

CITY OF GARDENA CONSULTANT AGREEMENT WITH XYZ

This Agreement is entered into this _____ day of _____, 2022, by and between the **City of Gardena**, a municipal corporation ("City") and **XYZ**, a [state] [type of entity] ("Consultant"). Based on the mutual promises and covenants contained herein, the Parties hereto agree, as follows.

1. **RECITALS.** This Agreement is made and entered into with respect to the following facts:

- A. Whereas, City is desirous of obtaining Construction Management & Inspection (CMI) consultant services for the Gardena Community Aquatic and Senior Center Project, JN 978;
- B. Whereas, Consultant has represented that it is qualified by virtue of experience, training, education and expertise to accomplish these services; and
- C. Whereas, City has determined that the public interest, convenience and necessity require the execution of this Agreement; and
- D. Whereas, no official or employee of City has a financial interest, within the provisions of sections 1090-1092 of the California Government Code, in the subject matter of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions contained herein, the parties hereby agree as follows:

2. **TERM OF AGREEMENT.** This Agreement shall commence upon execution and shall continue until completion, unless earlier terminated as provided below.
 - A. Either party may terminate this Agreement, without cause, by giving thirty (30) days written notice to the other party.
 - B. City may terminate this Agreement for cause by giving thirty (30) days written notice to Consultant. Lack of funding shall be considered cause for terminating this Agreement.
 - C. Upon termination, Consultant shall: (1) promptly discontinue all services affected, unless the notice directs otherwise; and (2) promptly deliver to City all data, reports, estimates, summaries, and such other information and materials as may have been accumulated or prepared to date by Consultant in performing the services under this Agreement, whether completed or in progress. Consultant shall be entitled to reasonable compensation for the services it performs up to the date of termination; however, if the Agreement

is terminated by City for cause, other than lack of funding, or by Consultant without cause, City shall be entitled to deduct any costs it incurs payment to another consultant for Services, which duplicate Consultant's Services to date. In the event of termination for other than cause attributable to Consultant, Consultant shall be deemed released for liability for any work assigned but not completed as of the effective date of termination.

3. **SERVICES.** Consultant agrees to provide the services as specified in the City's Request for Proposal ("RFP"), **Exhibit A**, attached hereto and incorporated herein by this reference ("services"). Unless otherwise specified herein, Consultant shall, at its sole cost and expense, furnish all facilities, equipment and personnel which may be required for providing the Services pursuant to this Agreement.
4. **ADDITIONAL SERVICES.** If City determines that additional services are required to be provided by Consultant in addition to the Services set forth above, City shall authorize Consultant to perform such additional services in writing ("Additional Services"). Such Additional Services shall be specifically described and approved by City in writing prior to the performance thereof. Consultant shall be compensated for such Additional Services in accordance with the agreed upon charges therefore as set forth in the written authorization. No compensation shall be paid to Consultant for Additional Services which are not specifically approved by City in writing.
5. **CONSULTANT'S PROPOSAL.** This Agreement shall include Consultant's proposal or bid which is incorporated herein as **Exhibit B**. In the event of any inconsistency between the terms of the proposal and this Agreement, it shall be resolved by giving precedence in the following order: (a) The Agreement (b) Exhibit A (c) Exhibit B.
6. **PERSONNEL.** City has relied upon the professional training and ability of Consultant to perform the services hereunder as a material inducement to enter into this Agreement. Consultant shall provide properly skilled professional and technical personnel to perform all services under this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the removal of any person or persons assigned by Consultant to perform Services pursuant to this Agreement, Consultant shall remove any such person immediately upon receiving notice from City. During the term of this Agreement, Consultant shall provide the services specified in the proposal. Such individual(s) shall not be replaced without the prior written consent of City.
7. **PERFORMANCE BY CONSULTANT.** Consultant shall maintain or exceed the level of competency presently maintained by other similar practitioners in the State of California, for professional and technical soundness, accuracy and adequacy of all work, advice and material furnished under this Agreement.
8. **TIMING OF PERFORMANCE.** Time is of the essence with respect to Consultant's performance of the Services required by this Agreement. Consultant shall diligently and timely pursue and complete the performance of the Services required of it by this Agreement. City, in its sole discretion, may extend the time for performance of any Service.

9. **MONITORING OF CONSULTANT.** Consultant's performance of this Agreement shall be continuously monitored by the General Services Director/City Engineer. Consultant shall be notified in writing of any deficiency in the performance of this Agreement in a timely manner by the General Services Director/City Engineer. Consultant shall have five (5) business days from receipt of the notification to cure any deficiency to the reasonable satisfaction of the General Services Director/City Engineer. All costs for such corrections shall be borne by Consultant and shall not increase Consultant's fees due hereunder. Should the General Services Director/City Engineer determine that Consultant has not performed its obligation as stated in this Agreement in a satisfactory manner, City may terminate this Agreement for cause as specified in Section 2 above.

10. **COMPENSATION.** Consultant shall be compensated as follows:

- A. Amount. City shall compensate Consultant for services rendered pursuant to this Agreement at the rate specified in the attached fee proposal hereto and incorporated herein by reference. In no event shall compensation under this Agreement exceed [REDACTED] and 00/00 (\$###.##) without the prior written authorization of the City Council.
- B. Invoices and Payment. Payment by City to Consultant shall be made upon receipt and approval of invoices for Services rendered. For payment to be made, Consultant's invoice must include an itemization as to the services rendered, date(s) of service, direct and/or subcontract costs and be submitted on an official letterhead or invoice with Consultant's name, address, and telephone number referenced. City shall review the invoices to determine whether services performed, and documents submitted are consistent with this Agreement. Payment shall be made within forty-five (45) days following receipt of the invoice or City shall provide Consultant with a written statement objecting to the charges and stating the reasons therefor. Payment by City under this Agreement shall not be deemed a waiver of defects, even if such defects were known to City at the time of payment.
- C. Expenses. Consultant shall not be entitled to any additional compensation for expenses.

11. **INSURANCE REQUIREMENTS.**

- A. Commencement of Work. Consultant shall not commence work under this Agreement until it has obtained City approved insurance. Before beginning work hereunder, during the entire period of this Agreement, for any extensions hereto, and for periods after the end of this Agreement as may be indicated below, Consultant must have and maintain in place all of the insurance coverages required in this Section. Consultant's insurance shall comply with all items specified by this Agreement. Any subcontractors shall be subject to all the requirements of this Section and Consultant shall be responsible to obtain evidence of insurance from each subcontractor and

provide it to City before the subcontractor commences work. Alternatively, Consultant's insurance may cover all subcontractors.

- B. 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.
- C. Coverages, Limits and Policy Requirements. Consultant shall maintain the types of coverages and limits indicated below:
1. Commercial General Liability Insurance – a policy for occurrence coverage for bodily injury, personal injury and property damage, including all coverages provided by and to the extent afforded by Insurance Services Office Form CG 2010 ed. 10/93 or 11/85, with no special limitations affecting City. The limit for all coverages under this policy shall be no less than one million dollars (\$1,000,000.00) per occurrence.
 2. 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 limit for bodily injury and property damage liability shall be no less than one million dollars (\$1,000,000.00) per accident.
 3. Worker's Compensation and Employers 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 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.
 4. Professional Errors & Omissions ("E&O") – a policy with minimum limits of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate. Architects' and engineers' coverage shall be endorsed to include contractual liability. If the policy is written as a "claims made" policy, the retro date shall be prior to the start of the contract work. Consultant shall obtain and maintain, said E&O liability insurance during the life of this Agreement and for three years after completion of the work hereunder. This policy shall be issued by an insurance company which is admitted to do business in the State of California.

5. Policy Requirements. The policies set forth above shall comply with the following, as evidenced by the policies or endorsements to the policies:

- a. Additional insureds: "The City Gardena and its elected and appointed boards, officers, officials, agents, employees, and volunteers are additional insureds with respect to: liability arising out of activities performed by or on behalf of the Consultant pursuant to its contract with the City; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; automobiles owned, leased, hired, or borrowed by the Consultant."
- b. Notice: "Said policy shall not terminate, be suspended, or voided, nor shall it be cancelled, nor the coverage or limits reduced, until thirty (30) days after written notice is given to City."
- c. Other insurance: "The Consultant's insurance coverage shall be primary insurance as respects the City of Gardena, its officers, officials, agents, employees, and volunteers. Any other insurance maintained by the City of Gardena shall be excess and not contributing with the insurance provided by this policy."
- d. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the City of Gardena, its officers, officials, agents, employees, and volunteers.
- e. The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

D. Additional Requirements. The procuring of such required policies of insurance shall not be construed to limit Consultant's liability hereunder nor to fulfill the indemnification provisions and requirements of this Agreement. There shall be no recourse against City for payment of premiums or other amounts with respect thereto. City shall notify Consultant in writing of changes in the insurance requirements. If Consultant does not deposit copies of acceptable insurance policies or endorsements with City incorporating such changes within sixty (60) days of receipt of such notice, Consultant shall be deemed in default hereunder.

E. 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 Consultant); or Consultant shall provide satisfactory financial guarantee for payment of

losses and related investigations, claim administration and defense expenses.

- F. Verification of Compliance. Consultant shall furnish City with original policies or certificates and endorsements effecting coverage required by this Agreement. The endorsements are to be signed by a person authorized by the insurer to bind coverage on its behalf. All endorsements are to be received and approved by City before work commences. Not less than fifteen (15) days prior to the expiration date of any policy of insurance required by this Agreement, Consultant 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. Consultant shall provide full copies of any requested policies to City within three (3) days of any such request by City.
- G. Termination for Lack of Required Coverage. If Consultant, for any reason, fails to have in place, at all times during the term of this Agreement, including any extension hereto, all required insurance and coverage, City may immediately obtain such coverage at Consultant's expense and/or terminate this Agreement.
- H. Non-Limiting. Nothing in this Section shall be construed as limiting in any way, the indemnification provision contained in this Agreement, or the extent to which Consultant may be held responsible for payments of damages to persons or property.

12. INDEMNIFICATION. Consultant agrees to defend, indemnify, hold free and harmless the City, its elected officials, officers, agents, employees and volunteers, at Consultant's sole expense, from and against any and all claims, actions, suits or other legal proceedings brought against the City, its elected officials, officers, agents, employees and volunteers arising out of the performance of the Consultant, its employees, and/or authorized subcontractors, of the work undertaken pursuant to this Agreement. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by the Consultant, its employees, and/or authorized subconsultants, but shall be required whenever any claim, action, complaint, or suit asserts as its basis the negligence, errors, omissions or misconduct of the Consultant, its employees, and/or authorized subconsultants, and/or whenever any claim, action, complaint or suit asserts liability against the City, its elected officials, officers, agents, employees and volunteers based upon the work performed by the Consultant, its employees, and/or authorized subconsultants under this Agreement, whether or not the Consultant, its employees, and/or authorized subconsultants are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, the Consultant shall not be liable for the defense or indemnification of the City for claims, actions, complaints or suits arising out of the sole negligence or willful misconduct of the City. **Notwithstanding the foregoing, to the extent Consultant's services are subject to Civil Code Section 2782.8, the above indemnity and defense shall be limited to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence,**

recklessness, or misconduct of Consultant. This provision shall supersede and replace all other indemnity provisions contained either in the City's specifications or Consultant's Proposal, which shall be of no force and effect.

13. **COOPERATION.** In the event any claim or action is brought against City relating to Consultant's performance or services rendered under this Agreement, Consultant shall render any reasonable assistance and cooperation which City might require.
14. **INDEPENDENT CONTRACTOR.** Consultant is and shall be acting at all times as an independent contractor and not as an employee of City. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of City. Consultant shall secure, at its sole expense, and be responsible for any and all payment of Income Tax, Social Security, State Disability Insurance Compensation, Unemployment Compensation, and other payroll deductions for Consultant and its officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder. Consultant shall indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Consultant further agrees to indemnify and hold City harmless from any failure of Consultant to comply with the applicable worker's compensation laws. City shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this paragraph.
15. **PERS ELIGIBILITY INDEMNIFICATION.** In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in PERS as an employee of City and entitlement to any contribution to be paid by City for employer contribution and/or employee contributions for PERS benefits.

16. **NON-LIABILITY OF CITY.** No official, employee, agent or volunteer of City shall be personally liable for any default or liability under this Agreement.

17. **OWNERSHIP OF WORK PRODUCT.** All documents or other information created, developed, or received by Consultant shall, for purposes of copyright law, be deemed works made for hire for City by Consultant as City employee(s) for hire and shall be the sole property of City. Consultant shall provide City with copies of these items upon demand, and in any event, upon termination or expiration of this Agreement.

18. **CONFIDENTIALITY CLAUSE.** Consultant acknowledges that some of the material and information that may come into its possession or knowledge in connection with this Agreement or its performance may consist of information that is exempt from disclosure to the public or other unauthorized persons under either state or federal ("Confidential Information"). Confidential Information includes, but is not limited to, names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver's license numbers, medical data, law enforcement records, agency source code or object code, agency security data, or information identifiable to an individual that relates to any of these types of information. Consultant agrees to hold Confidential Information in strictest confidence and not to make use of Confidential Information for any purpose other than the performance of this Agreement, to release it only to authorized employees or Sub-consultants requiring such information for the purposes of carrying out this Agreement, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make the information known to any other party without City's express written consent or as provided by law. Consultant agrees to release such information or material only to employees or Sub-consultants who have signed a nondisclosure agreement, the terms of which have been previously approved by City. Consultant agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to Confidential Information.

"Personal information" including, but not limited to, "Protected Health Information" (PHI) under Health Insurance Portability And Accountability Act (HIPAA), individuals' names, addresses, phone numbers, birth dates, and social security numbers collected, used, or acquired in connection with this Agreement shall be protected against unauthorized use, disclosure, modification or loss.

HIPAA establishes national minimum standards for the use and disclosure of certain health information. The Consultant must comply with all HIPAA requirements and rules when determined applicable by the City. If City determines that (1) City is a "covered entity" under HIPAA, and that (2) Consultant will perform "business associate" services and activities covered under HIPAA, then at City's request, Consultant agrees to execute City's Agreement in compliance with HIPAA.

Consultant shall ensure its directors, officers, employees, Sub-consultants or agents use personal information solely for the purposes of accomplishing the services set forth herein. Consultant and its Sub-consultants agree not to release, divulge,

publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the City or as otherwise required by law.

Any breach of this provision may result in termination of the Agreement and demand for return of all personal information. Moreover, Consultant will indemnify and hold the City harmless from and against all losses and damages resulting from any unauthorized or improper disclosure, dissemination or use of the information as a result, in whole or in part, of Consultant's action or inaction.

19. **NONUSE OF INTELLECTUAL PROPERTY OF THIRD PARTIES.** Contractor shall not use, disclose or copy any intellectual property of any third parties in connection with work carried out under this Agreement, except for intellectual property for which Contractor has a license. Contractor shall indemnify and hold City harmless against all claims raised against City based upon allegations that Contractor has wrongfully used intellectual property of others in performing work for City, or that City has wrongfully used intellectual property developed by Contractor pursuant to this Agreement.
20. **WAIVER OR BREACH.** No waiver of any provision of this Agreement 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.
21. **COMPLIANCE WITH LAWS.** Consultant warrants that it shall perform the services required by this Agreement in compliance with all applicable Federal and California employment laws, including, but not limited to, those laws related to minimum hours and wages; occupational health and safety; fair employment and employment practices; workers' compensation insurance and safety in employment; and all other Federal, State and local laws and ordinances applicable to the services required under this Agreement. Consultant shall indemnify and hold harmless City from and against all claims, demands, payments, suits, actions, proceedings, and judgments of every nature and description including attorneys' fees and costs, presented, brought, or recovered against City for, or on account of any liability under any of the above-mentioned laws, which may be incurred by reason of Consultant's performance under this Agreement.
22. **CONFLICT OF INTEREST AND REPORTING.** Consultant shall at all times avoid conflicts of interest or the appearance of a conflict of interest in the performance of this Agreement. If required, Consultant shall comply with the City's Conflict of Interest reporting requirements. Consultant 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 Agreement.
23. **NON-DISCRIMINATION.** Consultant covenants there shall be no discrimination

based upon race, color, creed, religion, sex, marital status, age, handicap, national origin, or ancestry, in activity pursuant to this Agreement.

24. **FORCE MAJEURE.** Consultant shall not be in default for failing to perform in accordance with the terms of this Agreement if such failure arises out of causes beyond the control and without the fault or negligence of Consultant.
25. **ASSIGNMENT.** Consultant shall not assign or subcontract any of its obligations pursuant to this Agreement, nor any part thereof, except for any monies due the Consultant, without the prior written consent of City. Such consent by City shall not be unreasonably withheld. Consultant shall be fully responsible to City for all work performed by assignees or subcontractors.
26. **NOTICES.** Whenever it shall be necessary for either party to serve notice on the other respecting this Agreement, such notice shall be in writing and shall be given by personal service upon the party to be notified, or by deposit of the same in the custody of the United States Postal Service, postage prepaid, addressed to the party to be notified as follows:

To City: City of Gardena
 1700 West 162nd Street
 Gardena, California 90247
 Attn: Allan Rigg
 Director of Public Works

To Consultant: XYZ
 Address
 XXXX, CA #####
 Attn: Name
 Tittle

Notices shall be deemed to have been served upon the date of personal service or three (3) working days after the same has been deposited in the United States Postal Service.

27. **LICENSED STATUS.** Consultant shall, at all times during the term of this Agreement, have in full force and effect, all licenses required of it by law, including, but not limited to, a City Business License.
28. **FAMILIARITY WITH WORK.** By executing this Agreement, Consultant warrants that: (1) it has investigated the work to be performed; (2) it has investigated the site of the work and is aware of all conditions there; and (3) it understands the difficulties and restrictions of the work under this Agreement. Should Consultant discover any conditions materially differing from those inherent in the work or as represented by City, it shall immediately inform City and shall not proceed, except at Consultant's own risk, until written instructions are received from City.

29. **PUBLIC RECORD ACT DISCLOSURE.** Consultant has been advised and is aware

that this Agreement and all reports, documents, information and data, including, but not limited to, computer tapes, discs or files furnished or prepared by Consultant, or any of its subcontractors, pursuant to this Agreement and provided to City may be subject to public disclosure as required by the California Public Records Act (California Government Code section 6250 *et seq.*). Exceptions to public disclosure may be those documents or information that qualify as trade secrets, as that term is defined in the California Government Code section 6254.7, and of which Consultant informs City of such trade secret. The City will endeavor to maintain as confidential all information obtained by it that is designated as a trade secret. The City shall not, in any way, be liable or responsible for the disclosure of any trade secret including, without limitation, those records so marked if disclosure is deemed to be required by law or by order of the Court.

30. MAINTENANCE OF RECORDS. Consultant shall maintain for a minimum of three (3) years from the completion date of the Services under this Agreement, the following records:

- A. All accounts and records, including personnel, property and financial, adequate to identify and account for all costs pertaining to this Agreement and assume proper accounting for all funds;
- B. Records which establish that Consultant and all subcontractors who render Services under this Agreement are in full compliance with the requirements of this Agreement and all federal, state and local laws and regulations;
- C. Any additional records deemed necessary by City to assume verification of full compliance with this Agreement.
- D. The aforementioned records shall be made available to City or any authorized representative thereof upon request for audit.

31. BINDING EFFECT. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties hereto.

32. GOVERNING LAW. This Agreement shall be interpreted and construed according to the laws of the State of California. Any action commenced about this Agreement shall be filed in the appropriate branch of the Los Angeles County Municipal or Superior Court.

33. SECTION HEADINGS. The Section headings used in this Agreement are for reference purposes only and shall have no binding effect.

34. AUTHORITY TO EXECUTE. The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement.

35. ATTORNEY'S FEES. In the event that legal action is necessary to enforce the provisions of this Agreement, or to declare the rights of the parties hereunder, the parties agree that the prevailing party in the legal action shall be entitled to recover

attorney's fees and court costs from the opposing party.

36. **PREPARATION OF AGREEMENT.** Each party acknowledges that it has had an adequate opportunity to review each and every provision in this Agreement and to submit the same to counsel and other consultants for review and comment and that the parties jointly drafted this Agreement. No provision of this Agreement or any Assignment shall be construed more strictly against one party than the other party by reason that one or the other party proposed, drafted or modified such provision or any other existing or proposed provision.
37. **SEVERABILITY.** If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.
38. **ENTIRE AGREEMENT.** This Agreement contains the entire understanding between City and Consultant. Any prior agreement, promises, negotiations or representations not expressly set forth herein are of no force or effect. Subsequent modifications to this Agreement shall be effective only if in writing and signed by both parties. This Agreement may be signed by the parties hereto in separate counterparts, including both counterparts that are executed on paper and counterparts that are in the form of electronic signatures. Electronic signatures include facsimile or email electronic signatures. Each executed counterpart shall be deemed an original. All counterparts, taken together, constitute the executed Agreement. If any term, condition or covenant of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall be valid and binding.

The parties hereby acknowledge and agree that electronic records and electronic signatures, as well as facsimile signatures, used in connection with the execution of this Agreement and electronic signatures, facsimile signatures or signatures transmitted by electronic mail in so-called pdf format shall be legal and binding and shall have the same full force and effect as if a paper original of this Agreement had been delivered and had been signed using a handwritten signature. City and Consultant (i) agree that an electronic signature, whether digital or encrypted, of a party to this Agreement is intended to authenticate this writing and to have the same force and effect as a manual signature, (ii) intend to be bound by the signatures (whether original, faxed or electronic) on any document sent or delivered by facsimile or, electronic mail, or other electronic means, (iii) are aware that the other party will rely on such signatures, and (iv) hereby waive any defenses to the enforcement of the terms of this Agreement based on the foregoing forms of signature. If this Agreement has been executed by electronic signature, all parties executing this document are expressly consenting under the United States Federal Electronic Signatures in Global and National Commerce Act of 2000 ("E-SIGN") and California Uniform Electronic Transactions Act ("UETA")(Cal. Civ. Code § 1633.1, et seq.), that a signature by fax, email or other electronic means shall constitute an Electronic Signature to an Electronic Record under both E-SIGN and UETA with respect to this specific transaction.

IN WITNESS WHEREOF, City and Consultant have executed this Agreement as of the date first hereinabove set forth.

CITY OF GARDENA

CONSULTANT – XYZ

Tasha Cerda, Mayor

Name

ATTEST:

Sign:

Title:

Mina Semenza, City Clerk

Name

APPROVED AS TO FORM:

Sign:

Title:

Carmen Vasquez, City Attorney