

DESIGN SERVICES AGREEMENT

This Professional Services Agreement ("Agreement") is dated February 1, 2019 ("Effective Date") and is between the City of Manhattan Beach, a California municipal corporation ("City") and Kitchell/CEM, Inc., a California corporation ("Consultant"). City and Consultant are sometimes referred to herein as the "Parties", and individually as a "Party".

RECITALS

A. City issued Request for Proposals No. 1182-19 on August 31, 2018, titled "Professional Design Consulting Services for the City Hall HVAC Improvements Project" Consultant submitted a proposal dated October 3, 2018 in response to the RFP.

B. Consultant represents that it is fully qualified to perform such services by virtue of its experience and the training, education and expertise of its principals and employees.

C. City desires to retain Consultant as an independent contractor and Consultant desires to serve City to perform these services in accordance with the terms and conditions of this Agreement.

The Parties therefore agree as follows:

1. Consultant's Services.

A. Scope of Services. Consultant shall perform the services described in the Scope of Services (the "Services") attached as **Exhibit A**, for an assessment report with options to improve the City Hall HVAC system. City may request, in writing, changes in the Scope of Services to be performed. Any changes mutually agreed upon by the Parties, and any increase or decrease in compensation, shall be incorporated by written amendments to this Agreement.

B. Party Representatives. For the purposes of this Agreement, the City Representative shall be the City Manager, or such other person designated in writing by the City Manager (the "City Representative"). For the purposes of this Agreement, the Consultant Representative shall be Heather Brown, PE, EAS Department Director (the "Consultant Representative"). The Consultant Representative shall directly manage Consultant's Services under this Agreement. Consultant shall not change the Consultant Representative without City's prior written consent.

C. Time for Performance. Consultant shall commence the Services on the Effective Date and shall perform all Services by the deadline established by the City Representative or, if no deadline is established, with reasonable diligence.

Approved for Use 1/4/19

D. Standard of Performance. Consultant shall perform all Services under this Agreement in accordance with the standard of care generally exercised by like professionals under similar circumstances and in a manner reasonably satisfactory to City.

E. Personnel. Consultant has, or will secure at its own expense, all personnel required to perform the Services required under this Agreement. All of the Services required under this Agreement shall be performed by Consultant or under its supervision, and all personnel engaged in the work shall be qualified to perform such Services.

F. Compliance with Laws. Consultant shall comply with all applicable federal, state and local laws, ordinances, codes, regulations and requirements.

G. Permits and Licenses. Consultant shall obtain and maintain during the Agreement term all necessary licenses, permits and certificates required by law for the provision of Services under this Agreement, including a business license.

2. Term of Agreement. The term of this Agreement shall be from the Effective Date through June 30, 2020, unless sooner terminated as provided in Section 12 of this Agreement or extended.

3. Compensation.

A. Compensation. As full compensation for Services satisfactorily rendered, City shall pay Consultant at the hourly rates set forth in the Approved Fee Schedule attached hereto as **Exhibit B**. In no event shall Consultant be paid more than \$49,900.00 (the "Maximum Compensation") for such Services.

B. Expenses. The amount set forth in paragraph 3.A. above includes reimbursement for all expenditures incurred in the performance of this Agreement.

C. Unauthorized Service and Expenses. City will not pay for any services not specified in the Scope of Services, unless the City Council or the City Representative, if applicable, and the Consultant Representative authorize such services in writing prior to Consultant's performance of those services or incurrence of additional expenses. Any additional services or expenses authorized by the City Council, or (where authorized) the City Manager shall be compensated at the rates set forth in **Exhibit B**, or, if not specified, at a rate mutually agreed to by the Parties. City shall make payment for additional services and expenses in accordance with Section 4 of this Agreement.

4. Method of Payment.

A. Invoices. Consultant shall submit to City an invoice, on a monthly basis, for the Services performed pursuant to this Agreement. Each invoice shall itemize the Services rendered during the billing period, hourly rates charged, if applicable, and the amount due. City shall review each invoice and notify Consultant in writing within ten Business days of receipt of any disputed invoice amounts.

B. Payment. City shall pay all undisputed invoice amounts within 30 calendar days after receipt up to the Maximum Compensation set forth in Section 3 of this Agreement. City does not pay interest on past due amounts. City shall not withhold federal payroll, state payroll or other taxes, or other similar deductions, from payments made to Consultant. Notwithstanding the preceding sentence, if Consultant is a nonresident of California, City will withhold the amount required by the Franchise Tax Board pursuant to Revenue and Taxation Code Section 18662 and applicable regulations.

C. Audit of Records. Consultant shall make all records, invoices, time cards, cost control sheets and other records maintained by Consultant in connection with this Agreement available during Consultant's regular working hours to City for review and audit by City.

5. Independent Contractor. Consultant is, and shall at all times remain as to City, a wholly independent contractor. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not, at any time, or in any manner, represent that it or any of its officers, agents or employees are in any manner employees of City.

6. Information and Documents.

A. Consultant covenants that all data, reports, documents, surveys, studies, drawings, plans, maps, models, photographs, discussion, or other information (collectively "Data and Documents") developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed or released by Consultant without prior written authorization by City. City shall grant such authorization if applicable law requires disclosure. Consultant, its officers, employees, agents, or subcontractors shall not without written authorization from the City Manager or unless requested in writing by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement or relating to any project or property located within the City. Response to a subpoena or court order shall not be considered "voluntary," provided Consultant gives City notice of such court order or subpoena.

B. Consultant shall promptly notify City should Consultant, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed thereunder or with respect to any project or property located within the City. City may, but has no obligation to, represent Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. However, City's right to review any such response does not imply or mean the right by City to control, direct or rewrite the response.

C. All Data and Documents required to be furnished to City in connection with this Agreement shall become City's property, and City may use all or any portion of the Data submitted by Consultant as City deems appropriate. Upon completion of, or in the event of termination or suspension of this Agreement, all original Data and Documents, including computer files containing Data and Documents generated for the Services, notes, and other documents prepared in the course of providing the Services shall become City's sole property and may be used, reused or otherwise disposed of by City without Consultant's permission. Consultant may take and retain copies of the written products as desired, but the written products shall not be the subject of a copyright application by Consultant.

D. Consultant's covenants under this Section shall survive the expiration or termination of this Agreement.

7. Conflicts of Interest. Consultant and its officers, employees, associates and subcontractors, if any, shall comply with all conflict of interest statutes of the State of California applicable to Consultant's Services under this Agreement, including the Political Reform Act (Gov. Code § 81000, *et seq.*) and Government Code Section 1090. During the term of this Agreement, Consultant may perform similar Services for other clients, but Consultant and its officers, employees, associates and subcontractors shall not, without the City Representative's prior written approval, perform work for another person or entity for whom Consultant is not currently performing work that would require Consultant or one of its officers, employees, associates or subcontractors to abstain from a decision under this Agreement pursuant to a conflict of interest statute. Consultant shall incorporate a clause substantially similar to this Section into any subcontract that Consultant executes in connection with the performance of this Agreement.

8. Indemnification, Hold Harmless, and Duty to Defend.

A. Indemnity for Design Professional Services. To the fullest extent permitted by law, Consultant shall, at its sole cost and expense, protect, indemnify, and hold harmless City and its elected officials, officers, attorneys, agents, employees, designated volunteers, successors, assigns and those City agents serving as independent contractors in the role of City officials (collectively "Indemnitees"), from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, judgments, penalties, liens, and losses of any nature whatsoever, including fees of accountants, attorneys, or other professionals and all costs associated therewith, and reimbursement of attorney's fees and costs of defense (collectively "Liabilities"), whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to, in whole or in part, the negligence, recklessness or willful misconduct of Consultant, its officers, agents, servants, employees, subcontractors, material men, contractors or their officers, agents, servants or employees (or any entity or individual that Consultant shall bear the legal liability thereof) in the performance of design professional services under this Agreement by a "design professional," as the term is defined under California Civil Code Section 2782.8(c)(2).

B. Other Indemnities.

1) Other than in the performance of design professional services, and to the fullest extent permitted by law, Consultant shall, at its sole cost and expense, defend, hold harmless and indemnify the Indemnitees from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, judgments, penalties, liens, and losses of any nature whatsoever, including fees of accountants, attorneys, or other professionals and all costs associated therewith and the payment of all consequential damages (collectively "Claims"), in law or equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Consultant, its officers, agents, servants, employees, subcontractors, materialmen, contractors or their officers, agents, servants or employees (or any entity or individual that Consultant shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees' active or passive negligence, except for Claims arising from the sole negligence or willful misconduct of the Indemnitees, as determined by court decision or by the agreement of the Parties. Consultant shall defend the Indemnitees in any action or actions filed in connection with any Claim with counsel of the Indemnitees' choice, and shall pay all costs and expenses, including all attorneys' fees and experts' costs actually incurred in connection with such defense. Consultant shall reimburse the Indemnitees for any and all legal expenses and costs incurred by the Indemnitees in connection therewith.

2) Consultant shall pay all required taxes on amounts paid to Consultant under this Agreement, and indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Consultant shall fully comply with the workers' compensation law regarding Consultant and Consultant's employees. Consultant shall indemnify and hold City harmless from any failure of Consultant to comply with applicable workers' compensation laws. City may offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this subparagraph B.2).

3) Consultant shall obtain executed indemnity agreements with provisions identical to those in this Section from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. If Consultant fails to obtain such indemnities, Consultant shall be fully responsible and indemnify, hold harmless and defend the Indemnitees from and against any and all Claims in law or equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Consultant's subcontractor, its officers, agents, servants, employees, subcontractors, materialmen, contractors or their officers, agents, servants or employees (or any entity or individual that Consultant's subcontractor shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees' active or passive negligence, except for Claims arising from the sole negligence or willful misconduct of the Indemnitees, as determined by court decision or by the agreement of the Parties.

C. Workers' Compensation Acts not Limiting. Consultant's obligations under this Section, or any other provision of this Agreement, shall not be limited by the

provisions of any workers' compensation act or similar act. Consultant expressly waives its statutory immunity under such statutes or laws as to City, its officers, agents, employees and volunteers.

D. Insurance Requirements not Limiting. City does not, and shall not, waive any rights that it may possess against Consultant because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. The hold harmless and indemnification provisions in this Section shall apply regardless of whether or not any insurance policies are determined to be applicable to the Liabilities, Claims, tax, assessment, penalty or interest asserted against City.

E. Survival of Terms. The indemnification in this Section shall survive the expiration or termination of this Agreement.

9. Insurance.

A. Minimum Scope and Limits of Insurance. Consultant shall procure and at all times during the term of this Agreement carry, maintain, and keep in full force and effect, insurance as follows:

1) Commercial General Liability Insurance with a minimum limit of \$2,000,000.00 per occurrence for bodily injury, personal injury and property damage and a general aggregate limit of \$2,000,000.00 per project or location. If Consultant is a limited liability company, the commercial general liability coverage shall be amended so that Consultant and its managers, affiliates, employees, agents and other persons necessary or incidental to its operation are insureds.

2) Automobile Liability Insurance for any owned, non-owned or hired vehicle used in connection with the performance of this Agreement with a combined single limit of \$2,000,000.00 per accident for bodily injury and property damage. If Consultant does not use any owned, non-owned or hired vehicles in the performance of Services under this Agreement, Consultant shall obtain a non-owned auto endorsement to the Commercial General Liability policy required under subparagraph A.1) of this Section.

3) Workers' Compensation Insurance as required by the State of California and Employer's Liability Insurance with a minimum limit of \$1,000,000.00 per accident for bodily injury or disease. If Consultant has no employees while performing Services under this Agreement, workers' compensation policy is not required, but Consultant shall execute a declaration that it has no employees.

4) Professional Liability/Errors and Omissions Insurance with minimum limits of \$2,000,000.00 per claim and in aggregate.

B. Acceptability of Insurers. The insurance policies required under this Section shall be issued by an insurer admitted to write insurance in the State of California with a rating of A:VII or better in the latest edition of the A.M. Best Insurance Rating Guide. Self insurance shall not be considered to comply with the insurance requirements under this Section.

C. Additional Insured. The commercial general and automobile liability policies shall contain an endorsement naming City, and its elected and appointed officials, officers, employees, agents and volunteers as additional insureds. This provision shall also apply to any excess/umbrella liability policies.

D. Primary and Non-Contributing. The insurance policies required under this Section shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance available to City. Any insurance or self-insurance maintained by City, its elected and appointed officials, officers, employees, agents or volunteers, shall be in excess of Consultant's insurance and shall not contribute with it.

E. Consultant's Waiver of Subrogation. The insurance policies required under this Section shall not prohibit Consultant and Consultant's employees, agents or subcontractors from waiving the right of subrogation prior to a loss. Consultant hereby waives all rights of subrogation against City.

F. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by City. At City's option, Consultant shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Consultant shall procure a bond guaranteeing payment of losses and expenses.

G. Cancellations or Modifications to Coverage. Consultant shall not cancel, reduce or otherwise modify the insurance policies required by this Section during the term of this Agreement. The commercial general and automobile liability policies required under this Agreement shall be endorsed to state that should the issuing insurer cancel the policy before the expiration date, the issuing insurer will endeavor to mail 30 days' prior written notice to City. If any insurance policy required under this Section is canceled or reduced in coverage or limits, Consultant shall, within two Business Days of notice from the insurer, phone, fax or notify City via certified mail, return receipt requested, of the cancellation of or changes to the policy.

H. City Remedy for Noncompliance. If Consultant does not maintain the policies of insurance required under this Section in full force and effect during the term of this Agreement, or in the event any of Consultant's policies do not comply with the requirements under this Section, City may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, City may, but has no duty to, take out the necessary insurance and pay, at Consultant's expense, the premium thereon. Consultant shall promptly reimburse City for any premium paid by City or City may withhold amounts sufficient to pay the premiums from payments due to Consultant.

I. Evidence of Insurance. Prior to the performance of Services under this Agreement, Consultant shall furnish City's Risk Manager with a certificate or certificates of insurance and all original endorsements evidencing and effecting the coverages required under this Section. The endorsements are subject to City's approval. Consultant may provide complete, certified copies of all required insurance policies to City. Consultant shall maintain current endorsements on file with City's Risk Manager. Consultant shall provide proof to City's Risk Manager that insurance policies expiring

during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Consultant shall furnish such proof at least two weeks prior to the expiration of the coverages.

J. Indemnity Requirements not Limiting. Procurement of insurance by Consultant shall not be construed as a limitation of Consultant's liability or as full performance of Consultant's duty to indemnify City under Section 8 of this Agreement.

K. Subcontractor Insurance Requirements. Consultant shall require each of its subcontractors that perform Services under this Agreement to maintain insurance coverage that meets all of the requirements of this Section.

10. Mutual Cooperation.

A. City's Cooperation. City shall provide Consultant with all pertinent Data, documents and other requested information as is reasonably available for Consultant's proper performance of the Services required under this Agreement.

B. Consultant's Cooperation. In the event any claim or action is brought against City relating to Consultant's performance of Services rendered under this Agreement, Consultant shall render any reasonable assistance that City requires.

11. Records and Inspections. Consultant shall maintain complete and accurate records with respect to time, costs, expenses, receipts, correspondence, and other such information required by City that relate to the performance of the Services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to City, its designees and representatives at reasonable times, and shall allow City to examine and audit the books and records, to 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 maintained for a period of three years after receipt of final payment.

12. Termination of Agreement.

A. Right to Terminate. City may terminate this Agreement at any time, at will, for any reason or no reason, after giving written notice to Consultant at least five calendar days before the termination is to be effective. Consultant may terminate this Agreement at any time, at will, for any reason or no reason, after giving written notice to City at least 60 calendar days before the termination is to be effective.

B. Obligations upon Termination. Consultant shall cease all work under this Agreement on or before the effective date of termination specified in the notice of termination. In the event of City's termination of this Agreement due to no fault or failure of performance by Consultant, City shall pay Consultant based on the percentage of work satisfactorily performed up to the effective date of termination. In no event shall Consultant be entitled to receive more than the amount that would be paid to Consultant for the full performance of the Services required by this Agreement. Consultant shall have

no other claim against City by reason of such termination, including any claim for compensation.

13. Force Majeure. Consultant shall not be liable for any failure to perform its obligations under this Agreement if Consultant presents acceptable evidence, in City's sole judgment, that such failure was due to acts of God, embargoes, inability to obtain labor or materials or reasonable substitutes for labor or materials, governmental restrictions, governmental regulations, governmental controls, judicial orders, enemy or hostile governmental action, civil commotion, fire or other casualty, or other causes beyond Consultant's reasonable control and not due to any act by Consultant.

14. Default.

A. Consultant's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Consultant is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating Consultant for any work performed after the date of default.

B. In addition to the right to terminate pursuant to Section 12, if the City Manager determines that Consultant is in default in the performance of any of the terms or conditions of this Agreement, City shall serve Consultant with written notice of the default. Consultant shall have ten calendar days after service upon it of the notice in which to cure the default by rendering a satisfactory performance. In the event that Consultant fails to cure its default within such period of time, City may, notwithstanding any other provision of this Agreement, terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

15. Notices. Any notice, consent, request, demand, bill, invoice, report or other communication required or permitted under this Agreement shall be in writing and conclusively deemed effective: (a) on personal delivery, (b) on confirmed delivery by courier service during Consultant's and City's regular business hours, or (c) three Business Days after deposit in the United States mail, by first class mail, postage prepaid, and addressed to the Party to be notified as set forth below:

If to City:

Attn: Mamerto Estepa Jr.
City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, California 90266
Telephone: (310) 802-5325
Email: mestepa@citymb.info

If to Consultant:

Attn: Heather Brown, PE, LEED AP,
EAS Department Director
Kitchell/CEM Inc.
515 S Flower Street, 18th Floor
Los Angeles, California 90071
Telephone: (916)832-3003
hbrown@kitchell.com

With a courtesy copy to:

Quinn M. Barrow, City Attorney
1400 Highland Avenue
Manhattan Beach, California 90266
Telephone: (310) 802-5061
Email: qbarrow@rwglaw.com

16. Non-Discrimination and Equal Employment Opportunity. In the performance of this Agreement, Consultant shall not discriminate against any employee, subcontractor or applicant for employment because of race, color, religious creed, sex, gender, gender identity, gender expression, marital status, national origin, ancestry, age, physical disability, mental disability, medical condition, genetic information, sexual orientation or other basis prohibited by law. Consultant will take affirmative action to ensure that subcontractors and applicants are employed, and that employees are treated during employment, without regard to their race, color, religious creed, sex, gender, gender identity, gender expression, marital status, national origin, ancestry, age, physical disability, mental disability, medical condition, genetic information or sexual orientation.

17. Prohibition of Assignment and Delegation. Consultant shall not assign any of its rights or delegate any of its duties under this Agreement, either in whole or in part, without City's prior written consent. City's consent to an assignment of rights under this Agreement shall not release Consultant from any of its obligations or alter any of its primary obligations to be performed under this Agreement. Any attempted assignment or delegation in violation of this Section shall be void and of no effect and shall entitle City to terminate this Agreement. As used in this Section, "assignment" and "delegation" means any sale, gift, pledge, hypothecation, encumbrance or other transfer of all or any portion of the rights, obligations, or liabilities in or arising from this Agreement to any person or entity, whether by operation of law or otherwise, and regardless of the legal form of the transaction in which the attempted transfer occurs.

18. No Third Party Beneficiaries Intended. This Agreement is made solely for the benefit of the Parties to this Agreement and their respective successors and assigns, and no other person or entity may have or acquire a right by virtue of this Agreement.

19. Waiver. No delay or omission to exercise any right, power or remedy accruing to City under this Agreement shall impair any right, power or remedy of City, nor shall it be construed as a waiver of, or consent to, any breach or default. No waiver of any breach, any failure of a condition, or any right or remedy under this Agreement shall be (1) effective unless it is in writing and signed by the Party making the waiver, (2) deemed to be a waiver of, or consent to, any other breach, failure of a condition, or right or remedy, or (3) deemed to constitute a continuing waiver unless the writing expressly so states.

20. Final Payment Acceptance Constitutes Release. The acceptance by Consultant of the final payment made under this Agreement shall operate as and be a release of City from all claims and liabilities for compensation to Consultant for anything done, furnished or relating to Consultant's work or services. Acceptance of payment shall

be any negotiation of City's check or the failure to make a written extra compensation claim within ten calendar days of the receipt of that check. However, approval or payment by City shall not constitute, nor be deemed, a release of the responsibility and liability of Consultant, its employees, subcontractors and agents for the accuracy and competency of the information provided and/or work performed; nor shall such approval or payment be deemed to be an assumption of such responsibility or liability by City for any defect or error in the work prepared by Consultant, its employees, subcontractors and agents.

21. Corrections. In addition to the above indemnification obligations, Consultant shall correct, at its expense, all errors in the work which may be disclosed during City's review of Consultant's report or plans. Should Consultant fail to make such correction in a reasonably timely manner, such correction may be made by City, and the cost thereof shall be charged to Consultant. In addition to all other available remedies, City may deduct the cost of such correction from any retention amount held by City or may withhold payment otherwise owed Consultant under this Agreement up to the amount of the cost of correction.

22. Non-Appropriation of Funds. Payments to be made to Consultant by City for services performed within the current fiscal year are within the current fiscal budget and within an available, unexhausted fund. In the event that City does not appropriate sufficient funds for payment of Consultant's services beyond the current fiscal year, this Agreement shall cover payment for Consultant's services only to the conclusion of the last fiscal year in which City appropriates sufficient funds and shall automatically terminate at the conclusion of such fiscal year.

23. Exhibits. Exhibits A and B constitute a part of this Agreement and are incorporated into this Agreement by this reference. If any inconsistency exists or arises between a provision of this Agreement and a provision of any exhibit, or between a provision of this Agreement and a provision of Consultant's proposal, the provisions of this Agreement shall control.

24. Entire Agreement and Modification of Agreement. This Agreement and all exhibits referred to in this Agreement constitute the final, complete and exclusive statement of the terms of the agreement between the Parties pertaining to the subject matter of this Agreement and supersede all other prior or contemporaneous oral or written understandings and agreements of the Parties. No Party has been induced to enter into this Agreement by, nor is any Party relying on, any representation or warranty except those expressly set forth in this Agreement. This Agreement may not be amended, nor any provision or breach hereof waived, except in a writing signed by both Parties.

25. Headings. The headings in this Agreement are included solely for convenience of reference and shall not affect the interpretation of any provision of this Agreement or any of the rights or obligations of the Parties to this Agreement.

26. Word Usage. Unless the context clearly requires otherwise, (a) the words "shall," "will" and "agrees" are mandatory and "may" is permissive; (b) "or" is not exclusive; and (c) "includes" or "including" are not limiting.

27. Time of the Essence. Time is of the essence in respect to all provisions of this Agreement that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a Party of the benefits of any grace or use period allowed in this Agreement.

28. Business Days. "Business days" means days Manhattan Beach City Hall is open for business.

29. Governing Law and Choice of Forum. This Agreement, and any dispute arising from the relationship between the Parties to this Agreement, shall be governed by and construed in accordance with the laws of the State of California, except that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in interpreting this Agreement. Any dispute that arises under or relates to this Agreement (whether contract, tort or both) shall be resolved in a superior court with geographic jurisdiction over the City of Manhattan Beach.

30. Attorneys' Fees. In any litigation or other proceeding by which a Party seeks to enforce its rights under this Agreement (whether in contract, tort or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing Party shall be entitled to recover all attorneys' fees, experts' fees, and other costs actually incurred in connection with such litigation or other proceeding, in addition to all other relief to which that Party may be entitled.

31. Severability. If a court of competent jurisdiction holds any provision of this Agreement to be illegal, invalid or unenforceable for any reason, the validity of and enforceability of the remaining provisions of this Agreement shall not be affected and continue in full force and effect.

32. Counterparts. This Agreement may be executed in multiple counterparts, all of which shall be deemed an original, and all of which will constitute one and the same instrument.

33. Corporate Authority. Each person executing this Agreement on behalf of his or her Party warrants that he or she is duly authorized to execute this Agreement on behalf of that Party and that by such execution, that Party is formally bound to the provisions of this Agreement.

[SIGNATURE PAGE FOLLOWS]

The Parties, through their duly authorized representatives are signing this Agreement on the date stated in the introductory clause.

City:

City of Manhattan Beach,
a California municipal corporation

Consultant:

Kitchell/CEM, Inc.
a California corporation

By: 

Name: Bruce Moe
Title: City Manager

By: 

Name: Sal G. Gennelli
Title: SE VICE PRESIDENT

ATTEST:

By: 

Name: MICHAEL BRUGGEMAN
Title: ASSISTANT SECRETARY

By:  2/22/19

Name: Liza Tamura
Title: City Clerk

PROOF OF AUTHORITY TO BIND CONTRACTING
PARTY REQUIRED

APPROVED AS TO FORM:

By: 

Name: Quinn M. Barrow
Title: City Attorney

APPROVED AS TO CONTENT:

By: 

Name: Steve S. Charelian
Title: Finance Director

EXHIBIT A SCOPE OF SERVICES

Task 1 – Project Start-up

Upon receipt of the Notice to Proceed, Kitchell/CEM Inc.(Kitchell) will meet with the City to ensure clear goals are defined, communication protocols are established, work activities are reviewed and confirmed, schedule milestones are reviewed and confirmed, schedule milestones are reviewed and confirmed, and desired outcomes are established. Kitchell will request and review available documentation of City Hall. This documentation will establish baseline information for planning work – a point of origin – and will include:

- As-built drawings of the buildings and systems
- Energy consumption records
- Existing Facility Condition Assessments (FCAs)
- Maintenance history, including infrastructure, facility and equipment problems
- Preventative maintenance plans
- ADA studies
- Other related studies and reports that have been produced for the facilities.

In addition to the City, Kitchell will also want to meet the occupant's representative and operators to establish a design criteria and project objective taking into account crucial design elements such as noise quality, air quality, maintenance strategies, and constructability issues including hazardous material abatement. Kitchell will also review regulatory requirements to be followed during the evaluation with the City, in addition to any long range funding strategies.

Once all of the available data from the City has been received, Kitchell will review the provided information and prepare for the project kick-off meeting. Kitchell will facilitate a project kick-off meeting with the City and all Team Members. During this meeting, all parties should clearly understand the following:

- Goals and objectives
- Scope, overall schedule and deliverables
- Future facility modifications including potential additions and/or upgrades
- Roles and responsibilities
- Review completeness of information provided
- Review of building: functional use, age, general condition, maintenance history
- Review long-range funding
- Review security protocols
- Review the report's format

Deliverables – Meeting minutes including goals and objectives, long-range funding strategies; pre-assessment questionnaire; project schedule

Task 2 – Facility Evaluation

Once all existing data is reviewed and evaluated during the project kick-off meeting, Kitchell will implement the following methodology to complete the facility evaluation portion of the work. The Field Evaluation Team (Team) will consist of an architect, structural engineer, mechanical engineer and an electrical engineer, each proficient carrying out assessments within their discipline. Specialty resources (e.g. security, architectural, and structural) will be added from Kitchell's Team to provide specific expertise and knowledge that may be required.

Prior to Kitchell's evaluation, Kitchell will coordinate its arrival schedule with the City. Upon arrival, Kitchell will first take time to interview building maintenance personnel, preferably individuals knowledgeable of the major systems maintenance history, current issues and known deficiencies. Kitchell will require maintenance staff to escort its Team (or be available) throughout its assessment. Maintenance staff should have access to all mechanical and electrical rooms, roofs, central plants and other secured areas.

The Team will assess the following systems and components:

- Heating, ventilation, and air conditioning systems, including chillers, boilers, cooling towers, pumps, air handlers, controls, instrumentation, and distribution
- Electrical and service distribution as it relates to the HVAC system and components.

The City has elected to provide its own hazmat testing company to provide the asbestos, lead-paint survey and other hazardous material services on this project. After completion of Kitchell's evaluation, Kitchell will direct the City as to which areas will need to be surveyed by the City's hazmat testing company.

American Air Balance Company, to be contracted by the City, will be providing the pre-TAB measurement so that Kitchell can determine how the current HVAC system and components are functioning. They will be measuring the current airflow in the ductwork and at the diffusers/grilles; providing the ductwork size and airflow at each branch off the main ductwork; and the airflow read off of the fan(s). We will be utilizing this information during the evaluation and findings phase of the project.

Deliverables – Trip Report

Task 3 – Evaluation and Findings

The field data gathered during the evaluation will be analyzed. Kitchell will perform heating and cooling block load evaluations on City Hall to assist in the analysis of the HVAC system. Load calculations have a direct impact on energy efficiency, occupant comfort, indoor air quality, and building durability. So to complement the load calculations, an energy model will also be generated to determine energy efficiency of City Hall and

the HVAC system and components. Kitchell will assess the performance of the building envelope, HVAC system and components, electrical system and components, and operating schedules. Kitchell will make recommendations to improve the overall building efficiency and building management control strategies by analyzing operating schedules, occupancy loads, and ventilation rates through demand control ventilation.

Once the calculations and energy model are completed, Kitchell will develop options for improving City Hall's HVAC system. The options will include:

- Removal and replacement of selected HVAC system and components (as needed), to enable the system to function for another 10 to 15 years;
- Removal of the existing system and installation of a newly-designed, fully-optimized system;
- Phased version of each option. Assume that a full replacement or overhaul cannot be performed at once. A description of how each option is to be phased would be provided.

Once the options have been developed, Kitchell's Team consisting of an architect, structural engineer, mechanical engineer, electrical engineer, and hazmat consultant will re-visit City Hall to determine the impact each option will have on the exterior systems, interior systems and finishes, and electrical systems. For example, Kitchell's electrical engineer(s) will determine the impact to the existing electrical panel(s) and identify the degree of disruption (if any) to City Hall operations.

Deliverables – A statement of probable cost (SPC) for each option will be prepared. The SPC shall be a budget level conceptual cost estimate expressed in an agreed upon method.

Task 4 – Reporting

Kitchell will prepare and submit a draft report that summarizes the existing conditions and alternatives for improving City Hall's HVAC system. The report will include the following:

- Assessment of the existing conditions and useful remaining life of all HVAC components
- Assessment of the existing configuration and performance
- Options for repair / servicing / replacement which will include the
 - Scope of work
 - Schedule
 - Anticipated disruption to City Hall Operations
 - Statement of probable cost (SPC)
 - Percentage of anticipated energy efficiency savings for the option(s)
 - Recommendation of a Building Management System (BMS)

Prior to submission of the draft report to the City for review, Kitchell's Project Manager, Sergio Rodriguez, will review the report. After receiving the City's draft report review comments, Kitchell will make any necessary adjustments and submit its final report to the City.

Deliverables – Draft Report, Final Report

EXHIBIT B **APPROVED FEE SCHEDULE**

Task #	Description	Hourly Rate	EAS Dept Director	Project Manager	Architect	Structural Engineer	Mechanical Engineer	Electrical Engineer	Project Designer	Estimator	BIM/CAD Operator	Administrative	Total Hrs	Total Fee
City of Manhattan Beach Public Works Department - City Hall HVAC Improvements														
1	Project Start-up													
	Project planning (work plan, project schedule)			4									4	\$ 700
	Review as-built information				2		2						10	\$ 1,580
	Three City meetings (kick-off, user group, maintenance staff)			2			4	4					10	\$ 1,670
	Project management / clerical		1	2									3	\$ 545
	Subtotal Task 1		1	8	2	2	6	6	0	0	2	0	27	\$ 4,495
2	Facility Evaluation													
	Kitchen building evaluation				4	4	4	4	4				20	\$ 3,120
	Hazard survey field work												0	\$ -
	Pre-job assessment and report			4								2	6	\$ 880
	Project management / clerical		0	4	4	4	4	4	4	0	0	2	26	\$ 4,000
	Subtotal Task 2		0	4	4	4	4	4	4	0	0	2	26	\$ 4,000
3	Evaluation and Findings													
	Block load calculations			2			4	4					14	\$ 1,970
	Energy model			4			8	6	16				44	\$ 5,990
	Develop HVAC system options				4	4	24	6	14				52	\$ 8,090
	Re-visit City Hall to determine impact of each option					4	4	4	4				20	\$ 3,120
	Statement of probable cost of each option									16			16	\$ 2,400
	Project management / clerical		2	10									12	\$ 2,140
	Subtotal Task 3		2	16	8	8	40	16	28	16	18	6	188	\$ 23,710
4	Reporting													
	Draft recommendation report				4	2	4	4			4	4	22	\$ 3,180
	Quality control			2		1	1	1			1		7	\$ 1,140
	Meet with City to discuss draft report comments			2		2	2	2			2	2	13	\$ 1,895
	Final Recommendation Report				2								6	\$ 1,090
	Project management / clerical		2	4		4	9	7	0	2	7	6	62	\$ 7,995
	Subtotal Task 4		2	8	7	4	59	33	0	2	7	14	263	\$ 40,200
	Total Hours		5	36	21	18	59	33	32	18	27	14	263	\$ 40,200
	Total Fee Per Discipline		\$975	\$6,300	\$3,465	\$2,970	\$9,735	\$5,445	\$3,840	\$2,700	\$3,510	\$1,280		\$40,200
	Supplemental (Additional) Services as Directed by the City													\$8,500
	Kitchen's Reimbursement Expenses (Printing & Photocopies)													\$1,200
	Total Fee													\$49,900

NOTE
This fee excludes any ADA upgrades

AMENDMENT NO. 1 TO THE DESIGN SERVICES AGREEMENT BETWEEN
THE CITY OF MANHATTAN BEACH AND KITCHELL/CEM, INC.

This First Amendment ("Amendment No. 1") to that certain agreement by and between the City of Manhattan Beach, a California municipal corporation ("City") and Kitchell/CEM, Inc., a California corporation ("Consultant") (collectively, the "Parties") is hereby entered into as of October 1, 2019 ("Effective Date").

RECITALS

A. On February 1, 2019, the City and Consultant entered into an agreement for professional services for the Consultant to provide design services for the City Hall HVAC Improvement Project ("Agreement");

B. The Parties now desire to amend the Agreement to modify the Scope of Services by adding additional services, and to increase the Maximum Compensation as compensation for the additional services.

NOW, THEREFORE, in consideration of the Parties' performance of the promises, covenants, and conditions stated herein, the Parties hereby agree as follows:

Section 1. Section 3.A of the Agreement is hereby revised to increase the Maximum Compensation amount by \$182,784, for a new Maximum Compensation of \$232,684.

Section 2. Kitchell/CEM Inc.'s proposal dated August 20, 2019, attached hereto as Exhibit "A", is hereby added to the Scope of Services attached to the Agreement as **Exhibit A**.

Section 3. Except as specifically amended by this Amendment No. 1, all other provisions of the Agreement shall remain in full force and effect.

IN WITNESS THEREOF, the Parties hereto have executed this Amendment No. 1 on the day and year first shown above.

[signatures begin on next page]

CITY OF MANHATTAN BEACH

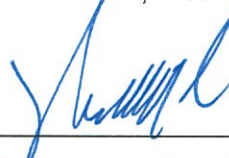
KITCHELL/CEM, Inc.

By:


Bruce Moe, City Manager

By:

Its:

 8/29/2019
Russell A. Fox, President

ATTEST:

 10-7-19
Liza Tamura, City Clerk

APPROVED AS TO FORM:


Quinn M. Barrow, City Attorney

APPROVED AS TO FISCAL CONTENT:


By: 
Steve S. Charelian
Finance Director



EXHIBIT "A"

August 20, 2019

Mamerto Estepa, Jr., PE
Project Manager
City of Manhattan Beach
Office of the City Clerk
1400 Highland Avenue
Manhattan Beach, CA 90266

RE: RFP No. 1182-19 Professional Design Services for the City Hall HVAC Improvement Project

Dear Mr. Estepa:

Kitchell CEM is pleased to provide a fee proposal for professional design services for the City Hall HVAC Improvement Project. On the 21st of June, 2019, Kitchell provided an assessment report for the City Hall HVAC Improvements Evaluation which included multiple design package options for the replacement of the HVAC systems. Base on the report finding, the City has elected to proceed with Package 1 as the basis of design which includes the following:

- Replacement of roof mounted air-cooled chiller
- Replacement of air handler (AH-1)
- Replacement of air handler (AH-2)
- Replacement of heating hot water and chilled water pumps
- Replacement of rooftop chilled/heating hot water piping
- Upgrade to a building energy management control system
- HVAC system test and balance
- Replacement of external ductwork and connections of all capped or improperly mounted ductwork
- Replacement of basement air handler (AH-3) and associated internal ductwork
- Replacement of roof exhaust fans
- Design of dedicated split system serving data server room
- Associated architectural and electrical work related to the above mentioned upgrades

The scope of services to be performed by Kitchell are detailed in Attachment A & B.

The project schedule will be based upon a mutually agreed schedule between the City of Manhattan Beach and Kitchell.

If additional work is required beyond what is noted above, Kitchell will provide services for these scope of work items under a separate proposal. No additional services will be performed without receiving written permission from the City.

Our not-to-exceed fee for the scope of work above is **One Hundred Eighty Two Thousand Seven Hundred and Eighty Four Dollars (\$182,784)** per Attachment A.

We look forward to starting our work with the City of Manhattan Beach. Feel free to contact me at 916-832-3003 or hbrown@kitchell.com with any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "S. Rodriguez", with a stylized flourish at the end.

Sergio Rodriguez, PE
EAS Operations Manager

City of Manhattan Beach Public Works Department - City Hall HVAC Improvements

EXHIBIT A

City of Manhattan Beach Public Works Department - City Hall HVAC Improvements		Hourly Rate	EAS Dept Director	Project Manager	Architect	Structural Engineer	Mechanical Engineer	Electrical Engineer	Estimator	Scheduler	BIM/CAD Operator	Administrative	Total Hrs	Total Fee
Task #	Description		\$ 195	\$ 175	\$ 165	\$ 165	\$ 165	\$ 165	\$ 150	\$ 150	\$ 130	\$ 90		
1	100% Design Development													
	Site Survey and Documentation				4	4	4	4					16	\$ 2,640
	Drawings (includes development of backgrounds)				10	20	36	20			70		156	\$ 23,290
	Specifications				2	2	4	2				4	14	\$ 2,010
	Calculations					2	4	2					8	\$ 1,320
	Title 24						2						2	\$ 330
	Estimate								16				16	\$ 2,400
	Quality Control				1	1	2	1			2		7	\$ 1,085
	Project Management		2	16									18	\$ 3,190
	Subtotal Task 1		2	16	17	29	52	29	16	0	72	4	237	\$ 36,265
2	50% Construction Documents													
	Drawings				14	22	40	20			60		156	\$ 23,640
	Specifications				2	2	8	2				4	18	\$ 2,670
	Calculations					2	4	2					8	\$ 1,320
	Title 24						4						4	\$ 660
	Estimate								12				12	\$ 1,800
	Incorporate Progress Set Client Comments				2	2	4	2			10		20	\$ 2,950
	Quality Control				2	2	2	2			2		10	\$ 1,580
	Project Management		2	16									18	\$ 3,190
	Subtotal Task 2		2	16	20	30	62	28	12	0	72	4	246	\$ 37,810
3	95% Construction Documents													
	Drawings				16	24	40	24			70		174	\$ 26,260
	Specifications				4	4	8	4				4	24	\$ 3,660
	Calculations					2	2	2					6	\$ 990
	Title 24						4						4	\$ 660
	Estimate								12				12	\$ 1,800
	Incorporate Progress Set Client Comments				2	2	4	2			10		20	\$ 2,950
	Permit Application Process				16								16	\$ 2,800
	Quality Control				2	2	2	2			2		10	\$ 1,580
	Project Management		2	16									18	\$ 3,190
	Subtotal Task 3		2	32	24	34	60	34	12	0	82	4	284	\$ 43,890
4	100% Construction Documents													
	Revise set based on comments & submit bid set				10	10	10	20			20	2	72	\$ 11,030
	Project Management		1	6									7	\$ 1,245
	Subtotal Task 4		1	6	10	10	10	20	0	0	20	2	79	\$ 12,275
5	Bid Phase													
	Attend pre-bid meeting (in person)			4									4	\$ 700
	Respond to RFIs, submit addendums				1	1	8	1			6	2	19	\$ 2,775
	Project Management			2									2	\$ 350
	Subtotal Task 5		0	6	1	1	8	1	0	0	6	2	25	\$ 3,825
6	Construction Administration													
	Attend pre-construction meeting (in person)						4						4	\$ 660
	Attend weekly contractor meeting for up to four months (via skype conference)						24						24	\$ 3,960
	Review submittals				8	8	16	8					40	\$ 6,000
	Respond to RFIs				10	10	16	10				16	62	\$ 9,030
	Punch list (1 punch list visit) and report					4	4	4					12	\$ 1,980
	Review contractor as-built drawings				2	2	4	2				2	12	\$ 1,830
	Closeout documentation - O&M and warranties						12					4	16	\$ 2,340
	Project Management / Clerical		2	14									16	\$ 2,840
	Subtotal Task 6		2	14	20	24	80	24	0	0	0	22	186	\$ 29,240
	Total Hours		9	90	92	128	272	136	40	0	252	38	1057	\$ 163,305
	Total Fee Per Discipline		\$1,755	\$15,750	\$15,180	\$21,120	\$44,880	\$22,440	\$6,000	\$0	\$32,760	\$3,420		\$163,305
	Kitchell's Expenses (Printing, Photocopies, Mileage to/ from Jobsite)													\$4,930
	Supplemental (Additional) Services as Directed by the City													\$14,549
	Total Not to Exceed Fee													\$182,784
NOTE This fee excludes any ADA upgrades														

City of Manhattan Beach HVAC Improvement Project:

Project Approach

Kitchell's design approach emphasizes continuous communication between the design team and the City of Manhattan Beach. We believe in providing value for every dollar the City spends in design and construction. As a result we are continuously reviewing design assumptions, material selection and equipment to provide maximum value. We constantly review our details to ensure they are constructible. It is our understanding that the City has identified the need to replace the City's Heating, Ventilation, Air Conditioning (HVAC) system at the facility located at 1400 Highland Avenue, Manhattan Beach, CA. This project will require development of drawings, specifications and estimates for bidding and construction; coordination and assist in permitting process; provide bid and award support services; and providing construction administration services. Our design process is a team approach that encompasses the owner, users, peer reviewers, agencies, sub-consultants and the design team.

This project will encompass the removal and replacement of the existing HVAC equipment as follows:

- Replacement of the roof mounted air-cooled chiller
- Replacement of the air handlers AH-1 & AH-2
- Replacement of the heating hot water & chilled water pumps
- Replacement of the rooftop chilled/heating hot water piping
- Upgrade to the building energy management control system
- HVAC system test and balance
- Replacement of external ductwork and connection of all capped or improperly mounted ductwork
- Replacement of basement air handler (AH-3) and associated internal ductwork
- Replacement of roof exhaust fans
- Design of dedicated split system serving data server room
- Associated architectural and electrical work related to the above mentioned upgrades

1. Progress Set (50% CD)

Upon notice to proceed, our experienced in-house design team shall contact the regulatory agencies that will affect this project to determine applicable codes and ordinances.

In order to meet the City's expectations and ensure project success, each team member will have a clearly defined role and set of responsibilities. Kitchell will also set up a communication protocol within our internal team to eliminate any duplication of effort and/or confusion. We will also set up a direct line of communication between our project manager and your project director. We recommend the use of a tabular responsibility matrix defining the roles and responsibilities of each member on the project team. This effort will help identify potential conflicts and omissions of activities before they become issues. It will also allow each team member to see a snapshot of their responsibilities and how they relate to other team members.

We will conduct a project kick-off meeting with the City once the relevant data has been reviewed and the project team is established. During the meeting, we shall review the project's goals and objectives, scope, budget, schedule and deliverables. We will also review each other's roles and responsibilities and establish project protocols that foster and facilitate team communication and collaboration.

After the kick-off meeting, our team will conduct a thorough assessment verification of the existing HVAC system as well as the building's structure and electrical distribution to identify system deficiencies and provide recommended solutions. Upon

completion of the assessment, Kitchell will prepare the 50% CD submittal that will contain drawings and specifications. Kitchell will facilitate a meeting with the City to review the submittal. We will prepare at 50% CD cost estimate. If the cost estimate exceeds the preliminary construction budget approved, we will explain and justify the increase as well as submit a list of proposed modifications to bring the cost within budget.

2. Permit Set (95% CD)

Upon completion of the 50% CD submittal review meeting we will issue the Permit Set. We will finalize the preparation of the drawings and specifications and set forth in detail the requirements for construction of the entire project. Specific details relating to the unique character of the project are developed. Structural, mechanical, and electrical, calculations are refined. We will follow the guidelines of the most current City's Design Criteria (if available), Standard Details (if available), and the City's Standard Specifications (Division 0 and 1). We will prepare a 95% CD cost estimate.

Prior to submitting the 95% CD to the City, we will perform a thorough in-house QC and constructability review of our work. Our 95% CD submittals to the City will also include a comment and response log of the City's comments on the previous submittal. The 95% CD set will be submitted to the City's Building Division for review and approval to acquire necessary permits. We will plan to meet with the City's Building Division to review their comments on the 95% CD and obtain a consensus as to how the documents will be revised as appropriate to incorporate their comments.

3. Final Bid Documents - 100% CD Phase

Based on the City's and plan check comments on the 95% CD, we will revise the 95% CD submittal to produce the final bid (100% CD) documents and include a final comment and response log. The final submittal shall consist of final plans and specifications stamped, signed and dated by the architects and engineers of record and ready for City's staff approval signatures. If impacted by review comments and updated project construction cost estimate shall be provided.

4. Bidding & Construction Assistance

Kitchell will assist the City through the bidding process, as well as in the preparation of contract documents and in making recommendations. We will also attend the pre-bid meeting, respond to RFIs, and issue any necessary addendums. If requested, Kitchell will assist the City with bid evaluations.

Kitchell will attend the pre-construction meeting and respond to pre-construction meeting questions, if necessary. We will review shop drawings and submittals; and provide clarifications to the contractor during construction. During construction, either our Project Manager or mechanical engineer shall attend weekly OAC meetings via conference call. Upon completion of construction we will attend the final walkthrough to provide input to final "punch list" and help determine if the work is ready for the City's acceptance. Kitchell will review the Contractor's as-built drawings to ensure they reflect the changes to the work during construction.

Kitchell will review the contractor-furnished equipment operation and maintenance manuals and warranties for accuracy and completeness. During the one (1) year warranty (or guarantee periods) following construction, relating to the design prepared per this scope of work, Kitchell can (for an additional fee), provide advice in order to assist the County in obtaining necessary compliance by the Contractor with the terms of the equipment guarantees or warranties.

Miscellaneous Internal Tasks

Throughout the design phase our project manager will meet with our team weekly to review project progress, resolve issues and provide guidance for the following week's work. Our project manager will contact the City's project director to discuss issues as they arise and keep you informed of the overall status of each project.

At every meeting with the City, Kitchell will ensure notes are kept and meeting summaries distributed within 48-hour turnaround. Every site visit attended by Kitchell will be followed by a site visit report which will be distributed within 48 hours of each meeting and include photo documentation of progress and issues discussed.

Quality Control

Quality is embedded in Kitchell's corporate culture. We have adopted and implemented a Continuous Quality Improvement Process based upon the program of Philip Crosby and Associates—a world recognized leader in Total Quality Management. Each and every employee is trained in the process—tools, measurements, documentation and corrective action. Our program begins with a commitment to quality performance and **"doing it right the first time"** in all of our work processes. To encourage active participation, we reward our employees for identifying areas for improvement and finding ways to improve our work processes. The quality control process that Kitchell has put in place has been designed to catch errors as the design progresses and not during construction which results in delays and added costs.

AMENDMENT NO. 2 TO THE PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF MANHATTAN BEACH AND KITCHELL/CEM, INC.

This Second Amendment ("Amendment No. 2") to that certain agreement by and between the City of Manhattan Beach, a California municipal corporation ("City") and Kitchell/CEM, Inc., a California corporation ("Consultant") (collectively, the "Parties") is hereby entered into as of June 30, 2020 ("Effective Date").

RECITALS

A. On February 1, 2019, the City and Consultant entered into an agreement for professional services for the Consultant to provide design services for the City Hall HVAC Improvement Project ("Original Agreement"). On October 1, 2019, the Parties entered into Amendment No. 1 to modify the Scope of Services by adding additional services and to increase the Maximum Compensation as compensation for the additional services. The Original Agreement, as modified by Amendment No. 1, is referred to herein as the "Agreement".

B. The Parties now desire to extend the term.

NOW, THEREFORE, in consideration of the Parties' performance of the promises, covenants, and conditions stated herein, the Parties hereby agree as follows:

Section 1. Section 2 of the Agreement is hereby revised to extend the term of the Agreement through June 30, 2022, unless sooner terminated as provided in Section 12 of the Agreement.

Section 2. Except as specifically amended by this Amendment No. 2, all other provisions of the Agreement shall remain in full force and effect.

IN WITNESS THEREOF, the Parties hereto have executed this Amendment No. 1 on the day and year first shown above.

[SIGNATURE PAGE FOLLOWS]

The Parties, through their duly authorized representatives are signing this Agreement on the date stated in the introductory clause.

City:

Consultant:

City of Manhattan Beach,
a California municipal corporation

Kitchell/CEM, Inc,
a California corporation

DocuSigned by:
Bruce Moe 7/9/2020
By: EAD3C06646684EC
Name: Bruce Moe
Title: City Manager

DocuSigned by:
Wendy Cohen 7/1/2020
By: FD195F1F9AB0163
Name: Wendy Cohen
Title: President

ATTEST:

By: _____
Name: _____
Title: _____

DocuSigned by:
Liza Tamura 7/9/2020
By: AEC50C3D1C0841E
Name: Liza Tamura
Title: City Clerk

APPROVED AS TO FORM:

DocuSigned by:
Quinn Barrow 7/9/2020
By: 96FA866DAA974E0...
Name: Quinn M. Barrow
Title: City Attorney

APPROVED AS TO FISCAL IMPACT:

DocuSigned by:
Steve S Charelian 7/9/2020
By: E6C7B3D6337748F...
Name: Steve S. Charelian
Title: Finance Director

APPROVED AS TO CONTENT:

DocuSigned by:
Stephanie Katsouleas 7/9/2020
By: 6EF60A43EB8C499
Name: Stephanie Katsouleas
Title: Public Works Director