

**AGREEMENT BETWEEN THE CITY OF MOUNTAIN VIEW
AND _____ FOR
PROFESSIONAL DESIGN SERVICES**

This AGREEMENT is dated for identification this ____ day of _____ 20____, by and between the CITY OF MOUNTAIN VIEW, a California charter city and municipal corporation, whose address is 500 Castro Street, P.O. Box 7540, Mountain View, California, 94039-7540 (hereinafter "CITY"), and _____ [DP insert Variable 1] ALL CAPS _____, _____4[legal entity— Example: sole proprietorship, partnership, corporation, S corporation, limited liability company, etc., etc.]_____, [OPTIONAL—DP insert "doing business as ___ Variable 2 ALL CAPS ___"], whose address is _____ (hereinafter "DESIGN PROFESSIONAL"), (CITY and DESIGN PROFESSIONAL hereinafter collectively "Parties" or individually "Party").

RECITALS

- A. WHEREAS, CITY desires to retain the services of DESIGN PROFESSIONAL to provide _____, Project _____ [OPTIONAL VARIABLE TO ADD CIP PROJECT NUMBER]_; and
- B. WHEREAS, DESIGN PROFESSIONAL is a qualified professional capable of providing the certain professional services which CITY seeks. DESIGN PROFESSIONAL represents and warrants that all professional design services shall be provided by a person or persons duly licensed by the State of California to provide the type of services described in Section 1, Description of Services.

AGREEMENT

NOW, THEREFORE, in consideration of the recitals and mutual promises contained herein, CITY does hereby engage DESIGN PROFESSIONAL, and DESIGN PROFESSIONAL agrees, to perform the services set forth herein in accordance with the following terms and conditions:

1. **Description of Services.** DESIGN PROFESSIONAL shall provide the services set forth in DESIGN PROFESSIONAL's proposal dated _____, attached hereto and incorporated herein as Exhibit A.

2. **Schedule and Term.** The schedule for performing said services is as follows:

DESIGN PROFESSIONAL shall commence work under this Agreement on _____ and shall complete all work under this Agreement no later than _____.

3. **Compensation.** The ____ [hourly or daily (select one)] rate for services under this Agreement shall be _____ Dollars (\$_____). Compensation to DESIGN PROFESSIONAL for services as set forth in Exhibit A shall not exceed _____ Dollars (\$_____). Compensation to DESIGN PROFESSIONAL for additional services, as assigned and only upon prior

written authorization by CITY, shall not exceed _____ Dollars (\$_____). Maximum compensation to DESIGN PROFESSIONAL for providing the services set forth herein shall not exceed (including reimbursed expenses) _____ Dollars (\$_____).

4. **Compliance with Department of Industrial Relations.** DESIGN PROFESSIONAL and DESIGN PROFESSIONAL's subconsultant(s) providing services on a public works project by employees whose job classification is subject to California prevailing wage laws must be registered with the Department of Industrial Relations and maintain registration for the duration of this Agreement. DESIGN PROFESSIONAL and/or DESIGN PROFESSIONAL's subconsultants shall pay these employees per California prevailing wage rates and submit certified payroll records in conformance with Department of Industrial Relations requirements.

5. **Contractor Building Access.**

a. All DESIGN PROFESSIONAL's employees and subcontractor's employees servicing CITY's account that require or request unescorted building access must be enrolled in the "Live Scan" fingerprint program, and the Department of Justice shall determine whether any individuals have been arrested or convicted of a violent or serious felony or has a pending criminal proceeding for a felony as defined in Section 45122.1 of the California Education Code. This report must be received and accepted by CITY from the Department of Justice prior to DESIGN PROFESSIONAL's employees and subcontractor employees beginning work. No DESIGN PROFESSIONAL, DESIGN PROFESSIONAL employees, subcontractor, or subcontractor's employees shall commence or continue work without clearance from the Department of Justice.

b. All required fees related to the Live Scan application process and other travel costs and time associated with security clearance will be the responsibility of DESIGN PROFESSIONAL.

c. The forms and appointments may be obtained from the Mountain View Police Department at 650-903-6344. Each applicant will make an appointment to obtain an application and to have fingerprints taken; charges will apply at this time (Fifty-Two Dollars (\$52) per applicant). The clearance process takes approximately two (2) weeks. After the clearance is given, an appointment should be made with CITY's Facilities Division, which will issue photo DESIGN PROFESSIONAL ID badges.

d. While they are on the premises, DESIGN PROFESSIONAL's employees shall display photo ID badges at all times.

6. **Payment Schedule.** CITY shall make periodic payments within thirty (30) days of receiving and approving a billing statement in proportion to the satisfactory completion of DESIGN PROFESSIONAL's services.

7. **Standard of Performance.**

a. Services shall be performed by DESIGN PROFESSIONAL in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised under similar conditions by members of DESIGN PROFESSIONAL's profession currently practicing in California. By delivery of completed work, DESIGN PROFESSIONAL certifies that the work conforms to the requirements of this Agreement and all applicable Federal, State, and local laws and the professional standards of care in California.

b. DESIGN PROFESSIONAL is responsible for making an independent evaluation and judgment of all conditions affecting performance of the work, including, without limitation, site condition; existing facilities; seismic, geologic, soils, hydrologic, geographic, and climatic conditions; applicable Federal, State, and local laws and regulations; and all other contingencies or design considerations. Data, calculations, opinions, reports, investigations, and other similar information provided by CITY relating to site, local, or other conditions is not warranted or guaranteed, either expressly or implied, by CITY.

c. DESIGN PROFESSIONAL's responsibilities under this section shall not be delegated. DESIGN PROFESSIONAL shall be responsible to CITY for acts, errors, or omissions of DESIGN PROFESSIONAL's subcontractors.

d. Whenever the scope of work requires or permits review, approval, conditional approval, or disapproval by CITY, it is understood that such review, approval, conditional approval, or disapproval is solely for the purposes of administering this Agreement and determining whether DESIGN PROFESSIONAL is entitled to payment for such work, and shall not be construed as a waiver of any breach or acceptance by CITY of any responsibility, professional or otherwise, for the work, and shall not relieve DESIGN PROFESSIONAL of responsibility for complying with the standard of performance or laws, regulations, industry standards, or from liabilities for damages caused by negligent acts, errors, omissions, noncompliance with industry standards, or the willful misconduct of DESIGN PROFESSIONAL.

8. **Independent Contractor.** It is agreed that DESIGN PROFESSIONAL is an independent contractor, and all persons working for or under the direction of DESIGN PROFESSIONAL are DESIGN PROFESSIONAL's agents and employees, or qualify as independent contractors as defined and required by applicable law, and said persons shall not be deemed agents, officers, partners, or joint venturers of CITY or employees of CITY by virtue of this Agreement. DESIGN PROFESSIONAL will defend, indemnify, and hold CITY harmless from any claims, demands, liabilities, costs, and expenses arising from DESIGN PROFESSIONAL's misclassification of workers providing services under this Agreement.

9. **Conflict of Interest.** If, in performing the services set forth in this Agreement, DESIGN PROFESSIONAL makes, or participates in, a "governmental decision" as described in Title 2, Section 18700.3(a) of the California Code of Regulations, or performs the same or substantially

all the same duties for CITY that would otherwise be performed by a CITY employee holding a position specified in CITY's Conflict of Interest Code, DESIGN PROFESSIONAL shall be subject to CITY's Conflict of Interest Code, the requirements of which include the filing of one (1) or more statements of economic interest disclosing the relevant financial interests of DESIGN PROFESSIONAL's personnel providing the services set forth in this Agreement. If subject to CITY's Conflict of Interest Code, DESIGN PROFESSIONAL shall notify CITY's City Clerk at city.clerk@mountainview.gov, 650-903-6304, or City Hall, 500 Castro Street, Third Floor, in order to enable electronic filing of the FPPC Statement of Economic Interest (Form 700).

10. **Ownership of Data and Documents.** DESIGN PROFESSIONAL agrees all records, specifications, data, maps, designs, graphics, writings, recordings, and other tangible materials regardless of form or format, including, without limitation, electronically transmitted documents and ACAD files, and other collateral materials collected, compiled, drafted, prepared, produced, and/or generated in the performance of this Agreement shall be the property of CITY. DESIGN PROFESSIONAL agrees that all copyrights which arise from creation of the work pursuant to this Agreement shall be vested in CITY and waives and relinquishes all claims to copyright or other intellectual property rights in favor of CITY. DESIGN PROFESSIONAL shall regularly provide such documents to CITY upon CITY's request. In the event this Agreement is terminated prior to completion of the scope of work, DESIGN PROFESSIONAL shall provide all such data and documents to CITY forthwith.

11. **Subcontractor.**

a. DESIGN PROFESSIONAL will perform the work personally or through DESIGN PROFESSIONAL's employees. DESIGN PROFESSIONAL may subcontract work only upon prior approval of CITY. If subcontracting of work is permitted, DESIGN PROFESSIONAL shall pay the subcontractor within seven (7) days of receipt of payment by CITY for work performed by a subcontractor and billed by DESIGN PROFESSIONAL. Use of the term "subcontractor" in any other provisions of this Agreement shall not be construed to imply authorization for DESIGN PROFESSIONAL to use subcontractors for performance of any service under this Agreement.

b. CITY is an intended beneficiary of any work performed by the subcontractor for purposes of establishing a duty of care between the subcontractor and CITY.

12. **Business License.** Prior to the execution of this Agreement, DESIGN PROFESSIONAL shall comply with Article I of Chapter 18 of the Mountain View City Code. More information is available online at www.mountainview.gov/our-city/departments/finance-and-administrative-services/billing/business-licenses or at City Hall, 500 Castro Street, Second Floor, Finance and Administrative Services Department Lobby.

13. **Insurance.**

a. **Commercial General Liability Insurance.** DESIGN PROFESSIONAL shall obtain and maintain Commercial General Liability insurance in a minimum amount of Two Million

Dollars (\$2,000,000) per occurrence. If a general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement or the general aggregate limit shall be twice the required occurrence limit. DESIGN PROFESSIONAL's insurance coverage shall be written on an occurrence basis.

b. Automobile Liability Insurance. DESIGN PROFESSIONAL shall obtain and maintain Automobile Liability insurance in a minimum amount of One Million Dollars (\$1,000,000) per occurrence.

c. Professional Liability Insurance. DESIGN PROFESSIONAL shall obtain and maintain Professional Liability insurance in a minimum amount of One Million Dollars (\$1,000,000) per claim. Professional Liability insurance must be maintained and evidence of insurance shall be provided to CITY for at least three (3) years after completion of work under this Agreement.

_. Pollution Insurance. DESIGN PROFESSIONAL shall obtain and maintain Pollution insurance in a minimum amount of One Million Dollars (\$1,000,000) per occurrence or claim.

>>NOTE: *If risk potential is major (known hazardous materials and/or transporting), the limits to be used may be from \$2,000,000 to \$5,000,000.*

******WORKERS' COMPENSATION INSURANCE: IF THE CONTRACTING PARTY IS:**

--A COMPANY WITH EMPLOYEES, USE OPTION NO. 1.

--AN INDIVIDUAL OR INDIVIDUALS WITH NO EMPLOYEES, USE OPTION NO. 2.

[DP—delete this note.]****

>>(OPTION NO. 1)

d. Workers' Compensation Insurance. DESIGN PROFESSIONAL shall obtain and maintain statutory Workers' Compensation insurance and Employer's Liability insurance in a minimum amount of One Million Dollars (\$1,000,000) per accident. *(END OF OPTION NO. 1)*

>>(OPTION NO. 2)

d. Workers' Compensation Insurance. DESIGN PROFESSIONAL is an individual or a company that has entered, or will be entering, into an agreement with CITY to provide goods or services.

DESIGN PROFESSIONAL is familiar with the Workers' Compensation laws of California (generally contained in Section 3700 of the Labor Code), including those provisions which provide for specific exemptions from the requirement that all employers must carry Workers' Compensation insurance, and DESIGN PROFESSIONAL maintains DESIGN PROFESSIONAL is exempted under the law from the requirement to maintain Workers' Compensation insurance coverage.

In addition, during the term of any work for CITY under said Agreement: (1) DESIGN PROFESSIONAL will not employ any person in any manner so as to become subject to the

Workers' Compensation laws of California; or (2) should DESIGN PROFESSIONAL become subject to the Workers' Compensation provisions of Section 3700 of the Labor Code for any reason, DESIGN PROFESSIONAL shall forthwith comply with those provisions and send evidence of financial compliance to CITY. (END OF OPTION NO. 2)

e. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's Rating of A:VII unless otherwise acceptable to CITY.

f. Verification of Coverage. Insurance, deductibles, or self-insurance retentions shall be subject to CITY's approval. Original Certificates of Insurance with endorsements shall be received and approved by CITY before work commences, and insurance must be in effect for the duration of the Agreement. The absence of insurance or a reduction of stated limits shall cause all work on the project to cease. Any delays shall not increase costs to CITY or increase the duration of the project.

g. Other Insurance Provisions:

(1) If DESIGN PROFESSIONAL maintains broader coverage and/or higher limits than the minimums shown above, CITY requires and shall be entitled to the broader coverage and/or the higher limits maintained by DESIGN PROFESSIONAL. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to CITY.

(2) The City of Mountain View and CITY's officers, officials, employees, and volunteers are to be covered as an additional insured by an endorsement at least as broad as ISO Form CG 20 10 11 85 or, if not available, through the addition of **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38 and CG 20 37 if a later revision is used or other endorsement approved by CITY's Risk Manager for Commercial General and Automobile Liability coverages.

(3) For any claims related to DESIGN PROFESSIONAL's services pursuant to this Agreement, DESIGN PROFESSIONAL's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 with respect to CITY and CITY's officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by CITY and CITY's officers, officials, employees, and volunteers shall not contribute to it.

(4) DESIGN PROFESSIONAL grants CITY a waiver of any rights to subrogation which any insurer of DESIGN PROFESSIONAL may acquire against CITY by virtue of the payment of any loss under such insurance (ISO CG 24 04 for CGL) and an endorsement to the Workers' Compensation policy. This provision applies regardless of whether or not CITY has received a waiver of subrogation endorsement from the insurer.

(5) DESIGN PROFESSIONAL shall provide thirty (30) days' notice to CITY in the event of cancellation or modification to the stipulated insurance coverage.

(6) In the event DESIGN PROFESSIONAL employs subcontractors as part of the work covered by this Agreement, it shall be the responsibility of DESIGN PROFESSIONAL to ensure that all subcontractors comply with the same insurance requirements as stated in this Agreement.

(7) Approval of the insurance by CITY or acceptance of the Certificate of Insurance by CITY shall not relieve or decrease the extent to which DESIGN PROFESSIONAL may be held responsible for payment of damages resulting from DESIGN PROFESSIONAL's services or operations pursuant to this Agreement, nor shall it be deemed a waiver of CITY's rights to insurance coverage hereunder.

(8) If, for any reason, DESIGN PROFESSIONAL fails to maintain insurance coverage that is required pursuant to this Agreement, the same shall be deemed a material breach of Agreement. CITY, at CITY's sole option, may terminate this Agreement and obtain damages from DESIGN PROFESSIONAL resulting from said breach. Alternately, CITY may purchase such required insurance coverage, and without further notice to DESIGN PROFESSIONAL, CITY may deduct from sums due to DESIGN PROFESSIONAL any premium costs advanced by CITY for such insurance.

14. **Indemnification.** To the fullest extent permitted by law, and in accordance with Civil Code Section 2782.8, DESIGN PROFESSIONAL shall indemnify, defend with competent counsel reasonably acceptable to the City Attorney, and hold harmless CITY and CITY's directors, officers, employees, and volunteers from and against all liabilities (including, without limitation, all claims, lawsuits, losses, damages, penalties, fines, and judgments, associated investigation and administrative expenses, and defense costs, including, but not limited to, reasonable attorneys' fees, court costs, and costs of alternative dispute resolution) regardless of nature or type that arise out of, or pertain to, or relate to the negligence, recklessness, or willful misconduct of DESIGN PROFESSIONAL, or of an employee, agent, or subcontractor of DESIGN PROFESSIONAL. In no event shall the cost to defend charged to DESIGN PROFESSIONAL exceed DESIGN PROFESSIONAL's proportionate percentage of fault. The provisions of this paragraph survive completion of the services or the termination of this Agreement. The provisions of this section are not limited by the provisions of Section 13 relating to insurance.

15. **Applicable Laws and Attorneys' Fees.** This Agreement shall be construed and enforced pursuant to the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of Santa Clara. Should any legal action be brought by a Party for breach of this Agreement or to enforce any provision herein, the prevailing Party of such action shall be entitled to reasonable attorneys' fees, court costs, and such other costs as may be fixed by the court. Reasonable attorneys' fees of the City Attorney's Office, if private counsel is not used, shall be based on comparable fees of private attorneys practicing in Santa Clara County.

16. **Nondiscrimination.** DESIGN PROFESSIONAL shall afford equal employment opportunities for all persons without discrimination because of race, color, religion, sex, sexual

orientation, political affiliation, national origin, ancestry, age, marital status, physical or mental disability, military or veteran status, gender identity or expression, or genetic information.

17. **Amendment.** This Agreement may be amended in writing and signed by the Parties.

18. **Termination.** CITY may terminate this Agreement at any time by providing ten (10) days' advance written notice to DESIGN PROFESSIONAL. Should CITY terminate pursuant to said notice, CITY shall pay DESIGN PROFESSIONAL for DESIGN PROFESSIONAL's services rendered to the date of termination based on percentage of completion of scope of basic services, including actual reimbursable expenses. In no event shall said fees exceed the maximum compensation established in this Agreement.

19. **Attachments or Exhibits.** Except as expressly referenced herein, no portion of any terms or conditions included in any attachments or exhibits shall be a part of this Agreement, and they shall have no force or effect. If any attachments or exhibits to this Agreement are inconsistent with this Agreement, this Agreement shall control.

20. **Entire Agreement.** This Agreement contains the entire understanding between the Parties with respect to the subject matter herein. There are no representations, agreements, or understandings (whether oral or written) between or among the Parties relating to the subject matter of this Agreement which are not fully expressed herein.

21. **Authority to Execute.** The persons executing this Agreement on behalf of the Parties warrant that they are duly authorized to execute this Agreement.

22. **Waiver.** The failure of CITY to insist upon a strict performance of any of the terms, conditions, and covenants contained herein shall not be deemed a waiver of any rights or remedies that CITY may have and shall not be deemed a waiver of any subsequent breach or default in the terms, conditions, and covenants contained herein.

23. **Headings.** The headings in this Agreement are inserted for convenience purposes only and shall not affect the terms of this Agreement.

24. **Public Records.** The Parties recognize and acknowledge that CITY is subject to the California Public Records Act, California Government Code Section 7920.000 and following. Public records are subject to disclosure.

25. **Severability.** If any provision of this Agreement is found by a court of competent jurisdiction to be void, invalid, or unenforceable, the same will either be reformed to comply with applicable law or stricken if not so conformable, so as not to affect the validity or enforceability of this Agreement.

26. **Notices.** Any notice given under this Agreement shall be in writing and shall be given by delivering the same to such Party in person, by delivering the same to such Party by reputable

overnight courier or express service, or by sending the same to such Party by registered or certified mail, return receipt requested, with postage prepaid. The address(es) of each Party for the giving of notices hereunder are, until changed as hereinafter provided, the following:

To CITY: _____ Director
City of Mountain View
500 Castro Street
P.O. Box 7540
Mountain View, CA 94039-7540

To DESIGN PROFESSIONAL: _____

With a copy to: _____ (optional)

Any notice will be deemed given on the date of delivery, on the date of refusal to accept delivery, or when delivery is first attempted but cannot be made due to a change of address for which no notice was given. A Party may change its notice address(es) at any time by giving written notice of such change to the other Party in the manner provided herein. Notice given by counsel shall be deemed given by the Party represented by such counsel.

27. **Compliance with Law.** DESIGN PROFESSIONAL shall comply with all applicable laws and regulations of the Federal, State, and local government, including, but not limited to, “The Code of the City of Mountain View, California.” DESIGN PROFESSIONAL specifically agrees to comply with any applicable laws, regulations, and/or guidelines relating to COVID-19, including, but not limited to, Centers for Disease Control and Prevention (CDC) guidelines, Santa Clara County Department of Public Health orders and/or guidelines, and CITY’s protocols for contractors related to COVID-19 which are located at www.mountainview.gov/our-city/departments/finance-and-administrative-services/purchasing and incorporated herein by this reference, as amended from time to time.

28. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which in the aggregate shall constitute one and the same instrument, and the Parties agree that signatures on this Agreement shall be sufficient to bind the Parties.

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IN WITNESS WHEREOF, this Agreement, dated __[DP insert Variable 3]__ for identification, between the City of Mountain View and __[DP insert Variable 1]__ [*OPTIONAL*—DP insert “doing business as __Variable 2__”] for __[DP—insert Variables 6+7]__, is executed by CITY and DESIGN PROFESSIONAL.

SAMPLE

“CITY”:
CITY OF MOUNTAIN VIEW,
a California charter city and municipal
corporation

“DESIGN PROFESSIONAL”:
____[DP insert Variable 1]ALL CAPS____,
____[DP insert Variable 4]____
[OPTIONAL—DP insert “d.b.a. ____Variable 2
ALL CAPS____”]

By: _____
____Department Head OR City
Manager (select appropriate one)

By: _____

Print Name: _____

Attest: _____
____City Clerk

Title: _____

***CITY CLERK SIGNATURE REQUIRED IF APPROVED BY CITY COUNCIL—
ADVISE WHETHER TO LEAVE IN OR DELETE***

Taxpayer I.D. Number

APPROVED AS TO CONTENT:

FINANCIAL APPROVAL:

Finance and Administrative
Services Director

APPROVED AS TO FORM:

City Attorney