

## PROFESSIONAL SERVICES AGREEMENT

**THIS AGREEMENT** is made this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by the **CITY OF GARDEN GROVE**, a municipal corporation, ("CITY") and **MICHAEL BAKER INTERNATIONAL**, herein after referred to as "CONSULTANT".

### RECITALS

The following recitals are a substantive part of this Agreement:

1. This Agreement is entered into pursuant to Garden Grove Council Resolution No. XXXX-XX (XXXXXX XX, XXXX).
2. CITY desires to utilize the services of CONSULTANT to prepare California Environmental Quality Act (CEQA) compliance documents for the Civic Center Project.
3. CONSULTANT is qualified by virtue of experience, training, education and expertise to accomplish services.

### AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Term and Termination.** The term of the agreement shall remain in effect until completion of the services to be provided by CONSULTANT hereunder, unless earlier terminated by CITY as allowed under this Agreement. This agreement may be terminated by the CITY without cause. In such event, the CITY will compensate CONSULTANT for work performed to date in accordance with CONSULTANT's proposal which is attached as Attachment "A" and is hereby incorporated by reference. CONSULTANT is required to present evidence to support performed work.
2. **Services to be Provided.** The services to be performed by CONSULTANT shall consist of tasks as set forth in the Proposal. The Proposal is attached as Attachment A, and is incorporated herein by reference. The Proposal and this Agreement do not guarantee any specific amount of work.
3. **Compensation.** CONSULTANT shall be compensated as follows:
  - 3.1 **AMOUNT.** Total Compensation under this agreement shall not exceed (NTE) amount of three-hundred thirty-one thousand fifty-one dollars (\$331,051.00), payable in arrears and in accordance with proposal in Attachment "A".
  - 3.2 **Payment.** For work under this Agreement, payment shall be made per invoice for work completed. Within 45 days of delivery of goods or

completion of performance of services, CONSULTANT must promptly render an invoice to CITY or payment may be significantly delayed. For extra work not a part of this Agreement, a written authorization by CITY will be required, and payment shall be based on schedule included in Proposal (Attachment A).

- 3.3 Records of Expenses. CONSULTANT shall keep complete and accurate records of all costs and expenses incidental to services covered by this Agreement. These records will be made available at reasonable times to CITY.
- 3.4 Termination. CITY and CONSULTANT shall have the right to terminate this agreement, without cause, by giving thirty (30) days written notice of termination. If the Agreement is terminated by CITY, then the provisions of paragraph 3 would apply to that portion of the work completed. In the event that Consultant materially defaults on its obligations under this Agreement, City shall provide written notice of such default to Consultant and Consultant shall have no less than ten (10) business days to cure such default. Should Consultant fail to cure within the specified time period, City may terminate this Agreement for cause.

#### 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 material change, cancellation, or termination at least thirty (30) days in advance and provide a Waiver of Subrogation in favor of the City.
- 4.2 WORKERS COMPENSATION INSURANCE. During 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 an amount of \$2,000,000.00 per occurrence (**claims made and modified occurrence policies are not acceptable**); Insurance companies must be acceptable to CITY and have a Best's Guide Rating of A-, Class VII or better, as approved by the CITY.

- (b) Automobile liability in an amount of \$1,000,000.00 combined single limit **(claims made and modified occurrence policies are not acceptable)**; Insurance companies must be acceptable to CITY and have a Best's Guide Rating of A-, Class VII or better, as approved by the CITY.
- (c) Professional liability in an amount not less than \$2,000,000. 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. 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 either by a new policy evidencing no gap in coverage, or by obtaining separate extended "tail" coverage with the present or new carrier.

An **On-Going and Completed Operations Additional Insured Endorsement** for the policy under section 4.3 (a) shall designate CITY, it's 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, it's officers, officials, employees, agents, and volunteers as additional insureds for automobiles, owned, leased, hired, or borrowed by the 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 insurance coverage shall be primary insurance as respects CITY, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, agents, and volunteers shall be excess of the CONSULTANT's insurance and shall not contribute with it.

- 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 the CITY, and shall obtain no rights to any benefits which accrue to CITY'S employees.
8. **Compliance with Law.** CONSULTANT shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state, and local government. CONSULTANT 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. **Conflict of Interest.** CONSULTANT shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.
11. **Notices.** All notices shall be personally delivered or mailed to the below listed address, or to such other addresses as may be designated by written notice. These addresses shall be used for delivery of service of process.
  - a. (Consultant)  
Michael Baker International  
Attention: Kristen Bogue  
5 Hutton Centre Drive, Suite 500  
Santa Ana, CA 92707
  - b. (Address of CITY) (with a copy to):  
City of Garden Grove Garden Grove City Attorney  
11222 Acacia Parkway 11222 Acacia Parkway  
Garden Grove, CA 92840 Garden Grove, CA 92840
12. **Consultant's Proposal.** This Agreement shall include CONSULTANT'S proposal or bid which shall be incorporated herein by reference. In the event of any inconsistency between the terms of the proposal and this Agreement, this Agreement shall govern.

13. **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.
14. **Familiarity with Work.** By executing this Agreement, CONSULTANT represents 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 promptly inform CITY of this and shall not proceed, except at CONSULTANT'S risk, until written instructions are received from CITY.
15. **Reserved.**
16. **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. CITY shall not assign this Agreement in whole or in part without the prior written consent of CONSULTANT.
17. **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.
18. **Indemnification.** To the fullest extent permitted by law, CONSULTANT shall indemnify CITY and its elective or appointive boards, officers, and employees from third-party claims, liabilities, expenses, or damages of any nature, including reasonable attorneys' fees, for injury or death of any person, or damages, including interference with use of property, to the extent arising directly out of 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. CONSULTANT's responsibility to indemnify CITY does not apply to the extent of the negligence, recklessness and/or wrongful conduct of CITY, or any of its elective or appointive boards, officers, agents, or employees.

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.

19. **Appropriations.** This Agreement is subject to and contingent upon funds being appropriated therefor by the Garden Grove City Council for each fiscal year covered by the term of this Agreement. If such appropriations are not made, this Agreement shall automatically terminate without penalty to the CITY.
20. **Waiver.** All waivers of the provisions of this Agreement must be in writing by the appropriate authorities of the CITY and CONSULTANT.
21. **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.
22. **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.
23. **Standard of Care.** The standard of care for all professional services performed or furnished by CONSULTANT under this Agreement will be the care and skill used by members of CONSULTANT's profession practicing under similar circumstances at the same time and in the same locality. CONSULTANT makes no warranties, express or implied, under this Agreement or otherwise, in connection with CONSULTANT's services.
24. **Limitation of Liability.** To the fullest extent permitted by law, the CITY agrees to limit CONSULTANT's liability to the CITY and to all other contractors or subcontractors on the project for any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related to the project or this Agreement from any cause or causes including but not limited to CONSULTANT's negligent acts, errors, omissions, strict liability, breach of contract, or breach of warranty, such that the total aggregate of liability of CONSULTANT to all those named shall not exceed \$50,000 or the total fee for CONSULTANT's services rendered in the project, whichever is greater. To the extent that this limitation of liability conflicts with any other provision(s) of this Agreement or any Task Orders associated therewith, said provision(s) shall be considered amended to whatever extent required to make such provision(s) consistent with this provision.
25. **Reuse of Work Product.** Any reuse of CONSULTANT's work product without written verification or adaptation by CONSULTANT will be at the CITY's own risk and without liability or legal exposure to CONSULTANT. The CITY shall indemnify and hold harmless CONSULTANT from all claims, damages, losses, and expenses, including reasonable attorney's fees, arising out of or resulting therefrom. Any such verification or adaptation will entitle CONSULTANT to

further compensation at rates to be agreed upon by the CITY and CONSULTANT.

26. **Waiver of Consequential Damages.** In no event shall either CONSULTANT or the CITY have any claim or right against the other, whether in contract, warranty, tort (including negligence), strict liability or otherwise, for any special, indirect, incidental, or consequential damages or any kind or nature whatsoever, such as but not limited to loss of revenue, loss of profits on revenue, loss of customers or contracts, loss of use of equipment or loss of data, work interruption, increased cost of work or cost of any financing, howsoever caused, even if same were reasonably foreseeable.
27. **Force Majeure.** In no event shall either Party have any claim or right against the other for any failure of performance where such failure of performance is caused by or is the result of causes beyond the reasonable control of the other party due to any occurrence commonly known as a "force majeure," including, but not limited to: acts of God; fire, flood, or other natural catastrophe; acts of any governmental body; labor dispute or shortage; national emergency; insurrection; riot; or war.

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(Agreement Signature Block on Next Page)

**IN WITNESS THEREOF**, these parties have executed this Agreement on the day and year shown below.

Date: \_\_\_\_\_

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

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

**ATTESTED:**

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

Date: \_\_\_\_\_

**"CONSULTANT"**  
**MICHAEL BAKER INTERNATIONAL**

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

Name: \_\_\_\_\_

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

Date: \_\_\_\_\_

Tax ID No. \_\_\_\_\_

Expiration Date: \_\_\_\_\_

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

**APPROVED AS TO FORM:**

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

\_\_\_\_\_  
Date