

**AGREEMENT BY AND BETWEEN  
THE CITY OF CARSON AND CHARGE BLISS, INC.**

This Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2016, by and between the City of Carson (“City”) and Charge Bliss, Inc., 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. Following a competitive solicitation called “The EPIC Challenge: Accelerating the Deployment of Advanced Energy Communities” under the Electric Program Investment Charge (EPIC) Program, the California Energy Commission (“CEC”) awarded Consultant a \$1.5 million grant to select a host site and develop a proposal for a shovel-ready project that would make selected properties within the host site capable of net-zero energy use (“Phase I”). After selecting the site and developing the proposal, Consultant will then submit the proposal to the CEC for a competitive solicitation (“Phase II”). If the CEC selects Consultant’s proposal, the CEC will award Consultant with further grant funds to carry out the construction of the proposal.

B. Consultant desires to use the City of Carson as the host site for its Phase II proposal, and City is willing to allow Consultant to use City-owned properties as the basis for the proposal, under the specific conditions described below. Furthermore, Consultant and City are interested in developing a mutually acceptable project proposal (“Proposal”) for purposes of submission in Phase II.

**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 I. DEFINITIONS**

1.1 Properties. “Properties” means the following City-owned properties in the City of Carson:

<b>Property Name</b>	<b>Property Address</b>
Anderson Park	19101 Wilmington
Calas Park	1000 E. 220th St.
Carriage Crest Park	23800 Figueroa St.
Carson Park	21411 Orrick Ave.
City Hall	701 E. Carson St.
Community Center	801 E. Carson St.
Corporate Yard	2390 Dominguez St.
Del Amo Park	703 E. Del Amo Blvd.

<b>Property Name</b>	<b>Property Address</b>
Dolphin Park	21205 Water St.
Dominguez Park	21330 Santa Fe Ave.
Dr. Mills Park	1340 Dimondale Dr.
Friendship Park	21930 Water St.
Perry St Mini-Park	21520-21590 Perry St.
Reflections Mini-Park	21208 Shearer Ave.
Scott Park	23410 Catskill Ave.
Stevenson Park	17400 Lysander Dr.
V. Hemingway Park	16700 Avalon Blvd.
Veterans Park	22400 Moneta Ave.
Walnut Mini-Park	440 E. Walnut St.

1.2 Proposal. “Proposal” means the proposal that Consultant will develop for submission to the CEC at the conclusion of Phase I, described in the first Recital.

## **ARTICLE II. DEVELOPMENT AND SUBMISSION OF PROPOSAL**

### **2.1 Consultant’s Services.**

In compliance with all terms and conditions found within the EPIC Terms and Conditions (previously supplied to City), the Phase I Scope of Work (“Scope”) detailed in the narrative section of the winning Phase I submission by Consultant, and the terms and conditions of this Agreement, Consultant will develop a Proposal using the City of Carson as the host site for Phase II. In the event of any dispute of legal terms and conditions, the EPIC Terms and Conditions shall prevail. In the event of any dispute regarding Scope, under no circumstances will the Scope exceed that which is described in the Phase I narrative.

Subject to completion of a Proposal deemed satisfactory to both Parties, said Proposal will be submitted to the CEC for consideration in Phase II in compliance with all requirements established by the CEC. In addition to the Proposal, Consultant will perform the services identified in the Phase I project narrative and Scope documents. Consultant represents and warrants that it has the qualifications, experience, and facilities necessary to properly perform these services 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. 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.

### **2.2 City’s Services.**

The City of Carson agrees to collaborate with Consultant in the completion of the Proposal as might reasonably be expected during the developmental phase of a capital project

with a similar scale and level of complexity. Said services shall include, by way of example and not limitation, provision of detailed building and electrical plans, utility bills, utility interval demand data, access to all relevant electrical and lighting systems, major electrical load items, rooftops, utility spaces, access to key building personnel such as engineers, electricians, planning staff, and collaborative review of proposed designs at the biweekly meetings. Furthermore, City agrees to collaborate with Consultant to develop the finance model included in the Proposal.

### 2.3 City's Permission to Submit Proposal.

The City grants Consultant permission to use the City, and specifically the Properties, as the host site for purposes of developing a Proposal, and to submit the Proposal to the CEC for consideration of an award of grant funds for Phase II, subject to the following conditions:

(a) Consultant will regularly inform City of all phases of Proposal development. Consultant will grant City access to all elements of the Proposal, including, but not limited to, data, plans, drawings, specifications, and cost analyses. Furthermore, at City's request, Consultant will meet with City staff, including in-person meetings, to discuss and review the Proposal.

(b) Consultant will not submit the Proposal to the CEC until it is fully reviewed and approved by the City in writing. City will have the right to deny submission of the Proposal for any of the following reasons: (a) failure of Consultant to complete a full project design as described in the Scope of Work; (b) technical infeasibility of the Proposal; (c) failure to comply with safety standards or City ordinances, including City's planning standards; (d) if the projected cost to the City of implementing the Proposal exceeds projected savings by the City resulting from the implementation of the Proposal (City reserving the right to challenge any calculation of cost and projected savings developed by Consultant and to rely of City's own determination of such costs and savings); (e) if City and Consultant fail to reach an agreement for the implementation of the Proposal pursuant to Section 3.1, below; or (f) any material breach of this Agreement that Consultant fails to cure.

(c) Consultant acknowledges and agrees that City has no obligation to approve the Proposal if Consultant fails to make reasonable revisions to the Proposal as requested by the City. City shall respond to Consultant's requests for comments on and revisions to the Proposal in writing within 10 working days of receipt of a project element or the Proposal as a whole. Once the Proposal is submitted, neither Party shall be able to require further revisions to the Proposal until the CEC review process is complete. City will make a diligent effort to assist Consultant in meeting all deadlines and requirements for Proposal submission, and it will be Consultant's sole responsibility to ensure that City is informed of such deadlines and requirements.

(d) This Agreement imposes no limitations on City's right to modify, or cause to be modified, any or all of the Properties during the term of this Agreement, even if such modifications require Consultant to revise the Proposal. City will provide notification of consideration of material modification to the Properties within 10 working days of presentation of such proposals to City leadership, City Council, or other personnel in charge of deciding upon such modifications.

(e) The City retains its rights to negotiate and contract with third parties for the provision of energy-related services and products for the Properties. Negotiating and contracting for such services and products will not constitute bad faith by the City. City will provide notification of intent to obtain such services at any of the subject Properties being evaluated by Consultant in advance in order to allow Consultant to make appropriate adjustments to energy and load calculations and systems designs.

(f) Notwithstanding the above, Charge Bliss shall have the option, at its sole discretion, to incorporate properties and buildings that are not owned by or are not situated upon City property if said actions are necessary to achieve best project design and outcomes.

### 2.3 Consultant's Work Product

The City agrees that Consultant's work product, including, but not limited to, data analytics, plans, drawings, specifications, and cost analyses are the sole property of Consultant. As such, the City may not reproduce said products in whole or in part, nor use them in any way, without the written authorization of the Consultant.

### 2.4 Access to City Energy Data.

City will grant Consultant access to the 15-minute interval data for the energy use of each of the Properties and Utility bills as may be requested from time to time by Consultant. Consultant acknowledges and agrees that such data is collected, processed, and stored by Southern California Edison, and that, therefore, City is in no way responsible for the accuracy or completeness of such data. Any costs associated with the provision of such data to Consultant will be borne solely by Consultant.

### 2.5 Access to Plans and Blueprints.

To the extent necessary for Consultant's development of the Proposal, and to the extent permitted by law, City will provide Consultant access to plans, drawings, and blueprints of the Properties. Any costs associated with the provisions of such plans, drawings, and blueprints, including, but not limited to, copying documents, or converting and/or transferring electronic files, will be borne solely by Consultant.

### 2.6 Access to Properties.

To the extent necessary for Consultant's development of the Proposal, City will grant Consultant access to the Properties at scheduled times, during the City's normal business hours, at the convenience of City staff.

### 2.7 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.

### **ARTICLE III. PHASE 2 AGREEMENT FOR PHASE II**

#### **3.1 Agreement to Negotiate in Good Faith.**

Prior to the submission of the Proposal, the Parties will negotiate in good faith with the goal of entering an Agreement for the implementation of the Proposal in the event that the CEC awards Consultant the grant for Phase II. Any agreement shall comply with all state and local laws including, specifically, Government Code section 4217.10 *et seq.*, regarding energy conservation contracts. The Parties acknowledge that failure to reach such an agreement may result in the rejection of the Proposal by the CEC. Notwithstanding the above, neither Party has an obligation to enter into such an agreement so long as each Party negotiates the terms and conditions of such an agreement in good faith. Any such agreement shall be null and void if the CEC does not award the Phase II grant to Consultant or if any third party providing financing for the implementation of Phase II withdraws such financing.

### **ARTICLE IV. COMPENSATION**

#### **4.1 No Compensation or Reimbursement.**

Consultant will not receive any compensation or reimbursement from the City under this Agreement.

### **ARTICLE V. TERM AND TERMINATION**

#### **5.1 Term.**

Unless earlier terminated pursuant to Section 5.3, this Agreement shall remain in full force and effect until Consultant submits the Proposal to the CEC or the time for such submission passes without the submission of a Proposal. The deadline for the submission of the Proposal to the CEC is \_\_\_\_\_.

#### **5.2 Extension of Term.**

The term may be extended by the mutual written consent of the Parties.

#### **5.3 Termination.**

Either Party may terminate the Agreement for cause upon thirty (30) days' written notice to the other Party, including a written explanation of the cause. The party receiving the termination notice shall have an opportunity to cure during the 30-day period, but if such cure is not accepted, the Agreement will terminate at the end of the 30-day period. Efforts to cure shall not be unreasonably rejected. During the cure period, all other work will cease until cure is completed.

Notwithstanding the above, in accordance with the CEC EPIC Terms and Conditions, Charge Bliss retains the sole right to cancel the Phase I project and to cease all further work in the event of termination of project funding by the CEC. Upon receipt of notification of termination from the CEC, Consultant will cease work immediately and will notify City of

termination. City agrees that Consultant will retain no residual responsibility to continue or complete the project. Under circumstances of project termination, Consultant agrees to retrieve any and all equipment, materials or other Consultant property and to restore City property to the state in which it was encountered at the initiation of the Project.

## **ARTICLE VI. INSURANCE, INDEMNITY, AND WAIVER**

### **6.1 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.

## 6.2 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 6.1 to the City.

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 6.3.

In the event the Consultant subcontracts any portion of the work, 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 6.1, and such certificates and endorsements shall be provided to City.

### 6.3 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.

#### 6.4 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 VII. RELATIONSHIP BETWEEN PARTIES**

#### 7.1 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.

#### 7.2 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.

### 7.3 Subcontracting and Assignment.

The City acknowledges Consultant's sole right to select qualified subcontractors to execute the CEC Phase I project. Said contractors and subcontractors have been approved by the CEC and shall remain in effect as part of the Consultant team at the sole discretion of Consultant and the CEC. A list of subcontractors shall be provided to the City in advance of any work.

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 VIII. ENFORCEMENT**

### 8.1 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.

### 8.2 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.

#### 8.3 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.

#### 8.4 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.

#### 8.5 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.

#### 8.6 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.

### **ARTICLE IX. MISCELLANEOUS PROVISIONS**

#### 9.1 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.

## 9.2 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 Director of Public Works, 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 with a receipt for delivery verifying that the communication has been delivered.

## 9.3 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.

#### 9.4 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.

#### 9.5 Unauthorized Aliens.

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

#### 9.6 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.

#### 9.7 Counterparts.

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

#### 9.8 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.

9.9 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.

9.10 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 \_\_\_\_\_

9.11 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

\_\_\_\_\_  
Albert Robles, Mayor

ATTEST:

\_\_\_\_\_  
Donesia Gause, City Clerk

APPROVED AS TO FORM:  
ALESHIRE & WYNDER, LLP

\_\_\_\_\_  
Sunny K. Soltani, City Attorney

**CONSULTANT:**

CHARGE BLISS, INC.

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

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

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