

## **AGREEMENT BETWEEN THE CITY OF HAWTHORNE AND HARRIS & ASSOCIATES FOR VARIOUS SERVICES RELATED TO COMMUNITY FACILITIES DISTRICT**

**THIS AGREEMENT** is made and effective as of September 25, 2024, between the City of Hawthorne ("City") and Harris & Associates ("Consultant"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

### **1. TERM**

This Agreement shall commence on September 25, 2024 for various services related to City's Community Facilities District ("CFD"). This agreement shall remain and continue in effect until tasks described herein are completed, but in no event later than December 31, 2029, unless sooner terminated pursuant to the provisions of this Agreement.

### **2. SERVICES**

Consultant shall perform the tasks described and set forth in Exhibit A, attached hereto and incorporated herein as though set forth in full.

### **3. PERFORMANCE**

Consultant shall at all times faithfully, competently and to the best of its ability, experience, and talent, perform all tasks described herein. Consultant shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing similar services as are required of Consultant hereunder in meeting its obligations under this Agreement.

### **4. CITY MANAGEMENT**

The City Manager shall represent CITY in all matters pertaining to the administration of this Agreement, review and approval of all products submitted by Consultant, but not including the authority to enlarge the Tasks to Be Performed or change the compensation due to Consultant. The City Manager shall be authorized to act on City's behalf and to execute all necessary documents, which enlarge the Tasks to Be Performed or change Consultant's compensation.

### **5. COMPENSATION**

- (a) The City agrees to pay Consultant in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit A, attached hereto and incorporated herein by this reference as though set forth in full, based upon a time and materials.
- (b) Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement, which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing, by the City Manager. Consultant shall be compensated for any additional services in the amounts and in the manner as agreed to by City Manager and Consultant at the time City's written authorization is given to Consultant for the performance of said services.
- (c) Consultant will submit invoices for actual services performed. Payment shall be made within forty-five (45) days of receipt of each invoice as to all non-disputed fees. If the City disputes any of Consultant's fees it shall give written notice to Consultant within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice.

## **6. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE**

- (a) The City may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the consultant at least ten (10) days prior written notice. Upon receipt of said notice, the Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the City suspends or terminates a portion of this Agreement, such suspension or termination shall not make void or invalidate the remainder of this Agreement.
- (b) In the event this Agreement is terminated pursuant to this Section, the City shall pay to Consultant the actual value of the work performed up to the time of termination, provided that the work performed is of value to the City. Upon termination of the Agreement pursuant to this Section, the Consultant will submit an invoice to the City.
- (c) Consultant may terminate this Agreement for cause if the City fails to cure a material default in performance within a period of 30 days, or such longer period as Consultant may allow, after receipt from Consultant of a written termination notice specifying the default in performance. In the event of termination for cause by Consultant, the City will pay Consultant for all services performed up to and including the effective date of termination.

## **7. DEFAULT OF CONSULTANT**

- (a) The 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 and can terminate this Agreement immediately by written notice to the Consultant. If such failure by the Consultant to make progress in the performance of work hereunder arises out of causes beyond the Consultant's reasonable control, and without fault or negligence of the Consultant, it shall not be considered a default.
- (b) If the City Manager or his/her delegate determines that the Consultant is in default in the performance of any of the terms or conditions of this Agreement, he/she shall cause to be served upon the Consultant a written notice of the default. The Consultant shall have ten (10) days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event that the Consultant fails to cure its default within such period of time, the City shall have the right, notwithstanding any other provision of this Agreement, to 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.

## **8. OWNERSHIP OF DOCUMENTS**

- (a) Consultant shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by City that relate to the performance of services under this Agreement. Consultant shall maintain adequate records of services provided in sufficient detail to permit an evaluation of 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 the representatives of City or its designees at reasonable times to such books and records; shall give City the right to examine and audit said books and records; shall permit City to make transcripts therefrom as necessary; and shall allow inspection of 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 (3) years after receipt of final payment.
- (b) Upon completion of, or in the event of termination or suspension of this Agreement, and provided that consultant has been paid in full for services rendered hereunder, all original documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become

the sole property of the City and may be used, reused, or otherwise disposed of by the City without the permission of the Consultant. Any reuse without written verification or adaptation by Consultant for the specific purpose intended will be at City's sole risk and without liability or legal exposure to Consultant.

## **9. INDEMNIFICATION**

When the law establishes a professional standard of care for Consultant's Services, to the fullest extent permitted by law, Consultant shall indemnify, and hold harmless City and any and all of its officials, employees ("Indemnified Parties") from and against any and all losses, liabilities, damages, costs and expenses, including reasonable attorney's fees and costs to the extent same are caused by any negligent act, error or omission of Consultant, its officers, agents, employees or sub-consultants (or any entity or individual that Consultant shall bear the legal liability thereof) in the performance of professional services under this Agreement. With respect to the design of public improvements, the Consultant shall not be liable for any injuries or property damage resulting from the reuse of the design at a location other than that specified in Exhibit A without the written consent of the Consultant.

To the extent that the Consultant's services are subject to California Civil Code 2782.8, the above indemnity, including the cost to defense, shall be limited to the extent required by Civil Code Section 2782.8.

## **10. INSURANCE**

- (a) Consultant shall maintain in-force: Commercial General Liability and Professional Liability Insurance. During the term of this Agreement, Consultant shall maintain in full force and effect a policy of public liability insurance with minimum coverage of \$2,000,000 in accordance with the requirements provided by City to Consultant. Consultant shall also maintain in-force; Professional Liability Insurance (and/or Errors & Omissions Insurance) with minimum limits of liability of \$2,000,000 per claim against an injury, death, loss or damages because of wrongful or negligent acts or omissions by the named insured.
- (b) Contractor shall maintain in-force Workers' Compensation and Employer's Liability Insurance as required by the California Labor Code. Evidence of coverage shall take the form of a Certificate of Insurance or a California Certificate to Self-Insure. Acceptable minimum limits for this coverage are: Workers' Compensation; Statutory in California; Employer's Liability: \$1,000,000.
- (c) Certificates of Insurance. Contractor shall furnish to City evidence of any insurance required by this Agreement. A Certificate of Insurance from an insurer admitted or authorized to do business in the State of California will be provided, indicating that the respective policy(s) meets the following requirements: (1) The City, its officers, employees, and agents shall be named as additional insured on the General Liability Insurance; (2) Insurance shall not be canceled or terminated without 30 days written notice to City or 10 day notice for non-payment of the premium; (3) General Liability shall be primary and any insurance held by City for its own protection shall be excess and shall be effective only upon exhaustion of Contractor's insurance; (4) Insurance shall be maintained for the duration of the Agreement, including any period extended beyond the expiration date of this Agreement required to complete performance as stipulated in this Agreement and all amendments thereto.
- (d) To the extent permitted by law, Consultant's total aggregate liability arising out of or relating to this Agreement shall not exceed \$2,000,000 or the total compensation received by Consultant under this Agreement, whichever is greater.

## **11. INDEPENDENT CONSULTANT**

- (a) Consultant is and shall at all times remain as to the City a wholly independent Consultant. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Neither City nor any of its officers, employees, or agents shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents, 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, employees, or agents are in any manner officers, employees, or agents of the City. Consultant shall not incur or have the power to incur any debt, obligation, or liability whatever against City, or bind City in any manner.
- (b) No employee benefits shall be available to Consultant in connection with the performance of this Agreement. Except for the fees paid to Consultant as provided in the Agreement, City shall not pay salaries, wages, or other compensation to Consultant for performing services hereunder for City. City shall not be liable for compensation or indemnification to Consultant for injury or sickness arising out of performing services hereunder.

## **12. LEGAL RESPONSIBILITIES**

The Consultant shall keep itself informed of applicable State and Federal laws and regulations, which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. The Consultant shall at all times observe and comply with all such laws and regulations pursuant to sound professional practices. The City, and its officers and employees, shall not be liable at law or in equity occasioned by negligent failure of the Consultant to comply with this Section.

## **13. UNDUE INFLUENCE**

Consultant declares that no undue influence or pressure is used against or in concert with any officer or employee of the City in connection with the award, terms or implementation of this Agreement, including any method of coercion, confidential financial arrangement, or financial inducement. No officer or employee of the City of Hawthorne will receive compensation, directly or indirectly, from Consultant, or from any officer, employee or agent of Consultant, in connection with the award of this Agreement or any work to be conducted as a result of this Agreement. Violation of this Section shall be a material breach of this Agreement entitling the City to any and all remedies at law or in equity.

## **14. NO BENEFIT TO ARISE TO LOCAL EMPLOYEES**

No member, officer, or employee of City, or their designees or agents, and no public official who exercises authority over or responsibilities with respect to the Project during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any agreement or sub-agreement, or the proceeds thereof, for work to be performed in connection with the Project performed under this Agreement.

## **15. RELEASE OF INFORMATION/CONFLICTS OF INTEREST**

- (a) All information gained by Consultant in performance of this Agreement shall be considered confidential and shall not be released by Consultant without City's prior written authorization. Consultant, its officers, employees, agents, or sub-consultants, shall not without written authorization from the City Manager or unless requested 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 sub-consultants 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 person or party regarding this Agreement and the work performed thereunder or with respect to any project or property located within the City. City retains the right, but has no obligation, to represent Consultant and/or be present at any deposition, hearing, or similar proceeding. Consultant agrees to cooperate fully with City and to provide 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 said response.

## **16. NOTICES**

The Parties shall submit in writing all notices and correspondence that this Agreement requires or permits, and shall deliver the notices and correspondence to the places set forth below. The parties may give notice by: (a) personal delivery; (b) U.S. mail, first class postage prepaid; (c) "Certified" U.S. mail, postage prepaid, return receipt requested; (d) facsimile or (e) email.

**CITY: Vontray Norris, City Manager**  
**City of Hawthorne**  
**4455 West 126<sup>th</sup> Street**  
**Hawthorne, CA 90250**

**CONSULTANT: Harris & Associates**  
**Hitta Mosesman, Vice President**  
**101 Progress, Suite 250**  
**Irvine, CA 92618**

## **17. ASSIGNMENT**

The Consultant shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of the City. Because of the personal nature of the services to be rendered pursuant to this Agreement, only Consultant staff shall perform the services described in this Agreement.

## **18. LICENSES**

At all times during the term of this Agreement, Consultant shall have in full force and effect, all licenses required of it by law for the performance of the services described in this Agreement.

## **19. GOVERNING LAW**

The City and Consultant understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district court with jurisdiction over the City of Hawthorne.

## **20. ENTIRE AGREEMENT**

This Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

**21. AUTHORITY TO EXECUTE THIS AGREEMENT**

The person or persons executing this Agreement on behalf of Consultant warrants and represents that he/she has the authority to execute this Agreement on behalf of the Consultant and has the authority to bind Consultant to the performance of its obligations hereunder.

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

**CITY OF HAWTHORNE**

**CONSULTANT**

---

Vontray Norris, City Manager  
City of Hawthorne

---

Hitta Mosesman, Vice President  
Harris & Associates

Approved as to Form:

---

Robert M. Kim, City Attorney  
City of Hawthorne

**EXHIBIT A**

**Harris & Associates Proposal for City CFD Administration and  
Reporting Services, Dated September 16, 2024**