

**CONTRACT SERVICES AGREEMENT**

**By and Between**

**CITY OF CARSON**

**and**

**SWAYZER CORPORATION**

**AGREEMENT FOR CONTRACT SERVICES  
BETWEEN THE CITY OF CARSON AND  
SWAYZER CORPORATION**

THIS AGREEMENT FOR CONTRACT SERVICES (herein “Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2024 by and between the CITY OF CARSON, a California municipal corporation (“City”) and SWAYZER CORPORATION, a California corporation (“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. City shall also have the right to increase the Contract Sum and authorize unanticipated increased services within the Scope of Services performed by Consultant. For all purposes under this Section 1.8, any increase in compensation of up to the amount of contingency approved by the City Council at the time the Agreement was awarded to Consultant, if any, taken either separately or cumulatively, or any increase in the time to perform of up to one hundred eighty (180) days and which are not detrimental to the interest of the City, may be approved by the City's Contract Officer. Any greater increases, taken either separately or cumulatively, must be approved by the City Council. 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.

1.10 Compliance with Labor and Wage Laws.

Certain portions of the Services may be subject to prevailing wages under the Labor Code and to the extent such is true, the below provisions will apply.

(a) Public Work. The Parties acknowledge that the work to be performed under this Agreement is a "public work" as defined in Labor Code Section 1720 and that this Agreement is therefore subject to the requirements of Division 2, Part 7, Chapter 1 (commencing with Section 1720) of the California Labor Code relating to public works contracts and the rules and regulations established by the Department of Industrial Relations ("**DIR**") implementing such statutes. The

work performed under this Agreement is subject to compliance monitoring and enforcement by the DIR. Consultant shall post job site notices, as prescribed by regulation.

(b) Registration with DIR. Pursuant to Labor Code section 1771.1, Consultant and all subcontractors must be registered with, and pay an annual fee to, the DIR prior to and during the performance of any work under this Agreement.

(c) Prevailing Wages. Consultant shall pay prevailing wages to the extent required by Labor Code Section 1771. Pursuant to Labor Code Section 1773.2, copies of the prevailing rate of per diem wages are on file at City Hall and will be made available to any interested party on request. By initiating any work under this Agreement, Consultant acknowledges receipt of a copy of the DIR determination of the prevailing rate of per diem wages, and Consultant shall post a copy of the same at each job site where work is performed under this Agreement. If this Agreement is subject to the payment of federal prevailing wages under the Davis-Bacon Act (40 U.S.C. § 3141 *et seq.*), then Consultant shall pay the higher of either the state or federal prevailing wage applicable to each laborer.

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

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

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

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

(h) Penalties for Excess Hours. Consultant shall comply with and be bound by the provisions of Labor Code Section 1813 concerning penalties for workers who work excess hours.

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

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

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

(j) Consultant's Responsibility for Subcontractors. For every subcontractor who will perform work under this Agreement, Consultant shall be responsible for such subcontractor's compliance with Division 2, Part 7, Chapter 1 (commencing with Section 1720) of the California Labor Code, and shall make such compliance a requirement in any contract with any subcontractor for work under this Agreement. Consultant shall be required to take all actions necessary to enforce such contractual provisions and ensure subcontractor's compliance, including without limitation, conducting a review of the certified payroll records of the subcontractor on a periodic basis or upon becoming aware of the failure of the subcontractor to pay his or her workers the specified prevailing rate of wages. Consultant shall diligently take corrective action to halt or rectify any such failure by any subcontractor.

## **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 Four Hundred Eleven Thousand Three Hundred Fifty Two Dollars and Sixty Eight Cents (**\$411,352.68**) (the “Contract Sum”), unless additional compensation is approved pursuant to Section 1.8. In the event City elects to exercise its options to extend the Term pursuant to Section 3.4 hereof, the Contract Sum will increase by an annual not to exceed amount of Four Hundred Eleven Thousand Three Hundred Fifty Two Dollars and Sixty Eight Cents (**\$411,352.68**) for each Extension Term.

## 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>Ezekiel W. Swayzer</u>	<u>Project Manager</u>
(Name)	(Title)



<u>Elijah Swayzer III</u>	<u>Operations Manager</u>
(Name)	(Title)
<hr/>	
(Name)	(Title)

It is expressly understood that the experience, knowledge, capability and reputation of the foregoing principals were a substantial inducement for City to enter into this Agreement. Therefore, the foregoing principals shall be responsible during the term of this Agreement for directing all activities of Consultant and devoting sufficient time to personally supervise the services hereunder. All personnel of Consultant, and any authorized agents, shall at all times be under the exclusive direction and control of the Principals. For purposes of this Agreement, the foregoing Principals may not be replaced nor may their responsibilities be substantially reduced by Consultant without the express written approval of City. Additionally, Consultant shall utilize only competent personnel to perform services pursuant to this Agreement. Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff and subcontractors, if any, assigned to perform the services required under this Agreement. Consultant shall notify City of any changes in Consultant's staff and subcontractors, if any, assigned to perform the services required under this Agreement, prior to and during any such performance.

4.2 Status of Consultant.

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

4.3 Contract Officer.

The Contract Officer shall be Modesto Bolanos, Park Maintenance Superintendent, or as otherwise directed 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 (Coverage Form ISO CGL CG 00 01 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, with Employer's Liability insurance coverage limits of at least \$1,000,000.00.

(c) Automotive Insurance (Coverage Form ISO CA 00 01 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) 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.

(e) 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. Products/completed operations coverage shall extend a minimum of three (3) years after project completion. Coverage shall be included on behalf of the insured for covered claims arising out of the actions of independent contractors. 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, 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 Agreement except as specifically provided in the following Section for termination for cause. The City reserves the right to terminate this Agreement 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 Agreement 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  
[rjl]

CONSULTANT:

SWAYZER CORPORATION, a California corporation

By: \_\_\_\_\_  
Name: Samuel Swayzer  
Title: President

By: \_\_\_\_\_  
Name: Ezekiel Swayzer  
Title: Chief Financial Officer

Address: 1665 E. Del Amo Blvd.  
Carson, CA 90746

**Two corporate officer signatures required when Consultant is a corporation, with one signature required from each of the following groups: 1) Chairman of the Board, President or any Vice President; and 2) Secretary, any Assistant Secretary, Chief Financial Officer or any Assistant Treasurer. CONSULTANT’S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, 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 \_\_\_\_\_, 2024 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.

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

**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 \_\_\_\_\_, 2024 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.

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

**I. Consultant will perform the following mowing and landscape maintenance Services:**

**1. GENERAL**

The Work to be done under this Contract shall include furnishing all labor, materials, fuel, and equipment necessary for the provision of the turf and park maintenance services as set forth in the contract, including the attachments hereto, for various City parks, facilities, City Hall and the Community Center.

1.1 Contractor shall have the duty to mow and edge all turf areas located at City parks and facilities listed in Exhibit A and blow and or sweep any visible grass clippings on sidewalks and hardscape as part of normal maintenance as specified in the contract. Maintenance frequencies shall be those specified in this contract. A general table of the minimum maintenance frequencies is shown in Exhibit B.

1.2 Contractor shall not work or perform any operation, particularly during periods of inclement weather, which may destroy or damage vegetation, ground cover, or turf areas. The Community Services Director, or designees, shall have the authority to suspend the work, wholly or in part, for such period as he/she may deem necessary, due to unsuitable weather or other conditions considered unfavorable for the suitable prosecution of the work.

1.3 Contractor shall be required to assign a designated English-speaking foreman as Project Manager. This individual will be the contact person for this project and must be available to respond to inquiries, walkthroughs, and inspections of the service contract as required. The project Manager shall be on site for a minimum of fifteen (15) hours per week. At least one member of any maintenance crew at each maintenance area shall be able to read and speak English fluently. All Contractor's personnel shall wear and maintain presentable uniforms complete with a nametag.

1.4 The designated foreman shall perform a maintenance inspection weekly of all areas within the maintenance areas.

1.7 Contractor shall schedule his operations so as not to interfere with the public's use of the maintenance areas. The contractor shall conduct its operations to provide the maximum safety for the public and to offer the least possible obstruction and inconvenience to the public, or disruption to the peace and quiet of the area around which the services are performed.

**2. AREA TO BE MAINTAINED**

2.1 Contractor shall maintain turf and landscape areas in Exhibit A and incorporated herein by this reference.

2.2 Contractor hereby acknowledges that before submitting his bid for this Contract, Contractor has visited all existing areas to be maintained, verified the approximate size of the turf areas, noted for each location the proposed work, and informed themselves fully as to all conditions that might affect the work specified. The contractor shall not be relieved of liability under this Agreement, nor the City be held liable,



with a replacement tree at Contractor's expense. Tree replacement size and replacement species shall be determined by the City Representative. After tree wells are trimmed, they shall be cleared of any debris by blowing or sweeping.

#### **4. TRASH AND LITTER CONTROL**

4.1 Contractor shall patrol all Parks daily, seven (7) days per week, removing but not limited to all litter, debris, paper, rocks, glass, animal feces and any undesirable materials from the site. Contractor shall replace bag liners in trash receptacles and maintain picnic areas clean. Contractor shall patrol all parking lots and pedestrian ways at least once daily to maintain the area free of trash and undesirable materials.

4.2 Contractor shall provide plastic bag liners for all trashcans in the parks and facilities. Bag liners shall be changed daily or on an as needed basis. The City provides these trashcans. The Contractor may use City dumpsters located at the facility.

4.3 Litter pickup shall be completed as early in the day as possible, but in no event later than 10:00 a.m.

4.4 City shall supply trash receptacles to replace damaged trash receptacles. Contractor shall transport them from the City yard and place them per the direction of the City Representative.

4.5 Contractor shall patrol the park as frequently as necessary to maintain clean facilities during holidays, and on high-use days. Holidays that traditionally require at least two (2) daily patrols are: Easter week, Memorial Day, Independence Day, Labor Day and Christmas week. Peak weekends requiring two (2) patrols daily shall be all weekends during the months of July through October. The second patrol for holidays or peak weekends shall be no earlier than 1:00 p.m. and be scheduled per direction of the City Representative.

#### **5. PESTICIDE**

5.1 Pesticides shall be approved by the City Representative prior to use. A written recommendation of proposed pesticides, including commercial name, concentrations, allocation rates, usage and reentry time shall be prepared by a licensed California Pest Control Advisor and site specific schedule submitted a minimum of fourteen (14) days prior to intended use. No work shall begin until written approval of use is obtained and a notice of intent has been filed with the Los Angeles County Agricultural Commissioner's office, as required. Copies of Material Safety Data Sheets and specimen labels shall be given the City prior to pesticide use on City property.

5.2 Chemicals shall only be applied by those persons possessing a valid California Qualified Applicator license/certificate. Application shall be in strict accordance with all governing regulations. Records of all operations shall be kept per California Department of Pesticide Regulations.

5.3 Records of all pesticides used by the Contractor on City property will be submitted by the fifth working day of the month to the City's Representative. The contractor is responsible to maintain site and date specific records of all pesticide and fertilizer application. The records shall be retained in accordance with Department of Pesticide Regulations.

5.4 Pesticides shall be applied in a manner to avoid contamination of non-target areas. Precautionary

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6.6 Contractor shall maintain mulch at a depth of two (2) inches in all areas. Use of any mulch product shall be dependent upon submission of a sample for approval by the City Representative. The supplier must be able to demonstrate the suitability of the product for use in public rights-of-way by certifying that the material does not contain sewage sludge, animal wastes or heavy metal contaminants, in writing. The Contractor is responsible for all mulch for this contract which includes labor for application.

6.7 Where ground cover grows under trees, the Contractor shall use a combination of techniques (raking and blowing) to remove the foliage from the ground cover.

6.8 Groundcover and plants shall not be allowed to encroach into lawns, shrub beds, street curb, or other areas deemed as undesirable by City representative.

6.9 Contractor shall be responsible at its cost for the replacement of plant material, with the same size and species due contractor's use of improper maintenance techniques. Replacement shall be pre-approved by City representative.

## **7. DISPOSAL**

7.1 Contractor shall dispose of all trash and debris. Contractor shall dispose of landscape debris according to state, county or governing body law. Contractor shall pay all disposal fees and submit a copy of receipt as part of the landscape monthly reports. At no time is the Contractor permitted to use City dumpsters.

## **8. GENERAL CONDITIONS**

8.1 Contractor's Liability – All damages that, in the City's opinion, are due to the Contractor's operation, shall be repaired at the Contractor's expense and be completed in accordance with the following maintenance practices:

(a) Trees – Minor damage such as bark lost from the impact of mowing equipment or string trimmer shall be remedied by an arborist. If damage results in the loss of a tree, the damaged tree shall be removed and replaced according to the specific instructions of the City.

8.2 Contractor is required to maintain an office and provide telephone services so that all calls from the City have no toll charge. If a telephone answering service is utilized, the answering service shall be capable of contacting the Contractor by radio or pager.

8.3 Safety – The contractor agrees to perform all work outlined in these specifications in such a manner as to meet all accepted standards for safe practices during maintenance operations and to safely maintain and operate all equipment, machines, and materials consequential or related to the work; and is solely responsible for complying at all times with all local, County, State, Federal, or other legal requirements, so as to protect all persons, including Contractor's employees, agents of the City, vendors, members of the public and others from foreseeable injury to themselves or damage to their property. The contractor shall inspect all hazards and potential hazards in Maintained Areas and keep a log indicating the date inspected and action taken.

8.4 It shall be the Contractor's responsibility to inspect and identify any practices and conditions that render any portion of the Maintained Areas unsafe. The City shall be notified immediately of any unsafe condition that requires major correction. The contractor shall notify the City of Carson of minor corrections including, but not limited to, filling holes in turf areas, replacing valve box covers, and repairing irrigation systems so as to protect members of the public or others from injury. The contractor shall cooperate fully with City in the investigation of any accidental injury or death occurring in any of the Maintained Areas, including a complete written report thereof to the City within five (5) days of the injury or death.

8.5 Hours and Days of Maintenance Service – Hours of maintenance services shall be between 7:00 a.m. and 3:00 p.m. on those days maintenance is to be provided pursuant to the work schedule approved in advance by the City.

8.6 Maintenance Schedules – Within ten (10) days after the effective date of the Contract, the Contractor will be required to submit a work schedule to the City for approval. When actual performance differs substantially from previously scheduled work, the Contractor shall submit for approval, revised schedules within five (5) working days.

8.7 Contractor's Staff – The Contractor shall provide sufficient personnel to perform all work in accordance with the specifications set forth herein. At no time will the Contractor allow its crew to be diminished in size or labor hours to not effectively complete the assigned maintenance tasks. A qualified, English-speaking foreman in the employ of the Contractor shall supervise all of the Contractor's maintenance personnel. At least one (1) member of each crew working at each site shall be fluent in English.

8.8 If any person employed by the Contractor shall fail or refuse to carry out the directions of the City's the Community Services Director, or designees, or is in the opinion of the Community Services Director, or designees, incompetent, intemperate, or disorderly; or uses threatening or abusive language to any person on the work site; or is otherwise unsatisfactory, he shall be discharged from the project immediately, and shall not again be employed on the work except with the written consent of the Community Services Director, or designees. The contractor shall transfer or discharge any such person within a reasonable time following notice thereof from the Community Services Director, or designees, and such person shall not be employed at any other area maintained by the Contractor for the City except with the written consent of the Community Services Director, or designees.

8.9 Contractor shall require employees to wear appropriate clothing while working in the City. This shall include proper work shoes and other clothing and gear required by Federal and/or State Safety Regulations.

8.10 Contractor shall display a sign indicating Contractor's name and license number on both sides of all maintenance vehicles, upon City approval.

8.11 Storage Facilities – City shall not provide any storage facilities for the Contractor.

**9. REPLACEMENT OF PLANT MATERIAL**

9.1 The contractor shall notify the City representative within four (4) days of the loss of plant material due to any cause.

9.2 The contractor shall supply all labor and materials to replace any tree, shrub, turf, or groundcover damaged or lost through the contractor's faulty maintenance or negligence.

9.3 The size and species of replacement plant material shall be determined by the City representative.

9.4 Where there is a difference in value between the tree lost and the replacement tree and where the value of the lost tree is higher, the difference will be deducted from the contract payment. The value will be determined using the latest I.S.A. guidelines.

9.5 Any plant damaged or lost through theft, vehicular damage, act of God, or other mysterious sources not the responsibility of the contractor, shall be replaced by the City.

#### **10. TRAFFIC CONTROL SETUP**

10.1 The purpose of traffic control devices, as well as principles for their use, is to promote highway safety and efficiency by providing for the orderly movement of all road users on streets, highways, bikeways & sidewalks.

10.2 Traffic control devices or their supports shall not bear any advertising message or any other message that is not related to traffic control.

10.3 The contractor shall follow California Manual on Uniform Traffic Control Devices (CA-MUTCD) 2014 or latest Edition in order to perform required maintenance. Contractor shall ensure all Temporary Traffic Control (TTC) devices follow CA-MUTCD 2014 or latest edition.

10.4 The contractor shall follow all City of Carson Municipal Code ordinances and regulations regarding traffic control measures, such as: proper use of traffic cones, lane closures, modified lane closures, directional signage, directional signals, and speed control limits.

#### **11. ADDITIONAL NOTES**

1. For City Hall and the Community Center, all newly landscaped areas as identified by City Representatives, will be maintained by completing the maintenance items listed below according to a schedule deemed reasonably necessary by the contractor. Shrub, groundcover control
2. Mulching
3. Pesticide applications for weed control
4. Blowing
5. Trash, litter and debris pick up
6. Plant material replacement

For City parks and facilities, contractor will conduct maintenance services by completing the maintenance items listed below. The frequency of mowing, edging, and blowing will be in accordance with Exhibit B.

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However, City reserves the option of requiring additional mowing, string trimming (weed whacking) and edging services, as well as trash and litter and services for pesticide applications for weed control, on an on call basis. For example, there may be a special event that may necessitate these additional services above and beyond what's specifically required.

1. Mowing
2. String Trimming (weed whacking)
3. Edging
4. Trash and Litter
5. Pesticide applications for weed control

**EXHIBIT A – LOCATIONS**

Name	Address	Estimated Turf Acres (To be accessed by contractor)	Map Link
Anderson Park	19101 S. Wilmington Ave	4.3	<a href="#">Anderson Park</a>
Calas Park	1000 E. 220th St	6	<a href="#">Calas Park</a>
Carriage Crest Park	23800 S. Figueroa St	3	<a href="#">Carriage Crest Park</a>
Carson Community Center	801 E. Carson St	1	<a href="#">Carson Community Center</a>
Carson Park	21411 Orrick Ave	4	<a href="#">Carson Park</a>
City Hall	701 East Carson St	2	<a href="#">City Hall</a>
Del Amo Park	703 E. Del Amo Blvd	4.5	<a href="#">Del Amo Park</a>
Dolphin Park	21205 Water St	6	<a href="#">Dolphin Park</a>
Dominguez Park	21330 Santa Fe Ave	5.1	<a href="#">Dominguez Park</a>
Foisia Park	23410 Catskill Ave	6	<a href="#">Foisia Park</a>
Friendship Park	21930 Water St	1	<a href="#">Friendship Park</a>
Hemingway Park	700 E. Gardena Blvd	11.9	<a href="#">Hemingway Park</a>

Mills Park	1340 E. Dimondale Dr	3.67	<a href="#">Mills Park</a>
Perry Street Mini Park	215 <sup>th</sup> Perry St	1	<a href="#">Perry Street Mini Park</a>
Reflections Mini Park	21208 Shearer St	.02	<a href="#">Reflections Mini Park</a>
Stevenson Park	17400 Lysander Dr	9.3	<a href="#">Stevenson Park</a>
Veterans Park	22400 Moneta Ave	7.5	<a href="#">Veterans Park</a>
Walnut Mini Park	440 E. Walnut St	0.2	<a href="#">Walnut Mini Park</a>

**EXHIBIT B**

<b>MOWING SCHEDULE</b>			
<b>LOCATIONS</b>	<b>Mowing</b>	<b>Edging &amp; String Trimming</b>	<b>Blowing</b>
<b>MONDAY</b>	<b>FREQUENCY</b>		
	<b>Once a week</b>	<b>Once a week</b>	<b>Once a week</b>
City Hall	x	X	X
Community Center	x	X	x
Foisia Park	x	X	x
Veterans Park	x	X	X
Carriage Crest	x	X	X
<b>TUESDAY</b>			
Anderson Park	x	X	X
Mills Park	x	X	X
Calas Park	x	X	x
Dolphin Park	x	X	X
<b>WEDNESDAY</b>			
Dominguez Park	x	X	x
Carson Park	x	x	x
Friendship Park	x	X	x
Perry Street Park	x	X	x
Del Amo Park	x	X	X

<b>THURSDAY</b>			
Hemingway Park	x	X	x
Reflections Mini Park	x	x	x
Stevenson Park	x	X	X
Walnut Park	x	X	X

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

- A. Landscape monthly reports.
- B. Accidental injury or death reports.

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

- A. As requested by City's Contract Officer.
- 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. Ezekiel W. Swayzer, Project Manager
  - B. Elijah Swayzer III, Operations Manager
  - C. Luellen E. Swayzer, Director of Horticulture
  - D. Daniel Vengoechea, Safety Manager
  - E. Manuel Santillan, Landscape Supervisor
  - F. Gabriel Ramos, Irrigation Systems Specialist
  - G. Julio Monchaca Orozco, Landscape Supervisor
  - H. Glenn Washington, Landscape Supervisor
  - I. Beachamp Lokeni, Lead Groundskeeper
  - J. Willie Habbery, Lead Groundskeeper

**EXHIBIT “B”**  
**SPECIAL REQUIREMENTS**  
**(Superseding Contract Boilerplate)**

The Agreement is hereby amended as follows (deletions shown in ~~striketrough~~ and additions shown in ***bold italics***):

**I. Section 3.4 (Term) of the Agreement is hereby amended to read in its entirety 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 one (1) years from the date hereof, except as otherwise provided in the Schedule of Performance (Exhibit “D”). ***The City may, at its sole discretion, elect to extend the Term by two (2) additional one-year terms (each, an “Extension Term”). The pricing to be applied for each Extension Term is listed in Exhibit “C.”***



**EXHIBIT “C”**  
**SCHEDULE OF COMPENSATION**

I. Consultant shall perform the following tasks at the following rates:

**Cost Table**

<b>No.</b>	<b>Location</b>	<b>Monthly</b>	<b>Annually</b>
1.	City Hall	\$ 896.31	\$10,755.72
2.	Community Center	\$ 448.16	\$ 5,377.92
3.	Foisia Park	\$ 2,688.93	\$32,267.16
4.	Veterans Park	\$ 3,361.16	\$40,333.92
5.	Carriage Crest	\$ 1,344.47	\$16,133.64
6.	Anderson Park	\$ 1,927.07	\$23,124.84
7.	Mills Park	\$ 1,644.73	\$19,736.76
8.	Calas Park	\$ 2,688.93	\$32,267.16
9.	Dolphin Park	\$ 2,688.93	\$32,267.16
10.	Dominguez Park	\$ 2,285.59	\$27,427.08
11.	Friendship Park	\$ 448.16	\$ 5,377.92
12.	Perry Street Park	\$ 448.16	\$ 5,377.92
13.	Del Amo Park	\$ 2,016.70	\$24,200.40
14.	Hemingway Park	\$ 5,333.04	\$63,996.48
15.	Reflections Mini Park	\$ 8.96	\$ 107.52
16.	Stevenson Park	\$ 4,167.84	\$50,014.08
17.	Walnut Park	\$ 89.63	\$ 1,075.56
18.	Carson Park	\$ 1,792.62	\$21,511.44
	<b>Total cost:</b>	<b>\$34,279.39</b>	<b>\$411,352.68</b>

The total not to exceed amount during any Extension Term will be \$411,352.68 per annum.

Below is a cost matrix for the Services broken down by tasks.

IFB PROPOSAL FORM					
ITEM	ESTIMATED QTY.	UOM	Description	UNIT PRICE	LINE TOTAL
1.	100	Acres	Mowing	\$ 103.50	\$ 10,350.00
2.	10	Acres	String trimming	\$ 85.00	\$ 850.00
3.	15	Acres	Edging	\$ 75.00	\$ 1,125.00
4.	20	Acres	Blowing	\$ 95.00	\$ 1,900.00
5.	5	Gallon	Shrub	\$ 45.00	\$ 225.00
6.	5	Gallon	Succulents	\$ 19.00	\$ 95.00
7.	5	Each	Remove and Replace trash liner	\$ 5.25	\$ 26.25
8.	5	Each	Remove and Replace Trash Receptacle	\$ 350.00	\$ 1,750.00
9.	1000	Sq Ft	Mulch / wood chips	\$ 2.25	\$ 2,250.00
9.	50	Hourly	Spray Technician	\$ 65.00	\$ 3,250.00
10.	50	Hourly	Laborer	\$ 35.00	\$ 1,750.00
11.	50	Hourly	Working on Holidays	\$ 75.00	\$ 3,750.00
12.	50	Hourly	Laborer on Weekends	\$ 52.50	\$ 2,625.00
			Subtotal:	\$ 1,007.50	\$ 29,946.25

**VI. 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.**

**VII. 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.

**VIII. The total compensation for the Services shall not exceed \$411,352.68 as provided in Section 2.1 of this Agreement.**

**EXHIBIT “D”**  
**SCHEDULE OF PERFORMANCE**

**I. Consultant shall perform all services timely in accordance with the schedule set out in Exhibit “A” Section I.**

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

- A. Landscape monthly reports.**
- B. Accidental injury or death reports.**

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