

AGREEMENT

This Agreement is made and entered into this 5th day of June, 2023 by and between **THE CITY OF LA HABRA**, hereinafter referred to as the “**CITY**” and **GREAT WESTERN INSTALLATIONS, INC.** hereinafter referred to as the “**CONTRACTOR**”.

RECITALS

WHEREAS, the City requires CONSTRUCTION WORK at the Claire Brown and Child Development Centers; and,

WHEREAS, the **CONTRACTOR** is qualified and experienced to perform such work.

NOW, THEREFORE, **CITY** and **CONTRACTOR** for the considerations hereinafter set forth, mutually agree as follows:

ARTICLE I SCOPE OF WORK; TERM

1.1 General Scope of Work:

CONTRACTOR shall for the price bid, upon request from **CITY**, furnish at his /her own proper cost and expense all necessary labor, materials, equipment, methods, processes, implements, services, tools, supplies, transportation, utilities and all other items and facilities to perform the required work for the **Child Development Centers Playground Surface Repairs**, (hereinafter “The Project”). The project shall be performed in accordance with the contract documents consisting of the Proposal, the Bid Sheets as ”Exhibit A”, the Agreement, the Faithful Performance Bond, the Payment Bond, the Non Collusion Affidavit, the Standard Plans for the City of La Habra and the Standard Specifications for Public Works Construction latest edition and supplements thereto, together with all additions, any modifications or interpretations of any said documents are hereby incorporated in and made part of this Agreement as fully as if set forth herein.

1.2 Term.

The term of this Agreement shall begin upon signing by both parties and continue until completion of the work and its final acceptance by the **CITY**; or, until such time as it is terminated pursuant to the provisions in Article V of this Agreement.

ARTICLE II RESPONSIBILITIES OF CONTRACTOR

2.1 Control and Payment of Subordinates.

CITY retains **CONTRACTOR** as an independent contractor and not an employee of the **CITY**. All personnel to be utilized by **CONTRACTOR** in the performance of this Agreement shall at all times be under **CONTRACTOR’S** exclusive direction and control. **CONTRACTOR** shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of the Project under this Agreement and as required by law. **CONTRACTOR** shall

be responsible for all reports and obligations with respect to such personnel, including, but not limited to social security taxes, income tax withholding, unemployment insurance, and workers' compensation insurance.

2.2 Conformance to Applicable Requirements.

All work constructed by **CONTRACTOR** shall be subject to the inspection and approval of the **CITY**.

2.3 Standard of Care, Licenses.

CONTRACTOR shall perform the Work under this Agreement in a skillful and competent manner. **CONTRACTOR** shall be responsible to **CITY** for any errors in its performance of this Agreement. **CONTRACTOR** represents and warrants to **CITY** that it has all licenses, permits, qualifications and approvals of whatever nature that are legally required to practice and to perform the Project hereunder. **CONTRACTOR** further represents and warrants that it shall keep in effect all such licenses, permits, and other approvals during the term of this Agreement.

2.4 Project Representatives.

CONTRACTOR assigns Brandon Seitz as its Project Representative who shall coordinate all phases of the Project. The Project Representative shall be available to **CITY** at all reasonable times. **CONTRACTOR** may appoint another person as Project Representative upon written notice to **CITY**. Kelly Fujio shall act as **CITY'S** Project Representative for purposes of this Agreement.

2.5 Accounting Records.

CONTRACTOR shall maintain complete and accurate records with respect to costs and expenses incurred in the performance of this Project. All such records shall be clearly identifiable as being associated with this Project. **CONTRACTOR** shall allow an authorized representative of **CITY**, during normal business hours, to examine, audit, and make transcripts of copies of such records. **CONTRACTOR** shall allow **CITY** to inspect all work, data, documents, proceedings, and activities related to this Agreement for a period of three (3) years from the date of final payment (or completion of work) under this Agreement.

ARTICLE III COMPENSATION

3.1 Compensation.

Except as provided in this section, **CONTRACTOR** shall receive compensation for all Work completed under this Agreement at the rates set forth in the Bid Sheets attached hereto as "EXHIBIT A". Total compensation shall not exceed bid amount without written approval of **CITY'S** Project Representative. [Extra work may be authorized as described below, and, if authorized, shall be compensated at the rates and manner set forth in this Agreement]. The **CITY MANAGER** may authorize extra work to fund unforeseen conditions up to the amount approved at the time of award by the City Council. Payment for additional work in excess of this amount requires prior City Council Authorization.

3.2 Payment of Compensation.

CONTRACTOR shall provide **CITY** an itemized monthly statement, which indicates work completed, to the Project by **CONTRACTOR** from the date of written notice to proceed, or the start of the subsequent billing periods, as appropriate, through the date of the statement. **CITY** shall make any payment due within forty-five (45) days after approval of the invoice by **CITY**; payment will be made for the approved amount of the invoice minus five (5) percent. The five (5) percent retained will be held until forty-five (45) days after final completion and acceptance of the contract work.

3.3 Extra Work.

At any time during the term of this Agreement, **CITY** may request that **CONTRACTOR** perform Extra Work. As used herein, "Extra Work" means any work which is determined by **CITY** to be necessary for the proper completion of the Project, but which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. **CONTRACTOR** shall not perform Extra Work until receiving prior written authorization from **CITY'S** Project Representative.

3.4 Amendment of Scope of Work.

CITY shall have the right to amend the Scope of Work within the Agreement by written notification to the **CONTRACTOR**. In such event, the compensation and time of performance shall be subject to renegotiations upon written demand of either party to the Agreement. Failure of the **CONTRACTOR** to secure **CITY'S** written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the contract price or time due, whether by way of compensation, restitution, quantum merit, etc. for work done without the appropriate **CITY** authorization.

3.5 Notices.

Kelly Fujio or her designee shall be the representative of **CITY** for purposes of this Agreement and may issue all consents, approvals, directives and agreements on behalf of the **CITY**, called for by this Agreement, except as otherwise expressly provided in this Agreement. **Brandon Seitz** shall be the representative of **CONTRACTOR** for purposes of this Agreement and may issue all consents, approvals, directives and agreement on behalf of **CONTRACTOR**, called for by this Agreement, except as otherwise expressly provided in this Agreement.

All notices and written communications sent by one party to the other shall be personally delivered or sent by registered or certified U.S. Mail postage prepaid, return receipt requested to the following addresses indicated below:

IF TO CITY: Kelly Fujio
Director of Community Services
City of La Habra
101 W. La Habra Blvd.,
La Habra, Ca. 90631

TO CONTRACTOR: Tyler Kyriopoulos

805 910-5971
Tyler@gwpark.com

The effective date of any notice or written communications sent by one party to the other shall be the date received if by personal service, or 48 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark.

3.6 Reimbursement for Expenses

CONTRACTOR shall not be reimbursed for any expenses unless prior written authorization is obtained from **CITY**.

ARTICLE IV INSURANCE

4.1 Insurance Requirements.

The **CITY** reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances. If the existing policies do not meet the Insurance Requirements set forth herein, **CONTRACTOR** agrees to amend, supplement or endorse the policies to do so.

Without limiting the indemnity provisions of the Contract, the **CONTRACTOR** shall procure and maintain in full force and effect during the term of the Contract, the following policies of insurance.

4.2 Minimum Scope of Insurance.

- (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 \$5,000,000 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.

Products-Completed Operations: **CONTRACTOR** shall procure and submit to City evidence of insurance for a period of at least ten (10) years from the time that all work under this Contract is completed.

- (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 \$5,000,000 each accident for bodily injury and property damage.
- (c) **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.

- (d) **Builder's Risk Insurance** for any property constructed on behalf of the City, to cover "all risk" of physical loss providing coverage for loss or damage from collapse, including collapse resulting from builder's design error. All property stored off-site or in transit must be covered. The value insured shall cover 100% of the completed Contract cost, including Boiler & Machinery and Soft Costs and shall be maintained until full acceptance of the Work. Proceeds payable under the above insurance shall be fully payable to the City as Loss Payee.

- (e) **CONTRACTOR'S Pollution Legal Liability Legal Liability and/or Asbestos Pollution Liability and/or Professional Liability** covering all of the **CONTRACTOR'S** operations to include onsite and offsite coverage for bodily injury (including death and mental anguish), property damage, non-owned disposal site liability, defense costs, cleanup costs, and pollution conditions that arise from or in connection with the transportation (including loading and unloading) by or on behalf of the **CONTRACTOR**, of any waste or waste materials off or away from the project site. Coverage shall be provided for both sudden and accidental and gradual and continuous pollution events with limits no less than \$5,000,000 each loss and \$10,000,000 in the aggregate. The policy shall not exclude any hazardous materials for which there is an exposure.

- (f) **Surety Bonds: CONTRACTOR** shall provide the following Surety Bonds:
 - (a) Bid Bond
 - (b) Performance Bond
 - (c) Payment Bond
 - (d) Maintenance Bond

The Payment Bond and the Performance Bond shall be in a sum equal to the contract price. If the Performance Bond provides for a one-year warranty a separate Maintenance Bond is not necessary. If the warranty period specified in the contract is for longer than one year a Maintenance Bond equal to 10% of the contract price is required. Bonds shall be duly executed by a responsible corporate surety, authorized to issue such bonds in the State of California and secured through an authorized agent with an office in California.

If the **CONTRACTOR** maintains broader coverage and/or higher limits than the minimums shown above, the **CITY** requires and shall be entitled to the broader coverage and/or higher limits maintained by the **CONTRACTOR**.

4.3 Endorsements.

Insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to the **CITY** for approval. The insurance policies shall contain or be endorsed to contain, the following provisions:

- (a) Commercial General Liability & CONTRACTORS Pollution Liability

- (1) **Additional Insured:** The City, its elected officials, officers, employees, volunteers, boards, agents and representatives (REVIEW NAMED INSURED’S FOR YOUR CITY) shall be additional insureds with regard to liability and defense of suits or claims arising out of the work or operations performed by or on behalf of the **CONTRACTOR** including materials, parts or equipment furnished in connection with such work or operations. Additional Insured Endorsements shall not:
1. Be limited to “Ongoing Operations”
 2. Exclude “Contractual Liability”
 3. Restrict coverage to the “Sole” liability of **CONTRACTOR**
 4. Exclude “Third-Party-Over Actions”
 5. Contain any other exclusion contrary to the Contract
- Additional Insured Endorsements shall be at least as broad as ISO Form(s) CG 20 10 11 85; or CG 2010 and CG 20 37.

- (2) **Primary Insurance:** This insurance shall be primary and any other insurance whether primary, excess, umbrella or contingent insurance, including deductible, or self-insurance available to the insureds added by endorsement shall be in excess of and shall not contribute with this insurance. Coverage shall be at least as broad as ISO CG 20 01 04 13.

(b) Auto Liability

- (1) **Additional Insured:** The City, its elected officials, officers, employees, volunteers, boards, agents and representatives (REVIEW NAMED INSURED’S FOR YOUR CITY) shall be additional insureds with regard to liability and defense of suits or claims arising out of the work or operations performed by or on behalf of the **CONTRACTOR**.
- (2) **Primary Insurance:** This insurance shall be primary and any other insurance whether primary, excess, umbrella or contingent insurance, including deductible, or self-insurance available to the insureds added by endorsement shall be in excess of and shall not contribute with this insurance.

(c) Workers’ Compensation

- (1) **Waiver of Subrogation:** A waiver of subrogation stating that the insurer waives all rights of subrogation against the indemnified parties.

4.4 Insurance Obligations of Contractor.

The Insurance obligations under this agreement shall be: (1) all the Insurance coverage and/or limits carried by or available to the **CONTRACTOR**; or (2) the minimum Insurance

coverage requirements and/or limits shown in this agreement; whichever is greater. Any insurance proceeds in excess of or broader than the minimum required coverage and/or minimum required limits, which are applicable to a given loss, shall be available to the **CITY**. No representation is made that the minimum Insurance requirements of this agreement are sufficient to cover the obligations of the **CONTRACTOR** under this agreement.

4.5 Notice of Cancellation.

Required insurance policies shall not be cancelled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

4.6 Waiver of Subrogation.

Required insurance coverages shall not prohibit **CONTRACTOR** from waiving the right of subrogation prior to a loss. **CONTRACTOR** shall waive all rights of subrogation against the indemnified parties and Policies shall contain or be endorsed to contain such a provision. This provision applies regardless of whether the City has received a waiver of subrogation endorsement from the insurer.

4.7 Evidence of Insurance.

All policies, endorsements, certificates, and/or binders shall be subject to approval by the City as to form and content. These requirements are subject to amendment or waiver only if so approved in writing by the City. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15) days prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced, **CONTRACTOR** shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

4.8 Deductible or Self-Insured Retention.

Any deductible or self-insured retention must be approved in writing by the City and shall protect the indemnified parties in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention. The City may require the **CONTRACTOR** to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration and defense expenses within the retention.

4.9 Contractual Liability.

The coverage provided shall apply to the obligations assumed by the **CONTRACTOR** under the indemnity provisions of this contract.

4.10 Failure to Maintain Coverage.

CONTRACTOR agrees to suspend and cease all operations hereunder during such period of time as the required insurance coverage is not in effect and evidence of insurance has not been furnished to the **CITY**. The **CITY** shall have the right to withhold any payment due until **CONTRACTOR** has fully complied with the insurance provisions of this Contract.

In the event that the **CONTRACTOR'S** operations are suspended for failure to maintain required insurance coverage, the **CONTRACTOR** shall not be entitled to an extension of time for completion of the Work because of production lost during suspension.

4.11 Acceptability of Insurers.

Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and authorized to do business in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law. Any other rating must be approved in writing by the City.

4.12 Claims Made Policies.

If coverage, including for Construction Defect claims, is written on a claims-made basis, the retroactive date on such insurance and all subsequent insurance shall coincide or precede the effective date of the initial **CONTRACTOR'S** Contract with the **CITY** and continuous coverage shall be maintained or an extended reporting period shall be exercised for a period of at least ten (10) years from termination or expiration of this Contract.

4.13 Insurance for Subcontractors.

CONTRACTOR shall be responsible for causing Subcontractors to purchase the same types and limits of insurance in compliance with the terms of this Contract/Agreement, including adding the **CITY** as an Additional Insured, providing Primary and Non-Contributory coverage and Waiver of Subrogation to the Subcontractor's policies. The Commercial General Liability Additional Insured Endorsement shall be on a form at least as broad as CG 20 38 04 13.

4.14 Additional Insurance.

Further, **CONTRACTOR** shall obtain any additional kinds and amounts of insurance which, in its own judgment, may be necessary for the proper protection of any of its officers', employees', or authorized sub-contractors' own actions during the performance of this Agreement.

4.15 Notice of Policy Changes.

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail,

return receipt requested, has been given to **CITY**.

Unless **CONTRACTOR'S** insurer agrees to provide (30) days written notice of any changes or modifications to any policies as required by this clause, **CONTRACTOR** shall provide copies of all required policies or certificates of insurance as may be requested by **CITY** to establish that such policies have not been modified or reduced in coverage or in limits.

ARTICLE V TERMINATION AND INDEMNIFICATION

5.1 Notice of Termination.

CITY may terminate the whole or any part of this Agreement at any time and without cause by giving seven (7) days written notice to **CONTRACTOR** of such termination, and specifying the effective date thereof. **CONTRACTOR** shall discontinue all services affected by such termination within seven (7) days of receipt of such notice, unless otherwise instructed by **CITY** in writing. **CONTRACTOR** may not terminate this Agreement except for cause.

5.1.1 Termination Without Cause.

If **CITY** terminates this Agreement without cause, **CITY** shall pay **CONTRACTOR** for services performed through the date of termination, upon receipt of written documentation of said services. Such payment shall include a pro-rated amount of profit, if applicable, but no amount shall be paid for anticipated profit on unperformed services.

5.1.2 Termination for Cause.

Should **CONTRACTOR** default in the performance of any covenant, condition, or agreement contained in this Agreement and the default is not cured within thirty (30) days after written notice of the default is served on **CONTRACTOR** by **CITY** then **CITY**, in addition to any other remedies at law or equity, may terminate this Agreement. **CONTRACTOR** shall be compensated for services, which have been completed and accepted by **CITY**. **CONTRACTOR** shall be liable to **CITY** for any reasonable additional costs incurred to correct or cure unsatisfactory work performed by **CONTRACTOR** which, at **CITY'S** discretion, must be revised, in part or in whole, to complete the Project.

5.2 Procurement of Similar Services.

In the event this Agreement is terminated as provided by this Article, with or without cause, in whole or in part, **CITY** may procure, any and all services as may be necessary to complete the Project.

5.3 Work Product.

Upon termination of this Agreement, **CITY** may require **CONTRACTOR** to provide all finished or unfinished documents, data, studies, drawings, reports, etc., prepared by **CONTRACTOR** in performance of this Agreement.

5.4 Indemnification and Hold Harmless.

These Indemnification provisions are independent of and shall not in any way be limited by the Insurance Requirements of this Agreement. City approval of the Insurance contracts required by this Agreement does not in any way relieve the CONTRACTOR from liability under this section.

Except as to the sole or active negligence or willful misconduct of the **CITY** and notwithstanding the existence of insurance coverage required of **CONTRACTOR** pursuant to this contract, **CONTRACTOR** shall save, keep defend, indemnify, hold free and harmless **CITY**, its officers, officials, employees, agents and volunteers from and against any and all damages to property or injuries to or death of any person or persons, and shall defend, indemnify, save and hold harmless **CITY**, its officers, officials, employees, agents and volunteers from any and all claims, demands, suits, actions or proceedings of any kind or nature, including, but not by way of limitation, all civil claims, workers' compensation claims, and all other claims resulting from or arising out of the acts, errors or omissions of **CONTRACTOR**, its employees and/or authorized subcontractors, whether intentional or negligent, in the performance of this Agreement.

CITY will notify **CONTRACTOR** of the receipt of any third party claim related to this contract within ___business days of receipt. The City is entitled to recover its reasonable costs incurred in providing the notification. (Pubic Contracts Code Section 9201)

ARTICLE VI GENERAL PROVISIONS

6.1 Entire Agreement.

This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings, or agreement whether verbal or written, concerning the same subject matter. Only by writing signed by both parties may modify this Agreement.

6.2 Successors and Assigns.

This Agreement shall be binding on the successors and assigns of the parties. This Agreement may not be sold, transferred or assigned by either party, or by operation of law, to any other person or persons or business entity, without the other party's written permission. Any such sale, transfer or assignment, or attempted sale, transfer or assignment without written permission, may be deemed by the other party to constitute a voluntary termination of this Agreement and this Agreement shall thereafter be deemed terminated and void.

6.3 Subcontracts.

CONTRACTOR shall not subcontract any portion of the work required by this Agreement without prior written approval of **CITY**. All approved subcontracts, if any, shall be accomplished by a written instrument. Such instrument shall contain an expressed assumption by the subcontractor of all conditions and terms and covenants contained in this Agreement.

6.4 Equal Opportunity Employment.

CONTRACTOR represents that it is an equal opportunity employer and shall not discriminate either directly or indirectly against an employee or applicant for employment with **CONTRACTOR** on the basis of race, color, religion, national origin, ancestry, sexual preference, sex or age. **CONTRACTOR** shall also take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, color, religion, national origin, ancestry, sexual preference, sex, age, or other prohibited grounds.

6.5 Attorney's Fees.

If either party commences a legal action against the other party arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover reasonable attorney's fees and costs of suits.

6.6 Governing Law.

This Agreement shall be governed by and construed with the laws of the State of California. Any Action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in the County of Orange.

6.7 Time of Essence.

Time is of the essence for each and every provision of this Agreement.

6.8 Right to Employ Other Contractors.

CITY reserves the right to employ other contractors in connection with this Project.

6.9 Covenant Against Contingent Fees.

The **CONTRACTOR** warrants that he has not employed or retained any company or person, other than a bona fide employee working with the **CONTRACTOR**, to solicit or secure this Agreement, and that he has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making this Agreement. For breach or violation of this warranty, the **CITY** shall have the right to annul this Agreement without liability, or, in its discretion to deduct from the Agreement the price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

6.10 Conflict of Interest.

CONTRACTOR covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. **CONTRACTOR** further covenants that in the performance of this Agreement, no person having any such conflict of interest shall be employed by **CONTRACTOR**.

6.11 Statement of Economic Interest.

If **CITY** determines **CONTRACTOR** comes within the definition of **CONTRACTOR** under the Political Reform Act (Government Code §87100 et. seq.), **CONTRACTOR** shall complete and file and shall require any other person doing work under this Agreement, to complete and file a "Statement of Economic Interest" with the City Clerk of the **CITY** disclosing **CONTRACTOR** and/or such other person's financial interests.

6.12 No Waiver of Breach; Time.

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 referring expressly to this Paragraph. 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.

6.13 Third Party Beneficiaries.

Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

6.14 Taxes.

CONTRACTOR agrees to file tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. **CONTRACTOR** agrees to indemnify and hold the **CITY** harmless from any liability which it may incur to the United States or to the State of California as a consequence of **CONTRACTOR'S** failure to pay, when due, all such taxes and obligations.

6.15 Compliance With Law.

CONTRACTOR shall comply with applicable federal, state and local laws, rules and regulations affecting the **CONTRACTOR** and his/her work hereunder.

6.16 Title to Documents.

Title to all plans, specifications, maps, estimates, reports, manuscripts, drawings, descriptions and other final work products that may be compiled by the **CONTRACTOR** under the Agreement shall be vested in the **CITY**, none of which shall be used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed

written consent of the **CITY**. Basic survey notes and sketches, charts, computations, and other data prepared or obtained under the Agreement shall be made available, upon request, to the **CITY** without restriction or limitations on their use. **CONTRACTOR** may retain copies of the above described information but agrees not to disclose or discuss any information gathered, discussed or generated in any way through this Agreement without the written permission of **CITY** during the term of this Agreement or until ninety (90) days after receipt of final payment from **CITY**.

6.17 Validity.

The validity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provisions of this Agreement.

6.18 Headings.

Section and subsection headings are not to be considered part of this Agreement, are included solely for convenience, and are not intended to modify or explain or to be a full or accurate description of the content thereof.

6.19 Counterparts.

This Agreement may be executed in one or more counterparts by the parties hereto. All counterparts shall be construed together and shall constitute one agreement.

6.20 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 provision of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the date and year first above written.

CITY OF LA HABRA

CONTRACTOR

JIM SADRO
CITY MANAGER

Name: _____

Title: _____

ATTEST:

RHONDA J. BARONE, CMC
CITY CLERK

APPROVED AS TO FORM:

RICHARD D. JONES
CITY ATTORNEY

EXHIBIT "A"