

## **CONSULTANT AGREEMENT**

THIS AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_ 2021 by the CITY OF GARDEN GROVE, a municipal corporation, ("CITY"), and **AGA Engineers, Inc.**, a California Corporation ("CONSULTANT").

### **RECITALS**

The following recitals are a substantive part of this Agreement:

1. This Agreement is entered into pursuant to CITY OF GARDEN GROVE City Council Authorization dated \_\_\_\_\_
2. CITY desires to utilize the services of CONSULTANT to **prepare the Garden Grove Local Roadway Safety Plan (LRSP)**.
3. CONSULTANT is qualified by virtue of experience, training, education and expertise to accomplish services.

### **AGREEMENT**

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Term of Agreement:** This Agreement shall cover services rendered for the preparation of the Garden Grove Local Roadway Safety Plan (LRSP).
2. **Services to be Provided:** The services to be performed by CONSULTANT shall consist of the services as further specified in CONSULTANT'S proposal attached hereto as Exhibit "A" and incorporated herein by reference. CONSULTANT agrees that its provision of Services under this agreement shall be within accepted accordance with customary and usual practices in CONSULTANT'S profession and in accordance with the same degree of care, skill, and diligence as is ordinarily possessed and exercised by professionals providing similar services, currently practicing, under similar circumstances.
3. **Compensation.** CONSULTANT shall be compensated as follows:
  - 3.1 **Amount.** CONSULTANT shall be compensated in accordance with the rate schedule set forth in Exhibit "B".
  - 3.2 **Not to Exceed.** The Parties agree that CONSULTANT shall bill for the Services provided by CONSULTANT to City on an hourly basis, except where otherwise set forth herein, provided compensation under this Proposal shall not exceed **\$77,956.00**. CONSULTANT warrants that all services will be performed in a competent, professional and satisfactory manner in accordance with the standards prevalent in the industry for such services. CONSULTANT shall not be compensated for any services rendered in connection with its performance of this Agreement, which

are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City Manager. The Proposal and this Agreement do not guarantee any specific amount of work.

- 3.3 Payment. For work under this Agreement, payment shall be made per monthly invoice. For extra work not a part of this Agreement, a written authorization by CITY will be required and payment shall be based on hourly rates as provided in Exhibit "B".
- 3.4 Records of Expenses. CONSULTANT shall keep complete and accurate records of payroll costs, travel and incidental expenses. These records will be made available at reasonable times to CITY.
- 3.5 Termination. CITY and CONSULTANT shall each have the right to terminate this Agreement, without cause, by giving thirty-(30) days written notice of termination to the other party. If CITY terminates the project, then the provisions of paragraph 3 shall apply to that portion of the work completed.

#### 4. **Insurance Requirements**

- 4.1 Commencement of Work CONSULTANT shall not commence work under this Agreement until all certificates and endorsements have been received and approved by the CITY. All insurance required by this Agreement shall contain a Statement of Obligation on the part of the carrier to notify the CITY of any cancellation, or termination at least thirty (30) days in advance.
- 4.2 Workers Compensation Insurance For the duration of this Agreement, CONSULTANT and all subcontractors shall maintain Workers Compensation Insurance in the amount and type required by law, if applicable. The insurer shall waive its rights of subrogation against the CITY, its officers, officials, agents, employees, and volunteers.
- 4.3 Insurance Amounts CONSULTANT shall maintain the following insurance for the duration of this Agreement:
  - a) Commercial general liability in the amount of \$1,000,000 per occurrence; (claims made and modified occurrence policies are not acceptable); Insurance companies must be admitted and licensed in California and have a Best's Guide Rating of A-, Class VII or better, as approved by the CITY;
  - b) Automobile liability in the amount of \$1,000,000 combined single limit; (claims made and modified occurrence policies are not acceptable) Insurance companies must be admitted and licensed in California and have a Best's Guide Rating of A-, Class VII or better, as approved by the CITY.

- c) Professional liability in the amount of \$1,000,000 per claim; Insurance companies must be acceptable to CITY and have an AM Best's Guide Rating of A-, Class VII or better, as approved by the CITY. If the policy is written on a "claims made" basis, the policy shall be continued in full force and effect at all times during the term of the agreement, and for a period of three (3) years from the date of the completion of services provided. In the event of termination, cancellation, or material change in the policy, professional/consultant shall obtain continuing insurance coverage for the prior acts or omissions of professional/consultant during the course of performing services under the term of the agreement. The coverage shall be evidenced by either a new policy evidencing no gap in coverage, or by obtaining separate extended "tail" coverage with the present or new carrier.

An Additional Insured Endorsement, **ongoing and completed operations**, for the policy under section 4.3 (a) shall designate CITY, its officers, officials, employees, agents, and volunteers as additional insureds for liability arising out of work or operations performed by or on behalf of the CONSULTANT. CONSULTANT shall provide to CITY proof of insurance and endorsement forms that conform to city's requirements, as approved by the CITY.

An Additional Insured Endorsement for the policy under section 4.3 (b) shall designate CITY, its officers, officials, employees, agents, and volunteers as additional insureds for automobiles owned (if any), lease, hired, or borrowed by CONSULTANT. CONSULTANT shall provide to CITY proof of insurance and endorsement forms that conform to CITY's requirements, as approved by the CITY.

For any claims related to this Agreement, CONSULTANT's General Liability and Automobile liability insurance coverage shall be primary insurance as respects to CITY, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, agents, or volunteers shall be excess of the CONSULTANT's insurance and shall not contribute with it.

*If CONTRACTOR maintains higher insurance limits than the minimums shown above, CONTRACTOR shall provide coverage for the higher insurance limits otherwise maintained by the CONTRACTOR.*

5. **Non-Liability of Officials and Employees of the CITY.** No official or employee of CITY shall be personally liable to CONSULTANT in the event of any default or breach by CITY, or for any amount, which may become due to CONSULTANT.
6. **Non-Discrimination.** CONSULTANT covenants there shall be no discrimination against any person or group due to race, color, creed, religion,

sex, marital status, age, handicap, national origin or ancestry, in any activity pursuant to this Agreement.

7. **Independent Contractor.** It is agreed to that CONSULTANT shall act and be an independent contractor and not an agent or employee of CITY, and shall obtain no rights to any benefits which accrue to CITY'S employees.
8. **Compliance With Law.** CONTRACTOR shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state, and local government. CONTRACTOR shall comply with, and shall be responsible for causing all contractors and subcontractors performing any of the work pursuant to this Agreement to comply with, all applicable federal and state labor standards, including, to the extent applicable, the prevailing wage requirements promulgated by the Director of Industrial Relations of the State of California Department of Labor. The City makes no warranty or representation concerning whether any of the work performed pursuant to this Agreement constitutes public works subject to the prevailing wage requirements.
9. **Disclosure of Documents.** All documents or other information developed or received by CONSULTANT are confidential and shall not be disclosed without authorization by CITY, unless disclosure is required by law.
10. **Ownership of Work Product.** All documents or other information developed ("Work Product") or received by CONSULTANT shall be the property of CITY. CONSULTANT shall provide CITY with copies of these items upon demand or upon termination of this Agreement. However, notwithstanding the foregoing, CONSULTANT shall retain all rights, titles, and interests, including but not limited to all ownership and intellectual property rights, in all inventions, improvements, discoveries, methodologies, models, formats, software, algorithms, processes, procedures, designs, specifications, findings, and all other intellectual properties developed, gathered, compiled or produced by CONSULTANT prior to or independently of any of its services under this Agreement ("Background IP"), including such Background IP that CONSULTANT may employ in the performance of this Agreement, or may incorporate into any part of CONSULTANT'S Work Product. CONSULTANT grants CITY irrevocable, non-exclusive, transferable, royalty-free license in perpetuity to use, disclose, and derive from, such Background IP, but only as an inseparable part of the Work Product. Any unauthorized or unintended use, re-use, or modification by CITY of the Work Product prepared and provided by CONSULTANT under this Agreement shall be at the CITY'S sole risk and without liability to CONSULTANT. Third-party content that may be used or incorporated in the Work Product shall not become the property of CITY. CONSULTANT shall secure all licenses necessary for CITY to utilize CONSULTANT'S services and the Work Product for their intended purposes.
11. **Conflict of Interest and Reporting.** CONSULTANT shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.

12. **Notices.** All notices shall be personally delivered or mailed to the below listed addresses, or to such other addresses as may be designated by written notice. These addresses shall be used for delivery of service of process.

(a) Address of CONSULTANT is as follows:

**AGA ENGINEERS, INC.  
ATTN: GREG WONG  
211 IMPERIAL HIGHWAY, SUITE 208  
FULLERTON, CA 92835**

(b) Address of CITY is as follows (with a copy to):

Engineering:	City Attorney
Dai Vu	City of Garden Grove
City of Garden Grove	11222 Acacia Prkwy
11222 Acacia Prkwy	Garden Grove, CA 92840
Garden Grove, CA 92840	

13. **CONSULTANT'S Proposal.** This Agreement shall include CONSULTANT'S proposal, Exhibit "A" hereto, which shall be incorporated herein. In the event of any inconsistency between the terms of the proposal and this Agreement, this Agreement shall govern.

14. **Licenses, Permits and Fees.** At its sole expense, CONSULTANT shall obtain a **Garden Grove Business License**, all permits and licenses as may be required by this Agreement.

15. **Familiarity With Work.** By executing this Agreement, CONSULTANT warrants that: (1) it has investigated the work to be performed; (2) it has investigated the site of the work and is aware of all conditions there; and (3) it understands the facilities, difficulties and restrictions of the work under this Agreement. Should CONSULTANT discover any latent or unknown conditions materially differing from those inherent in the work or as represented by CITY, it shall immediately inform CITY of this and shall not proceed, except at CONSULTANT'S risk, until written instructions are received from CITY.

16. **Time of Essence.** Time is of the essence in the performance of this Agreement.

17. **Limitations Upon Subcontracting and Assignment.** The experience, knowledge, capability and reputation of CONSULTANT, its principals and employees were a substantial inducement for CITY to enter into this Agreement. CONSULTANT shall not contract with any other entity to perform the services required without written approval of the CITY. This Agreement may not be assigned voluntarily or by operation of law, without the prior written approval of CITY. If CONSULTANT is permitted to subcontract any part of this Agreement, CONSULTANT shall be responsible to CITY for the acts and

omissions of its subcontractor as it is for persons directly employed. Nothing contained in this Agreement shall create any contractual relationship between any subcontractor and CITY. All persons engaged in the work will be considered employees of CONSULTANT. CITY will deal directly with and will make all payments to CONSULTANT.

18. **Authority to Execute.** The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement and that by executing this Agreement, the parties are formally bound.

19. **Indemnification.** To the fullest extent permitted by law, CONSULTANT agrees to protect, defend, and hold harmless CITY and its elective or appointive boards, officers, agents, and employees from any and all claims, liabilities, expenses, or damages of any nature, including attorneys' fees, for injury or death of any person, or damages of any nature, including interference with use of property, arising out of, or in any way connected with the negligence, recklessness and/or intentional wrongful conduct of CONSULTANT, CONSULTANT'S agents, officers, employees, subcontractors, or independent contractors hired by CONSULTANT in the performance of the Agreement. The only exception to CONSULTANT'S responsibility to protect, defend, and hold harmless CITY, is due to the negligence, recklessness and/or wrongful conduct of CITY, or any of its elective or appointive boards, officers, agents, or employees. Notwithstanding the foregoing, if any of the services provided by CONSULTANT under this Agreement are design professional services, as defined by California City Code section 2782.8, the defense and indemnity obligation under this Section 19, shall be limited to the extent required by California Civil Code section 2782.8.

This hold harmless agreement shall apply to all liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by CONSULTANT.

20. **Modification.** This Agreement constitutes the entire agreement between the parties and supersedes any previous agreements, oral or written. This Agreement may be modified only by subsequent mutual written agreement executed by CITY and CONSULTANT.

21. **Waiver.** All waivers of the provisions of this Agreement must be in writing by the appropriate authorities of the CITY and CONSULTANT.

22. **California Law.** This Agreement shall be construed in accordance with the laws of the State of California. Any action commenced about this Agreement shall be filed in the central branch of the Orange County Superior Court.

23. **Interpretation.** This Agreement shall be interpreted as though prepared by both parties

24. **Preservation of Agreement.** Should any provision of this Agreement be found invalid or unenforceable, the decision shall affect only the provision interpreted, and all remaining provisions shall remain enforceable.

*[SIGNATURES ON FOLLOWING PAGE]*

**IN WITNESS THEREOF**, these parties hereto have caused this Agreement to be executed as of the date set forth opposite the respective signatures.

**"CITY"**  
**CITY OF GARDEN GROVE**

Dated: \_\_\_\_\_, 2021

By: \_\_\_\_\_  
City Manager

**ATTEST**

**"CONSULTANT"**  
AGA Engineers, Inc.

\_\_\_\_\_  
City Clerk

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

Dated: \_\_\_\_\_, 2021

Dated: \_\_\_\_\_, 2021

**APPROVED AS TO FORM:**

If CONSULTANT/CONTRACTOR is a corporation, a Corporate Resolution and/or Corporate Seal is required. If a partnership, Statement of Partnership must be submitted to CITY

  
\_\_\_\_\_  
Garden Grove City Attorney

Dated: 12-11, 2021



# EXHIBIT A