

**CONTRACT FOR
PREVENTATIVE MAINTENANCE AND REPAIR SERVICES
FOR HEATING, VENTILATING, AND AIR CONDITIONING
(HVAC) SYSTEMS
031-0361-01**

THIS CONTRACT is made and entered into this ____ day of _____, 2017 by and between THE CITY OF GARDENA, a municipal corporation ("CITY") and _____, a California corporation authorized to do business in the State of California (hereinafter "CONTRACTOR").

WHEREAS, the City Council, at a meeting held on the ____ day of _____, 2017, authorized the Mayor to enter into this Contract.

NOW, THEREFORE, it is hereby agreed by and between the parties that:

1. DEFINED TERMS

- 1.1 Terms used in this Contract which are defined anywhere in the Contract Documents shall have the same meanings in all Contract Documents.

2. PERFORMANCE OF WORK

- 2.1 Unless otherwise specified, CONTRACTOR shall furnish all of the labor, materials, tools, equipment, services and transportation necessary to perform all of the SOW required to provide Preventative Maintenance and Repair Services for Heating, Ventilating, and Air Conditioning (HVAC) Systems ("System") as set forth in the Contract Documents. The final scope of the SOW consists of the SOW from the RFP dated July 6, 2017.
- 2.2 CONTRACTOR shall perform all of the SOW in strict accordance with the Contract Documents.
- 2.3 CONTRACTOR shall be liable to CITY for any damages arising from, or as a result of, a failure to fully comply with the Contract Documents. CONTRACTOR shall not be excused with respect to any failure to so comply by any act or omission of CITY, its officers, employees or agents, unless such act or omission actually prevents CONTRACTOR from fully complying with the requirements of the Contract Documents.

3. SCHEDULE

- 3.1 CONTRACTOR shall not perform any work under this Agreement until: (i)

CONTRACTOR furnishes proof of insurance as required under Section 21 of this Agreement, and (ii) CITY provides CONTRACTOR a signed General Services Agreement, which shall serve as a Notice to Proceed. All services required of CONTRACTOR under this Agreement shall be completed on or before the end of the term of the Agreement.

4. DELIVERABLES

- 4.1 A deliverable shall be a fully functioning system.
- 4.2 No SOW shall be commenced by CONTRACTOR prior to receiving a Notice to Proceed. Separate Notices shall be provided for each replacement of items. CITY shall not be liable for any costs or expenses incurred by CONTRACTOR prior to receiving the Notice to Proceed.
- 4.3 Upon satisfactory completion of work, CONTRACTOR shall test and demonstrate all components, equipment and applications of that work to the Facilities Director or designee. Testing of all systems, equipment and applications shall meet the approval of the Facilities Director or designee.

5. CONTRACT PRICE

CITY shall pay to CONTRACTOR as full consideration for the performance of the Final SOW required by this Contract, subject to any additions or deductions as provided in the Contract Documents, a price not to exceed the amounts set forth below. These prices include the first year's maintenance for each Phase.

- A. Year 1 - \$
- B. Year 2 - \$
- C. Year 3 - \$
- D. Year 4 - \$
- E. Year 5 - \$

Nothing herein is meant to guarantee CONTRACTOR any type of profit.

- 5.1 CONTRACTOR shall not demand or be entitled to receive payment for the SOW or any portion thereof, except in the manner set forth in the Contract Documents.

- 5.2 No direct payment will be made to CONTRACTOR for providing transportation, light, power, tools, and equipment; or for furnishing, building, and maintaining camps, construction plant, access roads, sanitary conveniences, disposal works, water supply, fire protection, guards, trestles, telephone system, submittals, design, false work, formwork, or any other similar service, thing, facility, or material of a non-permanent nature; or for the removal of all temporary structures, plant, and materials, or for medical attendance or health protection, or for watchmen, magazine keepers, or guards, unless payment therefor has definitely been provided. Compensation for all such services, facilities, things, or materials necessary or required to execute the SOW in accordance with the provisions of the Contract shall be considered as having been included in the prices stipulated.

6. PAYMENTS

Payments shall be made in the following manner:

- 6.1 The CITY shall pay all undisputed portions of any applicable invoice within thirty (30) days after receipt of an invoice. In the event the CITY disputes one or more items in an invoice, the CITY shall, within thirty (30) days after receipt of such invoice, notify the CONTRACTOR of the item(s) being disputed and the reason(s) therefore. The CITY may withhold payment for such disputed items until resolution of the dispute.
- 6.2 No claim shall be made or be filed and neither CITY, nor any of its elected or appointed officers, employees, agents, or volunteers shall be liable, or held to pay any money, except as specifically provided in the Contract. The acceptance by CONTRACTOR of the final payment when no securities or certificates of deposit have been deposited in escrow or with CITY, or his acceptance from the escrow agent or CITY of the securities or certificates of deposit substituted for the retention, whichever is later, shall operate as, and shall be, a release to CITY, and its elected and appointed officers, employees, agents, and volunteers, from all claims and liability to CONTRACTOR for anything done or furnished for, or relating to, the Project or for any act or neglect of CITY or of any person relating to or affecting the Project, except claims previously made as provided for and in accordance with the provisions of the General Conditions and pending at the time of acceptance of final payment or of the securities or certificates of deposit, or the claim against CITY for the remainder, if any there be, of the amounts kept or retained due to unpaid claims.

7. DELETIONS, EXTRA AND/OR ADDITIONAL WORK AND CHANGES

- 7.1 Should CITY, at any time during the progress of the SOW, request any alterations, deviations, additions or omissions from the SOW, it shall be at liberty to do so, and the same shall in no way affect or make void the Contract, but will be added to, or deducted from, the amount of the Contract price, as the case may be in accordance with the provision of the Contract Documents.
- A. Where a component that is deleted was included in the bid or Final Cost Proposal, the cost shall be adjusted downward in accordance with the prices listed therein for the components and savings for Design/Engineering and Project Management/Documentation. If actual hours are not specified for Design/Engineering and Project Management/Documentation, CONTRACTOR shall reduce the costs based on its estimated savings, using the hourly labor costs set forth in Exhibit A, attached hereto and incorporated herein by reference.
 - B. Where a component that is added was included in the bid or Final Cost Proposal, the cost shall be adjusted upward in accordance with the prices listed therein for the components and savings for Design/Engineering and Project Management/Documentation. If actual hours are not specified for Design/Engineering and Project Management/Documentation, CONTRACTOR shall increase the costs based on the hours spent, using the hourly labor costs set forth in Exhibit A.
 - F. In case of a discrepancy between the bid and the Final Cost Proposal, the Final Cost Proposal shall prevail.
 - G. If CITY decides to add a component that was not called for in the original bid, the added price shall be based on the cost of the component, plus no more than ten percent (10%) administrative mark-up, plus hourly costs for Design/Engineering and Project Management/Documentation expenses based on the hours spent, using the hourly labor costs set forth in Exhibit
 - H. No component(s) shall be added by CONTRACTOR until CONTRACTOR provides CITY with the cost of adding such additional component(s) in writing and includes the additional yearly maintenance costs through year five that will be incurred as a result of adding such additional component(s) and CITY provides written approval of such additions. Any additional maintenance costs shall be based on the rates used by CONTRACTOR as the basis for CONTRACTOR'S final maintenance

proposal. If requested, CONTRACTOR shall justify and explain the increased costs to CITY.

- 7.2 If CONTRACTOR considers any work demanded of him to be outside the requirements of the SOW, then CONTRACTOR may submit a change order for the additional work. The submission of the change order must be in writing to the Facilities Maintenance Supervisor prior to starting on the additional work. If CONTRACTOR considers any order or ruling of the Facilities Maintenance Supervisor or of any designee to be unfair, he shall immediately upon such work being demanded, or such order or ruling being made, proceed without delay to perform the work or conform to the order or ruling. If CONTRACTOR finds such instructions or decisions unsatisfactory, he shall within ten (10) DAYS after receipt of same, file a written protest with the Facilities Maintenance Supervisor. CONTRACTOR agrees that as to all matters not included in such protests, the orders, instructions and decisions of the Facilities Maintenance Supervisor shall be final and conclusive.

8. DOCUMENTATION/CONFIDENTIALITY

- 8.1 CONTRACTOR must provide the documentation as set forth in the SOW.
- 8.2 CONTRACTOR has received from CITY a copy of List of Equipment. CONTRACTOR hereby agrees to keep such plan confidential, which includes, but is not limited to, a prohibition on copying or scanning the plan, or providing the plan to any employee, subcontractor or third person unless their review of such plan is essential to implementation of the SOW. By execution of this Contract, CONTRACTOR warrants that it has complied with this provision from the time of receipt of the plan.
- 8.3 Anything which CONTRACTOR, its employees, agents or subcontractors may observe or hear during performance of work in the police facility shall remain confidential and shall not be disclosed to any other individual. Each person who works in the police facility shall be required to sign a confidentiality statement to this effect.

9. LEGAL REQUIREMENTS

- 9.1 CONTRACTOR, its agents and employees shall be bound by and shall comply with all applicable federal, state and local laws related to labor, regardless of whether enumerated herein.
- 9.2 Pursuant to California Labor Code section 1810 et seq., eight (8) hours labor constitutes a legal day's work. CONTRACTOR shall forfeit as a penalty to CITY the sum of \$25.00 for each worker employed in the execution of the Contract by CONTRACTOR or any subcontractor for each calendar day during which such

worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week, unless such worker receives compensation for all hours worked in excess of these hours at a rate of at least one and one-half times the basic rate of pay. (Labor Code § 1813.) CITY may withhold from any monies payable on account of work performed by CONTRACTOR or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such CONTRACTOR or subcontractor, for unpaid wages and liquidated damages as provided for herein.

- 9.3 CONTRACTOR, and any subcontractor under CONTRACTOR, shall pay not less than the specified prevailing rate of per diem wages to all workers employed in the execution of the Contract. (Labor Code § 1774.) Copies of the determination of the Director of the Department of Industrial Relations of the rate of per diem wages for each craft, classification or type of worker needed to execute the Contract are on file in, and available at, the office of CITY. (Labor Code § 1773.2.) When any craft or classification is omitted from the general prevailing wage determinations, CONTRACTOR shall pay the wage rate of the craft or classification most closely related to the omitted classification. A copy of the prevailing rate per diem wages for cash craft or type of workman needed to execute any contract which may be awarded by CITY, may be requested by contacting the State Department of Industrial Relations.
- 9.4 CONTRACTOR shall post at the work site(s), for the duration of the Contract, a copy of the determination of CITY of the specified prevailing rate of per diem wages. (Labor Code § 1773.2.)
- 9.5 CONTRACTOR shall have responsibility for compliance with California Labor Code section 1776 relative to the retention and inspection of payroll records. (Labor Code § 1776.)
- 9.6 CONTRACTOR shall comply with all provisions of Labor Code section 1775. In accordance with Labor Code section 1775, CONTRACTOR shall forfeit as a penalty to CITY not more than \$50.00 for each worker employed in the execution of the Contract by CONTRACTOR or any subcontractor for each calendar day, or portion thereof, in which the worker is paid less than the prevailing rates. CONTRACTOR shall also pay the difference between the prevailing wage rates and the amount paid to each worker for each calendar day, or portion thereof, for which each worker was paid less than the prevailing wage rate.
- 9.7 Nothing in this Contract shall prevent CONTRACTOR or any subcontractor from employing properly registered apprentices in the execution of the Contract. CONTRACTOR shall have responsibility for compliance with California Labor Code Section 1777.5 for all apprenticeable occupations. (Labor Code § 1777.5.) These sections require that CONTRACTOR and subcontractors shall submit

contract award information to the applicable joint apprenticeship committee, shall employ apprentices in apprenticeable occupations in a ratio of not less than one hour of apprentice's work for every five hours of labor performed by a journeyman (unless an exception is granted in accordance with Section 1777.5), shall contribute to the fund or funds in each craft or trade or a like amount to the California Apprenticeship Board and that CONTRACTORS and subcontractors shall not discriminate among otherwise qualified employees as apprentices solely on the ground of sex, race, religion, creed, national origin, ancestry or color. Only apprentices as defined in Labor Code Section 3077, who are in training under apprenticeship standards and who have written apprentice agreements will be employed in apprenticeable occupations.

- 9.8 The issuance of any evidence of indebtedness as payment for wages is prohibited unless the same is negotiable and payable on demand without discount. Wages must be paid at least semimonthly on regular pay days established in advance, and shall include all amounts for labor or services performed of every description.
- 9.9 CONTRACTOR warrants full compliance with all laws regarding employment of aliens and others, and that all its employees performing services hereunder meet the citizenship or alien status requirements contained in federal and state statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986 (P.L. 99-603). CONTRACTOR shall obtain, from all covered employees performing services hereunder, all verification and other documentation of employment eligibility status required by federal statutes and regulations as they currently exist and as they may be hereafter amended. CONTRACTOR shall retain such documentation for all covered employees for the period prescribed by law. CONTRACTOR shall indemnify, defend, and hold harmless, CITY, its elected and appointed officers, employees, agents and volunteers from employer sanctions and any other liability which may be assessed against CITY in connection with any alleged violation of federal or state statutes or regulations pertaining to the eligibility for employment of person performing services under this Agreement.
- 9.10 Neither CONTRACTOR, nor any subcontractor under CONTRACTOR, shall discriminate in the employment of persons, including apprentices, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, sexual orientation or age of such person, except as provided in Sections 12940 and 12941 of the Government Code. CONTRACTOR shall have responsibility for compliance with this section. (Gov. Code §§ 12940, 12941.)
- 9.11 CONTRACTOR and all subcontractors shall, at CONTRACTOR and subcontractor's sole expense, obtain and maintain all necessary licenses for the

SOW, including but not limited to a valid business license, and give all necessary notices and pay all fees and taxes required by law.

- 9.12 CONTRACTOR shall be responsible for obtaining at its own expense, all construction permits and licenses required by local authority having jurisdiction, including for any subcontracting firm engaged in construction/installation for this Project. Permits will be required from CITY, but all CITY permit fees shall be waived.
- 9.13 In performing the SOW CONTRACTOR shall comply with all applicable building code and OSHA requirements.
- 9.14 If this Contract involves excavation of any trench in excess of five feet, there must be submission by CONTRACTOR and acceptance by CITY or by a registered civil or structural engineer, employed by CITY, to whom authority to accept has been delegated, in advance of excavation, of a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches. If such plan varies from the shoring system standards, the plan shall be prepared by a registered civil or structural engineer. (Labor Code §§ 6705, 6707.)

10. CONTRACT DOCUMENTS

- 10.1 The Contract entered into consists of the following Contract Documents, all of which are component parts of the Contract as if herein set forth in full or attached hereto:
- A. Request for Proposal dated July 6, 2017
 - B. Bid Proposal dated XXX
 - C. Notice of Award
 - D. Executed Contract, including the following Exhibits:
 - Exhibit A - Final Cost Proposal Form
 - Exhibit B – Hourly Rates
 - E. Verification of California Contractor's License
 - F. Contractor's Certificate Regarding Workers' Compensation

G. Certificate(s) of Insurance

H. Notice(s) to Proceed

I. Prevailing Wage Scales

10.2 Interpretation – Omissions and Conflicts

A. In case of conflict between the Contract Documents, as opposed to omission, the following precedence shall apply:

1. Final Cost Proposal
2. Executed Contract
3. Form Proposal
4. RFP

11. **INDEPENDENT CONTRACTOR**

CONTRACTOR is and shall at all times remain as to CITY a wholly-independent contractor. Neither CITY nor any of its officers, employees, or agents shall have control over the conduct of CONTRACTOR or any of CONTRACTOR's officers, employees, servants, agents or subcontractors, except as set forth in the Contract Documents. CONTRACTOR shall not at any time or in any manner represent that it or any of its officers, employees, agents, or subcontractors, are in any manner officers, employees, agents or subcontractors of CITY.

12. **INDEMNIFICATION**

- 12.1 CONTRACTOR hereby agrees to defend, indemnify and hold harmless CITY, and its elected and appointed officers, employees, agents and representatives from and against any and all claims, demands, liability, loss, damage, cost, expense and judgment, including court costs and attorney's fees, whether or not litigation be commenced, because of injury or death to any person whomsoever or damage to any property whatsoever, arising out of or in any way connected with the performance of the SOW by CONTRACTOR or subcontractor, or any of their officers, employees, servants or agents, unless such damage is due to the sole, active negligence of CITY or a third party.
- 12.2 CITY does not, and shall not, waive any rights against CONTRACTOR which it may have by reason of the aforesaid indemnification, because of the acceptance or the deposit by CONTRACTOR, of any of the insurance policies specified in this Contract or other Contract Document.
- 12.3 The aforesaid indemnification shall apply regardless of whether or not the insurance policies specified in this Contract or other Contract Document shall

have been determined to be applicable to the claim, liability, loss, damage, cost or expense.

- 12.4 Said duty to indemnify shall not be affected or in any way diminished by the fact that CITY, or any of its elected or appointed officers, employees, agents or volunteers may have jointly caused or contributed to the liability or claim by their acts, omissions, conduct or negligence; provided, however, that nothing herein shall require CONTRACTOR to indemnify CITY, or any of its elected or appointed officer, employees, agents or volunteers for liability resulting from their active negligence.
- 12.5 CONTRACTOR shall reimburse CITY for all costs and expenses, including attorney's fees, incurred by CITY in enforcing the provisions of this article.

13. QUALITY ASSURANCE

- 13.1 CONTRACTOR must furnish the Facilities Maintenance Supervisor every reasonable facility for ascertaining whether the work is in accordance with the SOW. All CONTRACTOR work shall be subject to random, unannounced inspections by the Facilities Maintenance Supervisor.
- 13.2 All materials furnished and all the work done under the SOW shall be subject to rigid inspection. Work done in the absence of prescribed inspection may be required to be torn out and replaced and the entire cost of repair and replacement shall be borne by CONTRACTOR, irrespective of whether the work dismantled is found to be defective.
- 13.3 The inspection of the SOW shall not relieve CONTRACTOR of any of its obligations to fulfill this Contract as herein prescribed and defective SOW shall be made good and unsuitable materials may be rejected notwithstanding that such SOW and materials have been previously inspected by the Facilities Maintenance Supervisor and accepted or estimated for payment. If the work, or any part thereof, shall be found defective any time before the final acceptance of the work, CONTRACTOR shall immediately make good such defect without compensation in a manner satisfactory to the Facilities Maintenance Supervisor.
- 13.4 If any materials furnished and brought on-site by CONTRACTOR for use in the SOW or selected for same shall be condemned by the Facilities Maintenance Supervisor as unsuitable or not in conformity with the specifications, CONTRACTOR must immediately cease using such materials and remove them immediately to a satisfactory distance from the vicinity of the work and at the conclusion of the work day, remove such items from the premises. If CONTRACTOR fails or neglects to remove condemned materials from the work site within two (2) DAYS after the service by the Facilities Maintenance

Supervisor of an order to remove such materials, the Facilities Maintenance Supervisor may remove the condemned materials and deduct the cost thereof from the monies due CONTRACTOR.

- 13.5 If CONTRACTOR fails or neglects to make ordered repairs and/or replacement of damaged property within ten (10) DAYS after the service of an order to do such repair and/or replacement, the Facilities Maintenance Supervisor, may make the ordered repairs and/or replacement and deduct the cost thereof from the monies due CONTRACTOR.
- 13.6 Prior to final acceptance, CONTRACTOR shall restore all areas affected by the SOW to the original state of cleanliness and repair all damage done to the premises, including the grounds, by his workmen and equipment.

14. INSURANCE

- 14.1 Commencement of Work. CONTRACTOR shall not be authorized to commence the SOW under this Contract until it has obtained approved insurance. Before beginning work hereunder, during the entire period of this Contract, for any extensions hereto, and for periods after the end of this Contract as may be indicated below, CONTRACTOR must have and maintain in place all of the insurance coverages required in this Section. CONTRACTOR's insurance shall comply with all items specified by this Contract. Any subcontractors shall be subject to all of the requirements of this Section and CONTRACTOR shall be responsible to obtain evidence of insurance from each subcontractor and provide it to CITY before the subcontractor commences work. Alternatively, CONTRACTOR's insurance may cover all subcontractors.
- 14.2 Insurance Company Requirements. All insurance policies used to satisfy the requirements imposed hereunder shall be issued by insurers admitted to do business in the State of California. Insurers shall have a current Best's rating of not less than A-:VII, unless otherwise approved by CITY.
- 14.3 Coverages, Limits and Policy Requirements. CONTRACTOR shall maintain the types of coverages indicated below. Except for Course of Construction Insurance, all other policies must be maintained during all maintenance periods subject to the same provisions of this Section 15.
- A. Comprehensive General Liability Insurance. A policy of comprehensive general liability insurance written on a per occurrence basis in an amount not less than either (i) a combined single limit of \$5,000,000.00 or (ii) bodily injury limits of \$1,000,000.00 per person, \$5,000,000.00 per occurrence and \$5,000,000.00 products and completed operations and property damage limits of \$250,000.00 per occurrence and \$250,000.00 in the aggregate.

- B. Commercial Auto Liability Insurance - a policy including all coverages provided by and to the extent afforded by Insurance Services Office form CA 0001, ed. 12/93, including Symbol 1 (any auto) with no special limitations affecting CITY. The minimum auto insurance coverage shall be five million (\$5,000,000) combined single limit.
- C. Policy Requirements. The policies set forth above shall comply with the following, as evidenced by the policies or endorsements to the policies:
- (i) CITY and its appointed and elected officers, employees, agents and volunteers shall be added as additional insured to the policy.
 - (ii) The insurer shall agree to provide CITY with thirty (30) days prior written notice, return receipt requested, of any cancellation, non-renewal or material change in coverage.
 - (iii) For any claims with respect to the SOW covered by this Contract, CONTRACTOR's insurance coverage shall be primary insurance as respects CITY and its elected and appointed officers, employees, agents and volunteers. Any insurance or self-insurance maintained by CITY and its elected and appointed officers, employees, agents and volunteers shall be excess of CONTRACTOR's insurance and shall not contribute with it.
- D. Professional Errors & Omissions - a policy with minimum limits of one million dollars (\$1,000,000.00) per claim and two million dollars (\$2,000,000.00) aggregate. This policy shall be issued by an insurance company which is admitted to do business in the State of California and shall contain a clause that the policy may not be canceled until thirty (30) days written notice, return receipt requested, is mailed to CITY.
- E. Course of Construction Insurance - CONTRACTOR shall provide course of construction insurance covering for "all risks" of loss in the amount of the completed value of the Work. The CITY and CONTRACTOR shall be named as co-loss payees and the insurer shall waive all rights of subrogation against the CITY. This policy shall be issued by an insurance company which is admitted to do business in the State of California and shall contain a clause that the policy may not be canceled until thirty (30) days written notice, return receipt requested, is mailed to the CITY. Course of Construction Insurance may be provided based on the amount of each separate Phase.
- F. Worker's Compensation and Employer's Liability Insurance - a policy which meets all statutory benefit requirements of the Labor Code, or other applicable law, of the State of California. The minimum coverage limits for said insurance shall be no less than one million dollars (\$1,000,000) per

claim. The policy shall be issued by an insurance company which is admitted to do business in the State of California and shall contain a clause that the policy may not be canceled without thirty (30) days prior written notice, return receipt requested, is mailed to CITY.

In accordance with the provisions of section 1860 of the California Labor Code, CONTRACTOR's attention is directed to the requirement that in accordance with the provisions of section 3700 of the California Labor Code, CONTRACTOR and every subcontractor will be required to secure the payment of compensation of his or her employees, or obtain a certificate of consent to self-insurance by the Director of Industrial Relations in accordance with the requirements of Section 3700 of the California Labor Code.

In accordance with the provisions of section 1861 of the California Labor Code, CONTRACTOR shall sign and file with the awarding body the following certification prior to performing any work on the Project:

"I am aware of the provisions of section 3700 of the Labor Code which require every employer to be insured against liability for worker's 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."

- 14.4 Additional Requirements. The procuring of such required policies of insurance shall not be construed to limit CONTRACTOR's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract. There shall be no recourse against CITY for payment of premiums or other amounts with respect thereto. CITY shall notify CONTRACTOR in writing of changes in the insurance requirements. If CONTRACTOR does not deposit copies of acceptable insurance policies or endorsements with CITY incorporating such changes within sixty (60) days of receipt of such notice, CONTRACTOR shall be deemed in default hereunder.
- 14.5 Deductibles. Any deductible or self-insured retentions over \$25,000 per occurrence must be declared to and approved by CITY. Any deductible exceeding an amount acceptable to CITY shall be subject to the following changes: either the insurer shall eliminate or reduce such deductibles or self-insured retentions with respect to CITY, its officers, employees, agents and volunteers (with additional premium, if any, to be paid by CONTRACTOR); or CONTRACTOR shall provide satisfactory financial guarantee for payment of losses and related investigations, claim administration and defense expenses.
- 14.6 Verification of Compliance. CONTRACTOR shall furnish CITY with original policies or certificates and endorsements effecting coverage required by this

Contract. The endorsements are to be signed by a person authorized by the insurer to bind coverage on its behalf. All documents are to be received and approved by CITY before the SOW commences. Not less than fifteen (15) days prior to the expiration date of any policy of insurance required by this Contract, CONTRACTOR shall deliver to CITY a binder or certificate of insurance with respect to each renewal policy, bearing a notation evidencing payment of the premium therefor, or accompanied by other proof of payment satisfactory to CITY. CONTRACTOR shall provide full copies of any requested policies to CITY within three (3) days of any such request by CITY.

- 14.7 Termination for Lack of Required Coverage. If CONTRACTOR, for any reason, fails to have in place, at all times during the term of this Contract, including any extension hereto, all required insurance and coverage, CITY may immediately obtain such coverage at CONTRACTOR's expense and/or terminate this Contract. CONTRACTOR shall indemnify, defend and hold harmless CITY and its elected and appointed officers, employees, agents and volunteers from any claim resulting from failure of either CONTRACTOR or any subcontractor to take out or maintain any insurance required by this Contract.

15. CITY'S RIGHT TO TERMINATE

- 15.1 CITY may terminate the Contract at its own discretion for any reason, including but not limited to its own convenience, lack of funding, or when conditions encountered make it impossible or impracticable to proceed, or when CITY is prevented from proceeding with the Contract by Act of God, by law, or by official action of a public authority and/or funding agency. CITY shall provide CONTRACTOR with thirty (30) day notice of intent to terminate Contract. Upon termination, CITY shall be liable to CONTRACTOR only for work done by CONTRACTOR up to and including the date of termination.
- 15.2 CONTRACTOR shall not be entitled to any lost profit in the event of termination.
- 15.3 CONTRACTOR may terminate this Contract at any time during the terms of the Contract by giving the CITY sixty (60) days written notice.

16. WAIVER

No waiver of any provision of this Contract shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any such waiver constitute a continuing or subsequent waiver of the same provision. No waiver shall be binding, unless executed in writing by the party making the waiver.

17. **NOTICE**

- 17.1 Whenever it shall be necessary for either party to serve notice on the other respecting the Contract, such notice shall be served by personal delivery or by registered mail, postage prepaid, return receipt requested, addressed as follows:

CITY: TITLE
 NAME
 1700 West 162nd Street
 Gardena, California 90247
 Phone:
 Mobile:
 Fax:
 e-mail:

CONTRACTOR: NAME
 Address
 Address
 Attn:
 Phone:
 Mobile :
 Fax:
 E-mail:

unless and until different addresses may be furnished in writing by either party to the other.

- 17.2 Notice shall be deemed to have been served upon personal delivery or on the third (3rd) calendar day after the same has been deposited in the United States postal service. This shall be a valid and sufficient service of notice for all purposes.

18. **ASSIGNMENT**

- 18.1 CONTRACTOR shall not assign the performance of the Contract, nor any part thereof, nor any monies due or to become due hereunder, without the prior written consent of CITY. If CONTRACTOR does assign without CITY's previous consent, the Contract may, at the option of CITY, be terminated, revoked, or annulled, and CITY shall be relieved and discharged from any and all liability and obligations growing out of the same to CONTRACTOR or his assigns.
- 18.2 Subject to the provision of this Section regarding assignment, the Contract shall be binding upon the heirs, executors, administrators, successors, and assigns of CONTRACTOR.

19. ATTORNEY'S FEES

Except as specifically provided for herein, attorney's fees shall not be awarded to either party in any action in law or in equity, including an action for declaratory relief, brought to enforce or interpret the provisions of this Contract or to assert any claim resulting or alleged to result from its performance.

20. DISPUTE AVOIDANCE AND RESOLUTION

20.1 Claims shall be resolved in accordance with Public Contract Code Section 9204 which reads in pertinent part as follows:

Upon receipt of a claim pursuant to this section, the public entity to which the claim applies shall conduct a reasonable review of the claim and, within a period not to exceed 45 days, shall provide the claimant a written statement identifying what portion of the claim is disputed and what portion is undisputed. Upon receipt of a claim, a public entity and a contractor may, by mutual agreement, extend the time period provided in this subdivision.

(B) The claimant shall furnish reasonable documentation to support the claim.

(C) If the public entity needs approval from its governing body to provide the claimant a written statement identifying the disputed portion and the undisputed portion of the claim, and the governing body does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the public entity shall have up to three days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide the claimant a written statement identifying the disputed portion and the undisputed portion.

(D) Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the public entity issues its written statement. If the public entity fails to issue a written statement, paragraph (3) shall apply.

(2) (A) If the claimant disputes the public entity's written response, or if the public entity fails to respond to a claim issued pursuant to this section within the time prescribed, the claimant may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the public entity shall schedule a meet and confer conference within 30 days for settlement of the dispute.

(B) Within 10 business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the public entity shall provide the claimant a written statement identifying the portion of the

claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the public entity issues its written statement. Any disputed portion of the claim, as identified by the contractor in writing, shall be submitted to nonbinding mediation, with the public entity and the claimant sharing the associated costs equally. The public entity and claimant shall mutually agree to a mediator within 10 business days after the disputed portion of the claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to applicable procedures outside this section.

(C) For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

(D) Unless otherwise agreed to by the public entity and the contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.

(E) This section does not preclude a public entity from requiring arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program, if mediation under this section does not resolve the parties' dispute.

(3) Failure by the public entity to respond to a claim from a contractor within the time periods described in this subdivision or to otherwise meet the time requirements of this section shall result in the claim being deemed rejected in its entirety. A claim that is denied by reason of the public entity's failure to have responded to a claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the claim or the responsibility or qualifications of the claimant.

21. MISCELLANEOUS PROVISIONS

21.1 Should a change be contemplated in the name or nature of CONTRACTOR's legal entity, CONTRACTOR shall first notify CITY in order that proper steps may be taken to have the change reflected in the Contract Documents.

- 21.2 The Contract shall be effective from and after the date that this Contract is signed by the representatives of CITY.
- 21.3 This Contract may be made in counterparts.
- 21.4 The captions of the articles, sections, subsections, paragraphs and subparagraphs of the Contract Documents are for reference only and are not to be construed in any way as a part of the Contract.
- 21.5 The rights and remedies contained in this Contract are cumulative, and in addition to and not in limitation of, any right or remedy at law or in equity to which CITY may be entitled.
- 21.6 CONTRACTOR shall at all times avoid conflicts of interest or the appearance of a conflict of interest in the performance of this Contract. If required, CONTRACTOR shall comply with the City's Conflict of Interest reporting requirements. CONTRACTOR understands that pursuant to Gardena Municipal Code sections 2.24.020H and 2.24.025G, it is forbidden to make any contribution to a candidate or committee of a candidate for a municipal office of the CITY, or to an officeholder, until the completion of services to be performed under this Contract.
- 21.7 This Contract shall be deemed a contract under the laws of the State of California and for all purposes shall be interpreted in accordance with such laws. Both parties hereby agree and consent to the exclusive jurisdiction of the courts of the State of California and that the venue of any action brought hereunder shall be Los Angeles County, California.
- 21.8 Records/Audits
- A. CONTRACTOR shall be responsible for ensuring accuracy and propriety of all billings and shall maintain all supporting documentation for a minimum of three (3) years from the completion date of the work under this Contract, including but not limited to, the following records:
- All accounts and records, including personnel, property and financial, adequate to identify and account for all costs pertaining to this Contract and assure proper accounting for all funds;
 - Records which establish that CONTRACTOR and any subcontractor who renders work under this Contract are in full compliance with the requirements of this Contract and all federal, state and local laws and regulations;

- Any additional records deemed necessary by CITY to assume verification of full compliance with this Contract.
- B. CITY shall have the right to audit CONTRACTOR's invoices and all supporting documentation for purposes of compliance with this Contract for a period of three years following the completion of work.
- C. Upon reasonable notice from CITY or any other governmental agency, CONTRACTOR shall cooperate fully with any audit of its billings conducted by, or of, CITY and shall permit access to its books, records and accounts as may be necessary to conduct such audits.

22. ENTIRE AGREEMENT

- 22.1 The Contract Documents integrate all terms and conditions in connection with the SOW called for herein and supersede all negotiations and prior understandings, either oral or in writing, in respect to the subject matter hereof.
- 22.2 Each and every provision of law and clause required to be inserted into the Contract Documents shall be deemed to be inserted therein, and if through mistake or otherwise any such provision is not inserted, or is not inserted correctly, then upon application of either party, the Contract Documents shall forthwith be amended in writing to make such insertion or correction.
- 22.3 The Contract Documents shall not be amended except by a writing duly executed by the parties.
- 22.4 This Contract shall be effective upon the date executed by the Mayor, which execution shall not take place until this Contract is executed by CONTRACTOR and all necessary documents are provided to CITY.

CITY OF GARDENA

Tasha Cerda, Mayor

CONTRACTOR

NAME OF CONTRACTOR

Name, Title

(Corporate Seal)

Attest:

Mina Semenza, City Clerk

APPROVED AS TO FORM:

ACKNOWLEDGEMENT OF CONTRACT

STATE OF CALIFORNIA _____)

)

COUNTY OF LOS ANGELES)

On _____, before me, _____

A Notary Public for the State of California, personally appeared _____

who proved to me on the basis of satisfactory evidence, to be the person who executed the Contract as _____

and that said person(s) acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the Contract, the persons, or the entity upon behalf of which the persons acted, executed the Contract.

I certify under Penalty of Perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(Seal)

Notary Public in and for said State

**CERTIFICATE REGARDING
WORKERS' COMPENSATION**

I am aware of the provisions of Section 3700 of the California 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.

CONTRACTOR.

Name, Title

Date