CONTRACT SERVICES AGREEMENT

By and Between

CITY OF CARSON

and

KOA CORPORATION

AGREEMENT FOR CONTRACT SERVICES
BETWEEN THE City OF CARSON AND
KOA Corporation

THIS AGREEMENT FOR CONTRACT SERVICES (herein "Agreement") is made and entered into this ____ day of _____, 2020 by and between the City of Carson, a California municipal corporation ("City") and KOA Corporation, a California Corporation, ("Consultant"). City and Consultant are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties".

RECITALS

A. City has sought, by issuance of a Request for Proposals or Invitation for Bids, the performance of the services defined and described particularly in Article 1 of this Agreement.

B. Consultant, following submission of a proposal or bid for the performance of the services defined and described particularly in Article 1 of this Agreement, was selected by the City to perform those services.

C. Pursuant to the City of Carson Municipal Code, City has authority to enter into and execute this Agreement.

D. The Parties desire to formalize the selection of Consultant for performance of those services defined and described particularly in Article 1 of this Agreement and desire that the terms of that performance be as particularly defined and described herein.

OPERATIVE PROVISIONS

NOW, THEREFORE, in consideration of the mutual promises and covenants made by the Parties and contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the parties agree as follows:

ARTICLE 1. WORK OF CONSULTANT

1.1. Scope of Work.

In compliance with all terms and conditions of this Agreement, the Consultant 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, Consultant 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. Consultant shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. Consultant covenants that it shall follow the highest professional standards in performing the work and services required hereunder and that all materials will be both of good quality as well as fit for the purpose intended. For purposes of this Agreement, the phrase "highest professional standards" shall mean those

standards of practice recognized by one or more first-class firms performing similar work under similar circumstances.

1.2. Consultant's Proposal.

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

1.3. Compliance with Law.

Consultant shall keep itself informed concerning, and shall render all services hereunder in accordance with, all ordinances, resolutions, statutes, rules, and regulations of the City and any Federal, State or local governmental entity having jurisdiction in effect at the time service is rendered.

1.4. Licenses, Permits, Fees and Assessments.

Consultant shall obtain at its sole cost and expense such licenses, permits, registrations, and approvals as may be required by law for the performance of the services required by this Agreement. Consultant shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Consultant's performance of the services required by this Agreement, and shall indemnify, defend and hold harmless City, its officers, employees or agents of City, against any such fees, assessments, taxes, penalties or interest levied, assessed or imposed against City hereunder.

1.5. Familiarity with Work.

(a) By executing this Agreement, Consultant warrants that Consultant (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, Consultant warrants that Consultant has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services hereunder.

(b) Consultant shall promptly, and before the following conditions are disturbed, notify the City, in writing, of any: (i) material Consultant 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 Consultant'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 Consultant whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in Consultant's cost of, or time required for, performance of any part of the work, Consultant shall not be excused from any scheduled completion date set, but shall proceed with all work to be performed under the Agreement. Consultant 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.

Consultant 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. Consultant 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.

Consultant 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. Consultant 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, Consultant 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. Consultant shall act soon as requested by the City in response to an emergency. In addition, Consultant 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, Consultant'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. Consultant 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 Consultant. 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 Consultant 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 Consultant agrees to enforce such warranties and guarantees, if necessary, on behalf of the City. In the event that Consultant 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 Consultant's sole expense. Consultant shall be obligated to fully reimburse the City for any expenses incurred hereunder upon demand.

1.8. Prevailing Wages.

Consultant 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 Consultant and all subcontractors be registered with and pay the registration fee to the Department of Industrial Relations ("DIR"), Consultant 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, Consultant agrees to fully comply with such Prevailing Wage Laws. City shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Consultant 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 Consultant's principal place of business and at the project site. Consultant 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 Consultant, 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

Consultant ("Change Order"). All Change Orders must be signed by the Consultant 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 Consultant 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 Consultant 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 Consultant 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 Consultant's rights for that day.

(d) It is expressly understood by Consultant that the provisions of this Section 1.10 shall not apply to services specifically set forth in the Scope of Work. Consultant 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 Consultant anticipates and that Consultant shall not be entitled to additional compensation therefor. City may in its sole and absolute discretion have similar work done by other contractors.

(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 Consultant the amounts specified in the "Schedule of Compensation" attached hereto as Exhibit "C" and incorporated herein by this reference. The total compensation, including reimbursement for actual expenses, shall not exceed ONE HUNDRED SIXTY-FOUR THOUSAND SIX HUNDRED SIXTY-FIVE DOLLARS AND TWENTY CENTS ($164,665.20) (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 Consultant's rates as specified in the Schedule of Compensation, provided that (a) time estimates are provided for the performance of sub tasks, (b) contract retention is maintained and (c) the Contract Sum is not exceeded; or (iv) such other methods as may be specified in the Schedule of Compensation.

2.3. Reimbursable Expenses.

Compensation may include reimbursement for actual and necessary expenditures for reproduction costs, telephone expenses, and travel expenses approved by the Contract Officer in advance, or actual subcontractor expenses of an approved subcontractor pursuant to Section 4.5, and only if specified in the Schedule of Compensation. The Contract Sum shall include the attendance of Consultant at all project meetings reasonably deemed necessary by the City. Coordination of the performance of the work with City is a critical component of the services. If Consultant is required to attend additional meetings to facilitate such coordination, Consultant shall not be entitled to any additional compensation for attending said meetings.

2.4. Invoices.

Each month Consultant shall furnish to City an original invoice for all work performed and expenses incurred during the preceding month in a form approved by City's Director of Finance. By submitting an invoice for payment under this Agreement, Consultant is certifying compliance with all provisions of the Agreement. The invoice shall detail charges for all necessary and actual expenses by the following categories: labor (by sub-category), travel, materials, equipment, supplies, and sub-contractor contracts. Sub-contractor charges shall also be detailed by such categories. Consultant shall not invoice City for any duplicate services performed by more than one person.

City shall independently review each invoice submitted by the Consultant to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. Except as to any charges for work performed or expenses incurred by Consultant which are disputed by City, or as provided in Section 7.3, City will cause Consultant to be paid within thirty (30) days of receipt of Consultant's correct and undisputed invoice; however, Consultant acknowledges and agrees that due to City warrant run procedures, the City cannot guarantee that payment will occur within this time period. In the event any charges or expenses are disputed by City, the original invoice shall be returned by City to Consultant for correction and resubmission. Review and payment by the City of any invoice provided by the Consultant shall not constitute a waiver of any rights or remedies provided herein or any applicable law.

2.5. Waiver.

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

ARTICLE 3. PERFORMANCE SCHEDULE

3.1. Time of Essence.

Time is of the essence in the performance of this Agreement.

3.2. Schedule of Performance.

Consultant shall commence the services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all services within the time period(s) established in the "Schedule of Performance" attached hereto as Exhibit "D" and incorporated herein by this reference. When requested by Consultant, extensions to the time period(s) specified in the Schedule of Performance may be approved in writing by the Contract Officer but not exceeding one hundred eighty (180) days cumulatively.

3.3. Force Majeure.

The time period(s) specified in the Schedule of Performance for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of Consultant, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the City, if Consultant shall within ten (10) days of the commencement of such delay notify the Contract Officer in writing of the causes of the delay. The Contract Officer shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the Contract Officer such delay is justified. The Contract Officer's determination shall be final and conclusive upon the parties to this Agreement. In no event shall Consultant be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Consultant's sole remedy being extension of the Agreement pursuant to this Section.

3.4. Inspection and Final Acceptance.

City may inspect and accept or reject any of Consultant's work under this Agreement, either during performance or when completed. City shall reject or finally accept Consultant'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 Consultant.

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

Stephen Bise	Vice President
Chuck Stephen	Vice President
Min Zhao	President/CEO

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 Consultant and devoting sufficient time to personally supervise the services hereunder. All personnel of Consultant, and any authorized agents, shall at all times be under the exclusive direction and control of the Principals. For purposes of this Agreement, the Principals may not be replaced nor may their responsibilities be substantially reduced by Consultant without the express written approval of City. Additionally, Consultant shall make every reasonable effort

to maintain the stability and continuity of Consultant's staff and subconsultants, if any, assigned to perform the services required under this Agreement. Consultant shall notify City of any changes in Consultant's staff and subconsultants, if any, assigned to perform the services required under this Agreement, prior to and during any such performance.

4.2. Status of Consultant.

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

4.3. Contract Officer.

The City's Contract Officer (also sometimes referred to as "Contract Administrator") shall be [_____Reata Kucsar_____ or] such person as may be designated by the City Manager. It shall be the Consultant's responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services and the Consultant shall refer any decisions which must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer. The Contract Officer shall have authority, if specified in writing by the City Manager, to sign all documents on behalf of the City required hereunder to carry out the terms of this Agreement.

4.4. Independent Contractor.

Neither the City nor any of its employees shall have any control over the manner, mode or means by which Consultant, its agents or employees, perform the services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision or control of Consultant's employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. Consultant shall perform all services required herein as an independent contractor of City and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with that role. Consultant shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City. City shall not in any way or for any purpose become or be deemed to be a partner of Consultant in its business or otherwise or a joint venturer or a member of any joint enterprise with Consultant.

4.5. Prohibition Against Subcontracting or Assignment.

The experience, knowledge, capability and reputation of Consultant, its principals and employees were a substantial inducement for the City to enter into this Agreement. Therefore, Consultant shall not contract with any other entity to perform in whole or in part the services

required hereunder without the express written approval of the City. All subcontractors shall obtain, at its or Consultant'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 Consultant, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release the Consultant or any surety of Consultant of any liability hereunder without the express consent of City.

ARTICLE 5. INSURANCE, INDEMNIFICATION AND BONDS

5.1. Insurance Coverages.

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

(a) 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 Consultant against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by Consultant in the course of carrying out the work or services contemplated in this Agreement.

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

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

Agreement. During this additional 5-year period, Consultant shall annually and upon request of the City submit written evidence of this continuous coverage.

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

(f) Subcontractors. Consultant shall include all subconsultants/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 Consultant's insurance. The insurer is deemed hereof to waive all rights of subrogation and contribution it may have against the City, its officers, employees and agents and their respective insurers. Moreover, the insurance policy must specify that where the primary insured does not satisfy the self-insured retention, any additional insured may satisfy the self-insured retention. All of said policies of insurance shall provide that said insurance may not be amended or cancelled by the insurer or any party hereto without providing thirty (30) days prior written notice by certified mail return receipt requested to the City. In the event any of said policies of insurance are cancelled, the Consultant shall, prior to the cancellation date, submit new evidence of insurance in conformance with Section 5.1 to the Contract Officer. No work or services under this Agreement shall commence until the Consultant has provided the City with Certificates of Insurance, additional insured endorsement forms or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by the City. City reserves the right to inspect complete, certified copies of and endorsements to all required insurance policies at any time. Any failure to comply with the reporting or other provisions of the policies including breaches or warranties shall not affect coverage provided to City.

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

CANCELLATION:

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

[to be initialed] _____
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 Consultant performs; products and completed operations of Consultant; premises owned, occupied or used by Consultant; or any automobiles owned, leased, hired or borrowed by Consultant. The coverage shall contain no special limitations on the scope of protection afforded to City, and their respective elected and appointed officers, officials, employees or volunteers. Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

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

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

5.3. Indemnification.

To the full extent permitted by law, Consultant agrees to indemnify, defend and hold harmless the City, its officers, employees and agents ("Indemnified Parties") against, and will hold and save them and each of them harmless from, any and all actions, either judicial, administrative, arbitration or regulatory claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities whether actual or threatened (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent performance of the work, operations or activities provided herein of Consultant, its officers, employees, agents, subcontractors/subconsultants, or invitees, or any individual or entity for which Consultant is legally liable ("indemnitors"), or arising from Consultant's or indemnitors' reckless or willful misconduct, or arising from Consultant's or indemnitors' negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, and in connection therewith:

(a) Consultant will defend any action or actions filed in connection with any of said claims or liabilities and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith;

(b) Consultant will promptly pay any judgment rendered against the City, its officers, agents or employees for any such claims or liabilities arising out of or in connection with the negligent performance of or failure to perform such work, operations or activities of

Consultant hereunder; and Consultant agrees to save and hold the City, its officers, agents, and employees harmless therefrom;

(c) In the event the City, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against Consultant for such damages or other claims arising out of or in connection with the negligent performance of or failure to perform the work, operation or activities of Consultant hereunder, Consultant agrees to pay to the City, its officers, agents or employees, any and all costs and expenses incurred by the City, its officers, agents or employees in such action or proceeding, including but not limited to, legal costs and attorneys' fees.

In addition, Consultant 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 Consultant under this Agreement, and of which the Consultant is not the patentee or assignee or has not the lawful right to sell the same.

Consultant shall incorporate similar indemnity agreements with its subcontractors and if it fails to do so Consultant shall be fully responsible to indemnify City hereunder therefore, and failure of City to monitor compliance with these provisions shall not be a waiver hereof. This indemnification includes claims or liabilities arising from any negligent or wrongful act, error or omission, or reckless or willful misconduct of Consultant in the performance of professional services 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 Consultant and shall survive termination of this Agreement.

5.4. Performance and Labor Bonds.

Concurrently with execution of this Agreement Consultant 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 Consultant

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 Consultant 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 Consultant. Alternatively, the Consultant 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 Consultant.

5.7. Release of Securities.

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

(a) Consultant 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, Consultant has provided statutory bond, or otherwise as required by applicable law.

ARTICLE 6. RECORDS, REPORTS, AND RELEASE OF INFORMATION

6.1. Records.

Consultant shall keep, and require subcontractors to keep, such ledgers, books of accounts, invoices, vouchers, canceled checks, reports, studies, 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 Consultant's business, custody of the books and records may be given to City, and access shall be provided by Consultant's successor in interest. Notwithstanding the above, the Consultant shall fully cooperate with the City in providing access to the books and records if a public records request is made and disclosure is required by law including but not limited to the California Public Records Act.

6.2. Reports.

Consultant shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement as the Contract Officer shall require. Consultant hereby acknowledges that the City is greatly concerned about the cost of work and services to be performed pursuant to this Agreement. For this reason, Consultant agrees that if Consultant becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or services contemplated herein or, if Consultant is providing design services, the cost of the project being designed, Consultant shall promptly notify the Contract Officer of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto and, if Consultant is providing design services, the estimated increased or decreased cost estimate for the project being designed.

6.3. Ownership of Documents.

All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents and other materials (the "documents and materials") prepared by Consultant, its employees, subcontractors and agents in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of the Contract Officer or upon the termination of this Agreement, and Consultant shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership use, reuse, or assignment of the documents and materials hereunder. Any use, reuse or assignment of such completed documents for other projects and/or use of uncompleted documents without specific written authorization by the Consultant will be at the City's sole risk and without liability to Consultant, and Consultant's guarantee and warranties shall not extend to such use, reuse or assignment. Consultant may retain copies of such documents for its own use. Consultant shall have 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 Consultant fails to secure such assignment, Consultant shall indemnify City for all damages resulting therefrom. Moreover, Consultant with respect to any documents and materials that may qualify as "works made for hire" as defined in 17 U.S.C. § 101, such documents and materials are hereby deemed "works made for hire" for the City.

6.4. Confidentiality and Release of Information.

(a) All information gained or work product produced by Consultant in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Consultant. Consultant shall not release or disclose any such information or work product to persons or entities other than City without prior written authorization from the Contract Officer.

(b) Consultant, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the Contract Officer or unless requested by the City Attorney, voluntarily provide documents, declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives City notice of such court order or subpoena.

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

(d) Consultant shall promptly notify City should Consultant, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed there under. City retains the right, but has no obligation, to represent Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

ARTICLE 7. ENFORCEMENT OF AGREEMENT AND TERMINATION

7.1. California Law.

This Agreement shall be interpreted, construed and governed both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Los Angeles, State of California, or any other appropriate court in such county, and Consultant covenants and agrees to submit to the personal jurisdiction of such court in the event of such action. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in the County of Los Angeles, State of California.

7.2. Disputes; Default.

In the event that Consultant is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Consultant for any work performed

after the date of default. Instead, the City may give notice to Consultant of the default and the reasons for the default. The notice shall include the timeframe in which Consultant may cure the default. This timeframe is presumptively thirty (30) days, but may be extended, though not reduced, if circumstances warrant. During the period of time that Consultant is in default, the City shall hold all invoices and shall 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 Consultant does not cure the default, the City may take necessary steps to terminate this Agreement under this Article. Any failure on the part of the City to give notice of the Consultant's default shall not be deemed to result in a waiver of the City's legal rights or any rights arising out of any provision of this Agreement.

7.3. Retention of Funds.

Consultant hereby authorizes City to deduct from any amount payable to Consultant (whether or not arising out of this Agreement) (i) any amounts the payment of which may be in dispute hereunder or which are necessary to compensate City for any losses, costs, liabilities, or damages suffered by City, and (ii) all amounts for which City may be liable to third parties, by reason of Consultant's acts or omissions in performing or failing to perform Consultant's obligation under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by Consultant, or any indebtedness shall exist which shall appear to be the basis for a claim of lien, City may withhold from any payment due, without liability for interest because of such withholding, an amount sufficient to cover such claim. The failure of City to exercise such right to deduct or to withhold shall not, however, affect the obligations of the Consultant to insure, indemnify, and protect City as elsewhere provided herein.

7.4. Waiver.

Waiver by any party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Consultant shall not constitute a waiver of any of the provisions of this Agreement. No delay or omission in the exercise of any right or remedy by a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

7.5. Rights and Remedies are Cumulative.

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

7.6. Legal Action.

In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement. Notwithstanding any contrary provision herein, Consultant shall file a 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 Consultant and its sureties shall be liable for and shall pay to the City the sum of zero ($___0.00____) 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 Consultant 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 Consultant, except that where termination is due to the fault of the Consultant, the period of notice may be such shorter time as may be determined by the Contract Officer. In addition, the Consultant reserves the right to terminate this Contract at any time, with or without cause, upon sixty (60) days' written notice to City, except that where termination is due to the fault of the City, the period of notice may be such shorter time as the Consultant may determine. Upon receipt of any notice of termination, Consultant shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Except where the Consultant has initiated termination, the Consultant shall be entitled to compensation for all services rendered prior to the effective date of the notice of termination and for any services authorized by the Contract Officer thereafter in accordance with the Schedule of Compensation or such as may be approved by the Contract Officer, except as provided in Section 7.3. In the event the Consultant has initiated termination, the Consultant shall be entitled to compensation only for the reasonable value of the work product actually produced hereunder. In the event of termination without cause pursuant to this Section, the terminating party need not provide the non-terminating party with the opportunity to cure pursuant to Section 7.2.

7.9. Termination for Default of Consultant.

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

7.10. 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, Consultant 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 Consultant 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 Consultant, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Consultant or to its successor, or for breach of any obligation of the terms of this Agreement.

8.2. Conflict of Interest.

Consultant covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Consultant's performance of services under this Agreement. Consultant further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the Contract Officer. Consultant agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement.

No officer or employee of the City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which 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 Consultant warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

8.3. Covenant Against Discrimination.

Consultant covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, ancestry, or other protected class in the performance of this Agreement. Consultant shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, ancestry, or other protected class.

8.4. Unauthorized Aliens.

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

ARTICLE 9. MISCELLANEOUS PROVISIONS

9.1. Notices.

Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail, in the case of the City, to the City Manager and to the attention of the Contract Officer (with her/his name and City title), City of Carson, 701 East Carson, Carson, California 93203 and in the case of the Consultant, 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 Consultant and by the City Council. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

9.5. Severability.

In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

9.6. Warranty & Representation of Non-Collusion.

No official, officer, or employee of City has any financial interest, direct or indirect, in this Agreement, nor shall any official, officer, or employee of City participate in any decision relating to this Agreement which may affect his/her financial interest or the financial interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any State or municipal statute or regulation. The determination of "financial interest" shall be consistent with State law and shall not include interests found to be "remote" or "noninterests" pursuant to Government Code Sections 1091 or 1091.5. Consultant warrants and represents that it has not paid or given, and will not pay or give, to any third party including, but not limited to, any City official, officer, or employee, any money, consideration, or other thing of value as a result or consequence of obtaining or being awarded any agreement. Consultant further warrants and represents that (s)he/it has not engaged in any act(s), omission(s), or other conduct or collusion that would result in the payment of any money, consideration, or other thing of value to any third party including, but not limited to, any City official, officer, or employee, as a result of consequence of obtaining or being awarded any agreement. Consultant is aware of and understands that any such act(s), omission(s) or other conduct resulting in such payment of money, consideration, or other thing of value will render this Agreement void and of no force or effect.

Consultant's Authorized Initials _____

9.7. Corporate Authority.

The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first-above written.

City:

City OF CARSON, a municipal corporation

_____
Albert Robles, Mayor

ATTEST:

_____
Donesia L. Gause, City Clerk

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

_____
Sunny K. Soltani, City Attorney

CONSULTANT:

KOA CORPORATION, a California corporation

By:_____
Name: Stephen Bise
Title: Vice President

By:_____
Name: Juan Gutierrez
Title: Chief Financial Officer
Address: 2141 Orangewood Avenue
Orange, CA 9286

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

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

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

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On _____, 2020 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_____

_____

SIGNER IS REPRESENTING:
(NAME OF PERSON(S) OR ENTITY(IES))

_____
_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
TITLE OR TYPE OF DOCUMENT

_____
NUMBER OF PAGES

_____
DATE OF DOCUMENT

_____
SIGNER(S) OTHER THAN NAMED ABOVE

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

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

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On _____, 2020 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_____

_____

SIGNER IS REPRESENTING:
(NAME OF PERSON(S) OR ENTITY(IES))

_____
_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
TITLE OR TYPE OF DOCUMENT

_____
NUMBER OF PAGES

_____
DATE OF DOCUMENT

_____
SIGNER(S) OTHER THAN NAMED ABOVE

EXHIBIT "A"

SCOPE OF WORK

A. Consultant Services. Consultant will perform the following work [Acceptance criteria are set forth in the RFP Scope and/or the City's Bike Master Plan. Consultant/engineer shall sign all Plans, Specifications and Estimate (PS&E) and engineering data furnished under the Agreement, including registration number]:

1. Design and prepare the signing, striping, and pavement marking plans for bike lanes on various public streets in Carson for the implementation of Bike Lanes at the locations specified below in subparagraph 2 (Project No. 1451 [Federal Aid Project No. HSIPL-5403(025)]), with reference to the Carson Master Plan of Bikeways, available at http://ci.carson.ca.us/content/files/pdfs/planning/bikemasterplan.pdf. The bike lane designs do not necessarily have to be consistent with the proposed configurations provided in the Master Plan of Bikeways, and shall be determined by Consultant based on the specific roadway geometrics and conditions.

2. **LOCATIONS:**

   1. Figueroa St. from Victoria Street to south city limit

   2. Main St. from north city limit to south city limit

   3. Victoria St. from Figueroa St. to east city limit (portion of roadway shared with the City of Compton).

   4. Carson St. from I-405 to east city limit

3. Coordination. Consultant shall coordinate work with the City of Los Angeles, County of Los Angeles, City of Long Beach, Caltrans, and/or the Rail Road companies if proposed work is within their rights-of-way.

B. Environmental documents are not considered complete until a Caltrans District Senior Environmental Planner signs the Categorical Exclusion, a Caltrans Deputy District Director signs the Finding of No Significant Impact, or the Caltrans District Director signs the Record of Decision (see LAPM Chapter 6: Environmental Procedures, and the Standard Environmental Reference).

C. Consultant shall prepare the following Drawings, Plans, and other documents, which hereby made a part of this Agreement, as Agreement Deliverables:

1. Design drawings for bike lanes, to include a detailed set of construction-ready design plans (PS&E) that comply with applicable standards, specifications, policies, and design guidelines, such as the California Highway Design Manual, the American Association of State Highway and Transportation Officials, and the California Manual on Uniform Traffic Control Devices.

2. A signing, striping and pavement marking plan for the new and/or modified bike lanes to be installed within the existing curb-to-curb width of each roadway segment. The plans shall show the widths of the bike lanes, the widths of the vehicular travel lanes, the widths of the buffer zones (where feasible), the dimensions, type and locations of all pavement markings, and the type, size and locations of all new signs. The plans will be submitted at 60% and 90% completion levels for City review, and final plans will be submitted in response to City comments.

3. Final construction plans, utilizing AutoCAD at 40 scale (or whatever scale is most feasible), on the City of Carson title blocks.

4. Specifications that shall include, but not be limited to, details regarding pavement markings, paint/thermoplastic, signs, application/installation methodologies, removal of existing pavement markings/striping, the bidding schedule, and bid descriptions. Draft specifications shall be submitted for City review, and final specifications shall be submitted in response to City comments.

5. Estimates of quantities and costs. Draft estimates shall be submitted for City review, and final estimates shall be submitted in response to City comments. The estimates shall be itemized to quantify such features as pavement marking removals, traffic loops, pavement legends and striping, signs, etc.

6. Final CAD plans, plotted, wet stamped, and provided to City. Final CAD plans, specifications, and cost estimates shall be delivered to City on a compact disc as a deliverable product.

7. "As built" plans, within 30 days after project completion, using contractor-supplied redline mark-ups, with final originals delivered to City in CAD and pdf format.

D. In addition to the requirements of Section 6.2, during performance of the work, Contractor will keep the City apprised of the status of performance by delivering the following status reports:

1. Assist City staff with preparation of progress reports for Caltrans, as deemed necessary by the Contract Officer.

E. Right of Way. *State whether Right of Way requirements are to be determined and shown by Consultant, whether land surveys and computations with metes and bounds descriptions are to be made, and whether Right of Way parcel maps are to be furnished.* ***[NOT APPLICABLE TO THIS AGREEMENT]***

F. Surveys. Consultant has the responsibility for performing preliminary surveys for the preparation of the Plans, Specifications and Estimates. Consultant shall conduct field reconnaissance and measurements/surveys to document the existing conditions on the study area roadways, including but not limited to curb-to-curb widths, lane widths, sidewalk widths, sign locations, pavement markings, traffic control, a parking inventory, and above-ground utility infrastructure.

G. Subsurface Investigations. *State specifically whether or not Consultant has responsibility for making subsurface investigations.* ***[NOT APPLICABLE TO THIS AGREEMENT]***

H. City Obligations. *All data applicable to the project and in possession of City, another agency, or government agency that are to be made available to Consultant are referred to in the Agreement. Any other assistance or services to be furnished to Consultant are to be stated clearly.* ***[NOT APPLICABLE TO THIS AGREEMENT]***

I. Conferences, Site Visits, Inspection of Work. Consultant, in addition to complying with Section 6.2 and any other applicable requirements of this Agreement, shall meet with City staff to initiate the project, conduct at least two public workshops, and provide at least two City Council presentations prior to the completion of the final plans (all included within the Contract Sum).

J. Checking Shop Drawings. *For agreements requiring the preparation of construction drawings, make provision for checking shop drawings. Payment for checking shop drawings by CONSULTANT may be included in the Agreement fee, or provision may be made for separate payment.* ***[NOT APPLICABLE TO THIS AGREEMENT]***

K. CONSULTANT Services During Construction. The extent, if any of Consultant's services during the course of construction as material testing, construction surveys. etc., is as follows:

1. Attend and participate in one pre-construction meeting.

2. Be available to answer City staff questions during project design and provide technical advice during the construction phase.

3. Review contractor submittals for materials and respond within 72 hours of receipt of each submittal.

4. Respond to contractor's Requests for Information (RFI) as necessary.

5. Participate in at least one walk-through final check of the project to assure the work is in substantial conformance with the approved construction documents.

6. Prepare minutes for meetings.

L. Documentation and Schedules. *Consultant shall document the results of the work to the satisfaction of City's Contract Officer, and if applicable, the State and Federal Highway Administration ("FHWA"). This may include preparation of progress and final reports, plans, specifications and estimates, or similar evidence of attainment of the Agreement objectives.*

M. Deliverables and Number of Copies. *One physical copy of the final set of construction plans shall be provided to City. Specifications, drawings and all other deliverables may be provided electronically in word, PDF, and/or AutoCAD, as applicable.*

N. All work is subject to review and acceptance by the City, and must be revised by the Consultant without additional charge to the City until found satisfactory and accepted by City.

O. Consultant will utilize the following personnel to accomplish the work:

1. Principal - Min Zhou/Walter Okitsu
2. Project Manger - Stephen Bise
3. Sr. Associate Engineer - TBD
4. Associate Engineer - TBD

P. Consultant is approved to retain Coast Surveying, Inc. as a subcontractor to perform surveying services as set forth in Consultants proposal.

EXHIBIT "B"

SPECIAL REQUIREMENTS
(Superseding Agreement Boilerplate)

I. Section 1.8, "Prevailing Wages," is hereby replaced with the following:

"

(a) No Consultant or subconsultant may be awarded an Agreement containing public work elements unless registered with the Department of Industrial Relations (DIR) pursuant to Labor Code §1725.5. Registration with DIR must be maintained throughout the entire term of this Agreement, including any subsequent amendments.

(b) The Consultant shall comply with all of the applicable provisions of the California Labor Code requiring the payment of prevailing wages. The General Prevailing Wage Rate Determinations applicable to work under this Agreement are available and on file with the Department of Transportation's Regional/District Labor Compliance Officer (http://www.dot.ca.gov/hq/construc/LaborCompliance/documents/District-Region_Map_Construction_7-8-15.pdf). These wage rates are made a specific part of this Agreement by reference pursuant to Labor Code §1773.2 and will be applicable to work performed at a construction project site. Prevailing wages will be applicable to all inspection work performed at City construction sites, at City facilities and at off-site locations that are set up by the construction contractor or one of its subcontractors solely and specifically to serve City projects. Prevailing wage requirements do not apply to inspection work performed at the facilities of vendors and commercial materials suppliers that provide goods and services to the general public.

(c) General Prevailing Wage Rate Determinations applicable to this project may also be obtained from the Department of Industrial Relations Internet site at http://www.dir.ca.gov.

(d) Payroll Records

(i) Consultant and each subconsultant shall keep accurate certified payroll records and supporting documents as mandated by Labor Code §1776 and as defined in 8 CCR §16000 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 Consultant or subconsultant in connection with the public work. 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:

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

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

(ii) The payroll records enumerated under paragraph (i) above shall be certified as correct by the Consultant under penalty of perjury. The payroll records and all supporting documents shall be made available for inspection and copying by City representative's at all reasonable hours at the principal office of the Consultant. The Consultant shall provide copies of certified payrolls or permit inspection of its records as follows:

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

(B) A certified copy of all payroll records enumerated in paragraph (i) above, shall be made available for inspection or furnished upon request to a representative of City, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations. Certified payrolls submitted to City, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards shall not be altered or obliterated by the Consultant.

(C) The public shall not be given access to certified payroll records by the Consultant. The Consultant is required to forward any requests for certified payrolls to the City Contract Officer by both email and regular mail on the business day following receipt of the request.

(iii) Each Consultant shall submit a certified copy of the records enumerated in paragraph (i) above, to the entity that requested the records within ten (10) calendar days after receipt of a written request.

(iv) Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by City shall be marked or obliterated in such a manner as to prevent disclosure of each individual's name, address, and social security number. The name and address of the Consultant or subconsultant performing the work shall not be marked or obliterated.

(v) The Consultant shall inform City of the location of the records enumerated under paragraph (i) above, including the street address, city and county, and shall, within five (5) working days, provide a notice of a change of location and address.

(vi) The Consultant or subconsultant shall have ten (10) calendar days in which to comply subsequent to receipt of written notice requesting the records enumerated in paragraph (i) above. In the event the Consultant or subconsultant

fails to comply within the ten (10) day period, he or she shall, as a penalty to City, forfeit one hundred dollars ($100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Such penalties shall be withheld by City from payments then due. Consultant is not subject to a penalty assessment pursuant to this section due to the failure of a subconsultant to comply with this section.

(e) When prevailing wage rates apply, the Consultant is responsible for verifying compliance with certified payroll requirements. Invoice payment will not be made until the invoice is approved by the City Contract Administrator.

(f) Penalty

(i) The Consultant and any of its subconsultants shall comply with Labor Code §1774 and §1775. Pursuant to Labor Code §1775, the Consultant and any subconsultant shall forfeit to the City a penalty of not more than two hundred dollars ($200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of DIR for the work or craft in which the worker is employed for any public work done under the Agreement by the Consultant or by its subconsultant in violation of the requirements of the Labor Code and in particular, Labor Code §§1770 to 1780, inclusive.

(ii) The amount of this forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of mistake, inadvertence, or neglect of the Consultant or subconsultant in failing to pay the correct rate of prevailing wages, or the previous record of the Consultant or subconsultant in meeting their respective prevailing wage obligations, or the willful failure by the Consultant or subconsultant to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rates of prevailing wages is not excusable if the Consultant or subconsultant had knowledge of the obligations under the Labor Code. The Consultant is responsible for paying the appropriate rate, including any escalations that take place during the term of the Agreement.

(iii) In addition to the penalty and pursuant to Labor Code §1775, the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the Consultant or subconsultant.

(iv) If a worker employed by a subconsultant on a public works project is not paid the general prevailing per diem wages by the subconsultant, the prime Consultant of the project is not liable for the penalties described above unless the prime Consultant had knowledge of that failure of the subconsultant to pay the specified prevailing rate of wages to those workers or unless the prime Consultant fails to comply with all of the following requirements:

(A) The Agreement executed between the Consultant and the subconsultant for the performance of work on public works projects shall include a copy of the requirements in Labor Code §§ 1771, 1775, 1776, 1777.5, 1813, and 1815.

(B) The Consultant shall monitor the payment of the specified general prevailing rate of per diem wages by the subconsultant to the employees by periodic review of the certified payroll records of the subconsultant.

(C) Upon becoming aware of the subconsultant's failure to pay the specified prevailing rate of wages to the subconsultant's workers, the Consultant shall diligently take corrective action to halt or rectify the failure, including but not limited to, retaining sufficient funds due the subconsultant for work performed on the public works project.

(D) Prior to making final payment to the subconsultant for work performed on the public works project, the Consultant shall obtain an affidavit signed under penalty of perjury from the subconsultant that the subconsultant had paid the specified general prevailing rate of per diem wages to the subconsultant's employees on the public works project and any amounts due pursuant to Labor Code §1813.

(v) Pursuant to Labor Code §1775, City shall notify the Consultant on a public works project within fifteen (15) calendar days of receipt of a complaint that a subconsultant has failed to pay workers the general prevailing rate of per diem wages.

(vi) If City determines that employees of a subconsultant were not paid the general prevailing rate of per diem wages and if City did not retain sufficient money under the Agreement to pay those employees the balance of wages owed under the general prevailing rate of per diem wages, the Consultant shall withhold an amount of moneys due the subconsultant sufficient to pay those employees the general prevailing rate of per diem wages if requested by City.

(g) Eight (8) hours labor constitutes a legal day's work. The Consultant shall forfeit, as a penalty to the City, twenty-five dollars ($25) for each worker employed in the execution of the Agreement by the Consultant or any of its subconsultants for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of the Labor Code, and in particular §§1810 to 1815 thereof, inclusive, except that work performed by employees in excess of eight (8) hours per day, and forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day and forty (40) hours in any week, at not less than one and one-half (1.5) times the basic rate of pay, as provided in §1815.

(h) Employment of Apprentices

(i) Where either the prime Agreement or the subagreement exceeds thirty thousand dollars ($30,000), the Consultant and any subconsultant under him or her shall comply with all applicable requirements of Labor Code §§ 1777.5, 1777.6 and 1777.7 in the employment of apprentices.

(ii) Consultant and subconsultants are required to comply with all Labor Code requirements regarding the employment of apprentices, including mandatory ratios of journey level to apprentice workers. Prior to commencement of work, Consultant and subconsultants are advised to contact the DIR Division of Apprenticeship Standards website at https://www.dir.ca.gov/das/, for additional information regarding the employment of apprentices and for the specific journey-to- apprentice ratios for the Agreement work. The Consultant is responsible for all subconsultants' compliance with these requirements. Penalties are specified in Labor Code §1777.7."

II. A new Section 1.13, "Equipment Purchases and Other Capital Expenditures," is hereby added to read in its entirety as follows:

"(a) Prior authorization in writing by City's Contract Administrator shall be required before Consultant enters into any unbudgeted purchase order, or subcontract exceeding five thousand dollars ($5,000) for supplies, equipment, or Consultant services. Consultant shall provide an evaluation of the necessity or desirability of incurring such costs.

(b) For purchase of any item, service, or consulting work not covered in Consultant's approved cost proposal and exceeding five thousand dollars ($5,000), with prior authorization by City's Contract Administrator, three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.

(c) Any equipment purchased with funds provided under the terms of this Agreement is subject to the following:

(1) Consultant shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of five thousand dollars ($5,000) or more. If the purchased equipment needs replacement and is sold or traded in, City shall receive a proper refund or credit at the conclusion of the Agreement, or if the Agreement is terminated, Consultant may either keep the equipment and credit City in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established City procedures; and credit City in an amount equal to the sales price. If Consultant elects to keep the equipment, fair market value shall be determined at Consultant's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by City and Consultant, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by City.

(2) Regulation 2 CFR Part 200 requires a credit to Federal funds when participating equipment with a fair market value greater than five thousand dollars ($5,000) is credited to the project."

III. A new Section 1.14, "Funding Requirements," is hereby added to read in its entirety as follows:

"(a) It is mutually understood between the Parties that this Agreement may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both Parties, in order to avoid program and fiscal delays that would occur if the Agreement were executed after that determination was made.

(b) This Agreement is valid and enforceable only, if sufficient funds are made available to City for the purpose of this Agreement. In addition, this Agreement is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature, or City governing board that may affect the provisions, terms, or funding of this Agreement in any manner.

(c) It is mutually agreed that if sufficient funds are not appropriated, this Agreement may be amended to reflect any reduction in funds.

(d) City has the option to terminate the Agreement pursuant to Article 7, Enforcement of the Agreement and Termination, or by mutual agreement to amend the Agreement to reflect any reduction of funds."

IV. A new Section, 1.15, "Safety," is hereby added to read in its entirety as follows:

"(a) Consultant shall comply with OSHA regulations applicable to Consultant regarding necessary safety equipment or procedures. Consultant shall comply with safety instructions issued by City's Public Works Construction Inspector Supervisor and other City representatives. Consultant personnel shall wear hard hats and safety vests at all times while working on the construction project site.

(b) Pursuant to the authority contained in Vehicle Code §591, City has determined that such areas are within the limits of the project and are open to public traffic. Consultant shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. Consultant shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles."

V. A new Section 1.16, "National Labor Relations Board Certification," is hereby added to read in its entirety as follows:

"In accordance with Public Contract Code §10296, Consultant hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against Consultant within the immediately preceding two-year period, because of Consultant's failure to comply with an order of a federal

court that orders Consultant to comply with an order of the National Labor Relations Board."

VI. Article 2, Compensation and Method of Payment, is hereby replaced with the following:

"ARTICLE 2. ALLOWABLE COSTS AND PAYMENTS

"2.1 Method of Payment. The method of payment for this Agreement will be based on actual cost plus a fixed fee. City will reimburse Consultant for actual costs (including labor costs, employee benefits, travel, equipment rental costs, overhead and other direct costs) incurred by Consultant in performance of the work. Consultant will not be reimbursed for actual costs that exceed the estimated wage rates, employee benefits, travel, equipment rental, overhead, and other estimated costs set forth in the approved Consultant's cost proposal, unless additional reimbursement is provided for by Agreement amendment. In no event, will Consultant be reimbursed for overhead costs at a rate that exceeds City's approved overhead rate set forth in the cost proposal. In the event, that City determines that a change to the work from that specified in the cost proposal and Agreement is required, the Agreement time or actual costs reimbursable by City shall be adjusted by Agreement amendment to accommodate the changed work. The maximum total cost as specified in Section 2.9 of this Article shall not be exceeded, unless authorized by Agreement amendment.

2.2 Indirect Cost Rate. The indirect cost rate established for this Agreement is extended through the duration of this specific Agreement. Consultant's agreement to the extension of the 1-year applicable period shall not be a condition or qualification to be considered for the work or Agreement award.

2.3 Fixed Fee. In addition to the allowable incurred costs, City will pay Consultant a fixed fee of $(9,502.04). The fixed fee is nonadjustable for the term of the Agreement, except in the event of a significant change in the scope of work and such adjustment is made by Agreement amendment.

2.4 Reimbursement.

Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved cost proposal.

2.5 Revised Milestone Cost Estimates.

When milestone cost estimates are included in the approved cost proposal, Consultant shall obtain prior written approval for a revised milestone cost estimate from the Contract Officer before exceeding such cost estimate.

2.6 Progress Payments.

Progress payments will be made monthly in arrears based on services provided and allowable incurred costs. A pro rata portion of Consultant's fixed fee will be included

in the monthly progress payments. If Consultant fails to submit the required deliverable items according to the schedule set forth in Exhibit "A", Scope of Work, City shall have the right to delay payment or terminate this Agreement.

2.7 Approval of Work.

No payment will be made prior to approval of any work, nor for any work performed prior to approval of this Agreement.

2.8 Invoices.

Consultant will be reimbursed promptly according to California Regulations upon receipt by City's Contract Administrator of itemized invoices in duplicate. Invoices shall be submitted no later than thirty (30) calendar days after the performance of work for which Consultant is billing. Invoices shall detail the work performed on each milestone and each project as applicable. Invoices shall follow the format stipulated for the approved cost proposal and shall reference this Agreement number and project title. Final invoice must contain the final cost and all credits due City including any equipment purchased under the provisions of Section 1.13, Equipment Purchases. The final invoice should be submitted within sixty (60) calendar days after completion of Consultant's work. Invoices shall be mailed to City's Contract Officer at the following address:

City of Carson
701 E. Carson Street, Carson, CA 9075
Attention: Reata Kulcsar / Engineering

2.9 Contract Sum.

The total amount payable by City, including the fixed fee, shall not exceed ONE HUNDRED SIXTY-FOUR THOUSAND SIX HUNDRED SIXTY-FIVE DOLLARS AND TWENTY CENTS ($164,665.20) (the "Contract Sum").

2.10 Salary Increase.

Salary increases will be reimbursable if the new salary is within the salary range identified in the approved cost proposal and is approved by City's Contract Administrator.

2.11 Reimbursable Salary Increases.

For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.

2.13 Cost Principles and Administrative Requirements.

(a) The Consultant agrees that 48 CFR Part 31, Contract Cost Principles and Procedures, shall be used to determine the allowability of individual terms of cost.

(b) The Consultant also agrees to comply with Federal procedures in accordance with 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

(c) Any costs for which payment has been made to the Consultant that are determined by subsequent audit to be unallowable under 48 CFR Part 31 or 2 CFR Part 200 are subject to repayment by the Consultant to City.

(d) When a Consultant or subconsultant is a Non-Profit Organization or an Institution of Higher Education, the Cost Principles for Title 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards shall apply."

VII. Section 3.4, "Inspection and Final Acceptance," is amended to read in its entirety as follows (additions in ***bold italics***, deletions in ~~strikethrough~~**):**

"***Consultant and any subconsultant shall permit City, the State, and the FHWA to review and inspect the project activities and files at all reasonable times during the performance period of this Agreement.*** City may inspect and accept or reject any of Consultant's work under this Agreement, either during performance or when completed. City shall reject or finally accept Consultant'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."

VIII. Section 3.5, "Term," is hereby replaced with the following:

"3.5 Performance Period.

(a) This Agreement shall go into effect on full execution hereof, contingent upon approval by City, and Consultant shall commence work after notification to proceed by City's Contract Administrator. The Agreement shall end on December 31, 2021, unless extended by Agreement amendment.

(b) Consultant is advised that any recommendation for Agreement award is not binding on City until the Agreement is fully executed and approved by City."

IX. Section 4.5, "Prohibition Against Subcontracting or Assignment," is hereby amended to read in its entirety as follows (additions in ***bold italics***, deletions in ~~strikethrough~~**):**

"***(a)*** The experience, knowledge, capability and reputation of Consultant, its principals and employees were a substantial inducement for the City to enter into this Agreement. Therefore, Consultant shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of the City. All subconsultants shall obtain, at its or Consultant'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 Consultant, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release the Consultant or any surety of Consultant of any liability hereunder without the express consent of City.

(b) Nothing contained in this Agreement or otherwise, shall create any contractual relation between the City and any subconsultants, and no subagreement shall relieve the Consultant of its responsibilities and obligations hereunder. The Consultant agrees to be as fully responsible to the City for the acts and omissions of its subconsultants and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Consultant. The Consultant's obligation to pay its subconsultants is an independent obligation from the City's obligation to make payments to the Consultant.

(c) The Consultant shall perform the work contemplated with resources available within its own organization and no portion of the work shall be subcontracted without written authorization by City's Contract Officer, except that which is expressly identified in the Consultant's approved cost proposal.

(d) Any sub-agreement entered into as a result of this Agreement shall contain all the provisions stipulated in this entire Agreement to be applicable to subconsultants unless otherwise noted.

(e) Consultant shall pay its subconsultants within Fifteen (15) calendar days from receipt of each payment made to the Consultant by the City.

(f) Any substitution of subconsultants must be approved in writing by City's Contract Officer in advance of assigning work to a substitute subconsultant."

X. Section 5.3, "Indemnification," is hereby amended to add the following to the end of the fifth paragraph:

"In addition, Consultant shall defend, indemnify and hold harmless the Indemnified Parties from any claim or liability arising out of any failure or alleged failure to comply

with California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 1600, et seq."

XI. A new Section 5.8, "Claims Filed by City's Construction Contractor," is hereby added to read in its entirety as follows:

"(a) If claims are filed by City's construction contractor relating to work performed by Consultant's personnel, and additional information or assistance from Consultant's personnel is required in order to evaluate or defend against such claims; Consultant agrees to make its personnel available for consultation with City's construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.

(b) Consultant's personnel that City considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from City. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for Consultant's personnel services under this Agreement.

(c) Services of Consultant's personnel in connection with City's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this Agreement in order to resolve the construction claims."

XII. Section 6.2, "Reports," is hereby replaced with the following:

"6.2 Consultant's Reports or Meetings.

(a) Consultant shall submit progress reports at least once a month. The report should be sufficiently detailed for the City's Contract Officer to determine, if Consultant is performing to expectations, or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.

(b) Consultant's Project Manager shall meet with City's Contract Officer, as needed, to discuss progress on the Agreement.

(c) Consultant hereby acknowledges that the City is greatly concerned about the cost of work and services to be performed pursuant to this Agreement. For this reason, Consultant agrees that if Consultant becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or services contemplated herein or, if Consultant is providing design services, the cost of the project being designed, Consultant shall promptly notify the Contract Officer of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto and, if Consultant is providing design services, the estimated increased or decreased cost estimate for the project being designed."

XIII. Section 6.3, "Ownership of Documents," is hereby amended to read in its entirety as follows (additions in ***bold italics***, deletions in ~~strikethrough~~)**:**

"***(a)*** All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents and other materials (the "documents and materials") prepared by Consultant, its employees, subcontractors and agents in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of the Contract Officer or upon the termination of this Agreement, and Consultant shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership use, reuse, or assignment of the documents and materials hereunder. Any use, reuse or assignment of such completed documents for other projects and/or use of uncompleted documents without specific written authorization by the Consultant will be at the City's sole risk and without liability to Consultant, and Consultant's guarantee and warranties shall not extend to such use, reuse or assignment. Consultant may retain copies of such documents for its own use. Consultant shall have 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 Consultant fails to secure such assignment, Consultant shall indemnify City for all damages resulting therefrom. Moreover, Consultant with respect to any documents and materials that may qualify as "works made for hire" as defined in 17 U.S.C. § 101, such documents and materials are hereby deemed "works made for hire" for the City.

(b) Additionally, it is agreed that the Parties intend this to be an Agreement for services and each considers the products and results of the services to be rendered by Consultant hereunder to be work made for hire. Consultant acknowledges and agrees that the work (and all rights therein, including, without limitation, copyright) belongs to and shall be the sole and exclusive property of City without restriction or limitation upon its use or dissemination by City.

(c) Nothing herein shall constitute or be construed to be any representation by Consultant that the work product is suitable in any way for any other project except the one detailed in this Contract. Any reuse by City for another project or project location shall be at City's sole risk.

(d) Applicable patent rights provisions regarding rights to inventions shall be included in the contracts as appropriate (48 CFR 27 Subpart 27.3 - Patent Rights under Government Contracts for federal-aid contracts).

(e) City may permit copyrighting reports or other agreement products. If copyrights are permitted; the Agreement shall provide that the FHWA shall have the royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use; and to authorize others to use, the work for government purposes."

XIV. Section 6.4, "Confidentiality and Release of Information," is hereby amended to read in its entirety as follows (additions in ***bold italics***, deletions in ~~strikethrough~~**):**

"(a) All information gained or work product produced by Consultant in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Consultant. Consultant shall not release or disclose any such information or work product to persons or entities other than City without prior written authorization from the Contract Officer.

(b) Consultant, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the Contract Officer or unless requested by the City Attorney, voluntarily provide documents, declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives City notice of such court order or subpoena.

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

(d) Consultant shall promptly notify City should Consultant, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed there under. City retains the right, but has no obligation, to represent Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

(e) ***Permission to disclose information on one occasion, or public hearing held by City relating to the Agreement, shall not authorize Consultant to further disclose such information, or disseminate the same on any other occasion.***

(f) ***Consultant shall not comment publicly to the press or any other media regarding the Agreement or City's actions on the same, except to City's staff, Consultant's own personnel involved in the performance of this Agreement, at public hearings, or in response to questions from a Legislative committee.***

(g) ***Consultant shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this Agreement without prior review of the contents thereof by City, and receipt of City'S written permission.***

(h) ***All information related to the construction estimate is confidential, and shall not be disclosed by Consultant to any entity, other than City, Caltrans, and/or***

FHWA. All of the materials prepared or assembled by Consultant pursuant to performance of this Contract are confidential and Consultant agrees that they shall not be made available to any individual or organization without the prior written approval of City or except by court order. If Consultant or any of its officers, employees, or subconsultants does voluntarily provide information in violation of this Contract, City has the right to reimbursement and indemnity from Consultant for any damages caused by Consultant releasing the information, including, but not limited to, City's attorney's fees and disbursements, including without limitation experts' fees and disbursements."

XV. A new Section 6.5, "Retention of State Records/Audits," is hereby added to read in its entirety as follows:

"For the purpose of determining compliance with Gov. Code § 8546.7, the Consultant, subconsultants, and City shall maintain all books, documents, papers, accounting records, Independent CPA Audited Indirect Cost Rate workpapers, and other evidence pertaining to the performance of the Agreement including, but not limited to, the costs of administering the Agreement. All parties, including the Consultant's Independent CPA, shall make such workpapers and materials available at their respective offices at all reasonable times during the Agreement period and for three (3) years from the date of final payment under the Agreement. City, Caltrans Auditor, FHWA, or any duly authorized representative of the Federal government having jurisdiction under Federal laws or regulations (including the basis of Federal funding in whole or in part) shall have access to any books, records, and documents of the Consultant, subconsultants, and the Consultant's Independent CPA, that are pertinent to the Agreement for audits, examinations, workpaper review, excerpts, and transactions, and copies thereof shall be furnished if requested without limitation."

XVI. A new Section 6.6, "Audit Review Procedures," is hereby added to read in its entirety as follows:

"

(a) Any dispute concerning a question of fact arising under an interim or post audit of this Agreement that is not disposed of by Agreement, shall be reviewed by City's Finance Director.

(b) Not later than thirty (30) calendar days after issuance of the final audit report, Consultant may request a review by City's Finance Director of unresolved audit issues. The request for review will be submitted in writing.

(c) Neither the pendency of a dispute nor its consideration by City will excuse Consultant from full and timely performance, in accordance with the terms of this Agreement.

(d) Consultant and subconsultant Agreements, including Cost proposals and Indirect Cost Rates (ICR), may be subject to audits or reviews such as, but not limited to, an Agreement audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper

review. If selected for audit or review, the Agreement, bid/cost proposal, and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is Consultant's responsibility to ensure federal, City, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The Agreement, bid/cost proposal, and ICR shall be adjusted by Consultant and approved by City Contract Officer to conform to the audit or review recommendations. Consultant agrees that individual terms of costs identified in the audit report shall be incorporated into the Agreement by this reference if directed by City at its sole discretion. Refusal by Consultant to incorporate audit or review recommendations, or to ensure that the federal, City, or local governments have access to CPA work papers, will be considered a breach of Agreement terms and cause for termination of the Agreement and disallowance of prior reimbursed costs.

(e) Consultant's cost proposal may be subject to a CPA ICR Audit Work Paper Review and/or audit by Caltrans Audits and Investigation (A&I). Caltrans A&I, at its sole discretion, may review and/or audit and approve the CPA ICR documentation. The cost proposal shall be adjusted by the Consultant and approved by the City Contract Officer to conform to the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report. Refusal by the Consultant to incorporate the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report will be considered a breach of the Agreement terms and cause for termination of the Agreement and disallowance of prior reimbursed costs.

(i) During Caltrans A&I's review of the ICR audit work papers created by the Consultant's independent CPA, Caltrans A&I will work with the CPA and/or Consultant toward a resolution of issues that arise during the review. Each party agrees to use its best efforts to resolve any audit disputes in a timely manner. If Caltrans A&I identifies significant issues during the review and is unable to issue a cognizant approval letter, City will reimburse the Consultant at an accepted ICR until a FAR (Federal Acquisition Regulation) compliant ICR {e.g. 48 CFR Part 31; GAGAS (Generally Accepted Auditing Standards); CAS (Cost Accounting Standards), if applicable; in accordance with procedures and guidelines of the American Association of State Highways and Transportation Officials (AASHTO) Audit Guide; and other applicable procedures and guidelines}is received and approved by A&I.

Accepted rates will be as follows:

(A) If the proposed rate is less than one hundred fifty percent (150%) - the accepted rate reimbursed will be ninety percent (90%) of the proposed rate.

(B) If the proposed rate is between one hundred fifty percent (150%) and two hundred percent (200%) - the accepted rate will be eighty-five percent (85%) of the proposed rate.

(C) If the proposed rate is greater than two hundred percent (200%) - the accepted rate will be seventy-five percent (75%) of the proposed rate.

(ii) If Caltrans A&I is unable to issue a cognizant letter per paragraph (i) above, Caltrans A&I may require Consultant to submit a revised independent CPA-audited ICR and audit report within three (3) months of the effective date of the management letter. Caltrans A&I will then have up to six (6) months to review the Consultant's and/or the independent CPA's revisions.

(iii) If the Consultant fails to comply with the provisions of this paragraph (e), or if Caltrans A&I is still unable to issue a cognizant approval letter after the revised independent CPA audited ICR is submitted, overhead cost reimbursement will be limited to the accepted ICR that was established upon initial rejection of the ICR and set forth in paragraph (i) above for all rendered services. In this event, this accepted ICR will become the actual and final ICR for reimbursement purposes under this Agreement.

(iv) Consultant may submit to City final invoice only when all of the following items have occurred: (1) Caltrans A&I accepts or adjusts the original or revised independent CPA audited ICR; (2) all work under this Agreement has been completed to the satisfaction of City; and, (3) Caltrans A&I has issued its final ICR review letter. The Consultant MUST SUBMIT ITS FINAL INVOICE TO City no later than sixty (60) calendar days after occurrence of the last of these items. The accepted ICR will apply to this Agreement and all other agreements executed between City and the Consultant, either as a prime or subconsultant, with the same fiscal period ICR."

XVII. A new Section 6.7, "Evaluation of Consultant," is hereby added to read in its entirety as follows:

"Consultant's performance will be evaluated by City. A copy of the evaluation will be sent to Consultant for comments. The evaluation together with the comments shall be retained as part of the Agreement record."

XVIII. Section 7.3, "Retention of Funds," is hereby replaced with the following:

"No retainage will be held by the City from progress payments due the Consultant. Any retainage held by the Consultant or subconsultants from progress payments due subconsultants shall be promptly paid in full to subconsultants within thirty (30) calendar days after the subconsultant's work is satisfactorily completed. Federal law (49 CFR §26.29) requires that any delay or postponement of payment over thirty (30) calendar days may take place only for good cause and with the City's prior written approval. Any violation of this provision shall subject the violating Consultant or subconsultant to the penalties, sanctions and other remedies specified in Business and Professions Code §7108.5. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the Consultant or

subconsultant in the event of a dispute involving late payment or nonpayment by the Consultant, deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE Consultant and subconsultants."

XIX. Section 7.6, "Legal Action," is hereby amended to read in its entirety as follows (additions in ***bold italics***, deletions in ~~strikethrough~~)**:**

"***(a)*** In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement. Notwithstanding any contrary provision herein, Consultant shall file a claim pursuant to Government Code Sections 905 et seq. and 910 et. seq., in order to pursue a legal action under this Agreement.

(b) Notwithstanding subsection (a), prior to either party commencing any legal action under this Agreement, the parties agree to try in good faith to settle any dispute amicably between them. If a dispute has not been settled after forty-five (45) days of good-faith negotiations and as may be otherwise provided herein, then either party may commence legal action against the other (subject to the claim filing requirement in subsection (a) for Consultant).

(c) Any dispute, other than audit, concerning a question of fact arising under this Agreement that is not disposed of by agreement shall be decided by a committee consisting of City's Contract Officer and City Manager, who may consider written or verbal information submitted by Consultant.

(d) Not later than thirty (30) calendar days after completion of all deliverables necessary to complete the plans, specifications and estimate, Consultant may request review by City's City Council of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.

(e) Neither the pendency of a dispute, nor its consideration by the committee will excuse Consultant from full and timely performance in accordance with the terms of this Agreement."

XX. Section 7.8, "Termination Prior to Expiration of Term," is hereby replaced with the following:

"7.8 Termination.

(a) This Agreement may be terminated by City, provided that City gives not less than thirty (30) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate. Upon termination, City shall be entitled to all work, including but not limited to, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not, and in accordance with Section 15, Property of City.

(b) City may temporarily suspend this Agreement, at no additional cost to City, provided that Consultant is given written notice (delivered by certified mail, return receipt requested) of temporary suspension. If City gives such notice of temporary suspension, Consultant shall immediately suspend its activities under this Agreement. A temporary suspension may be issued concurrently with the notice of termination.

(c) Notwithstanding subsection (a) or any other provision of this Agreement, Consultant shall not be relieved of liability to City for damages sustained by City by virtue of any breach of this Agreement by Consultant, and City may withhold any payments due to Consultant until such time as the exact amount of damages, if any, due City from Consultant is determined.

(d) In the event of termination, Consultant shall be compensated as provided for in this Agreement, except as provided in Section 1.13(c)."

XXI. Section 8.2, "Conflict of Interest," is hereby replaced with the following:

"(a) During the term of this Agreement, Consultant shall disclose any financial, business, or other relationship with City that may have an impact upon the outcome of this Agreement or any ensuing City construction project. The Consultant shall also list current clients who may have a financial interest in the outcome of this Agreement or any ensuing City construction project which will follow.

(b) Consultant certifies that it has disclosed to City any actual, apparent, or potential conflicts of interest that may exist relative to the services to be provided pursuant to this Agreement. Consultant agrees to advise City of any actual, apparent or potential conflicts of interest that may develop subsequent to the date of execution of this Agreement. Consultant further agrees to complete any statements of economic interest if required by either City ordinance or State law.

(c) Consultant hereby certifies that it does not now have nor shall it acquire any financial or business interest that would conflict with the performance of services under this Agreement.

(d) Consultant hereby certifies the Consultant or subconsultant and any firm affiliated with the Consultant or subconsultant that bids on any construction contract or on any agreement to provide construction inspection for any construction project resulting from this Agreement, has established necessary controls to ensure a conflict of interest does not exist. An affiliated firm is one which is subject to the control of the same persons, through joint ownership or otherwise."

XXII. Section 8.3, "Covenant Against Discrimination," is hereby replaced with the following:

"8.3 Non-Discrimination Clause and Statement of Compliance.

(a) Consultant's signature affixed herein and dated shall constitute a certification under penalty of perjury under the laws of the State of California that Consultant has, unless exempt, complied with the nondiscrimination program requirements of Gov. Code §12990 and 2 CCR § 8103.

(b) During the performance of this Agreement, Consultant and its subconsultants shall not deny the Agreement's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Consultant and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.

(c) Consultant and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 et seq.), the applicable regulations promulgated there under (2 CCR §11000 et seq.), the provisions of Gov. Code §§11135-11139.5, and the regulations or standards adopted by City to implement such article. The applicable regulations of the Fair Employment and Housing Commission implementing Gov. Code §12990 (a-f), set forth 2 CCR §§8100-8504, are incorporated into this Agreement by reference and made a part hereof as if set forth in full.

(d) Consultant shall permit access by representatives of the Department of Fair Employment and Housing and the City upon reasonable notice at any time during the normal business hours, but in no case less than twenty-four (24) hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or City shall require to ascertain compliance with this clause.

(e) Consultant and its subcontsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

(f) Consultant shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.

(g) Consultant, with regard to the work performed under this Agreement, shall act in accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d et seq.). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the United States shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.

(h) Consultant shall comply with regulations relative to non-discrimination in federally-assisted programs of the U.S. Department of Transportation (49 CFR Part 21 - Effectuation of Title VI of the Civil Rights Act of 1964). Specifically, Consultant shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR §21.5, including employment practices and the selection and retention of subconsultants."

XXIII. A new Section 8.5, "Rebates, Kickbacks, or Other Unlawful Consideration," is hereby added to read in its entirety as follows:

"Consultant warrants that this Agreement was not obtained or secured through rebates, kickbacks or other unlawful consideration either promised or paid to any City employee. For breach or violation of this warranty, City shall have the right, in its discretion, to terminate this Agreement without liability, to pay only for the value of the work actually performed, or to deduct from this Agreement price or otherwise recover the full amount of such rebate, kickback or other unlawful consideration."

XXIV. A new Section 8.6, "Debarment and Suspension Certification," is hereby added to read in its entirety as follows:

"

(a) The Consultant's signature affixed herein shall constitute a certification under penalty of perjury under the laws of the State of California, that the Consultant or any person associated therewith in the capacity of owner, partner, director, officer or manager:

(i) Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;

(ii) Has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years;

(iii) Does not have a proposed debarment pending; and

(iv) Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.

(b) Any exceptions to this certification must be disclosed to City. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining responsibility. Disclosures must indicate the party to whom the exceptions apply, the initiating agency, and the dates of agency action.

(c) Exceptions to the Federal Government Excluded Parties List System maintained by the U.S. General Services Administration are to be determined by FHWA."

XXV. A new Section 8.7, "Disadvantaged Business Enterprises (DBE) Participation," is hereby added to read in its entirety as follows:

“

(a) This Agreement is subject to 49 CFR Part 26 entitled “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs”. Consultant who enter into a federally-funded agreement will assist the City in a good faith effort to achieve California's statewide overall DBE goal.

(b) The goal for DBE participation for this Agreement is 17.6%. Participation by DBE Consultant or subconsultants shall be in accordance with information contained in *Exhibit 10-O1: Consultant Proposal DBE Commitment*, or in *Exhibit 10-O2: Consultant Contract DBE Commitment* attached hereto and incorporated as part of the Agreement. If a DBE subconsultant is unable to perform, Consultant must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.

(c) Consultant can meet the DBE participation goal by either documenting commitments to DBEs to meet the Agreement goal, or by documenting adequate good faith efforts to meet the Agreement goal. An adequate good faith effort means that the Consultant must show that it took all necessary and reasonable steps to achieve a DBE goal that, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to meet the DBE goal. If Consultant has not met the DBE goal, complete and submit Exhibit 15-H: *DBE Information – Good Faith Efforts* to document efforts to meet the goal. Refer to 49 CFR Part 26 for guidance regarding evaluation of good faith efforts to meet the DBE goal.

(d) DBEs and other small businesses, as defined in 49 CFR Part 26 are encouraged to participate in the performance of Agreements financed in whole or in part with federal funds. The City, Consultant or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Consultant shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the Consultant to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the City deems appropriate, which may include, but is not limited to:

(i) Withholding monthly progress payments;

(ii) Assessing sanctions;

(iii) Liquidated damages; and/or

(iv) Disqualifying the contractor from future bidding as non-responsible

(e) A DBE firm may be terminated only with prior written approval from City and only for the reasons specified in 49 CFR §26.53(f). Prior to requesting City consent for the termination, Consultant must meet the procedural requirements specified in 49 CFR §26.53(f). If a DBE subconsultant is unable to perform, Consultant must make a

good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.

(f) Consultant shall not be entitled to any payment for such work or material unless it is performed or supplied by the listed DBE or by other forces (including those of Consultant) pursuant to prior written authorization of the City's Contract Officer.

(g) A DBE is only eligible to be counted toward the Agreement goal if it performs a commercially useful function (CUF) on the Agreement. CUF must be evaluated on an agreement by agreement basis. A DBE performs a CUF when it is responsible for execution of the work of the Agreement and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible, with respect to materials and supplies used on the Agreement, for negotiating price, determining quality and quantity, ordering the material and installing (where applicable), and paying for the material itself. To determine whether a DBE is performing a CUF, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the Agreement is commensurate with the work it is actually performing, and other relevant factors.

(h) A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, Agreement, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.

(i) If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its Agreement with its own work force, or the DBE subcontracts a greater portion of the work of the Agreement than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.

(j) Consultant shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime Consultants shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.

(k) Upon completion of the Agreement, a summary of these records shall be prepared and submitted on the form entitled, *Exhibit 17-F: Final Report-Utilization of Disadvantaged Business Enterprise (DBE) First-Tier subcontractors*, certified correct by Consultant or Consultant's authorized representative and shall be furnished to the Contract Officer with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The

amount will be returned to Consultant when a satisfactory "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subconsultants" is submitted to the Contract Officer.

(l) If a DBE subconsultant is decertified during the life of the Agreement, the decertified subconsultant shall notify Consultant in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the Agreement, the subconsultant shall notify Consultant in writing with the date of certification. Any changes should be reported to City's Contract Officer within thirty (30) calendar days.

(m) Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this section."

XXVI. A new Section 8.8, "Contingent Fee," is hereby added to read in its entirety as follows:

"Consultant warrants, by execution of this Agreement that no person or selling agency has been employed, or retained, to solicit or secure this Agreement upon an agreement or understanding, for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by Consultant for the purpose of securing business. For breach or violation of this warranty, City has the right to annul this Agreement without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the Agreement price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee."

EXHIBIT "C"

SCHEDULE OF COMPENSATION

I. Consultant shall perform the services at a rate calculated as follows:

CLASSIFICATION/TITLE	HOURLY RATE (FULLY BURDENED)
PRINCIPAL	$245
PROJECT MANAGER	$191
SR. ASSOCIATE ENGINEER	$109
ASSOCIATE ENGINEER	$95

The foregoing rates include the fixed fee set forth in Section 2.3, but do not include reimbursable expenses pursuant to section 2.4 or subconsultant fees as authorized in Section P of Exhibit A and set forth in detail in Consultant's proposal. However, said subconsultant fees, which shall not exceed $52,442.73, are included within the contract sum set forth in Section 2.9.

II. The City will compensate Consultant for the services performed upon submission of a valid invoice. Each invoice is to include:

A. Line items for all personnel describing the work performed, the number of hours worked, and the hourly rate.

B. Line items for all materials and equipment properly charged to the Services.

C. Line items for all other approved reimbursable expenses claimed, with supporting documentation.

D. Line items for all approved subcontractor labor, supplies, equipment, materials, and travel properly charged to the Services.

III. Payment to Consultant for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Consultant.

IV. The total compensation for the services shall not exceed the Contract Sum as provided in Section 2.9 of this Agreement.

EXHIBIT "D"

SCHEDULE OF PERFORMANCE

I. Consultant shall perform all work timely in accordance with the following schedule:

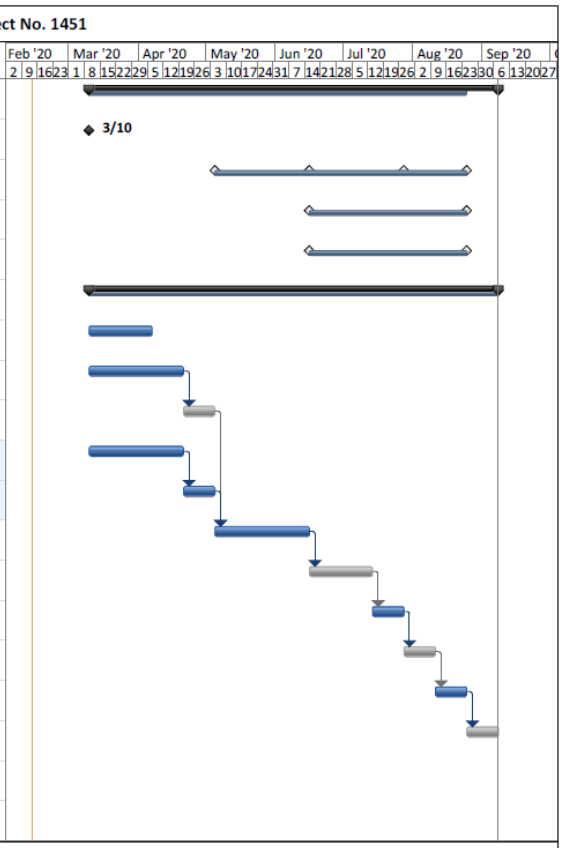
A. Consultant shall complete Tasks 1 and 2 (as identified in the chart set forth in subsection (C)) within six (6) months from the Contract Officer's written notice to proceed. The time periods of the subtasks identified in the chart are estimates only and not strict deadlines, provided that Tasks 1 and 2 as a whole are completed within six (6) months from the notice to proceed.

B. Consultant shall commence Task 3 (as identified in the chart set forth in subsection (C)) upon conclusion of Tasks 1 and 2, and shall perform Task 3 on an ongoing basis throughout the remaining term of this Agreement as specified in the Scope of Work.

C. Performance Timeline Chart:

PS&E's for Bike Lanes - Project No. 1451

ID	Task Name	Duration	Start	Finish
1	**Task 1: Project Management & Admin.**	**130 days**	**Tue 3/10/20**	**Mon 9/7/20**
2	Kick-off meeting	0 days	Tue 3/10/20	Tue 3/10/20
3	Design coordination meetings			
8	Public workshops			
11	City Council meetings			
14	**Task 2: PS&E**	**130 days**	**Tue 3/10/20**	**Mon 9/7/20**
15	Records research	4 wks	Tue 3/10/20	Mon 4/6/20
16	Traffic study	6 wks	Tue 3/10/20	Mon 4/20/20
17	*City review*	2 wks	Tue 4/21/20	Mon 5/4/20
18	Survey / base plan preparation	6 wks	Tue 3/10/20	Mon 4/20/20
19	Site evaluation	2 wks	Tue 4/21/20	Mon 5/4/20
20	60% submittal	6 wks	Tue 5/5/20	Mon 6/15/20
21	*City review*	4 wks	Tue 6/16/20	Mon 7/13/20
22	90% submittal	2 wks	Tue 7/14/20	Mon 7/27/20
23	*City review*	2 wks	Tue 7/28/20	Mon 8/10/20
24	100% submittal	2 wks	Tue 8/11/20	Mon 8/24/20
25	*City approval*	2 wks	Tue 8/25/20	Mon 9/7/20
26	**Task 3: Bid & Construction Support**			
27				



Project: MB93116
Date: 11/13/2019

Task — Summary — External Milestone
Milestone — External Tasks — Manual Summary Rollup

Page 1

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

A. Task 1 Deliverables – due as set forth below, but in no event later than completion of Task 1 as set forth in Section I above:

1. **Schedule - updated at request of Contract Officer.**

2. **Agenda & minutes - for each meeting.**

3. **Presentation material - for community and City Council meetings.**

B. Task 2 Deliverables – due as indicated in Section I of this Exhibit or in the Work Plan set forth in Consultant's proposal (but in no event later than completion of Task 2 as set forth in Section I above):

1. **Traffic Study.**

2. **Topographic Survey/Base Plans.**

3. **60%, 90%, & 100% PS&E submittals in both paper and electronic format.**

4. **Response to Comments Matrix.**

5. **Provide quantities and cost estimates.**

6. **Provide technical specifications.**

C. Task 3 Deliverables - due as set forth below, unless otherwise indicated in Section I of this Exhibit or in the Work Plan set forth in Consultant's proposal:

1. **Response to requests for information (RFI's) from contractor – within 72 hours of receipt of requests.**

2. **Submittal/shop drawing review - within 72 hours of receipt of requests.**

3. **Modification or revisions that are related to the project original scope and character – within 72 hours of receipt of requests.**

4. **Review of contractor change orders - within 72 hours of receipt of requests.**

5. **As-built drawings - within 30 days of project completion.**

D. Deliverables set forth in Section C of Exhibit A:

1. Items 1-6: due upon completion of Tasks 1 and 2

2. Item 7 – Due as stated in Section C of Exhibit A.

E. Other tangible work products – due as indicated in the Work Plan set forth in Consultant's proposal.

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