

DESIGN-BUILD AGREEMENT

By and Between

CITY OF CARSON

and

MICON CONSTRUCTION, INC.

EXHIBIT NO. 5

AGREEMENT FOR CONTRACT SERVICES BETWEEN THE CITY OF CARSON AND

THIS AGREEMENT FOR CONTRACT SERVICES (herein “Agreement”) is made and entered into this [REDACTED] day of [REDACTED], 2019 by and between the City of Carson, a California municipal corporation (“City”) and [REDACTED], [REDACTED] (“Design-Builder”). City and Design-Builder 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. Design-Builder, 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 Municipal Code, City has authority to enter into and execute this Agreement.

D. The Parties desire to formalize the selection of Design-Builder 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. WORK OF DESIGN-BUILDER

1.1 Scope of Work.

In compliance with all terms and conditions of this Agreement, the Design-Builder shall provide those services specified in the “Scope of Work” 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, Design-Builder represents and warrants that it has the qualifications, experience, and facilities necessary to properly perform the work required under this Agreement in a thorough, competent, and professional manner, and is experienced in performing the work and services contemplated herein. Design-Builder shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. Design-Builder 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 Design-Builder's Proposal.

The Scope of Service shall include the Design-Builder's scope of work in Design-Builder's bid proposal. The Design-Builder's bid proposal 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. The Design-Builder's bid proposal shall be escrowed with a neutral third party mutually agreed upon by the Parties.

1.3 Compliance with Law.

Design-Builder 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.

Design-Builder shall obtain at its sole cost and expense such licenses, permits, registrations, and approvals as may be required by law for the performance of the services required by this Agreement. Design-Builder 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 Design-Builder'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.

(a) By executing this Agreement, Design-Builder warrants that Design-Builder (i) has thoroughly investigated and considered the scope of work 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, Design-Builder warrants that Design-Builder has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services hereunder.

(b) Design-Builder shall promptly, and before the following conditions are disturbed, notify the City, in writing, of any: (i) material Design-Builder believes may be hazardous waste as defined in Section 25117 of the Health & Safety Code required to be removed to a Class I, II, or III disposal site in accordance with existing law; (ii) subsurface, unknown or latent conditions, materially different from those indicated; or (iii) unknown physical conditions at the site of any unusual nature, different from those ordinarily encountered and

generally recognized as inherent in work of the character provided for in this Agreement, and will materially affect the performance of the services hereunder.

(c) City shall promptly investigate the conditions, and if it finds that the conditions do materially differ, or do involve hazardous waste, and cause a decrease or increase in Design-Builder's cost of, or the time required for, performance of any part of the work, shall issue a change order per Section 1.10 of this Agreement.

(d) In the event that a dispute arises between City and Design-Builder whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in Design-Builder's cost of, or time required for, performance of any part of the work, Design-Builder shall not be excused from any scheduled completion date set, but shall proceed with all work to be performed under the Agreement. Design-Builder shall retain any and all rights provided either by contract or by law, which pertain to the resolution of disputes and protests between the contracting Parties.

1.6 Protection and Care of Work and Materials.

The Design-Builder shall adopt reasonable methods, including providing and maintaining storage facilities, 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 caused by City's own negligence. Stored materials shall be reasonably accessible for inspection. Design-Builder shall not, without City's consent, assign, sell, mortgage, hypothecate, or remove equipment or materials which have been installed or delivered and which may be necessary for the completion of the work.

1.7 Warranty.

Design-Builder warrants all Work under the Agreement (which for purposes of this Section shall be deemed to include unauthorized work which has not been removed and any non-conforming materials incorporated into the Work) to be of good quality and free from any defective or faulty material and workmanship. Design-Builder agrees that for a period of one year (or the period of time specified elsewhere in the Agreement or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the Work, whichever is later) after the date of final acceptance, Design-Builder shall within ten (10) days after being notified in writing by the City of any defect in the Work or non-conformance of the Work to the Agreement, commence and prosecute with due diligence all Work necessary to fulfill the terms of the warranty at its sole cost and expense. Design-Builder shall act soon as requested by the City in response to an emergency. In addition, Design-Builder shall, at its sole cost and expense, repair, remove and replace any portions of the Work (or work of other contractors) damaged by its defective Work or which becomes damaged in the course of repairing or replacing defective Work. For any Work so corrected, Design-Builder's obligation hereunder to correct defective Work shall be reinstated for an additional one year period, commencing with the date of acceptance of such corrected Work. Design-Builder shall perform such tests as the City may require to verify that any corrective actions, including, without

limitation, redesign, repairs, and replacements comply with the requirements of the Agreement. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstitution of equipment and materials necessary to gain access, shall be the sole responsibility of the Design-Builder. All warranties and guarantees of subcontractors, suppliers and manufacturers with respect to any portion of the Work, whether express or implied, are deemed to be obtained by Design-Builder for the benefit of the City, regardless of whether or not such warranties and guarantees have been transferred or assigned to the City by separate agreement and Design-Builder agrees to enforce such warranties and guarantees, if necessary, on behalf of the City. In the event that Design-Builder fails to perform its obligations under this Section, or under any other warranty or guaranty under this Agreement, to the reasonable satisfaction of the City, the City shall have the right to correct and replace any defective or non-conforming Work and any work damaged by such work or the replacement or correction thereof at Design-Builder's sole expense. Design-Builder shall be obligated to fully reimburse the City for any expenses incurred hereunder upon demand.

1.8 Prevailing Wages.

Design-Builder is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 1600, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates, that Design-Builder and all subcontractors be registered with and pay the registration fee to the Department of Industrial Relations ("DIR"), Design-Builder be subject to the monitoring and enforcement by the DIR, and the performance of other requirements on "Public Works" and "Maintenance" projects. If the services are being performed as part of an applicable "Public Works" or "Maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Design-Builder agrees to fully comply with such Prevailing Wage Laws. City shall provide Design-Builder with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Design-Builder shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the services available to interested parties upon request, and shall post copies at the Design-Builder's principal place of business and at the project site. Design-Builder shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

1.9 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.

1.10 Additional Work and Change Orders.

(a) 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 Work or make changes by altering, adding to or deducting from said work. No such extra work may be undertaken unless a written change order is first given by the Contract Officer to the Design-Builder, incorporating therein any adjustment in (i) the Contract Sum, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of the Design-Builder ("Change Order"). All Change Orders must be signed by the Design-Builder and Contract Officer prior to commencing the extra work thereunder.

(b) Any increase in compensation of up to ten percent (10%) of the Contract Sum or \$25,000, whichever is less; or any increase in the time to perform of up to one hundred eighty (180) days; and does not materially affect the Work and which are not detrimental to the Work or to the interest of the City, may be approved by the Contract Officer. Any greater increases, taken either separately or cumulatively, must be approved by the City Council.

(c) Any adjustment in the Contract Sum for a Change Order must be in accordance with the rates set forth in the Schedule of Compensation in Exhibit "C". If the rates in the Schedule of Compensation do not cover the type of work in the Change Order, the cost of such work shall not exceed an amount agreed upon in writing and signed by Design-Builder and Contract Officer. If the cost of the Change Order cannot be agreed upon, the City will pay for actual work of the Change Order completed, to the satisfaction of the City, as follows:

(i) Labor: the cost of labor shall be the actual cost for wages of workers and subcontractors performing the work for the Change Order at the time such work is done. The use of labor classifications that would increase the cost of such work shall not be permitted.

(ii) Materials and Equipment: the cost of materials and equipment shall be at cost to Design-Builder or lowest current price which such materials and equipment are reasonably available at the time the work is done, whichever is lower.

(iii) If the cost of the extra work cannot be agreed upon, the Design-Builder must provide a daily report that includes invoices for labor, materials and equipment costs for the work under the Change Order. The daily report must include: list of names of workers, classifications, and hours worked; description and list of quantities of materials used; type of equipment, size, identification number, and hours of operation, including loading and transportation, if applicable; description of other City authorized services and expenditures in such detail as the City may require. Failure to submit a daily report by the close of the next working day may, at the City's sole and absolute discretion, waive the Design-Builder's rights for that day.

(d) It is expressly understood by Design-Builder that the provisions of this Section 1.10 shall not apply to services specifically set forth in the Scope of Work. Design-Builder hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Work may be more costly or time consuming than Design-Builder anticipates and that Design-Builder shall not be entitled to additional compensation therefor. City may in its sole and absolute discretion have similar work done by other contractors.

(e) No claim for an increase in the Contract Sum or time for performance shall be valid unless the procedures established in this Section are followed.

1.11 Special Requirements.

Additional terms and conditions of this Agreement, if any, which are made a part hereof are set forth in the “Special Requirements” attached hereto as Exhibit “B” and incorporated herein by this reference. In the event of a conflict between the provisions of Exhibit “B” and any other provisions of this Agreement, the provisions of Exhibit “B” shall govern.

ARTICLE 2. COMPENSATION AND METHOD OF PAYMENT.

2.1 Contract Sum.

Subject to any limitations set forth in this Agreement, City agrees to pay Design-Builder the amounts specified in the “Schedule of Compensation” attached hereto as Exhibit “C” and incorporated herein by this reference. The total compensation, including reimbursement for actual expenses, shall not exceed One Million Seventy-Three Thousand Three Hundred Ninety-Four Dollars (\$1,073,394.00) (the “Contract Sum”), unless additional compensation is approved pursuant to Section 1.10.

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 the contract retention, (iii) payment for time and materials based upon the Design-Builder’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 Design-Builder 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 Design-Builder is required to attend additional meetings to facilitate such coordination, Design-Builder shall not be entitled to any additional compensation for attending said meetings.

2.4 Invoices.

Each month Design-Builder 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, Design-Builder 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. Design-Builder shall not invoice City for any duplicate services performed by more than one person.

City shall independently review each invoice submitted by the Design-Builder 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 Design-Builder which are disputed by City, or as provided in Section 7.3, City will cause Design-Builder to be paid within thirty (30) days of receipt of Design-Builder's correct and undisputed invoice; however, Design-Builder 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 Design-Builder for correction and resubmission. Review and payment by the City of any invoice provided by the Design-Builder shall not constitute a waiver of any rights or remedies provided herein or any applicable law.

2.5 Waiver.

Payment to Design-Builder for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Design-Builder.

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.

Design-Builder 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 Design-Builder, 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 Design-Builder, 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 Design-Builder 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 Design-Builder be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Design-Builder's sole remedy being extension of the Agreement pursuant to this Section.

3.4 Inspection and Final Acceptance.

City may inspect and accept or reject any of Design-Builder's work under this Agreement, either during performance or when completed. City shall reject or finally accept Design-Builder's work within forty-five (45) days after submitted to City. City shall accept work by a timely written acceptance, otherwise work shall be deemed to have been rejected. City's acceptance shall be conclusive as to such work except with respect to latent defects, fraud and such gross mistakes as to amount to fraud. Acceptance of any work by City shall not constitute a waiver of any of the provisions of this Agreement including, but not limited to, Articles 1 and 5, pertaining to warranty and indemnification and insurance, respectively.

3.5 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 Design-Builder.

The following principals of Design-Builder ("Principals") are hereby designated as being the principals and representatives of Design-Builder authorized to act in its behalf with respect to the work specified herein and make all decisions in connection therewith:

_____	_____
(Name)	(Title)

_____	_____
(Name)	(Title)

_____	_____
(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 Principals shall be responsible during the term of this Agreement for directing all activities of Design-Builder and devoting sufficient time to personally supervise the services hereunder. All personnel of Design-Builder, and any authorized agents, shall at all times be under the exclusive direction and control of the Principals. For purposes of this Agreement, the Principals may not be replaced nor may their responsibilities be substantially reduced by Design-Builder without the express written approval of City. Additionally, Design-Builder shall make every reasonable effort to maintain the stability and continuity of Design-Builder's staff and subcontractors, if any, assigned to perform the services required under this Agreement. Design-Builder shall notify City of any changes in Design-Builder'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 Design-Builder.

Design-Builder 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. Design-Builder shall not at any time or in any manner represent that Design-Builder or any of Design-Builder's officers, employees, or agents are in any manner officials, officers, employees or agents of City. Neither Design-Builder, nor any of Design-Builder'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. Design-Builder expressly waives any claim Design-Builder may have to any such rights.

4.3 Contract Officer.

The Contract Officer shall be Gilbert Marquez, City Engineer or such person as may be designated by the City Manager. It shall be the Design-Builder's responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services and the Design-Builder 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 Design-Builder.

Neither the City nor any of its employees shall have any control over the manner, mode or means by which Design-Builder, 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 Design-Builder's employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. Design-Builder 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. Design-Builder 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 Design-Builder in its business or otherwise or a joint venturer or a member of any joint enterprise with Design-Builder.

4.5 Prohibition Against Subcontracting or Assignment.

The experience, knowledge, capability and reputation of Design-Builder, its principals and employees were a substantial inducement for the City to enter into this Agreement. Therefore, Design-Builder 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. All subcontractors shall obtain, at its or Design-Builder's expense, such licenses, permits, registrations and approvals (including from the City) as may be required by law for the performance of any services or work under this Agreement. 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 Design-Builder, 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 Design-Builder or any surety of Design-Builder of any liability hereunder without the express consent of City.

ARTICLE 5. INSURANCE, INDEMNIFICATION AND BONDS

5.1 Insurance Coverages.

The Design-Builder 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) Commercial 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) Workers Compensation Insurance. A policy of workers 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 Design-Builder 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 Design-Builder 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 Design-Builder'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 Design-Builder's services or the termination of this Agreement. During this additional 5-year period, Design-Builder shall annually and upon request of the City submit written evidence of this continuous coverage.

(e) Additional Insurance. Policies of such other insurance, as may be required in the Special Requirements in Exhibit "B".

(f) Subcontractors. Design-Builder 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 be subject to all of the requirements stated herein.

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 Design-Builder'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 Design-Builder 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 Design-Builder 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]


Agent's 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 Design-Builder performs; products and completed operations of Design-Builder; premises owned, occupied or used by Design-Builder; or any automobiles owned, leased, hired or borrowed by Design-Builder. 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. Design-Builder'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 Design-Builder shall procure a bond guaranteeing payment of losses and related investigations, claim administration, defense expenses and claims. The Design-Builder agrees that the requirement to provide insurance shall not be construed as limiting in any way the extent to which the Design-Builder may be held responsible for the payment of damages to any persons or property resulting from the Design-Builder's activities or the activities of any person or persons for which the Design-Builder is otherwise responsible nor shall it limit the Design-Builder's indemnification liabilities as provided in Section 5.3.

In the event the Design-Builder subcontracts any portion of the work in compliance with Section 4.5 of this Agreement, the contract between the Design-Builder and such subcontractor shall require the subcontractor to maintain the same policies of insurance that the Design-Builder 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, Design-Builder 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 Design-Builder, its officers, employees, agents, subcontractors, or invitees, or any individual or entity for which Design-Builder is legally liable ("indemnitors"), or arising from Design-Builder's or indemnitors' reckless or willful misconduct, or arising from Design-Builder's or

indemnitors' negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, and in connection therewith:

(a) Design-Builder 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) Design-Builder 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 Design-Builder hereunder; and Design-Builder 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 Design-Builder 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 Design-Builder hereunder, Design-Builder agrees to pay to the City, its officers, agents or employees, any and all costs and expenses incurred by the City, its officers, agents or employees in such action or proceeding, including but not limited to, legal costs and attorneys' fees.

In addition, Design-Builder agrees to indemnify, defend and hold harmless the Indemnified Parties from, any and all claims and liabilities for any infringement of patent rights, copyrights or trademark on any person or persons in consequence of the use by the Indemnified Parties of articles to be supplied by Design-Builder under this Agreement, and of which the Design-Builder is not the patentee or assignee or has not the lawful right to sell the same.

Design-Builder shall incorporate similar indemnity agreements with its subcontractors and if it fails to do so Design-Builder 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 Design-Builder in the performance of professional services and work 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 Design-Builder and shall survive termination of this Agreement.

5.4 Performance and Labor Bonds.

Concurrently with execution of this Agreement Design-Builder shall deliver to the City, the following:

(a) A performance bond in the amount of the Contract Sum of this Agreement, in the form provided by the City Clerk, which secures the faithful performance of this Agreement.

(b) A labor and materials bond in the amount of the Contract Sum of this Agreement, in the form provided by the City Clerk, which secures the payment of all persons furnishing labor and/or materials in connection with the work under this Agreement.

Both the performance and labors bonds required under this Section 5.4 shall contain the original notarized signature of an authorized officer of the surety and affixed thereto shall be a certified and current copy of his power of attorney. The bond shall be unconditional and remain in force during the entire term of the Agreement and shall be null and void only if the Design-Builder promptly and faithfully performs all terms and conditions of this Agreement and pays all labor and materials for work and services under this Agreement.

5.5 Sufficiency of Insurer or Surety.

Insurance and bonds 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 Design-Builder agrees that the minimum limits of the insurance policies and the performance bond required by Section 5.4 may be changed accordingly upon receipt of written notice from the Risk Manager.

5.6 Substitution of Securities.

Pursuant to Public Contract Code Section 22300, substitution of eligible equivalent securities for any funds withheld to ensure performance under this Agreement may be permitted at the request and sole expense of the Design-Builder. Alternatively, the Design-Builder may, pursuant to an escrow agreement in a form prescribed by Public Contract Code Section 22300, request payment of retentions funds earned directly to the escrow agent at the sole expense of the Design-Builder.

5.7 Release of Securities.

City shall release the Performance and Labor Bonds when the following have occurred:

(a) Design-Builder has made a written request for release and provided evidence of satisfaction of all other requirements under Article 5 of this Agreement;

(b) the Work has been accepted; and

(c) after passage of the time within which lien claims are required to be made pursuant to applicable laws; if lien claims have been timely filed, City shall hold the Labor Bond until such claims have been resolved, Design-Builder has provided statutory bond, or otherwise as required by applicable law.

ARTICLE 6. RECORDS, REPORTS, AND RELEASE OF INFORMATION

6.1 Records.

Design-Builder shall keep, and require subcontractors to keep, such ledgers, books of accounts, invoices, vouchers, canceled checks, reports, studies, certified and accurate copies of payroll records in compliance with all applicable laws, 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 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 Design-Builder’s business, custody of the books and records may be given to City, and access shall be provided by Design-Builder’s successor in interest. Notwithstanding the above, the Design-Builder 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.

Design-Builder 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. Design-Builder 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, Design-Builder agrees that if Design-Builder 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 Design-Builder is providing design services, the cost of the project being designed, Design-Builder shall promptly notify the Contract Officer of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto and, if Design-Builder 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 Design-Builder, 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 Design-Builder 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 Design-Builder will be at the City's sole risk and without liability to Design-Builder, and Design-Builder's guarantee and warranties shall not extend to such use, reuse or assignment. Design-Builder may retain copies of such documents for its own use. Design-Builder shall have an unrestricted 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 Design-Builder fails to secure such assignment, Design-Builder shall indemnify City for all damages resulting therefrom. Moreover, Design-Builder 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 Design-Builder in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Design-Builder. Design-Builder 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) Design-Builder, 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 Design-Builder gives City notice of such court order or subpoena.

(c) If Design-Builder, or any officer, employee, agent or subcontractor of Design-Builder, provides any information or work product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Design-Builder for any damages, costs and fees, including attorneys fees, caused by or incurred as a result of Design-Builder's conduct.

(d) Design-Builder shall promptly notify City should Design-Builder, 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 Design-Builder or be present at any deposition, hearing or similar proceeding. Design-Builder agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Design-Builder. 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 Design-Builder 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 Design-Builder is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Design-Builder for any work performed after the date of default. Instead, the City may give notice to Design-Builder of the default and the reasons for the default. The notice shall include the timeframe in which Design-Builder 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 Design-Builder is in default, the City shall hold all invoices and shall proceed with payment on the invoices only when the default is cured. 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 Design-Builder 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 Design-Builder'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.

Design-Builder hereby authorizes City to deduct from any amount payable to Design-Builder (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 Design-Builder's acts or omissions in performing or failing to perform Design-Builder'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 Design-Builder, 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 Design-Builder 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 Design-Builder 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, Design-Builder shall file a 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 Liquidated Damages.

Since the determination of actual damages for any delay in performance of this Agreement would be extremely difficult or impractical to determine in the event of a breach of this Agreement, the Design-Builder and its sureties shall be liable for and shall pay to the City the sum of Eight Hundred and Fifty Dollars (\$850.00) as liquidated damages for each working day of delay in the performance of any service required hereunder, as specified in the Schedule of Performance (Exhibit "D"). The City may withhold from any monies payable on account of services performed by the Design-Builder any accrued liquidated damages.

7.8 Termination Prior to Expiration of Term.

This Section shall govern any termination of this Contract except as specifically provided in the following Section for termination for cause. The City reserves the right to terminate this Contract at any time, with or without cause, upon thirty (30) days' written notice to Design-Builder, except that where termination is due to the fault of the Design-Builder, the period of notice may be such shorter time as may be determined by the Contract Officer. In addition, the Design-Builder reserves the right to terminate this Contract at any time, with or without cause,

upon sixty (60) days' written notice to City, except that where termination is due to the fault of the City, the period of notice may be such shorter time as the Design-Builder may determine. Upon receipt of any notice of termination, Design-Builder shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Except where the Design-Builder has initiated termination, the Design-Builder 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 Design-Builder has initiated termination, the Design-Builder 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.

7.9 Termination for Default of Design-Builder.

If termination is due to the failure of the Design-Builder 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 Design-Builder 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 Design-Builder for the purpose of set-off or partial payment of the amounts owed the City as previously stated.

7.10 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.

7.11 Unfair Business Practices Claims.

In entering into this Agreement, Design-Builder offers and agrees to assign to the City all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2, (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials related to this Agreement. This assignment shall be made and become effective at the time the City renders final payment to the Design-Builder without further acknowledgment of the Parties.

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 Design-Builder, 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 Design-Builder or to its successor, or for breach of any obligation of the terms of this Agreement.

8.2 Conflict of Interest.

Design-Builder 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 Design-Builder's performance of services under this Agreement. Design-Builder 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. Design-Builder 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 effects his financial interest or the financial interest of any corporation, partnership or association in which he is, directly or indirectly, interested, in violation of any State statute or regulation. The Design-Builder 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.

Design-Builder covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, 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. Design-Builder 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.

Design-Builder 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 Design-Builder 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, Design-Builder 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 93203 and in the case of the Design-Builder, to the person 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. All correspondence relating to this Agreement shall be serialized consecutively.

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 counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

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 Design-Builder 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 "noninterests" pursuant to Government Code Sections 1091 or 1091.5. Design-Builder 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. Design-Builder 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. Design-Builder 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.

Design-Builder'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

Albert Robles, Mayor

ATTEST:

Donesia L. Gause, City Clerk

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

Sunny K. Soltani, City Attorney
[tc]

DESIGN-BUILDER:

MICON CONSTRUCTION, INC., a California Corporation

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____
Address: _____

Two corporate officer signatures required when Design-Builder 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. DESIGN-BUILDER'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 DESIGN-BUILDER'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 _____, 2019 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

CAPACITY CLAIMED BY SIGNER

- ☐
☐

INDIVIDUAL
CORPORATE OFFICER

TITLE(S)

- ☐
☐

PARTNER(S) ☐ LIMITED
☐ GENERAL

- ☐
☐
☐
☐

ATTORNEY-IN-FACT
TRUSTEE(S)
GUARDIAN/CONSERVATOR
OTHER _____

DESCRIPTION OF ATTACHED DOCUMENT

TITLE OR TYPE OF DOCUMENT

NUMBER OF PAGES

DATE OF DOCUMENT

SIGNER IS REPRESENTING:

(NAME OF PERSON(S) OR ENTITY(IES))

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 _____, 2019 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

CAPACITY CLAIMED BY SIGNER

- ☐
☐

INDIVIDUAL
CORPORATE OFFICER

TITLE(S)

- ☐
☐

PARTNER(S) ☐ LIMITED
GENERAL

- ☐
☐
☐
☐

ATTORNEY-IN-FACT
TRUSTEE(S)
GUARDIAN/CONSERVATOR
OTHER _____

DESCRIPTION OF ATTACHED DOCUMENT

TITLE OR TYPE OF DOCUMENT

NUMBER OF PAGES

DATE OF DOCUMENT

SIGNER IS REPRESENTING:

(NAME OF PERSON(S) OR ENTITY(IES))

SIGNER(S) OTHER THAN NAMED ABOVE

EXHIBIT “A”

SCOPE OF WORK

The work shall be performed at 21205 S. Water Street, Carson, California 90745, commonly known as Dolphin Park. The work consists of designing and building an inclusive accessible playground structure for children ages 2 to 12 with varying types of disabilities and various upgrades to comply with the American Disabilities Act (the “Project”). Micon Construction, Inc. (Design-Builder) is the design-build entity that is able to provide appropriately licensed contracting, architectural, and engineering services as needed pursuant to this Agreement. The Design-Builder is responsible for all work performed under this Agreement.

I. Design-Builder will perform the following work:

A. General.

- i. Design and build a playground area that is accessible for children with disabilities.
- ii. Upgrade the park restrooms to comply with current Americans with Disabilities Act (ADA) requirements.
- iii. Upgrade and install walkways necessary for the path of travel to the playground area, restrooms, shelters, and parking lot.

B. The work will occur in two phases—the Design Phase and the Construction Phase:

- i. The Design Phase is divided into Phase 1A and Phase 1B.

1. Phase 1A – Preliminary Conceptual Site Plan:

- a. Attend kickoff meeting with the City.
- b. Provide three (3) concept renderings and a subsequent site layout plan from each of the three (3) concepts.
- c. Renderings and layout plans shall include ADA-compliant accessible walkways to the playground site from Dolphin Park’s building facility (restrooms) and parking lot.
- d. Renderings and layout plans shall also include a list of materials and equipment for the playground components.
- e. Submit the three (3) 3-dimensional concept renderings to the City for review and approval prior to proceeding with the construction documents.

- f.** Refine the concepts after receiving the City's input.
- g.** Submit final concept rendering and related site layout plan for the City's approval.
- h.** Incorporate the following playground features and design parameters, with the understanding that budget constraints may affect the inclusion of or quantity of finalized design features:
 - i.** A playground for children ages 2-12, based on the approved design, and appropriate drainage system underneath.
 - ii.** Swings with safety harnesses, and slides with landing pads.
 - iii.** Canopy or shading features.
 - iv.** ADA compliant site furnishings such as benches, seating notes, picnic shelters, and BBQ pits.
 - v.** ADA compliant drinking water fountains.
 - vi.** ADA compliant accessible walkways, paths, and access to the playground
- i.** Prohibited playground equipment and materials: tunnels, hiding places, sand beds, or sand boxes. Design-Builder shall not include these prohibited features without the Contract Officer's prior written approval.
- j.** Recommend alternative selections, design parameters, proposed alignments, major project features, and special provisions that meet City standard practices and follow the Project's goal of having ADA accessible pathways, walkways, restrooms, and playground equipment.

2. Phase 1B – Final Submittal:

- a.** Develop construction drawings (prepared by a California licensed Civil Engineer) based on the approved preliminary conceptual site plan.
- b.** Construction drawings shall include a detailed construction cost estimate and construction schedule. The estimated and actual construction costs shall not exceed \$1,073,394.

- c. Submit the construction drawings to the City's Engineering, Building and Safety, and Parks/Recreation Divisions, as well as any other required agencies, for review and approval.
- d. Prepare drawings to 50% completion in compliance with the California Building Code and per the City of Carson's Public Work standards, and present 50% level drawings to the City for review. Provide updated cost estimate.
- e. After receiving the City's input, refine the drawings to 90% level of completion. Provide updated cost estimate.
- f. After receiving further input from the City, refine the drawings to 100% completion. Provide updated cost estimate and schedule. The updated cost estimate shall not exceed \$1,073,394.

ii. The Construction Phase is Phase 2.

1. Construction shall be consistent with the City-approved construction drawings, including the detailed construction estimate (which shall not exceed \$1,073,394) and construction schedule.
2. Provide all labor, equipment, materials, supplies, installation, and supervision for the complete construction of the Project in accordance with final plans and specifications approved by the city.
3. Prior to construction, obtain all necessary permits.
4. Mobilization:
 - a. Project management
 - b. Installing and maintaining temporary fencing
 - c. Provide storage binds
 - d. SWPPP's & erosion control
 - e. Procure equipment
5. Demolition (removal and disposal) of:
 - a. Rubber surfacing and sub-base
 - b. Playground containment curb

City-approved detailed construction cost estimates and construction schedule.

- a.** Paint (E) light pole
- b.** Provide GT Free Notes activity cluster
- c.** Install GT Free Notes
- d.** Install irrigation in sensory garden planter, connect to (E) valve/controller
- e.** Provide and place sensory garden plants

C. Provide services associated with the Project development, such as public workshops and presentations to the community, City Commissions, and City Council.

D. Work shall be performed in a manner compliant with the Contract Documents, which consist of the following:

- i. Request for Proposals and any Addenda
- ii. Design-Builder's Proposal, including Appendices, hourly fee schedule, and any other information the City required of bidders
- iii. This Agreement
- iv. Performance Bond
- v. Payment (Labor and Materials) Bond
- vi. Insurance certificates and endorsements required by this Agreement
- vii. Standard Specifications (Green Book)
- viii. Design renderings, specifications, plans, materials lists, and equipment lists
- ix. Construction drawings, specifications, materials lists, and equipment lists
- x. Approved and fully executed change orders
- xi. Any other documented contained in or incorporated, by reference or amendment, to this Agreement.

E. In the event of inconsistency among the Contract Documents, the Contract Documents shall have the following order of priority for interpreting the Agreement between the City and Design-Builder:

- i. Permits issued by jurisdictional regulatory agencies;
- ii. Exhibit B of this Agreement
- iii. This Agreement and its exhibits other than Exhibit “B”
- iv. Change orders
- v. Construction drawings, specifications, plans, and equipment/materials lists approved by the City during Phase 1B of the Project, including detailed construction cost estimates and construction schedule
- vi. Designs approved by the City during Phase 1 of the Project
- vii. Addenda to Request for Proposal
- viii. Request for Proposal
- ix. Standard Specifications
- x. Design-Builder’s Proposal
- xi. Any other specifications referenced in the Contract Documents

II. The location(s) of the work, its general nature and extent, and the form and general dimensions of the Project and appurtenant work are shown on the City-approved and City-selected design renderings, construction drawings, and plans, and are hereby made a part of this Agreement.

Design-Builder shall have on file a minimum of one (1) set of Construction Drawings upon which Design-Builder shall record all variations between the work as built and as originally shown on the Construction Drawings or other Contracts Documents (“Record Drawings”). Record Drawings must be kept at the work site and be accessible at all times during the construction periods and shall be delivered to the City Engineer within thirty (30) days after completion of the work.

III. In addition to the requirements of Section 6.2, during performance of the work, Design-Builder will keep the City apprised of the status of performance by delivering the following status reports:

N/A.

IV. All Work is subject to review and acceptance by the City, and must be revised by the Design-Builder without additional charge to the City until found satisfactory and accepted by City.

V. Design-Builder shall provide safe and continuous passage for pedestrian and vehicular traffic in accordance with the Work Area Traffic Control Handbook (WATCH), latest edition.

VI. Design-Builder will utilize the following personnel to accomplish the Work:

A. Kimberly Racette, Project Manager

B. Subcontractor: Robertson's Recreation Surfaces shall perform the pour-in-place safety surfacing.

The Design-Builder is solely responsive for the performance of this Agreement, regardless of references to subcontractors, subconsultants (including, but not limited to, designers and architects).

DRAFT

EXHIBIT “B”

SPECIAL REQUIREMENTS (Superseding Contract Boilerplate)

- I. The first sentence of Section 1.2, Design-Builder’s Proposal, shall be revised as follows (deleted content identified in ~~strike-through~~ and added content identified in *bold italics*):**

The Scope of ~~Service~~ **Work** shall include the Design-Builder’s ~~scope of work in Design-Builder’s bid proposal.~~ The Design-Builder’s bid proposal 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. ~~The Design-Builder’s bid proposal shall be escrowed with a neutral third party mutually agreed upon by the Parties.~~

- II. Section 1.4, Licenses, Permits, Fees, and Assessments, shall be revised as follows (deleted content identified in ~~strike-through~~ and added content identified in *bold italics*):**

1.4 Licenses, Permits, Fees and Assessments.

Design-Builder shall obtain at its sole cost and expense such licenses, permits, registrations, and approvals as may be required by law for the performance of the services required by this Agreement. ***Permits issued by the City, however, shall be issued at no cost.*** Design-Builder 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 Design-Builder’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.

- III. Subsection (c) of Section 1.10, Additional Work and Change Orders, shall be revised as follows (deleted content identified in ~~strike-through~~ and added content identified in *bold italics*):**

Any adjustment in the Contract Sum for a Change Order must be in accordance with the rates set forth in the Schedule of Compensation in ~~Exhibit “C”~~. ***Exhibit “C-1”***. If the rates in the Schedule of Compensation do not cover the type of work in the Change Order, the cost of such work shall not exceed an amount agreed upon in writing and signed by Design-Builder and Contract Officer. If the cost of the Change Order cannot be agreed upon, the City will pay for actual work of the Change Order completed, to the satisfaction of the City, as follows:

- (i) Labor: ~~The~~ ***the*** cost of labor shall be ***as described in Section 7-4.2.1 of the Greenbook 2018 Standard Specifications for Public Works Construction.*** ~~the actual cost for wages of workers and subcontractors performing the work for the Change Order~~

~~at the time such work is done.~~ The use of labor classifications that would increase the cost of such work shall not be permitted.

(ii) Materials and Equipment: ~~The~~ *the* cost of materials and equipment shall be *as described in Section 7-4.2.2 of the Greenbook 2018 Standard Specifications for Public Works Construction.* ~~at cost to Design Builder or lowest current price which such materials and equipment are reasonably available at the time the work is done, whichever is lower.~~ *The City reserves the right to approve materials and sources of supply, or to supply materials to the Contractor if necessary for the progress of the Work. No markup shall be applied to any material provided by the City.*

(iii) If the cost of the extra work cannot be agreed upon, the Design-Builder must provide a daily report that includes invoices for labor, materials and equipment costs for the work under the Change Order. The daily report must include: list of names of workers, classifications, and hours worked; description and list of quantities of materials used; type of equipment, size, identification number, and hours of operation, including loading and transportation, if applicable; description of other City authorized services and expenditures in such detail as the City may require. Failure to submit a daily report by the close of the next working day may, at the City's sole and absolute discretion, waive the Design-Builder's rights for that day.

IV. Pursuant to Public Contract Code Section 7104, Section 1.12, Trenching and Excavations, is added to the Agreement as follows (new language identified in *bold italics*):

1.12 Trenching and Excavations.

If Work requires digging trenches or other excavations that extend deeper than four feet below the surface, then:

(a) The Design-Builder shall promptly, and before the following conditions are disturbed, notify the City, in writing, of any:

(i) Material that the Design-Builder believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.

(2) Subsurface or latent physical conditions at the site differing from those indicated by information about the site made available to bidders prior to the deadline for submitting bids.

(3) Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Agreement.

(b) The City shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the Design-Builder's cost of, or the time required for, performance of any part of the work shall issue a change order under the procedures described in the Agreement.

(c) If a dispute arises between the City and the Design-Builder whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Design-Builder's cost of, or time required for, performance of any part of the Work, the Design-Builder shall not be excused from any scheduled completion date provided for by the Agreement, but shall proceed with all Work to be performed under the Agreement. The Design-Builder shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the Parties to this Agreement.

V. Pursuant to Labor Code Section 6705, Section 1.13, Trenching and Pipeline Safety, is added to the Agreement as follows (new language identified in *bold italics*):

1.13 Trenching and Pipeline Safety.

Prior to any excavation of a trench five feet or more in depth, the Design-Builder shall submit for the City Engineer's approval a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during excavation of the trench. If the Design-Builder's plan varies from shoring system standards, then the plan shall be prepared by a registered civil or structural engineer. Shoring, sloping, or protection systems shall be at least as effective as required by the Department of Industrial Relations Construction Safety Orders. This requirement shall not be construed to impose tort liability on the City.

VI. Pursuant to Title 1, Division 5, Chapter 3.1 of the Government Code, Section 1.14, Protection of Underground Infrastructure, is added to the Agreement as follows (new language identified in *bold italics*):

1.14 Protection of Underground Infrastructure.

Design-Builder shall be solely responsible for compliance with the provisions of Chapter 3.1, Protection of Underground Utilities, in Title 1, Division 5, of the California Government Code, including excavation notification requirements, commonly known as "DigAlert" requirements. A City-issued permit to excavate shall not be valid unless the applicant has been provided an initial ticket by a regional notification center pursuant to Government Code Section 4216.2.

VII. Pursuant to Labor Code Section 1777.5 and 1777.6, Section 1.15, Apprentices, is added to the Agreement as follows (new language identified in *bold italics*):

1.15 Apprentices.

(a) The Design-Builder's attention is directed to the provisions of Sections 1777.5 and 1777.6 of the Labor Code concerning the employment of apprentices by the Design-Builder and any subcontractor. The Design-Builder and any subcontractor shall comply with the requirements of said sections in the employment of apprentices.

(b) Design-Builder shall be responsible for compliance with Labor Code Sections 1777.5 and 1777.6. Prior to commencing construction on the Project site, Design-Builder shall provide the City with a copy of the information submitted to any applicable apprenticeship program. Within sixty (60) days after concluding work pursuant to this Agreement, Design-Builder and each subcontractor shall submit to the City a verified statement of the journeyman and apprentice hours performed on the Project.

VIII. Pursuant to Labor Code Section 1810, et seq., Section 1.16, Legal Hours of Work, is added to the Agreement as follows (new language identified in *bold italics*):

1.16 Legal Hours of Work.

(a) Pursuant to Labor Code Section 1810 et seq., eight hours of work is a legal day's work. Hours worked in excess of that amount shall be paid as overtime at a rate of not less than one and one-half times the basic rate of pay.

(b) The time of service of any worker employed upon the Project is limited and restricted to eight hours during any one calendar day, and 40 hours during any one calendar week, except as provided for under Labor Code Section 1815.

(c) The Design-Builder and any subcontractor shall keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed by him or her in connection with the Project. The record shall be kept open at all reasonable hours to the inspection of the City and to the Division of Labor Standards Enforcement.

(d) The Design-Builder and any subcontractor shall, as a penalty to the City, forfeit twenty-five dollars (\$25) for each worker employed in the performance of this Agreement by the Design-Builder or subcontractor for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day and 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.

IX. Pursuant to Labor Code Section 1776, Section 1.17, Payroll Records, is added to the Agreement as follows (new language identified in *bold italics*):

1.17 Payroll Records.

(a) The Design-Builder and each subcontractor shall keep an accurate payroll record showing the name, address, social security number, work classification, straight time

and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the Design-Builder or subcontractor in connection with the Project. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

(i) The information contained in the payroll record is true and correct.

(ii) The employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by his or her employees on the public works project.

(b) The payroll records enumerated under subsection 1.17(a) above shall be certified and shall be available for inspection at all reasonable hours at the principal office of the Design-Builder on the following basis:

(i) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.

(ii) A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the body awarding the contract and the Division of Labor Standards Enforcement of the Department of Industrial Relations.

(iii) A certified copy of all payroll records enumerated in subsection 1.17(a) above shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through either the City or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (b)(ii) above, the requesting Party shall, prior to being provided the records, reimburse the costs of preparation by the Design-Builder, subcontractors, and the entity through which the request was made. The public shall not be given access to the records at the principal office of the Design-Builder.

(c) Unless required to be furnished directly to the Labor Commissioner in accordance with paragraph (3) of subdivision (a) of Section 1771.4, the certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the division. The payroll records may consist of printouts of payroll data that are maintained as computer records, if the printouts contain the same information as the forms provided by the division and the printouts are verified in the manner specified in subsection 1.17(a) above.

(d) The Design-Builder and subcontractors shall file a certified copy of the records enumerated in subsection 1.17(a) with the entity that requested the records within 10 days after receipt of a written request.

(e) Except as provided in subsection 1.17(f) above, any copy of records made available for inspection as copies and furnished upon request to the City or the Division of Labor Standards Enforcement shall be marked or obliterated to prevent disclosure of an individual's name, address, and social security number. The name and address of the Design-Builder or the subcontractor performing the Work shall not be marked or obliterated.

(f) The Design-Builder shall inform the City of the location of the records enumerated under subsection 1.17(a), including the street address, city, and county, and shall, within five working days, provide a notice of a change of location and address.

(g) The Design-Builder or subcontractor has 10 days in which to comply subsequent to receipt of a written notice requesting the records enumerated in subdivision (a). In the event that the Design-Builder or subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to the City, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. The Design-Builder is not subject to a penalty assessment pursuant to this subsection (g) due to the failure of a subcontractor to comply with this subsection (g).

(h) The Design-Builder and Subcontractor shall submit certified payrolls and copies of all payroll checks and pay stubs showing all itemized deductions for each employee on a weekly basis to the City Engineer.

X. Section 2.2, Method of Compensation, shall be revised as follows (deleted content identified in strike through and added content identified in bold italics):

2.2 Method of Compensation.

The method of compensation *shall be:*

(a) As specified in Exhibit "C" – Schedule of Compensation for performance of the Scope of Work, which may include: (i) progress payments based on percentage of completion of Design services in Phase 1, as well as construction in Phase 2; and (ii) on a lump sum basis for line items in the Schedule of Compensation that are not subject to progress payments; and

(b) On a time and materials basis as specified in this Agreement and Exhibit "C-1" for Extra Work 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 the contract retention, (iii) payment for time and materials based upon the Design Builder's rates as specified in the Schedule of Compensation, provided that (a) (i) time estimates~~

are provided for the performance of sub tasks, ~~(b)~~ *(ii)* contract retention is maintained and ~~(c)~~ *(iii)* the Contract Sum is not exceeded except by approved Change Order or Council approval of an amendment to increase the Contract Sum; ~~or (iv) such other methods as may be specified in the Schedule of Compensation.~~

XI. Section 2.4, Invoices, shall be revised as follows (deleted content identified in strike through and added content identified in *bold italics*):

2.4 Invoices.

Each month Design-Builder 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, Design-Builder 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.~~ *The invoice shall provide sufficient details and supporting documents for the City's Contract Officer to verify the Work performed and Work progress with reasonable ease. Invoices for Work performed in the Construction Phase shall provide details and supporting documents consistent with the final construction costs approved with the final construction drawings, as well as any change orders approved by the City.* Sub-contractor charges shall also be detailed by such categories. Design-Builder shall not invoice City for any duplicate services performed by more than one person.

XII. Subsection (a), Commercial General Liability Insurance (Occurrence Form CG001 or equivalent), of Section 5.1, Insurance Coverages, shall be revised as follows (deleted content identified in strike through and added content identified in *bold italics*):

~~(a) Commercial 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.~~

(a) Commercial General Liability (CGL): Insurance Services Office (ISO) Form CG 00 01 covering a policy of comprehensive general liability insurance written on a per occurrence basis, including bodily injury, personal injury, property damage, products and completed operations, and advertising injury. The policy of insurance shall be in an amount not less than \$5,000,000.00 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISOCG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit. The City of Carson, its elected and appointed officers, officials, employees, agents, and volunteers shall be covered as additional insureds on

the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Design-Builder, including materials, parts, or equipment furnished in connection with such work or operations, and automobiles owned, leased, hired, or borrowed by or on behalf of the Design-Builder. General liability coverage can be provided in the form of any endorsement to the Design-Builder's insurance (at least as broad as ISO Form CG 20 10, CG 11 85, or both CG 2010, CG 20 26, CG 20 33, or CG 20 38 and CG 20 37 forms if later revisions are used.

XIII. Subsection (b), Workers Compensation Insurance, of Section 5.1, Insurance Coverages, shall be revised as follows (deleted content identified in ~~strike through~~ and added content identified in *bold italics*):

(b) Workers Compensation Insurance. A policy of workers compensation insurance ~~in such amount as will fully comply with the laws of the State of California~~ *with a limit of no less than \$1,073,394 per accident for bodily injury or disease*, and which shall indemnify, insure and provide legal defense for the Design-Builder 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 Design-Builder in the course of carrying out the work or services contemplated in this Agreement. *The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City of Carson for all work performed by the Design-Builder, its employees, sub-consultants, subcontractors, and agents.*

XIV. Subsection (c), Automotive Insurance (Form CA 0001 (Ed 1/87) including "any auto" and endorsement CA 0025 or equivalent, of Section 5.1, Insurance Coverages, shall be revised as follows (deleted content identified in ~~strike through~~ and added content identified in *bold italics*):

(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~~ *\$5,000,000*. Said policy shall include coverage for owned, non-owned, leased, hired cars and any automobile.

XV. Subsection (d), Professional Liability, of Section 5.1, Insurance Coverages, shall be revised as follows (deleted content identified in ~~strike through~~ and added content identified in *bold italics*):

(d) Professional Liability. Professional liability insurance *with a limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate* ~~appropriate to the Design-Builder'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 Design-Builder's services or the termination of this Agreement. During this additional 5-year period, Design-Builder

shall annually and upon request of the City submit written evidence of this continuous coverage.

XVI. Subsection (e), Additional Insurance, of Section 5.1, Insurance Coverages, shall be revised to include subsection (e)(i) as follows (deleted content identified in ~~strike through~~ and added content identified in *bold italics*):

(i) Builder's Risk (Course of Construction) insurance utilizing an "All Risk" (Special Perils) coverage form, with limits equal to the completed value of the project and no co-insurance penalty provisions. Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after completion of the work. If coverage is canceled or not renewed, and not replaced with another claims-made policy form with a retroactive date prior to this Agreement's date first referenced above, then the Design-Builder shall purchase extended reporting period coverage for a minimum of five (5) years after completion of the work. Coverage shall name the City of Carson as a loss payee.

XVII. Subsection (g) is hereby added to Section 5.1, Insurance Coverages, as follows (deleted content identified in ~~strike through~~ and added content identified in *bold italics*):

If the Design-Builder maintains broader coverage and/or higher limits than the minimums required by this Article 5, the City requires and shall be entitled to the broader coverage and/or higher limits maintained by the Design-Builder. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

XVIII. Section 5.2, General Insurance Requirements, shall be revised as follows (deleted content identified in ~~strike through~~ and added content identified in *bold italics*):

5.2 General Insurance Requirements.

(a) All of the above policies of insurance shall be primary insurance at least as broad as ISO CG 20 01 04 13 with respect to the City, its officers, officials, employees, and volunteers. All of the above policies of insurance and shall also name the City, its elected and appointed officers, employees and agents as additional insureds. Any-and-any insurance maintained by City or its officers, employees or agents may apply in excess of, and not contribute with Design-Builder's insurance.

(b) 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. The Design-Builder hereby agrees to waive rights of subrogation which any insurer of Design-Builder may acquire from Design-Builder by virtue of the payment of any loss. Design-Builder shall obtain any endorsement necessary to affect this waiver of subrogation.

(c) 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.

(d) 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 Design-Builder shall, prior to the cancellation date, submit new evidence of insurance in conformance with Section 5.1 to the Contract Officer.

(e) No work or services under this Agreement shall commence until the Design-Builder 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.


(f) 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.

(g) 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]


Agent's Initials

(h) 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 Design-Builder performs; products and completed operations of Design-Builder; premises owned, occupied or used by Design-Builder; or any automobiles owned, leased, hired or borrowed by Design-Builder. 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. Design-Builder'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.

(i) 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 Design-Builder shall procure a bond guaranteeing payment of losses and related investigations, claim administration, defense expenses and claims. The Design-Builder agrees that the requirement to provide insurance shall not be construed as limiting in any way the extent to which the Design-Builder may be held responsible for the payment of damages to any persons or property resulting from the Design-Builder's activities or the activities of any person or persons for which the Design-Builder is otherwise responsible nor shall it limit the Design-Builder's indemnification liabilities as provided in Section 5.3.

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

XIX. The first paragraph of Section 5.3, Indemnification, is amended as follows (deleted content identified in strike-through and added content identified in bold italics):

To the full extent permitted by law, Design-Builder 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 Design-Builder, its officers, employees, agents, subcontractors, *subconsultants (including Design-Builder's architect)*, or invitees, or any individual or entity for which Design-Builder is legally liable *or which the Design-Builder has selected for performance of the Work* ("indemnitors"), or arising from Design-Builder's or indemnitors' reckless or willful misconduct, or arising from Design-Builder's or indemnitors' negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, and in connection therewith:

XX. Section 5.4, Performance and Labor Bonds, shall be revised as follows (deleted content identified in strike-through and added content identified in bold italics):

5.4 Performance and Labor Bonds.

Concurrently with execution of this Agreement Design-Builder shall deliver to the City, the following:

- (a) A performance bond in the amount of the Contract Sum of this Agreement, in the form provided by the City Clerk, which secures the faithful performance of this Agreement.

(b) A labor and materials bond in the amount of the Contract Sum of this Agreement, in the form provided by the City Clerk, which secures the payment of all persons furnishing labor and/or materials in connection with the work under this Agreement.

Bonds shall be duly executed by a responsible corporate surety, authorized to issue such bonds in the State of California and secured through an authorized agent with an office in California. Both the performance and labors bonds required under this Section 5.4 shall contain the original notarized signature of an authorized officer of the surety and affixed thereto shall be a certified and current copy of his power of attorney. The bond shall be unconditional and remain in force during the entire term of the Agreement and shall be null and void only if the Design-Builder promptly and faithfully performs all terms and conditions of this Agreement and pays all labor and materials for work and services under this Agreement.

XXI. Pursuant to Labor Code Section 1860 et seq., Section 5.8, Workers' Compensation, is added to the Agreement as follows (new language identified in bold italics):

5.8 Workers Compensation.

(a) California Labor Code Sections 1860 and 3700 provide that every employer shall secure the payment of compensation to its employees if it has employees. Pursuant to Labor Code Section 1861, Design-Builder 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."

Design-Builder's Authorized Initials

EXHIBIT "C"

SCHEDULE OF COMPENSATION

- I. Design-Builder shall perform the Scope of Work in accordance with the following cost estimates, which are subject to change upon the City's selection of a design concept and the City's approval of the detailed construction cost estimate attached to City-approved construction drawings. The detailed cost estimate shall not exceed \$1,073,394.

PHASE 1 - DESIGN SERVICES (Concept to final construction drawings)		
	3 design concepts and 3 site layouts for the City's consideration	
	Final design concept and site layout	
	50% completion of construction drawings with updated cost estimate	
	90% completion of construction drawings with updated cost estimate	
	100% completion of construction drawings with final detailed cost estimate and construction schedule	
	PHASE 1 – DESIGN SERVICES TOTAL	\$57,800
PHASE 2 – CONSTRUCTION		
	Mobilization	
	Project management	
	Performance and payment bond	
	Temporary Fencing	
	Storage Bins	
	SWPPP's and erosion control	
	Equipment procurement	
	Recycle and demolition compliance	
	Permit fees and license	
	Mobilization Subtotal: \$196,532	
	Demolition (Removal and Disposal)	
	Existing rubber surfacing and sub-base	
	Playground containment curb	
	Raised planters with footings	
	Concrete flatwork	
	Wading pool feature	
	Non-compliant handicap ramp at parking area	
	Existing play equipment	
	Restroom masonry screen wall	
	Pump enclosure and associated water and electrical lines	
	Demolition Subtotal: \$88,944	
	Grading and Drainage	
	Grade, compact	
	Construct sub-drainage under rubber surfacing	
	Grading & Drainage Subtotal: \$22,000	
	Construction & Installation	
	Restroom upgrades for ADA compliance	

	Rubber containment curb and anchor	
	Aggregate sub-base for resilient surfacing	
	Rubber surfacing	
	Play equipment	
	Site furnishings	
	Shades with benches	
	Concrete walkways connecting the parking lot, playground, shelters, and restrooms	
	Irrigation and landscape alterations and repairs	
	Poligon shelter	
	Hex shade	
	Construction & Installation Subtotal: \$665,878	
	Miscellaneous	
	Paint (E) light pole	
	Provide GT Free Notes activity cluster	
	Install GT Free Notes	
	Install irrigation in sensory garden planter, connect to (E) valve/controller	
	Provide and place sensory garden plants	
	Miscellaneous Subtotal: \$42,240	
	PHASE 2 - CONSTRUCTION TOTAL	\$1,015,594
	PROJECT (PHASE 1 AND PHASE 2) TOTAL	\$1,073,394

- II. A retention of five percent (5%) shall be held from each payment as a contract retention to be paid as part of the final payment upon satisfactory completion of services.**
- III. Within the budgeted amounts for each Task, and with the prior written approval of the Contract Officer, funds may be shifted from one Task subbudget to another so long as the Contract Sum is not exceeded per Section 2.1, unless Additional Work are approved per Section 1.10.**
- IV. The City will compensate Design-Builder for the services performed upon submission of a valid invoice. Each invoice is to include:**
- A. Line items for work performed as described in the Scope of Work, and in accordance with the progression of the Schedule of Performance.**
 - B. Line items for all materials and equipment properly charged to the Work.**
 - 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 Work.**

- V. The total compensation for the services shall not exceed the Contract Sum as provided in Section 2.1 of this Agreement.**
- VI. The Design-Builder shall not receive payment on any invoice unless the Design-Builder has submitted the appropriate status report (as described in Exhibit “A”) in advance, describing the completion of Work for which the invoice requests payment. N/A as indicated in Exhibit “A.”**
- VII. The Design-Builder’s billing rates for all personnel are attached as Exhibit C-1.**

DRAFT

EXHIBIT “C-1”

Design-Builder’s Hourly Fee Schedule shall, per the RFP, apply to additional tasks **not addressed** in the Scope of Work.

Certified Access Specialist (CAsp)	\$225 per hour
Civil Engineer	\$210 per hour
Principal Landscape Architect	\$195 per hour
Electrical Engineer	\$175 per hour
Sr. Landscape Architect/Project Manager	\$175 per hour
Certified Irrigation Designer	\$135 per hour
Landscape Designer	\$115 per hour
Professional/Clerical Staff	\$75 per hour
Project Manager	\$120 per hour

EXHIBIT “D”

SCHEDULE OF PERFORMANCE

- I. Design-Builder shall perform all work timely in accordance with the following schedule:**

Estimated Performance Deadline

PHASE 1 - DESIGN

3 MONTHS

PHASE 2 - CONSTRUCTION

1. Substantial Completion of Construction, which is when the Work is sufficiently complete in accordance with the construction drawings so that the work can be used for its intended purpose, as determined by the Contract Officer.
Ten (10) months after the City issues the Notice to Proceed for Design-Build services. (Note: Although the Purchase Order number on this Agreement shall be provided by the City to the Design-Builder prior to the kickoff meeting, the City shall issue the Notice to Proceed after the kickoff meeting.)
2. Final Completion, which is the completion of punch list items, the City’s inspection to confirm that the Work is complete, and the City Council’s formal acceptance of the Project.
Twelve (12) months after the City issues the Notice to Proceed for Design-Build services.

- II. Design-Builder shall deliver the following tangible work products to the City by the following dates.**

A. Prior to the City Council’s acceptance of the Work, the Design-Builder shall deliver to the City any and all design materials including, but not limited to, calculations, preliminary drawings, construction drawings, shop drawings, samples, electronic media data, sketches, illustrations specifications, descriptions, models, renderings, and other information developed, prepared, furnished, or delivered in the performance of Design services. Shop drawings include drawings submitted to the Design-Builder by subcontractors, manufacturers, suppliers, or distributors, showing, in detail, the proposed fabrication and assembly of building elements and the installation (i.e. form, fit, and attachment details) of materials and equipment.

B. Prior to the City Council’s acceptance of the Work, the Design-Builder shall deliver to the City equipment and materials manuals, specifications, and warranties

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