

**Project Name/No.:** \_\_\_\_\_  
**Project Manager:** \_\_\_\_\_

**Contract No.:** \_\_\_\_\_  
**Approved:** \_\_\_\_\_

**AGREEMENT FOR SERVICES  
BETWEEN THE CITY OF CHINO AND  
SITESCAPES, INC.**

THIS AGREEMENT FOR SERVICES (herein “Agreement”) is made and entered into this 6th day of May, 2025 (“Effective Date”) by and between the City of Chino, a California municipal corporation (“City”) and SITESCAPES, Inc., (“Consultant”). City and Consultant may be referred to individually as “Party” or collectively as “Parties.”

**RECITALS**

**A.** City has sought, by issuance of a Request for Proposals or Invitation for Bids, the performance of the services defined and described particularly in Article 1 of this Agreement.

**B.** Consultant, following submission of a proposal or bid for the performance of the services defined and described particularly in Article 1 of this Agreement, was selected by the City to perform those services.

**C.** Pursuant to the City of Chino’s Municipal Code, City has authority to enter into and execute this Agreement.

**D.** The Parties desire to formalize the selection of Consultant for performance of those services defined and described particularly in Article 1 of this Agreement and desire that the terms of that performance be as particularly defined and described herein.

**OPERATIVE PROVISIONS**

NOW, THEREFORE, in consideration of the mutual promises and covenants made by the Parties and contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the parties agree as follows:

**ARTICLE 1. SERVICES OF CONSULTANT**

**1.1 Scope of Services.**

In compliance with all terms and conditions of this Agreement, the Consultant shall provide those services specified in the “Scope of Services” attached hereto as Exhibit “A” and incorporated herein by this reference, which may be referred to herein as the “services” or “work” hereunder. As a material inducement to the City entering into this Agreement, Consultant represents and warrants that it has the qualifications, experience, and facilities necessary to properly perform the services required under this Agreement in a thorough, competent, and professional manner, and is experienced in performing the work and services contemplated herein. Consultant shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. Consultant covenants that it shall follow the highest professional standards in performing the work and services required hereunder and that all materials will be both of good quality as well as fit for the purpose intended. For

purposes of this Agreement, the phrase “highest professional standards” shall mean those standards of practice recognized by one or more first-class firms performing similar work under similar circumstances.

## **1.2 Consultant’s Proposal.**

The Scope of Services shall include the scope of work included in Consultant’s proposal, which shall be incorporated herein by this reference as though fully set forth herein. In the event of any inconsistency between the terms of such proposal and this Agreement, the terms of this Agreement shall govern.

## **1.3 Compliance with Law.**

Consultant shall keep itself informed concerning, and shall render all services hereunder in accordance with, all ordinances, resolutions, statutes, rules, and regulations of the City and any Federal, State or local governmental entity having jurisdiction in effect at the time service is rendered.

## **1.4 California Labor Law.**

If the Scope of Services includes any “public work” or “maintenance work,” as those terms are defined in California Labor Code Section 1720 *et seq.* and California Code of Regulations, Title 8, Section 16000 *et seq.*, and if the total compensation is \$1,000 or more, Consultant shall pay prevailing wages for such work and comply with the requirements in California Labor Code section 1770 *et seq.* and 1810 *et seq.*, and all other applicable laws, as they pertain to such work, including the following requirements:

(a) DIR Monitoring and Enforcement. The public work and/or maintenance work performed under this Agreement shall be subject to compliance monitoring and enforcement by the Department of Industrial Relations (“DIR”). Consultant shall post job site notices, as prescribed by regulation.

(b) Prevailing Wages. Consultant shall pay prevailing wages to the extent required by Labor Code Section 1771. Pursuant to Labor Code Section 1773.2, copies of the prevailing rate of per diem wages are on file at City Hall and will be made available to any interested party on request. By initiating any work under this Agreement, Consultant acknowledges receipt of a copy of the DIR determination of the prevailing rate of per diem wages, and Consultant shall post a copy of the same at each job site where work is performed under this Agreement.

(c) Penalty for Failure to Pay Prevailing Wages. Consultant shall comply with and be bound by the provisions of Labor Code Sections 1774 and 1775 concerning the payment of prevailing rates of wages to workers and the penalties for failure to pay prevailing wages. The Consultant shall, as a penalty to the City, forfeit two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the DIR for the work or craft in which the worker is employed for any public work done pursuant to this Agreement by Consultant or by any subcontractor.

(d) Payroll Records. Consultant shall comply with and be bound by the provisions of Labor Code Section 1776, which requires Consultant and each subcontractor to: keep accurate payroll records and verify such records in writing under penalty of perjury, as specified in Section 1776; certify and make such payroll records available for inspection as provided by Section 1776; and inform the City of the location of the records.

(e) Apprentices. Consultant shall comply with and be bound by the provisions of Labor Code Sections 1777.5, 1777.6, and 1777.7 and California Code of Regulations Title 8, Section 200 *et seq.* concerning the employment of apprentices on public works projects. Consultant shall be responsible for compliance with these aforementioned Sections for all apprenticeable occupations. Prior to commencing work under this Agreement, Consultant shall provide City with a copy of the information submitted to any applicable apprenticeship program. Within sixty (60) days after concluding work pursuant to this Agreement, Consultant and each of its subcontractors shall submit to the City a verified statement of the journeyman and apprentice hours performed under this Agreement.

(f) Eight-Hour Work Day. Consultant acknowledges that eight (8) hours labor constitutes a legal day's work. Consultant shall comply with and be bound by Labor Code Section 1810.

(g) Penalties for Excess Hours. Consultant shall comply with and be bound by the provisions of Labor Code Section 1813 concerning penalties for workers who work excess hours. The Consultant shall, as a penalty to the City, forfeit twenty-five dollars (\$25) for each worker employed in the performance of this Agreement by the Consultant or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of Division 2, Part 7, Chapter 1, Article 3 of the Labor Code. Pursuant to Labor Code section 1815, work performed by employees of Consultant in excess of eight (8) hours per day, and forty (40) hours during any one week shall be permitted upon public work upon compensation for all hours worked in excess of 8 hours per day at not less than one and one-half (1½) times the basic rate of pay.

(h) Workers' Compensation. California Labor Code Sections 1860 and 3700 provide that every employer will be required to secure the payment of compensation to its employees if it has employees. By executing this Agreement, and in accordance with the provisions of California Labor Code Section 1861, Consultant certifies as follows:

“I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.”

(i) Consultant's Responsibility for Subcontractors. For every subcontractor who will perform work under this Agreement, Consultant shall be responsible for such subcontractor's compliance with Division 2, Part 7, Chapter 1 (commencing with Section 1720) of the California Labor Code, and shall make such compliance a requirement in any contract

with any subcontractor for work under this Agreement. Consultant shall be required to take all actions necessary to enforce such contractual provisions and ensure subcontractor's compliance, including without limitation, conducting a review of the certified payroll records of the subcontractor on a periodic basis or upon becoming aware of the failure of the subcontractor to pay his or her workers the specified prevailing rate of wages. Consultant shall diligently take corrective action to halt or rectify any such failure by any subcontractor.

#### **1.5 Licenses, Permits, Fees and Assessments.**

Consultant shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement. Consultant shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Consultant's performance of the services required by this Agreement, and shall indemnify, defend and hold harmless City, its officers, employees or agents of City, against any such fees, assessments, taxes, penalties or interest levied, assessed or imposed against City hereunder.

#### **1.6 Familiarity with Work.**

By executing this Agreement, Consultant warrants that Consultant (i) has thoroughly investigated and considered the scope of services to be performed, (ii) has carefully considered how the services should be performed, and (iii) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. If the services involve work upon any site, Consultant warrants that Consultant has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services hereunder. Should the Consultant discover any latent or unknown conditions, which will materially affect the performance of the services hereunder, Consultant shall immediately inform the City of such fact and shall not proceed except at Consultant's risk until written instructions are received from the Project Manager.

#### **1.7 Software and Computer Services.**

If the Scope of Services includes the provision and/or installation of any software, computer system, or other computer technology, Consultant represents and warrants that it has inspected the City's current infrastructure, equipment, computer system and software and that the software, computer system, or other computer technology provided and/or installed by Consultant under this Agreement is compatible, and shall be fully functional, with such infrastructure, equipment, computer system and software of the City. Consultant acknowledges that the City is relying on the representation by Consultant as a material consideration in entering into this Agreement.

#### **1.8 Care of Work.**

The Consultant shall adopt reasonable methods during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and/or other components thereof to prevent losses or damages, and shall be

responsible for all such damages, to persons or property, until acceptance of the work by City, except such losses or damages as may be caused by City's own negligence.

### **1.9 Further Responsibilities of Parties.**

Both parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both parties agree to act in good faith to execute all instruments, prepare all documents and take all actions as may be reasonably necessary to carry out the purposes of this Agreement. Unless hereafter specified, neither party shall be responsible for the service of the other.

### **1.10 Additional Services.**

City shall have the right, subject to state law and the City's Municipal Code, at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to or deducting from said work. No such extra work may be undertaken unless a written order is first given by the Project Manager to the Consultant, incorporating therein any adjustment in (i) the Contract Sum for the actual costs of the extra work, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of the Consultant. Any increase in compensation for extra work shall require the approval of City Council unless the City Council has previously authorized the City Manager to approve an increase in compensation and the amount of the increase does not exceed such authorization. It is expressly understood by Consultant that the provisions of this Section shall not apply to services specifically set forth in the Scope of Services. Consultant hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Consultant anticipates and that Consultant shall not be entitled to additional compensation therefor. City may in its sole and absolute discretion have similar work done by other contractors. No claims for an increase in the Contract Sum or time for performance shall be valid unless the procedures established in this Section are followed.

### **1.11 Special Requirements.**

Additional terms and conditions of this Agreement, if any, which are made a part hereof are set forth in the "Special Requirements" attached hereto as Exhibit "B" and incorporated herein by this reference. In the event of a conflict between the provisions of Exhibit "B" and any other provisions of this Agreement, the provisions of Exhibit "B" shall govern.

## **ARTICLE 2. COMPENSATION AND METHOD OF PAYMENT.**

### **2.1 Contract Sum.**

Subject to any limitations set forth in this Agreement, City agrees to pay Consultant the amounts specified in the "Schedule of Compensation" attached hereto as Exhibit "C" and incorporated herein by this reference. The total compensation, including reimbursement for actual expenses, shall not exceed Eighty Thousand Dollars and No Cents (\$80,000.00) (the "Contract Sum"), unless additional compensation is approved pursuant to Section 1.10.

## **2.2 Method of Compensation.**

The method of compensation may include: (i) a lump sum payment upon completion; (ii) payment in accordance with specified tasks or the percentage of completion of the services, less contract retention; (iii) payment for time and materials based upon the Consultant's rates as specified in the Schedule of Compensation, provided that (a) time estimates are provided for the performance of sub tasks, (b) contract retention is maintained, and (c) the Contract Sum is not exceeded; or (iv) such other methods as may be specified in the Schedule of Compensation.

## **2.3 Reimbursable Expenses.**

Compensation may include reimbursement for actual and necessary expenditures for reproduction costs, telephone expenses, and travel expenses approved by the Project Manager in advance, or actual subcontractor expenses of an approved subcontractor pursuant to Section 4.5, and only if specified in the Schedule of Compensation. The Contract Sum shall include the attendance of Consultant at all project meetings reasonably deemed necessary by the City. Coordination of the performance of the work with City is a critical component of the services. If Consultant is required to attend additional meetings to facilitate such coordination, Consultant shall not be entitled to any additional compensation for attending said meetings.

## **2.4 Invoices.**

Each month Consultant shall furnish to City an original invoice for all work performed and expenses incurred during the preceding month in a form approved by City's Director of Finance. By submitting an invoice for payment under this Agreement, Consultant is certifying compliance with all provisions of the Agreement. Consultant shall not invoice City for any duplicate services performed by more than one person.

All invoices shall be submitted by email to [\*\*ap@cityofchino.org\*\*](mailto:ap@cityofchino.org). Each invoice is to include:

- (a) Line items for all personnel describing the work performed, the number of hours worked, and the hourly rate.
- (b) Line items for all materials and equipment properly charged to the Services.
- (c) Line items for all other approved reimbursable expenses claimed, with supporting documentation.
- (d) Line items for all approved subcontractor labor, supplies, equipment, materials, and travel properly charged to the Services.
- (e) If this Agreement requires prevailing wages, per Section 1.4 of the Agreement, all invoices shall include a copy of Consultant's Certified Payroll and proof that Certified Payroll has been submitted to the DIR. Consultant shall also submit a list of the prevailing wage rates for all

employees and subcontractors providing services under this Agreement, as applicable, with Consultant's first invoice. If these rates change at any time during the term of the Agreement, Consultant shall submit a new list of rates to the City with its first invoice following the effective date of the rate change.

City shall independently review each invoice submitted by the Consultant to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. Except as to any charges for work performed or expenses incurred by Consultant which are disputed by City, or as provided in Section 7.3, City will use its best efforts to cause Consultant to be paid within forty-five (45) days of receipt of Consultant's correct and undisputed invoice; however, Consultant acknowledges and agrees that due to City warrant run procedures, the City cannot guarantee that payment will occur within this time period. In the event any charges or expenses are disputed by City, the original invoice shall be returned by City to Consultant for correction and resubmission. Review and payment by City for any invoice provided by the Consultant shall not constitute a waiver of any rights or remedies provided herein or any applicable law.

## **2.5 Waiver.**

Payment to Consultant for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Consultant.

## **2.6 Contingency of Funds.**

Consultant acknowledges that funding or portions of funding for this Agreement may be contingent upon State budget approval; receipt of funds from, and/or obligation of funds by the State of California to City; or inclusion of sufficient funding for the services hereunder in the budget approved by Chino City Council for each fiscal year covered by this Agreement. If such approval, funding or appropriations are not forthcoming, or are otherwise limited, City may immediately terminate or modify this Agreement without penalty.

# **ARTICLE 3. PERFORMANCE SCHEDULE**

## **3.1 Time of Essence.**

Time is of the essence in the performance of this Agreement.

## **3.2 Schedule of Performance.**

Consultant shall commence the services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all services within the time period(s) established in the "Schedule of Performance" attached hereto as Exhibit "D" and incorporated herein by this reference. When requested by the Consultant, extensions to the time period(s) specified in the Schedule of Performance may be approved in writing by the Project Manager but not exceeding one hundred eighty (180) days cumulatively.

### **3.3 Force Majeure.**

The time period(s) specified in the Schedule of Performance for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Consultant, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the City, if the Consultant shall within ten (10) days of the commencement of such delay notify the Project Manager in writing of the causes of the delay. The Project Manager shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the Project Manager such delay is justified. The Project Manager's determination shall be final and conclusive upon the parties to this Agreement. In no event shall Consultant be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Consultant's sole remedy being extension of the Agreement pursuant to this Section.

### **3.4 Term.**

Unless earlier terminated in accordance with Article 7 of this Agreement, this Agreement shall continue in full force and effect until completion of the services, which shall be no later than June 30, 2026, except as otherwise provided in the Schedule of Performance (Exhibit "D"). This Agreement may be renewed by a written amendment for up to an additional three (3) year(s) at the option of the City if the City is satisfied with the quality of services performed by Consultant under this Agreement.

## **ARTICLE 4. COORDINATION OF WORK**

### **4.1 Representatives and Personnel of Consultant.**

The following principals of Consultant ("Principals") are hereby designated as being the principals and representatives of Consultant authorized to act in its behalf with respect to the work specified herein and make all decisions in connection therewith:

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

It is expressly understood that the experience, knowledge, capability and reputation of the foregoing principals were a substantial inducement for City to enter into this Agreement. Therefore, the foregoing principals shall be responsible during the term of this Agreement for directing all activities of Consultant and devoting sufficient time to personally supervise the services hereunder. All personnel of Consultant, and any authorized agents, shall at all times be under the exclusive direction and control of the Principals. For purposes of this Agreement, the



foregoing Principals may not be replaced nor may their responsibilities be substantially reduced by Consultant without the express written approval of City. Additionally, Consultant shall utilize only competent personnel to perform services pursuant to this Agreement. Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff and subcontractors, if any, assigned to perform the services required under this Agreement. Consultant shall notify City of any changes in Consultant's staff and subcontractors, if any, assigned to perform the services required under this Agreement, prior to and during any such performance.

#### **4.2     Status of Consultant.**

Consultant shall have no authority to bind City in any manner, or to incur any obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City. Consultant shall not at any time or in any manner represent that Consultant or any of Consultant's officers, employees, or agents are in any manner officials, officers, employees or agents of City. Neither Consultant, nor any of Consultant's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's employees. Consultant expressly waives any claim Consultant may have to any such rights.

#### **4.3     Project Manager.**

The Project Manager shall be Jeff Benson, Parks and Facilities Manager or any other person as may be designated by the Project Manager. It shall be the Consultant's responsibility to assure that the Project Manager is kept informed of the progress of the performance of the services and the Consultant shall refer any decisions which must be made by City to the Project Manager. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Project Manager. The Project Manager shall have authority, if specified in writing by the City Manager, to sign all documents on behalf of the City required hereunder to carry out the terms of this Agreement.

#### **4.4     Independent Consultant.**

Neither the City nor any of its employees shall have any control over the manner, mode or means by which Consultant, its agents or employees, perform the services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision or control of Consultant's employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. Consultant shall perform all services required herein as an independent contractor of City and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with that role. Consultant shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City. City shall not in any way or for any purpose become or be deemed to be a partner of Consultant in its business or otherwise or a joint venturer or a member of any joint enterprise with Consultant.

#### **4.5     Prohibition Against Subcontracting or Assignment.**

The experience, knowledge, capability and reputation of Consultant, its principals and employees were a substantial inducement for the City to enter into this Agreement. Therefore, Consultant shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of the City. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Consultant, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release the Consultant or any surety of Consultant of any liability hereunder without the express consent of City.

## **ARTICLE 5. INSURANCE AND INDEMNIFICATION**

### **5.1 Insurance Coverages.**

Without limiting Consultant's indemnification of City, and prior to commencement of any services under this Agreement, Consultant shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to City.

(a) General liability insurance. Consultant shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

(b) Automobile liability insurance. Consultant shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with Services to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$1,000,000 combined single limit for each accident.

(c) Professional liability (errors & omissions) insurance. Consultant shall maintain professional liability insurance that covers the Services to be performed in connection with this Agreement, in the minimum amount of \$1,000,000 per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this Agreement and Consultant agrees to maintain continuous coverage through a period no less than three (3) years after completion of the services required by this Agreement.

(d) Workers' compensation insurance. Consultant shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000).

(e) Subcontractors. Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall include all of the requirements stated herein.

(f) Additional Insurance. Policies of such other insurance, as may be required in the Special Requirements in Exhibit “B”.

## **5.2 General Insurance Requirements.**

(a) Proof of insurance. Consultant shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers’ compensation. Insurance certificates and endorsements must be approved by City’s Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this Agreement. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

(b) Duration of coverage. Consultant shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Services hereunder by Consultant, its agents, representatives, employees or subconsultants.

(c) Primary/noncontributing. Coverage provided by Consultant shall be primary and any insurance or self-insurance procured or maintained by City shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City before the City’s own insurance or self-insurance shall be called upon to protect it as a named insured.

(d) City’s rights of enforcement. In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Consultant or City will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, City may cancel this Agreement.

(e) Acceptable insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or that is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders’ Rating of A- (or higher) and Financial Size Category Class VI (or larger) in accordance with the latest edition of Best’s Key Rating Guide, unless otherwise approved by the City’s Risk Manager.

(f) Waiver of subrogation. All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against City, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow

Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

(g) Enforcement of contract provisions (non-estoppel). Consultant acknowledges and agrees that any actual or alleged failure on the part of the City to inform Consultant of non-compliance with any requirement imposes no additional obligations on the City nor does it waive any rights hereunder.

(h) Requirements not limiting. Requirements of specific coverage features or limits contained in this section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

(i) Notice of cancellation. Consultant agrees to oblige its insurance agent or broker and insurers to provide to City with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage.

(j) Additional insured status. General liability policies shall provide or be endorsed to provide that City and its officers, officials, employees, and agents, and volunteers shall be additional insureds under such policies. This provision shall also apply to any excess/umbrella liability policies.

(k) Prohibition of undisclosed coverage limitations. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing.

(l) Separation of insureds. A severability of interests provision must apply for all additional insureds ensuring that Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

(m) Pass through clause. Consultant agrees to ensure that its subconsultants, subcontractors, and any other party involved with the project who is brought onto or involved in the project by Consultant, provide the same minimum insurance coverage and endorsements required of Consultant. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Consultant agrees that upon request, all agreements with consultants, subcontractors, and others engaged in the project will be submitted to City for review.

(n) Agency's right to revise specifications. The City reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Consultant ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Consultant, the City and Consultant may renegotiate Consultant's compensation.

(o) Self-insured retentions. Any self-insured retentions must be declared to and approved by City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by City.

(p) Timely notice of claims. Consultant shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Consultant's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

(q) Additional insurance. Consultant shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the work.

### **5.3 Indemnification.**

To the full extent permitted by law, Consultant agrees to indemnify, defend and hold harmless the City, its officers, employees and agents ("Indemnified Parties") against, and will hold and save them and each of them harmless from, any and all actions, either judicial, administrative, arbitration or regulatory claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities whether actual or threatened (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent performance of the work, operations or activities provided herein of Consultant, its officers, employees, agents, subcontractors, or invitees, or any individual or entity for which Consultant is legally liable ("indemnitors"), or arising from Consultant's or indemnitors' reckless or willful misconduct, or arising from Consultant's or indemnitors' negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, and in connection therewith:

(a) Consultant will defend any action or actions filed in connection with any of said claims or liabilities and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith;

(b) Consultant will promptly pay any judgment rendered against the City, its officers, agents or employees for any such claims or liabilities arising out of or in connection with the negligent performance of or failure to perform such work, operations or activities of Consultant hereunder; and Consultant agrees to save and hold the City, its officers, agents, and employees harmless therefrom;

(c) In the event the City, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against Consultant for such damages or other claims

arising out of or in connection with the negligent performance of or failure to perform the work, operation or activities of Consultant hereunder, Consultant agrees to pay to the City, its officers, agents or employees, any and all costs and expenses incurred by the City, its officers, agents or employees in such action or proceeding, including but not limited to, legal costs and attorneys' fees.

Consultant shall incorporate similar indemnity agreements with its subcontractors and if it fails to do so Consultant shall be fully responsible to indemnify City hereunder therefore, and failure of City to monitor compliance with these provisions shall not be a waiver hereof. This indemnification includes claims or liabilities arising from any negligent or wrongful act, error or omission, or reckless or willful misconduct of Consultant in the performance of professional services hereunder. The provisions of this Section do not apply to claims or liabilities occurring as a result of City's sole negligence or willful acts or omissions, but, to the fullest extent permitted by law, shall apply to claims and liabilities resulting in part from City's negligence, except that design professionals' indemnity hereunder shall be limited to claims and liabilities arising out of the negligence, recklessness or willful misconduct of the design professional. The indemnity obligation shall be binding on successors and assigns of Consultant and shall survive termination of this Agreement.

## **ARTICLE 6. RECORDS, REPORTS, AND RELEASE OF INFORMATION**

### **6.1 Records.**

Consultant shall keep, and require subcontractors to keep, such ledgers, books of accounts, invoices, vouchers, canceled checks, reports, studies or other documents relating to the disbursements charged to City and services performed hereunder (the "books and records"), as shall be necessary to perform the services required by this Agreement and enable the Project Manager to evaluate the performance of such services. Any and all such documents shall be maintained in accordance with generally accepted accounting principles and shall be complete and detailed. The Project Manager shall have full and free access to such books and records at all times during normal business hours of City, including the right to inspect, copy, audit and make records and transcripts from such records. Such records shall be maintained for a period of three (3) years following completion of the services hereunder, and the City shall have access to such records in the event any audit is required. In the event of dissolution of Consultant's business, custody of the books and records may be given to City, and access shall be provided by Consultant's successor in interest. Notwithstanding the above, the Consultant shall fully cooperate with the City in providing access to the books and records if a public records request is made and disclosure is required by law including but not limited to the California Public Records Act.

### **6.2 Reports.**

Consultant shall periodically prepare and submit to the Project Manager such reports concerning the performance of the services required by this Agreement as the Project Manager shall require. Consultant hereby acknowledges that the City is greatly concerned about the cost of work and services to be performed pursuant to this Agreement. For this reason, Consultant agrees that if Consultant becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or services contemplated herein

or, if Consultant is providing design services, the cost of the project being designed, Consultant shall promptly notify the Project Manager of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto and, if Consultant is providing design services, the estimated increased or decreased cost estimate for the project being designed.

### **6.3 Ownership of Documents.**

All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents and other materials (the “documents and materials”) prepared by Consultant, its employees, subcontractors and agents in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of the Project Manager or upon the termination of this Agreement, and Consultant shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership use, reuse, or assignment of the documents and materials hereunder. Any use, reuse or assignment of such completed documents for other projects and/or use of uncompleted documents without specific written authorization by the Consultant will be at the City’s sole risk and without liability to Consultant, and Consultant’s guarantee and warranties shall not extend to such use, reuse or assignment. Consultant may retain copies of such documents for its own use. Consultant shall have the right to use the concepts embodied therein. All subcontractors shall provide for assignment to City of any documents or materials prepared by them, and in the event Consultant fails to secure such assignment, Consultant shall indemnify City for all damages resulting therefrom. Moreover, Consultant with respect to any documents and materials that may qualify as “works made for hire” as defined in 17 U.S.C. § 101, such documents and materials are hereby deemed “works made for hire” for the City.

### **6.4 Confidentiality and Release of Information.**

(a) All information gained or work product produced by Consultant in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Consultant. Consultant shall not release or disclose any such information or work product to persons or entities other than City without prior written authorization from the Project Manager.

(b) Consultant, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the Project Manager or unless requested by the City Attorney, voluntarily provide documents, declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered “voluntary” provided Consultant gives City notice of such court order or subpoena.

(c) If Consultant, or any officer, employee, agent or subcontractor of Consultant, provides any information or work product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Consultant for any damages, costs and fees, including attorney’s fees, caused by or incurred as a result of Consultant’s conduct.

(d) 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 there under. City retains the right, 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, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

## **ARTICLE 7. ENFORCEMENT OF AGREEMENT AND TERMINATION**

### **7.1 California Law.**

This Agreement shall be interpreted, construed and governed both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of San Bernardino, State of California, or any other appropriate court in such county, and Consultant covenants and agrees to submit to the personal jurisdiction of such court in the event of such action. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in the County of San Bernardino, State of California.

### **7.2 Disputes; Default.**

In the event that Consultant is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Consultant for any work performed after the date of default. Instead, the City may give notice to Consultant of the default and the reasons for the default. The notice shall include the timeframe in which Consultant may cure the default. This timeframe is presumptively thirty (30) days, but may be extended, though not reduced, if circumstances warrant. During the period of time that Consultant is in default, the City shall hold all invoices and shall, when the default is cured, proceed with payment on the invoices. In the alternative, the City may, in its sole discretion, elect to pay some or all of the outstanding invoices during the period of default. If Consultant does not cure the default, the City may take necessary steps to terminate this Agreement under this Article. Any failure on the part of the City to give notice of the Consultant's default shall not be deemed to result in a waiver of the City's legal rights or any rights arising out of any provision of this Agreement.

### **7.3 Retention of Funds.**

Consultant hereby authorizes City to deduct from any amount payable to Consultant (whether or not arising out of this Agreement) (i) any amounts the payment of which may be in dispute hereunder or which are necessary to compensate City for any losses, costs, liabilities, or damages suffered by City, and (ii) all amounts for which City may be liable to third parties, by reason of Consultant's negligent acts or omissions in performing or failing to perform Consultant's obligation under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by Consultant, or any indebtedness shall exist which shall appear to be the basis for a claim of lien, City may withhold from any payment due, without liability for interest because of such withholding, an amount sufficient to cover such claim. The failure of



City to exercise such right to deduct or to withhold shall not, however, affect the obligations of the Consultant to insure, indemnify, and protect City as elsewhere provided herein.

#### **7.4 Waiver.**

Waiver by any party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Consultant shall not constitute a waiver of any of the provisions of this Agreement. No delay or omission in the exercise of any right or remedy by a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

#### **7.5 Rights and Remedies are Cumulative.**

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

#### **7.6 Legal Action.**

In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement. Notwithstanding any contrary provision herein, Consultant shall file a statutory claim pursuant to Government Code Sections 905 *et seq.* and 910 *et seq.*, in order to pursue a legal action under this Agreement.

#### **7.7 Liquidated Damages.**

Since the determination of actual damages for any delay in performance of this Agreement would be extremely difficult or impractical to determine in the event of a breach of this Agreement, the Consultant and its sureties shall be liable for and shall pay to the City the sum of Zero Dollars and No Cents (\$0.00) as liquidated damages for each working day of delay in the performance of any service required hereunder. The City may withhold from any monies payable on account of services performed by the Consultant any accrued liquidated damages.

#### **7.8 Termination Prior to Expiration of Term.**

This Section shall govern any termination of this Contract except as specifically provided in the following Section for termination for cause. The City reserves the right to terminate this Contract at any time, with or without cause, upon thirty (30) days' written notice to Consultant, except that where termination is due to the fault of the Consultant, the period of notice may be

such shorter time as may be determined by the Project Manager. In addition, the Consultant reserves the right to terminate this Contract at any time, with or without cause, upon sixty (60) days' written notice to City, except that where termination is due to the fault of the City, the period of notice may be such shorter time as the Consultant may determine. Upon receipt of any notice of termination, Consultant shall immediately cease all services hereunder except such as may be specifically approved by the Project Manager. Except where the Consultant has initiated termination, the Consultant shall be entitled to compensation for all services rendered prior to the effective date of the notice of termination and for any services authorized by the Project Manager thereafter in accordance with the Schedule of Compensation or such as may be approved by the Project Manager, except as provided in Section 7.3. In the event the Consultant has initiated termination, the Consultant shall be entitled to compensation only for the reasonable value of the work product actually produced hereunder. In the event of termination without cause pursuant to this Section, the terminating party need not provide the non-terminating party with the opportunity to cure pursuant to Section 7.2.

#### **7.10 Attorneys' Fees.**

If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees. Attorney's fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

### **ARTICLE 8. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION**

#### **8.1 Non-liability of City Officers and Employees.**

No officer or employee of the City shall be personally liable to the Consultant, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Consultant or to its successor, or for breach of any obligation of the terms of this Agreement.

#### **8.2 Conflict of Interest.**

Consultant covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Consultant's performance of services under this Agreement. Consultant further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the Project Manager. Consultant agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement.

No officer or employee of the City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which affects her/his financial interest or the financial interest of any corporation, partnership or association in which (s)he is, directly or indirectly, interested, in violation of any State statute or regulation. The Consultant warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

### **8.3 Covenant Against Discrimination.**

Consultant covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, ancestry or other protected class in the performance of this Agreement. Consultant shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, ancestry or other protected class.

### **8.4 Unauthorized Aliens.**

Consultant hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C. § 1101 *et seq.*, as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Consultant so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should any liability or sanctions be imposed against City for such use of unauthorized aliens, Consultant hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by City.

## **ARTICLE 9. MISCELLANEOUS PROVISIONS**

### **9.1 Notices.**

Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail, in the case of the City, to the City Manager and to the attention of the Project Manager (with her/his name and City title), City of Chino, 13220 Central Avenue, Chino, California 91710 and in the case of the Consultant, to the person(s) at the address designated on the execution page of this Agreement. Either party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

## **9.2 Interpretation.**

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

## **9.3 Counterparts.**

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

## **9.4 Integration; Amendment.**

This Agreement including the attachments hereto is the entire, complete and exclusive expression of the understanding of the parties. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. No amendment to or modification of this Agreement shall be valid unless made in writing and approved by the Consultant and by the City Council. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

## **9.5 Severability.**

In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

## **9.6 Warranty & Representation of Non-Collusion.**

No official, officer, or employee of City has any financial interest, direct or indirect, in this Agreement, nor shall any official, officer, or employee of City participate in any decision relating to this Agreement which may affect his/her financial interest or the financial interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any State or municipal statute or regulation. The determination of "financial interest" shall be consistent with State law and shall not include interests found to be "remote" or "noninterests" pursuant to Government Code Sections 1091 or 1091.5. Consultant warrants and represents that it has not paid or given, and will not pay or give, to any third party including, but not limited to, any City official, officer, or employee, any money, consideration, or other thing of value as a result or consequence of obtaining or being awarded any agreement. Consultant further warrants and represents that (s)he/it has not engaged in any act(s), omission(s), or other conduct or collusion that would result in the payment of any money,

consideration, or other thing of value to any third party including, but not limited to, any City official, officer, or employee, as a result of consequence of obtaining or being awarded any agreement. Consultant is aware of and understands that any such act(s), omission(s) or other conduct resulting in such payment of money, consideration, or other thing of value will render this Agreement void and of no force or effect.

Consultant's Authorized Initials \_\_\_\_\_

**9.7 Corporate Authority.**

The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) that entering into this Agreement does not violate any provision of any other Agreement to which said party is bound. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties.

**[SIGNATURES ON FOLLOWING PAGE]**

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the date and year first-above written.

**CITY:**

CITY OF CHINO, a municipal corporation

\_\_\_\_\_  
Linda Reich, City Manager

**ATTEST:**

\_\_\_\_\_  
Natalie Gonzaga, City Clerk

**APPROVED AS TO FORM:**  
ALESHIRE & WYNDER, LLP

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
Fred Galante, City Attorney

\_\_\_\_\_  
Silvia Avalos, Director of Community Services,  
Parks & Recreation

**CONSULTANT:**

SITESCAPES, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Two corporate officer signatures required when Consultant is a corporation, with one signature required from each of the following groups: 1) Chairman of the Board, President or any Vice President; and 2) Secretary, any Assistant Secretary, Chief Financial Officer or any Assistant Treasurer.**

## **EXHIBIT “A”**

### **SCOPE OF SERVICES**

- I. Consultant will perform the Services described in Consultant’s Proposal, attached hereto as Exhibit A-1.**
- II. All work product is subject to review and acceptance by the City, and must be revised by the Consultant without additional charge to the City until found satisfactory and accepted by City.**



# SITESCAPES

December 12, 2024

*Revised January 7, 2025, Revised March 3, 2025*

**Jeff Benson**  
**City of Chino**  
13220 Central Avenue  
Chino, CA 91710

**Project: Glenn Duncan Park Splash Pad**

Dear Jeff,

We are pleased to submit this proposal for Professional Services in connection with the .25-acre, splash pad within this center of the Glenn Duncan Park at Block 9 of The Preserve.

## **AGREEMENT BETWEEN CLIENT AND LANDSCAPE ARCHITECT**

This Agreement is between City of Chino. (Client) located at 13220 Central Avenue, Chino, California 91710 and SITESCAPES, Inc. (Landscape Architect) located at 3190 B-2 Airport Loop Drive, Costa Mesa, California 92626 for the above-referenced Project.

## **ARTICLE 1: SCOPE OF WORK**

This scope of work is based upon the urban splash pad as depicted within the Glenn Duncan Park site plan dated 08/12/24 by SITESCAPES.

### **A. Landscape Architect agrees to provide Client the following Basic Services:**

1. Project Coordination
2. Concept Design
3. Design Development
4. Construction Documents
5. Construction Administration

#### **1. Phase 1 – Project Coordination:**

Upon approval of the proposal from Client, SITESCAPES, Inc. shall proceed to interact with other project consultants including the Civil Engineer, Project Architect and Governing Agencies. The intent is to have SITESCAPES, Inc. develop and create Landscape Architectural drawings that will illustrate specific solutions used to attain the ultimate project goals.

This phase of work shall include the following:

- a. Review all pertinent technical data as well as agency requirements regarding project's current status and site plan submittal requirement.
- b. Assemble design team's information (i.e., civil, architectural and utilities) to create an accurate comprehensive AutoCAD "Site Plan" base sheet. This base sheet will provide an up-to-date background which will be used to expose any conflicts and help minimize any future landscape constraints.

*Landscape  
Architecture  
& Planning*

SITESCAPES, Inc.  
3190 B Airport Loop Drive  
Costa Mesa, CA 92626  
949-644-9370 v  
714-210-3140 f

License #12782



- c. Attend and participate in project team meetings and consultant coordination meetings as required or as deemed necessary by Client. It is assumed that this project will require (1) local one-hour meeting every three weeks until project approval.
- d. Attend city meetings and presentations as required.
- e. Assemble and coordinate permittable ancillary structure drawing package, if required by the city, that may include, but is not limited to structural engineering, electrical design/lighting engineering, utility design, plumbing design, etc.

## **2. Phase 2 – Concept Design:**

Sitescapes shall refine and expand upon the “schematic” landscape designs for the splash pad park based upon Sitescapes’ designs presented in June to the city. (see attached exhibit)

This phase of work shall include the following:

- a. Discuss with representatives from Client and other design consultants to review architectural characteristics, project theme, site amenities, low-impact/water quality issues, landscape maintenance and cost budgeting concerns.
- b. Review rough grading plan by Civil Engineer and make vertical relationship suggestion based upon anticipated site amenities and access issues.
- c. Refine conceptual “schematic” Site Plan sketches identifying the following design elements:
  - 1. Project Theme – *Design elements that help promote the “innovation” theme of the overall park*
  - 2. Circulation – *Create strong & intuitive connection*
  - 3. Internal People Spaces – *Design meaningful active & passive areas around the center spray fountain*
  - 4. Spray Park Nozzles and Amenity Features: *Design a mixture of animated and passive water elements to increase interaction and aesthetic*
  - 5. Shade Structures & Site Furniture – *Theme-based urban park elements*
- d. Based upon mutually agreed program, schedule and construction budget requirements, consultant shall prepare for approval by client, schematic design documents consisting of drawings and other documents illustrating the scale and relationship of splash pad project components. Schematic design phase deliverables shall include the following:
  - 1. Splash pad plan views
  - 2. Longitudinal sections
  - 3. Finish and details
  - 4. Feature details
- e. Review with Client conceptual “schematic” sketches and provide modifications as necessary.  
*{Note: These sketches will be very informal as they will only be used to develop communication between us.}*
- f. Develop a “schematic” hardscape Site Plan @ 10 scale, based upon approved “schematic” sketches that will illustrate the proposed landscape goals and theme. Distribute CAD file of new hardscape layout to design team.
- g. Prepare conceptual images to support Site Plan to help define project’s theme and direction.

## **3. Phase 3 – Design Development:**

Sitescapes, Inc. shall refine the site amenities and landscape designs based upon approved schematic design as shown within scope of Phase 2.

*{Note: Sitescapes’ ability to proceed is contingent upon Client’s and Consultant Team’s ability to provide accurate base information as well as additional required drawings.}*

This Phase of work shall include the following:

- a. Refine and expand upon submitted designs and coordinate with other project consultants including Fountain Consultant, Civil, Electrical, Lighting, and Structural Engineers.
- b. Develop enlarged plan view and 3D graphics of key design issues and amenities as necessary to gain Client's final understanding of intent.
- c. Prepare vertical control designs and coordinate with Client's Consultant Civil Engineer.
- d. Prepare "utility and constraints plan" identifying the proposed grading concept with key spot elevations, drainage devices, tree drain, utility locations, electrical and irrigation sleeves, etc. Plan shall be forward and coordinated with design team.
- e. Design team shall provide client with building and infrastructure requirements. Including design criteria, as needed to service the splash pad equipment, including:
  1. Equipment vault dimensions
  2. Sanitary/storm sewer requirement and points of connection
  3. Domestic water requirement and points of connections
  4. Electrical requirements and points of connection for equipment
  5. Consultant shall advise client of any adjustments to the estimate of probable construction cost
- f. Review design development drawings and detailed enlargements with Client and design team and modify as required.
- g. Aesthetic lighting design indicating locations and fixture type of bollard and any "theatrical" style lighting.
- h. Research preliminary material and product selection and review with Client.
- i. Prepare a landscape cost estimate based upon 80% completion of Design Development phase.

#### **4. Phase 4 – Construction Documents:**

Sitescapes, Inc. shall prepare construction documents pertaining to the landscape architectural improvements after the Client has approved "PHASE 3," design development drawings and has given authorization to proceed.

*{Note: If it is necessary to begin this phase of work prior to provision of the final Architecture or Site Plan, revisions to our drawings resulting from such changes shall be billed to the Client as extra work on an hourly basis.}*

The construction document shall include the following:

- a. Develop the following plans for construction @ 10 scale:
  1. Construction Plan indicating location and type of all hardscape elements designed by Sitescapes, Inc. including fencing, shade structures, walls, paving, materials, etc.  
*{Sitescapes, Inc. will provide the Civil Engineer with hardscape & other construction element locations for inclusion into their files.}*
  2. Sitescapes shall coordinate service points (water, storm drain, sewer, electrical, etc.) required from consultants to serve landscape amenities. The team consultants will incorporate this information into their construction as required.
  3. Prepare for approval by Client, construction documents consisting of drawings and specification setting forth in detail the requirements for construction of the splash pad/fountain. Construction documents phase deliverables shall include the following:
    - Architectural
    - Splash Pad plan views

- Splash Pad longitudinal sections
- Splash Pad finish and details
- Splash Pad Toy/Feature Details
- Outline specifications in CSI format

Mechanical

- Splash Pad piping plan
- Splash Pad mechanical equipment piping plan
- Splash pad mechanical equipment sections
- Miscellaneous splash pad mechanical details

Electrical

- Splash Pad underwater lighting plan
- Splash recommended Three phase panel schedule (Panel schedule to be completed by Electrical Engineer)
- Miscellaneous splash pad electrical details

4. Prepare a diagrammatic Irrigation Plan providing for an automatic system indicating type, size and location of all piping, sprinkler valves, heads and controllers.
  5. Planting plan indicating location, species, size and quantity of all trees, shrubs and groundcover.
  6. Civil Engineering to include design to bring required utilities to the site and provide all necessary elevations. *{Civil Engineer shall be hired by SITESCAPES as an outside consultant on behalf of Client.}*
  7. Coordinate material selection for hardscape items designed by SITESCAPES, Inc. This includes tile, brick, concrete color specifications etc.  
*{Excludes formal color/material board presentations.}*
  8. Aesthetic lighting design indicating locations and fixture type of bollard and any “theatrical” style lighting.  
*{Foot candles and electrical calculations would be completed by outside Electrical Engineer consultant hired by SITESCAPES on behalf of Client.}*
  9. Hardscape construction details as required. *{Structural engineering per outside consultant}*
  10. Prepare site furniture and decorative pot design indicating location and specification of required elements needed to complement design.
  11. Prepare required irrigation calculations based upon AB1881 or city’s equal.
  12. Planting and irrigation construction details as required.
  13. Develop construction specifications in various forms based upon each subcontractor’s work. SITESCAPES shall assemble into one submittal as required.
- b. SITESCAPES shall submit plan for city plan check using City’s Accela electronic submittal process.
- c. SITESCAPES, Inc. to make City plan check corrections, as required. This does not include Site Plan or value engineering / cost cutting changes beyond our control. If needed, these types of changes would be considered an extra.
- d. Prepare an itemized project construction cost estimate based upon approved landscape plans, to aid in future bidding by City.

The Construction Documents will set forth the requirements for the construction of the Project in SITESCAPES customary formats and levels of quality, and in sufficient detail to enable a knowledgeable and experienced contractor familiar with code requirements, with statutorily specified functionality standards, with established industry practices, and with projects similar to the Project to bid and to complete construction with only routine inquiries, corrections, and clarifications. These documents will delineate only the locations, key dimensions, and general methods of installing and assembling the Project’s major components. These documents will not direct or require specific materials, products, or details of construction except

where specifically noted or required by law or by governmental authorities; and unless so noted or required, the responsibility for the selection, fabrication, and installation of any particular material, product, or assemblage will not lie with the Landscape Architect, but rather with those who make and implement these decisions.

## **5. Phase 5 - Construction Administration:**

### **A. Landscape Architect's Basic Construction Administration Services**

Sitescapes, Inc. will provide administration of construction documents and periodically observe construction during the installation phase to ascertain conformity of construction to design intent. Our participation shall be based upon the request from the Client or his authorized field representative. As part of this phase of work our services include:

1. Reconnaissance and tagging of specimen tree material.
2. Review of shop drawings and approval of material samples as specified in construction documents. Landscape Architect will not review shop drawings or other contractor submittals for any purpose other than for conformity with aesthetic design concepts, and in no event will Landscape Architect review shop drawings for accuracy or completeness, for serviceability or performance, for constructability, for code compliance, for coordination among trades or compatibility with other Project components, or for contractor safety precautions all of which are the sole responsibility of the submitting contractor.
3. Observation of layout and installation of hardscape work in relation to design intent and quality of workmanship.
4. Observation of layout and installation of irrigation system including coverage test.
5. Observation of installation of plant material quality and installation at the project site.
6. Observation to establish 90-day maintenance period. Develop punch list, as required.
7. Final observation at the end of the 90-day maintenance period. Develop punch list, as required.
8. Prepare final certificate of completion review and report for city.
9. Construction site visitation and meetings [total number not expected to exceed (3)].

If expressly set forth in the scope of work, LANDSCAPE ARCHITECT will visit the site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the completed landscape work and to determine in general if the landscape work is being performed in a manner indicating that, when completed, it will be in accordance with the landscape plans and specifications. However, LANDSCAPE ARCHITECT will not be required to make exhaustive or continuous on-site inspections to check quality of the work. On the basis of the on-site observations, LANDSCAPE ARCHITECT will endeavor to keep the Client informed of progress of the landscape work and will endeavor to guard the Client against defects and deficiencies in the landscape work. However, LANDSCAPE ARCHITECT will not have control over, or charge of, and will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the project. LANDSCAPE ARCHITECT will not be responsible for the failure of any person or entity to carry out the work in accordance with the contract documents.

### **B. Additional Services beyond Landscape Architect's Basic Services**

At Client's express request, Landscape Architect will provide any or all of the following additional services pursuant to the hourly fee schedule as set forth in Article 4 of this Agreement:

1. All costs involving document reproduction and deliveries.
2. Governmental meetings or presentations (other than described above).
3. Additional meetings beyond those described above.

4. Civil, electrical and structural engineering except as noted. Grading and drainage of landscape areas by Civil Engineers.
5. Preparation of colored renderings, theme boards, models, computer modeling, CADD files, or similar presentation materials.
6. Soils and/or geological investigation.
7. Value Engineering Revisions: Revisions required to value engineer the Consultant's Design Team's portion of the project.
8. Verification of the accuracy or completeness of information provided by Client, other consultants, or other reasonably reliable sources.
9. Preparation of documents for alternate, fast track, separate or sequential bids, or multiple phases, or providing services in connection with bidding, negotiation, or construction prior to or after the completion of the Construction Documents including preparation of documentation of separate permit and plan check submittals.
10. Making revisions to the Construction Documents or other documents when such revisions are:
  - a. Inconsistent with approvals or instructions previously given by Client, including revisions made necessary by changes in the Project program, budget, scheduling or phasing, or the result of Client's failure to render decisions in a timely manner;
  - b. Required by the enactment, amendment, or revised interpretation of governmental or quasi-governmental requirements subsequent to the preparation of such documents, or by the discretionary decisions of governmental or quasi-governmental officials inconsistent with prior approvals; or
  - c. Necessitated by site conditions that were neither foreseen nor reasonably foreseeable by Landscape Architect at the time the documentation was originally prepared.

If during the progress of the development of plans or during construction, Client finds it desirable or necessary to cause the Landscape Architect to perform Additional or Extra Services, the payment for such additional work shall be based on our hourly rates.

**C. Excluded Services and Assumptions:**

1. Sitescapes, Inc. is not responsible for providing the following services:
  - a. Providing project management services.
  - b. Providing survey services.
  - c. Identifying or determining project's bidding requirements.
  - d. Determining project budget.
  - e. Any maintenance services after project's completion.
  - f. Plan check fees and/or building permits or submittals.
  - g. Preparation of a SWPPP and / or WQMP Plan.
  - h. "As-Built" Drawings: Preparation of "As-Built" Record Drawings is not included in this Scope of Services. Consultant assumes that the Contractor shall provide this effort.
  - i. Responsibility for the accuracy or completeness of data and/or design work provided to Landscape Architect by Client, other design professionals, or other reasonably reliable sources, and will have no responsibility for such information even if it is incorporated into Landscape Architect's Instruments of Service for coordination, ease of reference, or any other purpose.
  - j. Retaining wall designs.
  - k. Waterproofing specifications and details
2. Sitescapes, Inc. is not responsible for the following on-site conditions:
  - a. Any or all existing subsurface conditions.
  - b. Soil issues (including soil content, toxicity and level of compaction).
  - c. Identifying and/or verifying lot line locations.

- d. Existing on-site drainage.
- e. On-site utilities locations.
- f. Performing existing plant inventory.

3. Project Assumptions:

- a. Project can be prepared and submitted as one design package.
- b. Construction meetings and review services provided by Landscape Architect is not in a supervisory role to the contractors or his workers, but merely to observe the progress of the installation of the plans and specifications.
- c. Excludes any formal color/material board presentations other than those specifically agreed upon within this contract.
- d. Signage Design and Construction Documents: It is assumed that the Client's Graphics and Signage Consultant is responsible for Design and Construction Documents for all Project signage.

**D. Professional Agreement:**

Landscape Architect agrees to provide its professional services in accordance with generally accepted standards of its profession. Landscape Architect agrees to put forth reasonable efforts to comply with codes, laws and regulations in effect as of the date of this agreement.

**ARTICLE 2: CLIENT'S RESPONSIBILITIES**

- A. Client agrees to provide Landscape Architect with all information, surveys, reports, anticipated improvements and professional recommendations requested by Landscape Architect to provide its professional services. Format of such information shall be AutoCAD or reproducible format. Landscape Architect may reasonably rely on the accuracy and completeness of these required information items.
- B. The Client will promptly advise the Landscape Architect of any fault or defect in Landscape Architect's work or non-conformance during the construction with the documents prepared pursuant to this Agreement. It is Client's responsibility prior to and during construction to promptly notify Landscape Architect in writing of any perceived errors or omissions in the Construction Documents of which a contractor thoroughly knowledgeable with the building codes, statutorily specified functionality standards, and industry standard methods of construction should be reasonably aware.
- C. Verbal request to commence each task or phase constitutes approval of prior design, material selection, etc. Design revisions will be incorporated into the subsequent design phase.
- D. Client agrees to advise Landscape Architect of any known or suspected contaminants at the Project site. Client shall be solely responsible for all subsurface soil conditions unless otherwise agreed to in writing.
- E. Client will obtain and pay for all necessary permits from authorities having jurisdiction over the project. Landscape Architect will assist Client with this obligation by completing and submitting appropriate paperwork and forms to governing authorities. Landscape Architect's assistance, however, shall not include attendance at more than one meeting with such governing authorities or creating additional or special documentation required by such authorities.
- F. The Client will require that each contractor and subcontractor performing work on the Project be properly licensed and agree to indemnify, defend, and hold harmless Client and Landscape Architect, and their officers, agents, and employees, for claims, losses, expenses, including attorney's fees, and any damages arising in connection with such contractor's and/or subcontractor's performance; and maintain general liability insurance in annual limits of at least \$1,000,000.00 per claim and aggregate with Client and Landscape Architect named as additional insureds.
- G. Client agrees to provide the items described in Article 2.A and to render decisions in a timely manner so as not to delay the orderly and sequential progress of Landscape Architect's services.

### ARTICLE 3: ESTIMATED SCHEDULE AND PROJECT BUDGET

- A. Landscape Architect shall render its services as expeditiously as is consistent with professional skill and care. During the course of the Project, anticipated and unanticipated events may impact any Project schedule.
- B. As of the date of this Agreement, Client's Project budget is undetermined. Client agrees to promptly notify Landscape Architect if Client's schedule or budget changes. Client acknowledges that significant changes to the Project schedule, budget or the Project's scope may require Additional Services of Landscape Architect.

### ARTICLE 4: COMPENSATION AND PAYMENTS

- A. Client agrees to pay Landscape Architect as follows:

1. Basic Services:

- |   |                                     |
|---|-------------------------------------|
| a. Phase 1 – Project Coordination.....        | Hourly, est. NTE \$2,000.00         |
| b. Phase 2 – Schematic/Concept Design.....    | \$6,000.00                          |
| c. Phase 3 – Design Development.....          | \$5,000.00                          |
| d. Phase 4 – Construction Documents.....      | \$63,000.00                         |
| 4a. Landscape Architect.....                  | \$18,000.00                         |
| 4b. Electrical/Lighting.....                  | \$6,000.00                          |
| 4c. Structural Engineer.....                  | \$4,000.00                          |
| 4d. Fountain Consultant.....                  | \$29,000.00                         |
| 4e. Civil Engineer.....                       | \$6,000.00                          |
| e. Phase 5 – Construction Administration..... | Hourly, as needed est. @ \$4,000.00 |

2. Additional Services: As requested

3. Hourly Rates: (Rates subject to adjustment one (1) year from date of contract)

Principal/Partner	\$170.00
Department Head / 3D Design	\$155.00
Sr. Project Manager	\$150.00
Project Manager	\$130.00
Landscape Designer	\$123.00
Draftsman	\$100.00
Clerical	\$45.00
Mileage	\$00.56

3. Payment shall be made as follows:

- a. Invoices are billed the last day of each month and are based upon percentage of work completed per phase.
- b. Each invoice shall be due and payable upon receipt, and delinquent 30 days after its date. In the event of delinquency, interest shall accrue from the invoice date at the rate of 10%, or at the highest rate permitted by California Law, whichever is lower. No deductions shall be made from SITESCAPES, INC. compensation on account of claims or losses for which an appropriate court or arbitrator has not held SITESCAPES, INC. legally liable.
- c. In light of the obvious advantage of resolving questions and disputes regarding Architect's billing quickly and while recollections are fresh, Client will notify Architect of any questions or dissatisfaction which may regard any particular invoice within 30 days of the invoice date, and if Client fails to give Architect such notice, then Client will have waived its right to dispute the accuracy and appropriateness of the invoice and the invoice will be binding upon Client.
- B. The reimbursable expenses concerning the project for which Client shall be responsible at a multiple of 1.10 include, but are not necessarily limited to, all costs involving reproduction, postage, and handling of documents; long distance and facsimile charges; deliveries, mileage, authorized travel, additional insurance required by Client over and above that which the Landscape Architect or its sub-consultants customarily carry, employee overtime necessitated by Client's express request for expedited service, any governmental

fees or costs advanced by the Landscape Architect as a Client accommodation, and Client requested renderings and models.

- C. Landscape Architect shall bill Client for Basic and Additional Services and Reimbursable Expenses once a month. All payments are due Landscape Architect upon receipt of invoice. A service charge of 1.5% per month will be charged on all amounts due more than 30 days after the date of invoice.

Should the above reflect a mutual understanding of services to be rendered for the stated fee, an authorized signature on the attached copy will initiate our work.

SIGNED ON BEHALF OF:

**SITESCAPES, Inc.**

California License #2782  
3190 B-2 Airport Loop Drive  
Costa Mesa, CA 92626



Richard Polhamus  
Principal

ACCEPTED AND AGREED:

**City of Chino**

By: \_\_\_\_\_

Date: \_\_\_\_\_



**EXHIBIT “B”**

**SPECIAL REQUIREMENTS**

**(INTENTIONALLY LEFT BLANK)**

## **EXHIBIT “C”**

### **SCHEDULE OF COMPENSATION**

- I. Consultant shall be compensated for the services provided under this Agreement in accordance with the budget and rates provided in Exhibit “A-1”.**
- II. The City will compensate Consultant for the Services performed upon submission of a valid invoice, as described in Section 2.4.**
- III. The total compensation for the Services shall not exceed the Contract Sum, as provided in Section 2.1 of this Agreement.**

**EXHIBIT “D”**

**SCHEDULE OF PERFORMANCE**

- I. Consultant shall perform all Services timely in accordance with the following schedule:**

**DEADLINE DATE**

- A. Task A – Design Services for Glenn E. Duncan Splash Pad** By or before October 31, 2025.

- II. The Project Manager may approve extensions for performance of the services in accordance with Section 3.2.**