

CONTRACT SERVICES AGREEMENT

By and Between

CITY OF CARSON

and

WITT O'BRIEN'S, LLC

**AGREEMENT FOR CONTRACT SERVICES
BETWEEN THE CITY OF CARSON AND
WITT O'BRIEN'S, LLC**

THIS AGREEMENT FOR CONTRACT SERVICES (herein "Agreement") is made and entered into this ____ day of _____, 2023 by and between the CITY OF CARSON, a California municipal corporation ("City") and WITT O'BRIEN'S, LLC, a Delaware limited liability company ("Consultant"). City and Consultant are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "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 Carson'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 Service shall include the Consultant’s scope of work or bid 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 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.

1.5 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 Contract Officer.

1.6 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.

1.7 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.

1.8 Additional Services.

City shall have the right 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 Contract Officer 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 of up to ten percent (10%) of the Contract Sum or \$25,000, whichever is less; or, in the time to perform of up to one hundred eighty (180) days, may be approved by the Contract Officer. Any greater increases, taken either separately or cumulatively, must be approved by the City Council. 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.

1.9 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 **One Hundred Thousand Dollars (\$100,000)** (the "Contract Sum"), unless additional compensation is approved pursuant to Section 1.8.

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 Contract Officer 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. The invoice shall detail charges for all necessary and actual expenses by the following categories: labor (by sub-category), travel, materials, equipment, supplies, and sub-contractor contracts. Sub-contractor charges shall also be detailed by such categories. Consultant shall not invoice City for any duplicate services performed by more than one person.

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.

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 Contract Officer 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 Contract Officer in writing of the causes of the delay. The Contract Officer 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 Contract Officer such delay is justified. The Contract Officer'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 but not exceeding one (1) years from the date hereof, except as otherwise provided in the Schedule of Performance (Exhibit "D").

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:

<u>Chelsea Morganti, CFM</u>	<u>Project Manager/Mitigation Planner</u>
(Name)	(Title)

Erin Buchanan, CFM
(Name)

Project Executive
(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 Contract Officer.

The Contract Officer shall be Nora Garcia, Emergency Services Manager, or such person as may be designated by the City Manager. It shall be the Consultant's responsibility to assure that the Contract Officer 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 Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer. The Contract Officer 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.

The Consultant shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, during the entire term of this Agreement including any extension thereof, the following policies of insurance which shall cover all elected and appointed officers, employees and agents of City:

(a) General Liability Insurance (Occurrence Form CG0001 or equivalent). A policy of comprehensive general liability insurance written on a per occurrence basis for bodily injury, personal injury and property damage. The policy of insurance shall be in an amount not less than \$1,000,000.00 per occurrence or if a general aggregate limit is used, then the general aggregate limit shall be twice the occurrence limit.

(b) Worker's Compensation Insurance. A policy of worker's compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for the Consultant against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by the Consultant in the course of carrying out the work or services contemplated in this Agreement.

(c) Automotive Insurance (Form CA 0001 (Ed 1/87) including "any auto" and endorsement CA 0025 or equivalent). A policy of comprehensive automobile liability insurance written on a per occurrence for bodily injury and property damage in an amount not less than \$1,000,000. Said policy shall include coverage for owned, non-owned, leased, hired cars and any automobile.

(d) Professional Liability. Professional liability insurance appropriate to the Consultant's profession. This coverage may be written on a "claims made" basis, and must include coverage for contractual liability. The professional liability insurance required by this Agreement must be endorsed to be applicable to claims based upon, arising out of or related to services performed under this Agreement. The insurance must be maintained for at least 5 consecutive years following the completion of Consultant's services or the termination of this Agreement. During this additional 5-year period, Consultant shall annually and upon request of the City submit written evidence of this continuous coverage.

(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".

(g) Broader Coverages and Higher Limits. Notwithstanding anything else herein to the contrary, if Consultant maintains broader coverages and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverages and/or higher limits maintained by Consultant.

5.2 General Insurance Requirements.

All of the above policies of insurance shall be primary insurance and shall name the City, its elected and appointed officers, employees and agents as additional insureds and any insurance maintained by City or its officers, employees or agents may apply in excess of, and not contribute with Consultant's insurance. The insurer is deemed hereof to waive all rights of subrogation and contribution it may have against the City, its officers, employees and agents and their respective insurers. Moreover, the insurance policy must specify that where the primary insured does not satisfy the self-insured retention, any additional insured may satisfy the self-insured retention.

All of said policies of insurance shall provide that said insurance may not be amended or cancelled by the insurer or any party hereto without providing thirty (30) days prior written notice by certified mail return receipt requested to the City. In the event any of said policies of insurance are cancelled, the Consultant shall, prior to the cancellation date, submit new evidence of insurance in conformance with Section 5.1 to the Contract Officer.

No work or services under this Agreement shall commence until the Consultant has provided the City with Certificates of Insurance, additional insured endorsement forms or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by the City. City reserves the right to inspect complete, certified copies of and endorsements to all required insurance policies at any time. Any failure to comply with the reporting or other provisions of the policies including breaches or warranties shall not affect coverage provided to City.

All certificates shall name the City as additional insured (providing the appropriate endorsement) and shall conform to the following "cancellation" notice:

CANCELLATION:

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATED THEREOF, THE ISSUING COMPANY SHALL MAIL THIRTY (30)-DAY ADVANCE WRITTEN NOTICE TO CERTIFICATE HOLDER NAMED HEREIN.

[to be initialed]

Consultant Initials

City, its respective elected and appointed officers, directors, officials, employees, agents and volunteers are to be covered as additional insureds as respects: liability arising out of activities Consultant performs; products and completed operations of Consultant; premises owned, occupied or used by Consultant; or any automobiles owned, leased, hired or borrowed by Consultant. The coverage shall contain no special limitations on the scope of protection afforded to City, and their respective elected and appointed officers, officials, employees or volunteers. 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.

Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City or its respective elected or appointed officers, officials, employees and volunteers or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration, defense expenses and claims. The Consultant agrees that the requirement to provide insurance shall not be construed as limiting in any way the extent to which the Consultant may be held responsible for the payment of damages to any persons or property resulting from the Consultant's activities or the activities of any person or persons for which the Consultant is otherwise responsible nor shall it limit the Consultant's indemnification liabilities as provided in Section 5.3.

In the event the Consultant subcontracts any portion of the work in compliance with Section 4.5 of this Agreement, the contract between the Consultant and such subcontractor shall require the subcontractor to maintain the same policies of insurance that the Consultant is required to maintain pursuant to Section 5.1, and such certificates and endorsements shall be provided to City.

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.

5.4 Sufficiency of Insurer.

Insurance required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated “A” or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the Risk Manager of the City (“Risk Manager”) due to unique circumstances. If this Agreement continues for more than 3 years duration, or in the event the risk manager determines that the work or services to be performed under this Agreement creates an increased or decreased risk of loss to the City, the Consultant agrees that the minimum limits of the insurance policies may be changed accordingly upon receipt of written notice from the Risk Manager.

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 Contract Officer 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 Contract Officer 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 Contract Officer such reports concerning the performance of the services required by this Agreement as the Contract Officer 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 Contract Officer 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 Contract Officer 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 Contract Officer.

(b) Consultant, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the Contract Officer 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 attorneys 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 Los Angeles, 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 Los Angeles, 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 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 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 Contract Officer. 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 Contract Officer. 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 Contract Officer thereafter in accordance with the Schedule of Compensation or such as may be approved by the Contract Officer, 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.

7.8 Termination for Default of Consultant.

If termination is due to the failure of the Consultant to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 7.2, take over the work and prosecute the same to completion by contract or otherwise, and the Consultant shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated (provided that the City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to the Consultant for the purpose of set-off or partial payment of the amounts owed the City as previously stated.

7.9 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 Contract Officer. 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.A. §§ 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 Contract Officer (with her/his name and City title), City of Carson, 701 East Carson, Carson, California 90745 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 any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original, whether the signatures are originals, electronic, facsimiles or digital. All such counterparts shall together constitute but one and the same Agreement.

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 “non-interests” 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) the 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 CARSON, a municipal corporation

Lula Davis-Holmes, Mayor

ATTEST:

Dr. Khaleah K. Bradshaw, City Clerk

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

Sunny K. Soltani, City Attorney
[brj]

CONSULTANT:

WITT O'BRIEN'S, LLC, a Delaware limited liability company

By: _____
Name:
Title:

By: _____
Name:
Title:

Address: 818 Town & Country Blvd., Ste. 200
Houston, TX 77024

If Consultant is a limited liability company, any one of the following options will satisfy City's signature requirements pursuant to the Corporations Code. Option A: 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. Option B: Signatures required from two managers unless the LLC is managed by one manager per its articles of organization, in which case only one signature from that manager is required. Option C: One signature required from any member unless the LLC is manager-managed per its articles of organization. Option D: One signature required from any manager if the LLC is manager-managed per its articles of organization. CONSULTANT'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF ORGANIZATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO CONSULTANT'S BUSINESS ENTITY.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On _____, 2023 before me, _____, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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.

Signature: _____

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

<p><input type="checkbox"/> CAPACITY CLAIMED BY SIGNER</p> <p><input type="checkbox"/> INDIVIDUAL</p> <p><input type="checkbox"/> CORPORATE OFFICER</p> <p>_____</p> <p><input type="checkbox"/> PARTNER(S) <input type="checkbox"/> TITLE(S) LIMITED</p> <p><input type="checkbox"/> GENERAL</p> <p><input type="checkbox"/> ATTORNEY-IN-FACT</p> <p><input type="checkbox"/> TRUSTEE(S)</p> <p><input type="checkbox"/> GUARDIAN/CONSERVATOR</p> <p><input type="checkbox"/> OTHER _____</p> <p>_____</p> <p>SIGNER IS REPRESENTING: (NAME OF PERSON(S) OR ENTITY(IES))</p> <p>_____</p> <p>_____</p>	<p>DESCRIPTION OF ATTACHED DOCUMENT</p> <p>_____</p> <p>TITLE OR TYPE OF DOCUMENT</p> <p>_____</p> <p>NUMBER OF PAGES</p> <p>_____</p> <p>DATE OF DOCUMENT</p> <p>_____</p> <p>SIGNER(S) OTHER THAN NAMED ABOVE</p>
---	--

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On _____, 2023 before me, _____, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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.

Signature: _____

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

<p><input type="checkbox"/> CAPACITY CLAIMED BY SIGNER</p> <p><input type="checkbox"/> INDIVIDUAL</p> <p><input type="checkbox"/> CORPORATE OFFICER</p> <p>_____</p> <p><input type="checkbox"/> PARTNER(S) <input type="checkbox"/> TITLE(S) LIMITED</p> <p><input type="checkbox"/> <input type="checkbox"/> GENERAL</p> <p><input type="checkbox"/> ATTORNEY-IN-FACT</p> <p><input type="checkbox"/> TRUSTEE(S)</p> <p><input type="checkbox"/> GUARDIAN/CONSERVATOR</p> <p><input type="checkbox"/> OTHER _____</p> <p>_____</p> <p>SIGNER IS REPRESENTING: (NAME OF PERSON(S) OR ENTITY(IES))</p> <p>_____</p> <p>_____</p>	<p>DESCRIPTION OF ATTACHED DOCUMENT</p> <p>_____</p> <p>TITLE OR TYPE OF DOCUMENT</p> <p>_____</p> <p>NUMBER OF PAGES</p> <p>_____</p> <p>DATE OF DOCUMENT</p> <p>_____</p> <p>SIGNER(S) OTHER THAN NAMED ABOVE</p>
--	--

EXHIBIT “A”
SCOPE OF SERVICES

I. Consultant will perform the following Services:

- A. General:** Provide professional consulting services for the update of the City’s 2013 Hazard Mitigation Plan (“HMP” or “Plan”), which is based on sound planning processes and accounts for the risks and capabilities of the City and its internal and external partners. The HMP must comply with all applicable FEMA and CalOES regulations and standards. The update to the HMP must be approved by FEMA, CalOES, and the City Council to be considered complete. Consultant shall act as the project manager, primary investigator, and primary author of the HMP, and will be required to report to FEMA, OES and the HMP Planning Team as necessary throughout the term of the Agreement. A HMP Planning Team (also referred to herein as the “Planning Team” or “HMPT”) consisting of core representatives from the City, County, community partners, and Consultant will be formed by the City’s Contract Officer. The Planning Team will meet at least once a month, virtually, if needed, to review progress and address Plan development needs. Consultant shall provide technical and administrative services including, but not limited to, coordinating monthly Planning Team meetings (can be done virtually), communications, presentations, documentation of the planning process and bi-weekly status reports on budget and work progress. Tasks to complete the services are as follows:

1. Task 1: Establish the Planning Process and Resources

PROJECT MANAGEMENT

Upon issuance of the Notice to Proceed, Consultant will work with the City to establish the programmatic foundation and working relationships; this ensures City staff have a clear understanding of the steps in the mitigation planning process, including what documentation and information are needed to meet FEMA and State requirements.

Consultant will do the following work:

a. Organize the required resources to ensure the final HMP is both responsive and tailored to the City’s needs. Consultant’s methodology and project approach shall incorporate feedback from the City and other stakeholders while ensuring full regulatory compliance.

b. Develop a productive working strategy that maximizes the input of City staff while minimizing disruption to City staff’s day-to-day work. Consultant will work with the City to establish the programmatic foundation and productive working relationships. This includes setting a clear understanding of the steps in the mitigation planning process including what documentation and information are needed to meet FEMA and State requirements.

c. Consultant's Project Manager (PM), will schedule a kick-off meeting with the City's Contract Officer to validate the scope, schedule, and budget; ensure all parties have a clear view of project goals and milestones; confirm a common understanding of expectations; and establish communication protocols. In addition, PM will work with the City to identify key decision points in the process where City actions and/or approval will be needed. Agreement upon these decision points will be important to the project's success. The outcomes of the kick-off meeting will be documented in Consultant's Project Management Plan (PMP), which will serve as the roadmap for Consultant's management of the project. The PMP will identify high-level tasks, activities, deliverables, schedule, key milestones, and the staffing plan. The PMP will provide the basis for monitoring, controlling, and reporting on the work, including the comparison of planned vs. actual schedule and costs, work accomplishments, and product delivery. Direct coordination with the City will be linked to a designated "point" team member, to provide continuity and consistency. These dedicated team representatives will be available to check in as often as weekly.

d. Consultant's PM will conduct an internal kick-off meeting with assigned project staff to ensure their full understanding of project roles, responsibilities, reporting protocols, and objectives. Throughout the project, Consultant will update the City and key stakeholders on project progress. This information will be delivered during project meetings and in monthly status reports (or on a schedule to be determined based on workload, event occurrence, and other needs). Consultant will maintain steady project progress and document all technical work activities and resource allocations and maintain a master project schedule that tracks all ongoing tasks. The schedule will be a living document, updated by PM, and used to ensure all deliverables are completed in a timely manner, within scope, and on budget. Unless otherwise directed, Consultant will conduct this work virtually, implementing the tools and processes Consultant has developed while working with other clients during the COVID-19 pandemic. Collaboration with City's key stakeholders can take place remotely via webinar, conference calls, or other means without losing data quality or integrity. Throughout the lifecycle of the sub-grant, Consultant will track project progress and will assist with subrecipient quarterly reports and other CalOES reporting requirements. Consultant will identify any deviations from the project schedule or budget and coordinate on any necessary modifications regarding the terms of the sub-grant award. Consultant is fully versed in maintaining federal compliance with grants and sub-grants and can provide expert technical assistance to the City in maintaining this or future awards.

DATA AND INFORMATION GATHERING

Consultant will review all existing relevant documents, data, and information provided by national and state-level datasets, the City, and neighboring jurisdictions as background for the planning effort. These documents will include the current HMP, the State of California's HMP, annual capital improvement plans, the City's Emergency Operations Plan, surrounding communities' mitigation plans, historic structures and asset registries, flood management plans, regulatory plans,

mitigation project implementation plans/studies, and other relevant datasets, as appropriate.

PARTICIPANT AND STAKEHOLDER OUTREACH

Consultant will develop an initial list of entities and representatives that should be a part of the planning process. Formation of a Planning Team that includes representatives from the community helps build whole-community support and buy-in. The Planning Team will also include representative members from City agencies and departments, the private sector, and possibly other Federal, state, and regional partners like the Governor's Office of Planning and Research (OPR). The HMP Planning Team will be finalized with input from the City. Not every entity that has data to contribute to the planning effort will want or need to be a full participating entity. Stakeholder outreach is essential to collecting input, sharing resources, and establishing ties while respecting the needs and time of these contributors. Consultant will make recommendations for stakeholder outreach that includes entities within the community that support community lifelines; academic organizations; Federal or regional agencies; utilities; private-sector businesses and organizations (e.g., major employers that sustain community lifelines); special districts that share mitigation goals or cross boundaries; and nonprofit organizations that work directly with underserved and socially vulnerable populations or oversee natural or cultural resources.

INITIAL MEETING WITH THE PLANNING TEAM

Once the Planning Team has been established, Consultant will prepare for and conduct a Planning Team Kick-Off Meeting to discuss:

- Plan Update Overview — provide a clear understanding of the steps in the mitigation planning process;
- A draft work plan and project schedule, including the dates of all required meetings;
- Any additional resources and/or reference materials required for the process;
- Reporting and documentation requirements needed to meet FEMA and State requirements;
- Expectations for the Planning Team as a planning body and the required level of involvement from each team participant.

Consultant's staff will prepare all materials to facilitate Plan development meetings, including agendas, sign-in sheets, meeting notes and minutes, and any documents for discussion. Consultant will establish review and distribution timeframes, so the Planning Team members and other interested parties will receive

pre-reads prior to scheduled meetings. Attendees and other interested parties will receive meeting notes following each meeting. These notes will be included in the final project plan. Meetings can be held both in-person and virtually. Throughout the planning, research, and draft phases of the project, Consultant will meet consistently with stakeholders, technical experts, and department/organizational working groups. The Plan development process will be thoroughly documented in accordance with 44 CFR, §201.6(c)(1)).

ONGOING COORDINATION

Consultant's goal is to help its clients, such as the City, integrate mitigation into the full spectrum of community planning, so that communities are able to assess other planning efforts and align them with mitigation concepts and principles. Overall, this community based method has the effect of strengthening each community's resiliency and safety. Consultant's processes will match FEMA's recommendations for how communities should both conceptualize and implement hazard mitigation planning. Throughout the process of meeting with the Planning Team, collecting data and gathering information, reviewing existing plans and policies, and soliciting feedback and ideas from the public, Consultant will document the actions taken, and how the Plan was developed. This will include incorporating meeting materials (e.g., agendas, notes, minutes, sign-in sheets), stakeholder comments, and public comments into the final HMP.

DATA COLLECTION AND REVIEW

Consultant will utilize a comprehensive approach in reviewing existing relevant documents, data, and information provided by national-, state-, and regional-level datasets, the County, the City, neighboring jurisdictions, and partner agencies. As appropriate, Consultant will also review other relevant documents and datasets for incorporation—including the City's general plan, capital improvement plans, emergency operations plan, the Seismic Assessment Report, and any other relevant documents identified by the HMP Planning Team including land-use plans, historic structures and asset registries, floodplain management plans, ordinances, and other studies.

SOLICIT AND INCORPORATE INPUT FROM THE PUBLIC

Consultant will conduct public engagements during the planning process that may include meetings, webinars, or surveys. Surveys can be distributed electronically, handed out during City fairs or other public events, or collected during public meetings. Outreach activities that have been successful for other community planning efforts include implementing engaging branding, social media campaigns, radio and/or print advertisements, and entering participants that complete the survey into a prize drawing. These engagements will be tailored to the City's needs and preferences, and designed to both provide information and solicit opinions, feedback, and comments. All public and stakeholder participation activities will be documented throughout the Plan in accordance with 44 CFR §201.6(b). Consultant

will illustrate how the Plan is compliant through deliverables and in the Plan Review Tool (PRT). Consultant will utilize social media campaigns, advertisements, handouts at community gatherings, or more formal in-person meetings and ensure these engagements set the groundwork to facilitate meaningful discussion and gain community consensus. Workshops can be held either in person, virtually, or via a hybrid model to review the Plan and collect feedback.

EQUITY

Consultant will tailor each outreach strategy as needed to meet City's communities' needs, so that those who wish to meaningfully participate can make progress and benefit from hazard mitigation. Work will be completed in compliance with the Senate Bill 1000 (2015) (and any other applicable) requirements for inclusion of environmental justice components in local planning strategies.

2. **Task 2: Assess Risks and Capabilities**

Consultant will conduct a comprehensive hazard identification assessment that fully evaluates the location, severity, and impact of past disaster events within the City, and projects the likelihood of future occurrences. Consultant will then conduct a risk assessment that addresses the most threatened and most vulnerable areas and populations, taking into consideration an estimate of losses and development since the last plan, and future development under consideration. These activities will include hazard profiling, mapping, and risk/vulnerability assessments in accordance with 44 CFR, §201.6(c)(2)).

HAZARD IDENTIFICATION AND PROFILES

Starting with a review of the 2018 California State Hazard Mitigation Plan, the Los Angeles County Hazard Mitigation Plan, the City's 2013 Hazard Mitigation Plan, publicly available plans from surrounding jurisdictions, and other existing planning mechanisms and tools, Consultant will collect information on each identified natural hazard for consideration by the HMPT, including earthquakes, floods, wildfires, and sea-level rise. New hazards will also be considered and presented to the Planning Team for determination. At the discretion of the Planning Team, man-made hazards can also be identified for consideration and inclusion. Should the HMP Planning Team also wish to include the planning requirements for the Rehabilitation of High-Hazard Potential Dam Grant Program, Consultant will fully support this effort. Any hazard that is excluded from the Plan will be omitted based on documented rationale and confirmed by the Planning Team. The hazards validated as potential risks to all areas of the City will be examined in light of documented occurrences and will be profiled by Consultant's team. Consultant will use the best available data to determine and document historical occurrences; probability of future occurrences; extent, magnitude, and geographic boundaries; and provide an overview and analysis of the City's vulnerability to the hazards identified.

HAZARD MAPPING

Consultant will work closely with the HMP Planning Team to ensure all required hazard maps are updated and the locations of hazardous areas within the City are identified. Many natural hazards have geographic boundaries, including hazards the City identified in its last plan. These hazards can be mapped along with various levels of probability for events of specific magnitude or frequency. Using FEMA's Risk Map, ArcGIS desktop software, and all available authoritative sources of geospatial data, mappable hazards can be visualized with levels of probability for events of specific magnitude or frequency. Updated data and maps are fundamental to ensure they are accessible and useful for implementing mitigation strategies and to determine the need for new or revised policies that regulate land use and development.

VULNERABILITY ANALYSIS TOOLS

Consultant will use applications and toolkits to gather and synthesize data to assess the jurisdictions most threatened and most vulnerable to damage and loss associated with hazard events. These include:

- The National Risk Index tool will assist with the identification of potential risks of natural hazards and gather data on annual losses, social vulnerability, and community resilience. Consultant will use the geospatial data to identify the hazard vulnerability for each jurisdiction and help inform the mitigation strategy.
- FEMA's Risk Map will identify flood risk vulnerability for the participating communities and help guide effective land-use mitigation strategies. Consultant will utilize FEMA Risk Maps, Digital Flood Insurance Rate Maps (DFIRMs), Digital Elevation Modal (DEMs) data, and spatial analysis utilizing GIS desktop software to determine flood risks throughout the region.
- The U.S. Climate Resilience Toolkit is used to explore hazard vulnerability and allows for interactive mapping of past and future conditions. The toolkit also includes case studies that will help guide mitigation strategies.
- Hazus-MH was designed, developed, and is managed by FEMA's Natural Hazards Risk Assessment Program to estimate building and infrastructure loss in the event of a disaster. Consultant will use Hazus-MH to calculate exposure for the area, characterize the level or intensity, and calculate the potential economic losses and structural damage due to hurricanes, floods, or earthquakes. Hazus-MH can be used to show the extent and magnitude for actual or arbitrary scenarios.
- ESRI's ArcGIS Desktop software and tools will be used throughout the Plan to develop maps and other visualizations to depict hazard information,

assess these hazards in respect to population and jurisdictional assets, and to depict geographic boundaries. Consultant will provide an overview and analysis of each participating jurisdiction's vulnerability level to the identified hazards.

ASSET INVENTORY

Consultant will use existing data sources validated by the HMP Planning Team to inventory assets exposed or vulnerable to the hazards identified and profiled in the preceding task. City-owned or operated assets and buildings, critical facilities, infrastructure, cultural resources, and historic assets will be included, as will Repetitive Loss (RL) and Severe Repetitive Loss (SRL) properties (as applicable). Consultant will gather and organize geospatial data for each asset, including location, structural data, and valuation. Consultant will produce a database as an appendix to the HMP that will outline the structure's details—including location, structural data, and valuation—categorization of the facility, and potential losses. Consultant will use ArcGIS desktop software to produce cartographic products of these assets in the Plan which will include their location overlaid onto areas of hazard vulnerability. Identifying areas of vulnerability and potential losses will also show the City's development trends and help identify needs for future considerations.

VULNERABILITY AND LOSS ESTIMATION

Using the vulnerability analysis tools, asset data, vulnerable population data, and impacts due to climate change, the updated assessment will provide an overview and analysis of potential losses and vulnerabilities, which will be useful to help inform mitigation strategies that enhance resiliency. The output will include data visualizations and calculations that show vulnerable structures and populations. Using ArcGIS, asset inventory data and population data will be overlaid onto areas of identified hazard vulnerability that will then identify the potential exposure. Identifying areas of vulnerability and potential losses will also show the City's development trends and help identify needs for future land-use considerations.

RISK ASSESSMENT

Consultant will describe the impact each hazard would have on the assets identified by the City, also taking into consideration population growth in hazard areas and changes in risk profile due to factors such as climate change. The assessment of each jurisdiction's vulnerability will include the most threatened or vulnerable areas. Using FEMA's National Risk Index tool and U.S. Census data, the assessment will also include an overview of potential exposure to City's communities' most vulnerable populations. This section will include land-use maps and discussions on development trends, which will assist with advisement on future land-use decisions. NFIP-insured structures that have been repetitively damaged by floods will be identified and analyzed, however property addresses will be redacted

in keeping with the Privacy Act of 1974. Consultant will develop a hazard mapping geodatabase to help inform mitigation strategies. Any data limitations will be noted and identified as part of the mitigation strategy.

INCORPORATE CLIMATE CONSIDERATIONS

Climate adaptation planning is one method communities can use to identify ways they could be harmed by future conditions—and to prepare for those conditions. Consultant, utilizing the U.S. Climate Resilience Toolkit, can assess vulnerability and identify feasible implementation strategies to reduce climate change risk. Evaluating the plan for necessary adjustments due to changing future conditions like climate change is a requirement of the Local Mitigation Planning Policy Guide which takes effect on April 19, 2023, and of the 2015 Senate Bill 379 - requirements for inclusion of climate adaptation and resiliency strategies in local plans. However, the HMP Planning Team has discretion over how this conversation will take shape and if the Climate Resilience Toolkit planning process is a good fit for incorporation. Incorporating the vulnerability analysis tools, asset data, vulnerable population data, and impacts due to climate change, the updated assessment will provide an enhanced overview of potential losses and vulnerabilities and will help inform mitigation strategies that enhance resiliency.

ONLINE/INTERACTIVE MAPPING

Depending on the City's needs, online interactive mapping tools and applications can be provided to enhance the Plan and the public's awareness of the hazards addressed in the Plan. These products would be built using the most updated and applicable ESRI ArcGIS technology and can range from basic interactive maps imbedded within existing City websites to full-fledged mapping applications that allow for the identification of hazards relative to specific properties or places of interest.

CAPABILITIES ASSESSMENT

Based on input from the Planning Team, Consultant will assess the City's capacity for pre- and post-disaster hazard management programs. This process will include:

- Consideration of policies, any pre-existing programs related to hazard mitigation, and development in hazard-prone areas.
- A discussion of the City's funding capabilities and staffing levels for hazard mitigation projects and programs.
- Evaluation of adopted and/or implemented ordinances that reduce risk and/or increase resilience.
- Any other criteria identified by Consultant as relevant and necessary to this discussion, such as any infrastructure in place that positively or negatively

impacts vulnerability to disasters and the City's floodplain management program.

3. **Task 3: Develop a Mitigation Strategy**

Consultant will take a community-based approach to hazard mitigation planning. The goal is to help the City integrate mitigation into the full spectrum of community planning. Once the foundations of the Hazard Identification, Risk Assessment, Vulnerabilities, and Capabilities sections are complete, the team will have the tools to update the City's mitigation strategy. This will form the basis for the development of the Plan.

HAZARD MITIGATION GOALS

Based on input from the Planning Team, and in consideration of the results of its risk assessment, Consultant will work with the Planning Team to update and/or develop new mitigation goals and prepare a draft listing for review and validation. Goals will be finalized during a Planning Team meeting. These goals will guide the selection of activities to mitigate and reduce potential losses to the City.

Consultant will use the following procedures to validate and develop mitigation goals:

- **Outreach Findings.** Evaluate themes that emerged during planning meetings and/or outreach activities. These themes might include the need for improved public awareness about hazards or the need for a better public notification system during emergencies. For every theme identified, a corresponding ability or authority to expand and/or improve the community's capability will also be identified.
- **Jurisdictional Consistency.** Correlate existing plans and other policy documents to ensure hazard mitigation goals are consistent with the goals of other community plans and objectives previously established by the jurisdictions within the City. Mitigation goals should complement and leverage existing plans and policies.
- **State Hazard Mitigation Goals.** The State Hazard Mitigation Plan documents the State's goals for reducing risks and allocating resources. It is strategic to consider aligning the City's goals with the State Hazard Mitigation Plan's objectives. In addition, Consultant will work with the individual participating agencies during Planning Team meetings to identify and address issues of importance to their communities, by setting goals and, if appropriate, mitigation measures. This includes identifying opportunities to improve upon existing capabilities for pre- and post-disaster mitigation management.

HAZARD MITIGATION ACTIONS

Consultant will prepare a comprehensive range of mitigation actions for specific hazards that will reduce potential impacts, while taking into consideration the community's interest in representation, resilience, and the goals of environmental protection and economic growth. Consultant will then work with the HMPT to identify the mitigation measures that best achieve the City's goals. To evaluate the mitigation measures, Consultant will use the industry best practice FEMA's STAPLEE Method, which will help guide the team in selecting mitigation actions. The STAPLEE Method uses seven criteria for evaluating a mitigation action: social, technical, administrative, political, legal, economic, and environmental. Within each of these criteria are additional considerations that could reach back to the risk assessment or other sources of information. For example, economic considerations must include evaluation of both the current economic environment and projected changes. Cost-effective mitigation actions that can be funded in a current or upcoming budget cycle are more likely to be recommended for implementation than actions requiring general obligation bonds or other funding that would incur long-term debt. During our evaluation, Consultant will consider:

- What benefits does the action provide?
- Are the costs reasonable given the likely benefits and the size of the problem?
- Does the action contribute to other community economic goals?
- Are there current sources of funding that can be used to implement the action?
- Does the action need to be put on hold for implementation until an outside source of funding can be identified and obtained?

Based on the results of the risk assessment and additional evaluation criteria, Consultant will identify mitigation actions and ensure each action is properly prioritized. Each activity in the strategy will include an explanation for how the activity contributes to the overall mitigation strategy (i.e., how risk or vulnerability is reduced or eliminated). Consultant will strengthen the linkage of mitigation actions to funding opportunities and include an implementation plan/timeframe to help keep the Plan actionable. It is important to establish a schedule for implementing the mitigation actions prescribed in the Plan. The Plan deliverable will include a method for measuring implementation. ***This includes a recommended timeline for implementing each mitigation measure over the next five years, a summarization of each action, its level of priority, which party or agency is responsible for the action, how the action will be funded, the benefit-cost review result, and the action's level of feasibility.***

The Plan section will clearly establish the process by which the mitigation strategy was developed and will clearly and succinctly describe the mitigation strategy for the next five-year cycle.

MONITORING AND MAINTENANCE PLAN

The final steps are the mechanisms to keep the Plan actionable throughout the five-year planning cycle. It is important to consider how the community will engage with and maintain the plan over time. This encourages progress toward implementation of the established mitigation strategies. Consultant will develop a maintenance process that identifies how, when, and by whom the Plan will be monitored, evaluated, and updated over time.

It is also important to establish a process for how the mitigation plan will be integrated into other planning mechanisms and vice versa. Consultant will help validate this section with input from the HMPT, based on best practices and lessons learned since the last plan update.

4. **Task 4: Adopt and Implement the Plan**

REVIEW AND FINALIZE

Once the updated HMP is complete, Consultant will submit a preliminary draft for review by the HMP planning team. Consultant will also complete the Region IX Local Mitigation Plan Review Tool to illustrate how the Plan is compliant with 44 CFR § 201.6. Any comments received during the Planning Team's review will be consolidated and edits will be tracked noting how the revisions were addressed. After initial edits, Consultant will make the Plan available for public comment. Feedback received during the public comment period will be reviewed and consolidated. Edits made by Consultant's planners will be tracked and Consultant will note how the comments were addressed in the final version of the Plan.

When the draft is finalized, Consultant will submit the Plan for state review following the California Enhanced State Hazard Mitigation Plan requirements. This includes:

- One (1) hard copy of the latest final draft of the HMP document ready for Cal OES review;
- An electronic version of the HMP document on a CD or USB drive;
- An electronic copy of the Region IX Local Mitigation Plan Review Tool in a Word document file (or other editable format) with the "Location In Plan" field completed for each element, on a CD or USB drive.

Consultant will prepare responses and/or revisions to all requests for clarification from the City, the Planning Team, the State of California, and FEMA Region IX.

PLAN ADOPTION

Once the City receives confirmation of Approval Pending Adoption (APA) status from FEMA, Consultant will assist with any questions during the City adoption

process. Once the Plan is adopted, proof of adoption will be forwarded to Cal OES and FEMA Region IX.

- B.** After Plan adoption, Consultant’s team will be available, at no additional cost, to meet with the City’s planning team on an annual basis to review the mitigation strategy and discuss applicable updates, for the purpose of ensuring the Plan remains actionable throughout the five-year cycle. Consultant will be also available, at no additional cost, to assist with questions regarding upcoming mitigation funding opportunities and potential cost share requirements, so the City can coordinate fiscal budget planning and mitigation project prioritization.

II. As part of the Services, Consultant will prepare and deliver the following tangible work products to the City:

- A.** Complete draft Plan provided to HMP Planning Team for review by September 30, 2023.
- B.** Revised draft Plan, incorporating edits per HMP Planning Team, public comment, and CalOES feedback, with confirmation of Approval Pending Adoption (APA) status from FEMA, presented to City Council for adoption by December 31, 2023. Upon adoption, Consultant will immediately prepare a finalized Plan and forward it to CalOES and FEMA Region IX.
- C.** All Plan files, including GIS shapefiles, hazard maps, and source documents in ArcGIS/ESRI shapefile format and PDF format – upon Plan finalization.
- D.** All project documentation, including sign-in sheets, photos, invitations, minutes, agendas, and copies of presentations from all Planning Meetings – upon Plan finalization.
- E.** The updated Plan in MS Word and PDF Formats – upon Plan finalization.
- F.** 3 hard copies of the Final FEMA and City Council-approved Plan (actual copying costs to be paid as Reimbursable Expenses per Section 2.3 of this Agreement) – upon Plan finalization.

Note: Consultant will retain all data, records, and documentation for the preparation of required items.

III. In addition to the requirements of Section 6.2, during performance of the Services, Consultant will keep the City apprised of the status of performance by delivering the following status reports:

- A.** Project kick-off meeting.
- B.** Planning Team meetings – monthly, or more frequently as requested by Contract Officer.

- C. Throughout the project, Consultant will update the City and key stakeholders on project progress. This information will be delivered during project meetings and in monthly status reports (or on a more frequent schedule to be determined based on workload, event occurrence, and other needs). To ensure Consultant maintains steady project progress, Consultant will document all technical work activities and resource allocations and maintain a master project schedule that tracks all ongoing tasks. The schedule will be a living document, updated by Consultant and available to City upon request of Contract Officer, and will be used to ensure all deliverables are completed in a timely manner and within scope, and on budget (although it is understood the scope of services is to be completed at the firm fixed rates as provided in Exhibit “C”, Schedule of Compensation, regardless of the actual time/expense incurred by Consultant to complete the work, as stated in Section 1.8).

IV. 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.

V. Consultant will utilize the following personnel to accomplish the Services:

- A. Erin Buchanan, CFM – Project Executive
- B. Chelsea Morgati, CFM – Project Manager/Mitigation Planner
- C. Steven Foss - Mitigation Planner
- D. Kristen Martin, CFM – Mitigation Planner
- E. Candace Snipes – GIS and Hazus Specialist
- F. Cathy L. Walker, GISP – GIS and Hazus Specialist

EXHIBIT “B”
SPECIAL REQUIREMENTS
(Superseding Contract Boilerplate)

(added text shown in ***bold italics***, deleted text shown in ~~strikethrough~~)

I. Section 3.4, Term, is hereby amended as follows:

“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 but not exceeding ***five (5)*** ~~one (1)~~ years from the date hereof, except as otherwise provided in the Schedule of Performance (Exhibit ‘D’).”

II. Section 5.3, Indemnification, is hereby amended as follows:

“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~~ ***as a direct result of*** 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~~ ***directly resulting*** 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~~ ***as a direct result of*** 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~~ ***directly resulting from*** 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~~ ***as a direct result of*** 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.

In no event (whether or not such Party has previously been advised of the possibility of such damages) shall either Party be liable for any exemplary, punitive, incidental, special, indirect or consequential damages of any kind, including, without limitation, any loss of profits or revenue, loss of use of property or equipment and business interruption losses, regardless of the cause of such damages, and regardless of whether the claim is based in contract, tort, strict liability or otherwise.

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~~ ***provisions of this section*** shall be binding on successors and assigns of Consultant and shall survive termination of this Agreement."

III. Section 7.3, "Retention of Funds," is hereby amended as follows:

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 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. ***Prior to deducting or withholding any amount payable to Consultant, City shall notify Consultant of any amounts that may be in dispute, and shall allow Consultant time to rectify, to the extent time permits between the date of such notice and the date the amount payable by City would otherwise be due.***"

IV. Section 7.8, Termination for Default of Consultant,” is hereby amended as follows:

“7.8 Termination for Default of Consultant.

If termination is due to the failure of the Consultant to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 7.2, take over the work and prosecute the same to completion by contract or otherwise, and the Consultant shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated (provided that the City shall use reasonable efforts to mitigate such damages), and City, *with prior notification to the Consultant and time to rectify (to the extent time permits between the date of such notice and the date on which payment would otherwise be due)*, may withhold any payments to the Consultant for the purpose of set-off or partial payment of the amounts owed the City as previously stated.”

V. Section 9.1, “Notice,” is hereby amended as follows:

“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, *sent by email with delivery receipt*, or sent by prepaid, first-class mail, in the case of the City, to the City Manager and to the attention of the Contract Officer (with her/his name and City title), City of Carson, 701 East Carson, Carson, California 90745 and in the case of the Consultant, to *the attention of the Director of Contracts & Compliance, 818 Town & Country Blvd., Suite 200 Houston, Texas 77024 USA contractrequests@wittobriens.com with a copy to cjoiner@wittobriens.com; For Legal Notices, a copy shall be provided to: Witt O’Brien’s, LLC. Attention: Legal Counsel 2200 Eller Drive Fort Lauderdale, Florida 33316 USA Email: blong@ckor.com with a copy to cjoiner@wittobriens.com* 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.”

EXHIBIT "C"
SCHEDULE OF COMPENSATION

I. Consultant shall perform the tasks listed in the scope of services at the following firm fixed rates:

	RATE	TIME	SUB-BUDGET
Task 1: Establish Planning Process	\$10,860	See Exh. D, §I	\$10,860
Task 2: Assess Risks and Capabilities	\$47,920	See Exh. D, §I	\$47,920
Task 3: Develop Mitigation Strategy	\$22,600	See Exh. D, §I	\$22,600
Task 4: Adopt and Implement the Plan	\$16,200	See Exh. D, §I	\$16,200
Reimbursable Expenses (copying, travel if needed):	\$2,420	TBD	\$2,420

II. Within the budgeted amounts for each Task, and with the approval of the Contract Officer, funds may be shifted from one Task sub-budget to another so long as the Contract Sum is not exceeded per Section 2.1, unless Additional Services are approved per Section 1.8.

III. The City will compensate Consultant for the Services performed upon submission of a valid invoice. 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.

IV. The total compensation for the Services shall not exceed \$100,000 as provided in Section 2.1 of this Agreement.

V. For any additional work which may be authorized that is not listed within the scope of services, Consultant's hourly billing rates for all personnel are as follows:

- A.** Project Executive: \$150
- B.** Project Manager: \$130
- C.** Mitigation Planner II: \$120
- D.** GIS Specialist II: \$138
- E.** GIS Specialist I: \$100

EXHIBIT “D”
SCHEDULE OF PERFORMANCE

I. Consultant shall perform all services timely in accordance with the project schedule to be developed by Consultant and subject to the written approval of the Contract Officer, provided the tasks shall be completed by no later than the following dates:

Deadline Date

- | | | |
|-----------|---------------|---------------------------|
| A. | Task 1 | April 30, 2023 |
| B. | Task 2 | June 30, 2023 |
| C. | Task 3 | September 30, 2023 |
| D. | Task 4 | December 31, 2023 |

II. Consultant shall deliver the following tangible work products to the City by the following dates:

- A.** See Exhibit A, Section II.

III. The Contract Officer may approve extensions for performance of the services in accordance with Section 3.2.