may deduct from sums due to the Consultant any premium costs advanced by the City for such insurance.

Acceptability of Insurers

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Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:6 unless otherwise approved by the City's Risk Manager.

Verification of Coverage

Consultant shall furnish the City of Santa Monica with original certificates and amendatory endorsements effecting coverage required by this section. The certificates and endorsements for each policy are to be signed by a person authorized by the insurer to bind coverage on its behalf. The certificates and endorsements should be on forms provided by the City of Santa Monica or on other than the City of Santa Monica's forms, provided those forms and endorsements conform to the requirements. All certificates and endorsements are to be received and approved by the City of Santa Monica before work commences. The City of Santa Monica reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

Subconsultants

Consultant shall include all subconsultants as insureds under its policies or shall furnish separate certificates and endorsements for each subconsultant. All coverages for subconsultant shall be subject to all of the requirements stated herein.