

**PROFESSIONAL SERVICES AGREEMENT
(QUARANTINE MOTEL SHELTER PROJECT)
WITH
KINGDOM CAUSES INC. (dba CITY NET)**

THIS AGREEMENT is made and entered into this 15th day of July, 2020 (“Effective Date”), by and between the CITIES OF LA HABRA (“LA HABRA”), and FULLERTON (“FULLERTON”) both municipal corporations, collectively referred to as “CITIES”, and KINGDOM CAUSES INC, a California Corporation (“CITY NET”).

WITNESSETH:

A. WHEREAS, The County Orange and CITIES have entered into a Memorandum of Understanding (“MOU”) to cooperatively work together to address issues related to homelessness; and

B. WHEREAS, the MOU is an Alternative Shelter Site agreement for COVID-19 symptomatic homeless individuals to allow individuals to self-isolate and prevent the spread of COVID-19; and

C. WHEREAS, The County has agreed to provide \$629,000 to CITIES to reimburse the costs of their contract with CITY NET utilizing CARES Act funding that was allocated to the County; and

D. WHEREAS, CITIES, to fulfill their obligations under the MOU, propose to utilize the services of CITY NET as an independent contractor to operate a temporary emergency housing shelter for homeless neighbors, as more fully described herein; and

E. WHEREAS, CITY NET represents that it has that degree of specialized expertise contemplated within California Government Code Section 37103, and holds all necessary licenses to practice and perform the services herein contemplated; and

F. WHEREAS, CITIES and CITY NET desire to contract for the specific services described in Exhibit “A” (the “Project”) and desire to set forth their rights, duties and liabilities in connection with the services to be performed; and

G. WHEREAS, no official or employee of CITIES have a financial interest, within the provisions of Sections 1090-1092 of the California Government Code, in the subject matter of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions contained herein, the parties hereby agree as follows:

1.0. SERVICES PROVIDED BY CITY NET

1.1. Scope of Services. CITY NET shall provide the professional services described in the CITY NET’s Proposal (“Proposal”), dated 6-4-2020 attached hereto as Exhibit “A” and incorporated herein by this reference.

1.1.1. In addition to the services to be provided by CITY NET in Exhibit “A” attached hereto, CITY NET shall perform all of the services required to fulfill all of the CITIES responsibilities under the MOU which is attached hereto as Exhibit “B” and incorporated herein by this reference. The responsibilities

include, but are not limited to, Sections 4, 7, 8.2, 9, 11, 12 and 13 of the MOU.

- 1.1.2. CITY NET shall only provide shelter to individuals experiencing homelessness (“Admittees”) who meet the criteria outlined in the MOU and who are “residents” of the CITIES (“Criteria”). CITY NET shall keep records of all admissions into the program with verification that the Criteria has been met by the Admittees. Should there be surplus rooms, CITY NET shall not fill those rooms with residents from other cities;
- 1.1.3. Should any Admittee later be found to not meet the aforementioned criteria CITY NET shall be responsible to reimburse CITIES for any deduction made to the funding provided to CITIES by the County as a result of the improper admittance.
- 1.1.4. Should CITY NET evict any Admittee for violation of the rules or the law, CITY NET shall contact the police department for the City from which the Admittee originally resided to have them transported back to that City or to an appropriate alternative facility.

1.2. Professional Practices. All professional services to be provided by CITY NET pursuant to this Agreement shall be provided by personnel experienced in their respective fields and in a manner consistent with the standards of care, diligence and skill ordinarily exercised by professional consultants in similar fields and circumstances in accordance with sound professional practices. CITY NET also warrants that it is familiar with all laws that may affect its performance of this Agreement and shall advise CITY of any changes in any laws that may affect CITY NET’s performance of this Agreement. CITY NET shall keep itself informed of State and Federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. CITY NET shall at all times observe and comply with all such laws and regulations. Officers and employees shall not be liable at law or in equity occasioned by failure of CITY NET to comply with this section.

1.3. Performance to Satisfaction of Cities. CITY NET agrees to perform all the work to the complete satisfaction of CITIES and within the hereinafter specified services. Evaluations of the work will be done by the City Manager of FULLERTON or his or her designee. If the quality of work is not satisfactory, CITIES in their discretion has the right to:

- (a) Meet with CITY NET to review the quality of the work and resolve the matters of concern;
- (b) Require CITY NET to repeat the work at no additional fee until it is satisfactory; and/or
- (c) Terminate the Agreement as hereinafter set forth.

1.4. Warranty. CITY NET warrants that it shall perform the services required by this Agreement in compliance with all applicable Federal and California employment laws, including, but not limited to, those laws related to minimum hours and wages; occupational health and safety; fair employment and employment practices; workers’ compensation insurance and safety in employment; and all other Federal, State and local laws and ordinances applicable to the services required under this Agreement. CITY NET shall indemnify and hold harmless CITIES from and against all claims, demands, payments, suits, actions, proceedings, and

judgments of every nature and description including attorneys' fees and costs, presented, brought, or recovered against CITIES for, or on account of any liability under any of the above-mentioned laws, which may be incurred by reason of CITY NET's performance under this Agreement.

1.5. Non-discrimination. In performing this Agreement, CITY NET shall not engage in, nor permit its agents to engage in, discrimination in employment of persons because of their race, religion, color, national origin, ancestry, age, physical handicap, medical condition, marital status, sexual gender or sexual orientation, except as permitted pursuant to Section 12940 of the Government Code. Such actions shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship. CITY NET agrees to post in conspicuous places, available to employees and applicants for employment, a notice setting forth provisions of this non-discrimination clause.

CITY NET shall, in all solicitations and advertisements for employees placed by, or on behalf of CITY NET shall state that all qualified applicants will receive consideration for employment without regard to age, race, color, religion, sex, marital status, national origin, or mental or physical disability. CITY NET shall cause the paragraphs contained in this Section to be inserted in all subcontracts for any work covered by the Agreement, provided that the foregoing provisions shall not apply to subcontracts for standard commercial supplies or raw materials.

1.6. Non-Exclusive Agreement. CITY NET acknowledges that CITY may enter into agreements with other consultants for services similar to the services that are subject to this Agreement or may have its own employees perform services similar to those services contemplated by this Agreement.

1.7. Delegation and Assignment. This is a personal service contract, and the duties set forth herein shall not be delegated or assigned to any person or entity without the prior written consent of CITIES. CITY NET may engage a subcontractor(s) as permitted by law and may employ other personnel to perform services contemplated by this Agreement at CITY NET's sole cost and expense.

1.8. Confidentiality. Employees of CITY NET in the course of their duties may have access to financial, accounting, statistical, and personnel data of private individuals and employees of CITIES. CITY NET covenants that all data, documents, discussion, or other information developed or received by CITY NET or provided for performance of this Agreement are deemed confidential and shall not be disclosed by CITY NET without written authorization by CITIES. CITIES shall grant such authorization if disclosure is required by law. All CITIES data shall be returned to CITIES upon the termination of this Agreement. CITY NET's covenant under this Section shall survive the termination of this Agreement.

2.0. COMPENSATION AND BILLING

2.1. Compensation. CITY NET shall be paid in accordance with the fee schedule set forth in Exhibit "C". CITY NET's total compensation shall not exceed Six hundred Twenty Eight Thousand Three Hundred Thirty-two Dollars (\$628,332.00) unless CITY has given specific advance approval in writing.

2.2. Additional Services. CITY NET shall not receive compensation for any services provided outside the scope of services specified in CITY NET's Proposal or which is inconsistent with or in violation of the provisions of this Agreement unless the CITY or the

Project Manager for this Project, prior to CITY NET performing the additional services, approves such additional services in writing. It is specifically understood that oral requests and/or approvals of such additional services or additional compensation shall be barred and are unenforceable. Should CITIES request in writing additional services that increase the hereinabove described "SCOPE OF SERVICES", an additional fee based upon the CITY NET's standard hourly rates shall be paid to CITY NET for such additional services.

2.3. Method of Billing. CITY NET may submit invoices to LA HABRA for approval on a progress basis, but no more often than two times a month. Said invoice shall be based on the total of all CITY NET's services which have been completed to CITIES's sole satisfaction. CITIES shall pay CITY NET's invoice within forty-five (45) days from the date CITIES receives said invoice. Each invoice shall describe in detail, the services performed, the date of performance, and the associated time for completion. Any additional services approved and performed pursuant to this Agreement shall be designated as "Additional Services" and shall identify the number of the authorized change order, where applicable, on all invoices.

2.4. Records and Audits. Records of CITY NET's services relating to this Agreement shall be maintained in accordance with generally recognized accounting principles and shall be made available to LA HABRA or its Project Manager for inspection and/or audit at mutually convenient times for a period of three (3) years from the Effective Date.

2.5 Accounting Responsibilities. LA HABRA will be responsible for the financial component of this agreement, with shall include, but not be limited to receiving invoices from CITY NET, invoicing the County for reimbursement for the compensation to be paid to CITY NET and to pay CITY NET for the services that have been rendered to the satisfaction of CITIES.

3.0 CITIES OVERSIGHT OF THE AGREEMENT

3.1 FULLERTON. FULLERTON shall provide direction, consents, evaluation, of the services being provided by CITY NET and shall review the records and reports prepared by CITY NET to ensure compliance with this Agreement and the MOU attached hereto.

3.2 LA HABRA. LA HABRA shall be responsible for the financial component of this Agreement as set forth in Section 2.5 herein. In addition, should a LA HABRA resident be evicted from the shelter for violation of the shelter rules and/or the law, LA HABRA shall upon notification shall be responsible for returning that resident to LA HABRA.

4.0. TIME OF PERFORMANCE

4.1. Commencement and Completion of Work. The professional services to be performed pursuant to this Agreement shall commence within five (5) days from the Effective Date of this Agreement. Said services shall be performed in strict compliance with the Project Schedule approved by CITIES as set forth in Exhibit "A."

4.2. Excusable Delays. Neither party shall be responsible for delays or lack of performance resulting from acts beyond the reasonable control of the party or parties. Such acts shall include, but not be limited to, acts of God, fire, strikes, material shortages, compliance with laws or regulations, riots, acts of war, or any other conditions beyond the reasonable

control of a party. If a delay beyond the control of the CITY NET is encountered, a time extension may be mutually agreed upon in writing by CITIES and the CITY NET. CITY NET shall present documentation satisfactory to CITIES to substantiate any request for a time extension.

5.0. TERM AND TERMINATION

5.1. Term. This Agreement shall commence on the Effective Date and continue for a period of four (4) months, ending on November 20, 2020, unless previously terminated as provided herein or as otherwise agreed to in writing by the parties.

5.2. Notice of Termination. CITIES reserve and have the right and privilege of canceling, suspending or abandoning the execution of all or any part of the work contemplated by this Agreement, with or without cause, at any time, by providing at least fifteen (15) days prior written notice to CITY NET. The termination of this Agreement shall be deemed effective upon receipt of the notice of termination. In the event of such termination, CITY NET shall immediately stop rendering services under this Agreement unless directed otherwise by CITIES. If CITIES suspend, terminate, or abandon a portion of this Agreement such suspension, termination or abandonment shall not make void or invalidate the remainder of this Agreement.

If CITY NET defaults in the performance of any of the terms or conditions of this Agreement, it shall have ten (10) days after service upon it of written notice of such default in which to cure the default by rendering a satisfactory performance. In the event that CITY NET fails to cure its default within such period of time, CITIES shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

CITIES shall have the right, notwithstanding any other provisions of this Agreement, to terminate this Agreement, at its option and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement, immediately upon service of written notice of termination on the CITY NET, if the latter should:

- a. Be adjudged a bankrupt;
- b. Become insolvent or have a receiver of its assets or property appointed because of insolvency;
- c. Make a general assignment for the benefit of creditors;
- d. Default in the performance of any obligation or payment of any indebtedness under this Agreement;
- e. Suffer any judgment against it to remain unsatisfied or unbonded of record for thirty (30) days or longer; or
- f. Institute or suffer to be instituted any procedures for reorganization or rearrangement of its affairs.

5.3. Compensation. In the event of termination, CITIES shall pay CITY NET for reasonable costs incurred and professional services satisfactorily performed up to and including the date of CITIES's written notice of termination within thirty-five (35) days after service of the

notice of termination. Compensation for work in progress shall be prorated based on the percentage of work completed as of the effective date of termination in accordance with the fees set forth herein. In ascertaining the professional services actually rendered hereunder up to the effective date of termination of this Agreement, consideration shall be given to both completed work and work in progress, to complete and incomplete drawings, and to other documents pertaining to the services contemplated herein whether delivered to CITIES or in the possession of CITY NET. CITY shall not be liable for any claim of lost profits.

5.4. Documents. In the event of termination of this Agreement, all documents prepared by CITY NET in its performance of this Agreement including, but not limited to, reports, shall be delivered to the CITIES within ten (10) days of delivery of termination notice to CITY NET, at no cost to CITIES.

6.0. INSURANCE

6.1. Minimum Scope and Limits of Insurance. CITY NET shall obtain, maintain, and keep in full force and effect during the life of this Agreement all of the following minimum scope of insurance coverages with an insurance company admitted to do business in California, rated "A," Class X, or better in the most recent Best's Key Insurance Rating Guide, and approved by CITY:

- (a) **Commercial General Liability (CGL)** which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 00 01, including products and completed operations, property damage, bodily injury, and personal & advertising injury with limits no less than \$2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- (b) **Automobile Liability Insurance** with coverage at least as broad as Insurance Services Office Form CA 0001 covering "Any Auto" (Symbol 1) with limit no less than \$1,000,000 each accident for bodily injury and property damage.

Workers' Compensation as required by the State of California with statutory limits, and Employer's Liability Insurance with a limit of not less than \$1,000,000 per accident for bodily injury or disease. Before execution of this Agreement by CITIES, CITY NET shall file with the Administrative Services Director the following signed certification:

I am aware of, and will comply with, Section 3700 of the Labor Code, requiring every employer to be insured against liability of Workers' Compensation or to undertake self-insurance before commencing any of the work.

CITY NET shall also comply with Section 3800 of the Labor Code by securing, paying for and maintaining in full force and effect for the duration of this Agreement, complete Workers' Compensation Insurance, and shall furnish a Certificate of Insurance to LA HABRA before execution

of this Agreement by CITIES. CITIES, its officers and employees shall not be responsible for any claims in law or equity occasioned by failure of CITY NET to comply with this section.

- (a) **Professional Liability** with limit of not less than \$1,000,000 each claim and \$2,000,000 aggregate. Covered Professional Services shall specifically include all work to be performed under the contract and delete any exclusion that may potentially affect the work to be performed.

Neither CITIES nor any of their respective elected or appointed officials, officers, agents, employees, or volunteers makes any representation that the types of insurance and the limits specified to be carried by CITY NET under this Agreement are adequate to protect CITY NET. If CITY NET believes that any such insurance coverage is insufficient, CITY NET shall provide, at its own expense, such additional insurance as CITY NET deems adequate.

6.2. Endorsements. The commercial general liability insurance policy and business automobile liability policy shall contain or be endorsed to contain the following provisions:

- (a) Additional insureds: "CITY OF LA HABRA AND FULLERTON and their respective elected and appointed boards, officers, officials, agents, employees, and volunteers are additional insureds with respect to: liability arising out of activities performed by or on behalf of CITY NET pursuant to its contract with CITY OF LA HABRA AND FULLERTON; products and completed operations of the CITY NET; premises owned, occupied or used by the CITY NET; automobiles owned, leased, hired, or borrowed by the CITY NET."
- (b) Notice: "CITY OF LA HABRA AND FULLERTON shall provide immediate written notice if (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; (3) or the deductible or self-insured retention is increased. In the event of any cancellation or reduction in coverage or limits of any insurance, CITY NET shall forthwith obtain and submit proof of substitute insurance. Should CITY NET fail to immediately procure other insurance, as specified, to substitute for any canceled policy, CITY may procure such insurance at CITY NET's sole cost and expense."
- (c) Other insurance: "The CITY NET's insurance coverage shall be primary insurance as respects CITY OF LA HABRA AND FULLERTON, its officers, officials, agents, employees, and volunteers. Any other insurance maintained by CITY OF LA HABRA AND FULLERTON shall be excess and not contributing with the insurance provided by this policy."
- (d) Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to CITY OF LA HABRA AND FULLERTON, its officers, officials, agents, employees, and volunteers.
- (e) The CITY NET'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.

6.3. Deductible or Self-Insured Retention. If any of such policies provide for a deductible or self-insured retention to provide such coverage, the amount of such deductible or self-insured retention shall be approved in advance by CITIES. No policy of insurance issued as to which CITIES are an additional insured shall contain a provision which requires that no insured except the named insured can satisfy any such deductible or self-insured retention.

6.4. Certificates of Insurance. CITY NET shall provide to CITIES certificates of insurance showing the insurance coverages and required endorsements described above, in a form and content approved by CITIES, prior to performing any services under this Agreement. The certificates of insurance shall be attached hereto as Exhibit "D" and incorporated herein by this reference.

6.5. Non-limiting. Nothing in this Section shall be construed as limiting in any way, the indemnification provision contained in this Agreement, or the extent to which CITY NET may be held responsible for payments of damages to persons or property.

7.0. GENERAL PROVISIONS

7.1. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to any matter referenced herein and supersedes any and all other prior writings and oral negotiations. This Agreement may be modified only in writing and signed by the parties in interest at the time of such modification. The terms of this Agreement shall prevail over any inconsistent provision in any other contract document appurtenant hereto, including exhibits to this Agreement.

7.2. Representatives. The City Manager of FULLERTON or his or her designee shall be the representative of CITIES for purposes of this Agreement and may issue all consents, approvals, and directives on behalf of CITIES, called for by this Agreement, except as otherwise expressly provided in this Agreement.

CITY NET shall designate a representative for purposes of this Agreement who shall be authorized to issue all consents, approvals, directives, and agreements on behalf of CITY NET called for by this Agreement, except as otherwise expressly provided in this Agreement.

7.3. Project Managers. FULLERTON shall designate a Project Manager to work directly with CITY NET in the performance of this Agreement. It shall be the CITY NET's responsibility to assure that the Project Manager is kept informed of the progress of the performance of the services and the CITY NET shall refer any decision, which must be made by CITIES, to the Project Manager. Unless otherwise specified herein, any approval of CITIES required hereunder shall mean the approval of the Project Manager.

CITY NET shall designate a Project Manager who shall represent it and be its agent in all consultations with CITIES during the term of this Agreement and who shall not be changed by CITY NET without the express written approval by CITIES. CITY NET or its Project Manager shall attend and assist in all coordination meetings called by CITIES.

7.4. Notices. Any notices, documents, correspondence or other communications concerning this Agreement or the work hereunder may be provided by personal delivery, facsimile or if mailed, shall be addressed as set forth below and placed in a sealed envelope, postage prepaid, and deposited in the United States Postal Service. Such communication shall be deemed served or delivered: a) at the time of delivery if such communication is sent by personal delivery; b) at the time of transmission if such communication is sent by facsimile; and

c) 72 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail.

IF TO CITY NET:

CITY NET
4508 Atlantic Avenue, Suite 292
Long Beach, CA 90807
Tel: (714) 712-0107
Email: Brad@citynet.org
Attn: Brad Fieldhouse

IF TO LA HABRA:

CITY OF LA HABRA
110 East La Habra Blvd.
La Habra, CA 90633
Tel: (562) 383-4010
Email: jsadro@lahabracaca.gov
Attn: Jim Sadro

IF TO FULLERTON:

CITY OF FULLERTON
303 W. Commonwealth Ave.
Fullerton, CA 92832
Tel: (714) 738-6300
Email: KDomer@cityoffullerton.com
Attn: Kenneth Domer

7.5. Attorneys' Fees. In the event that litigation is brought by any party in connection with this Agreement, the prevailing party shall be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms, conditions, or provisions hereof.

7.6. Governing Law. This Agreement shall be governed by and construed under the laws of the State of California without giving effect to that body of laws pertaining to conflict of laws. In the event of any legal action to enforce or interpret this Agreement, the parties hereto agree that the sole and exclusive venue shall be a court of competent jurisdiction located in Los Angeles County, California. CITY NET agrees to submit to the personal jurisdiction of such court in the event of such action.

7.7. Assignment. CITY NET shall not voluntarily or by operation of law assign, transfer, sublet or encumber all or any part of CITY NET's interest in this Agreement without CITY NET's prior written consent. Any attempted assignment, transfer, subletting or encumbrance shall be void and shall constitute a breach of this Agreement and cause for termination of this Agreement. Regardless of CITY NET's consent, no subletting or assignment shall release CITY NET of CITY NET's obligation to perform all other obligations to be performed by CITY NET hereunder for the term of this Agreement.

7.8. Indemnification and Hold Harmless. CITY NET agrees to defend, indemnify, hold free and harmless CITY NET, its elected and appointed officials, officers, agents and employees, at CITY NET's sole expense, from and against any and all claims, demands, actions, suits or other legal proceedings brought against CITY NET, their respective elected and appointed officials, officers, agents and employees arising out of the performance of the CITY NET, its employees, and/or authorized subcontractors, of the work undertaken pursuant to this Agreement. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by the CITY NET, its employees, and/or authorized subcontractors, but shall be required whenever any claim, action, complaint, or suit asserts as its basis the negligence, errors, omissions or misconduct of the CITY NET, its employees,

and/or authorized subcontractors, and/or whenever any claim, action, complaint or suit asserts liability against CITIES, their respective elected and appointed officials, officers, agents and employees based upon the work performed by the CITY NET, its employees, and/or authorized subcontractors under this Agreement, whether or not the CITY NET, its employees, and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, the CITY NET shall not be liable for the defense or indemnification of CITIES for claims, actions, complaints, or suits arising out of the sole active negligence or willful misconduct of CITIES. This provision shall supersede and replace all other indemnity provisions contained either in CITIES's specifications or CITY NET's Proposal, which shall be of no force and effect.

7.9. Independent Contractor. CITY NET is and shall be acting at all times as an independent contractor and not as an employee of LA HABRA or FULLERTON. CITY NET shall have no power to incur any debt, obligation, or liability on behalf of LA HABRA or FULLERTON or otherwise act on behalf of LA HABRA or FULLERTON as an agent. Neither LA HABRA or FULLERTON nor any of their respective agents shall have control over the conduct of CITY NET or any of CITY NET's employees, except as set forth in this Agreement. CITY NET shall not, at any time, or in any manner, represent that it or any of its or employees are in any manner agents or employees of CITIES. CITY NET shall secure, at its sole expense, and be responsible for any and all payment of Income Tax, Social Security, State Disability Insurance Compensation, Unemployment Compensation, and other payroll deductions for CITY NET and its officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder. CITY NET shall indemnify and hold CITIES harmless from any and all taxes, assessments, penalties, fines and interest asserted against CITIES and any legal fee incurred by CITIES by reason of any challenge/claim made against CITIES regarding the independent contractor relationship created by this Agreement. CITY NET further agrees to indemnify and hold CITIES harmless from any failure of CITY NET to comply with the applicable worker's compensation laws. CITY shall have the right to offset against the amount of any fees due to CITY NET under this Agreement any amount due to CITIES from CITY NET as a result of CITY NET's failure to promptly pay to CITIES any reimbursement or indemnification arising under this paragraph.

7.10. PERS Eligibility Indemnification. In the event that CITY NET or any employee, agent, or subcontractor of CITY NET providing services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of CITIES, CITY NET shall indemnify, defend, and hold harmless CITIES for the payment of any employee and/or employer contributions for PERS benefits on behalf of CITY NET or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of CITIES.

Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, CITY NET and any of its employees, agents, and subcontractors providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by CITIES, including but not limited to eligibility to enroll in PERS as an employee of CITIES and entitlement to any contribution to be paid by CITIES for employer contribution and/or employee contributions for PERS benefits.

7.11. Cooperation. In the event any claim or action is brought against CITIES relating to CITY NET's performance or services rendered under this Agreement, CITY NET shall render any reasonable assistance and cooperation which CITIES might require.

7.12. Ownership of Documents. All findings, reports, documents, information and data including, but not limited to, computer tapes or discs, files and tapes furnished or prepared by CITY NET or any of its subcontractors in the course of performance of this Agreement, shall be and remain the sole property of CITIES. CITY NET agrees that any such documents or information shall not be made available to any individual or organization without the prior consent of CITIES. CITY NET shall deliver to CITIES any findings, reports, documents, information, data, in any form, including but not limited to, computer tapes, discs, files audio tapes or any other Project related items as requested by CITIES or its authorized representative, at no additional cost to CITIES.

7.13. Public Records Act Disclosure. CITY NET has been advised and is aware that this Agreement and all reports, documents, information and data, including, but not limited to, computer tapes, discs or files furnished or prepared by CITY NET, or any of its subcontractors, pursuant to this Agreement and provided to CITIES may be subject to public disclosure as required by the California Public Records Act (California Government Code Section 6250 *et seq.*). Exceptions to public disclosure may be those documents or information that qualify as trade secrets, as that term is defined in the California Government Code Section 6254.7, and of which CITY NET informs CITIES of such trade secret. The CITY will endeavor to maintain as confidential all information obtained by it that is designated as a trade secret. CITIES shall not, in any way, be liable or responsible for the disclosure of any trade secret including, without limitation, those records so marked if disclosure is deemed to be required by law or by order of the Court.

7.14. Conflict of Interest. CITY NET and its officers, employees, associates and subconsultants, if any, will comply with all conflict of interest statutes of the State of California applicable to CITY NET's services under this agreement, including, but not limited to, the Political Reform Act (Government Code Sections 81000, *et seq.*) and Government Code Section 1090. During the term of this Agreement, CITY NET and its officers, employees, associates and subconsultants shall not, without the prior written approval of CITIES Representatives, perform work for another person or entity for whom CITY NET is not currently performing work that would require CITY NET or one of its officers, employees, associates or subconsultants to abstain from a decision under this Agreement pursuant to a conflict of interest statute.

7.15. Responsibility for Errors. CITY NET shall be responsible for its work and results under this Agreement. CITY NET, when requested, shall furnish clarification and/or explanation as may be required by the CITIES' representatives, regarding any services rendered under this Agreement at no additional cost to CITIES. In the event that an error or omission attributable to CITY NET occurs, then CITY NET shall, at no cost to CITIES, provide all necessary design drawings, estimates and other CITY NET professional services necessary to rectify and correct the matter to the sole satisfaction of CITIES and to participate in any meeting required with regard to the correction.

7.16. Prohibited Employment. CITY NET will not employ any regular employee of CITIES WHILE this Agreement is in effect.

7.17. Order of Precedence. In the event of an inconsistency in this Agreement and any of the attached Exhibits, the terms set forth in this Agreement shall prevail. If, and to the extent this Agreement incorporates by reference any provision of any document, such provision shall be deemed a part of this Agreement. Nevertheless, if there is any conflict among the terms and conditions of this Agreement and those of any such provision or provisions so incorporated by reference, this Agreement shall govern over the document referenced.

7.18. Costs. Each party shall bear its own costs and fees incurred in the preparation and negotiation of this Agreement and in the performance of its obligations hereunder except as expressly provided herein.

7.19. No Third-Party Beneficiary Rights. This Agreement is entered into for the sole benefit of CITIES and CITY NET and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.

7.20. Headings. Paragraphs and subparagraph headings contained in this Agreement are included solely for convenience and are not intended to modify, explain or to be a full or accurate description of the content thereof and shall not in any way affect the meaning or interpretation of this Agreement.

7.21. Construction. The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

7.22. Amendments. Only a writing executed by the parties hereto or their respective successors and assigns may amend this Agreement.

7.23. Waiver. The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

7.24. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any party, is materially impaired, which determination made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.

7.25. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement.

7.26. Corporate Authority. The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by doing so the parties hereto are formally bound to the provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers, as of the date first above written.

CITY OF LA HABRA,
A municipal corporation

Jim Sadro, City Manager

Date: _____

ATTEST:

Laurie Swindell, CMC, City Clerk

APPROVED AS TO FORM:

Richard D. Jones, City Attorney

Date: _____

CITY OF FULLERTON,
A municipal corporation

Kenneth Domer, City Manager

Date: _____

ATTEST:

Lucinda Williams, MMC, City Clerk

APPROVED AS TO FORM:

Richard D. Jones, City Attorney

Date: _____

CITY NET

Brad Fieldhouse
President/Executive Director

Date: _____

EXHIBIT A
CITY NET'S PROPOSAL

EXHIBIT B
MEMORANDUM OF UNDERSTANDING

EXHIBIT C
COMPENSATION

EXHIBIT D
CERTIFICATES OF INSURANCE