

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made this **1st day of July 2023** by the **CITY OF GARDEN GROVE**, a municipal corporation, ("CITY") and **MIND OC**, a California nonprofit corporation, hereinafter referred to as "CONTRACTOR".

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Agreement is entered into pursuant to Garden Grove City Council approval on July 25, 2023.
2. CITY desires to utilize the services of CONTRACTOR to design, develop, and deploy a Mobile Crisis Response Program per Attachment "A".
3. CONTRACTOR 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 be from July 1, 2023 through June 30, 2025, with an option to extend said agreement an additional three years. Option years shall be exercised one year at time, at the sole option of the CITY. This agreement may be terminated by the CITY without cause. In such event, the CITY will compensate CONTRACTOR for work performed to date in accordance with CONTRACTOR's proposal which is attached as Attachment "A" and is hereby incorporated by reference. CONTRACTOR is required to present evidence to support performed work completion.
2. **Services to be Provided**. The services to be performed by CONTRACTOR shall consist of tasks as set forth in the Proposal attached as Attachment "A". The Proposal is incorporated herein by reference. The Proposal and this Agreement do not guarantee any specific amount of work.
3. **Compensation**. CONTRACTOR shall be compensated as follows:
 - 3.1 **AMOUNT**. Total Compensation under this agreement shall not exceed (NTE) amount of **One Million One Hundred Thousand Dollars** (\$1.1 million), per year for the first two years, payable in arrears and in accordance with proposal in Attachment A. Total Compensation for option years three, four, and five shall have a not to exceed (NTE) amount with options for 18-hour operations or 12-hour operations. For 18-hour operations option year three NTE amount of **One Million One Hundred Thousand Dollars** (\$1.1 million), plus Consumer Price Index (CPI); year four NTE amount of **Approved Year Three Budget, plus CPI**; year five NTE amount of **Approved Year Four Budget, plus CPI**. For

12-hour operations option year three NTE amount of **Seven Hundred Seventy Five Thousand Dollars (\$775,000)**, CPI; year four NTE amount **Approved Year Three Budget, plus CPI**; year five NTE amount of **Approved Year Four Budget, plus CPI** payable in arrears and in accordance with proposal in Attachment B.

- 3.2 PAYMENT. For work under this Agreement, payment shall be made per invoice for work completed. Within 45 day of delivery of goods or completion of performance of services, CONTRACTOR 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**. CONTRACTOR shall keep complete and accurate records of all costs and expenses incidental to services covered by this Agreement for a minimum of five years. These records will be made available at reasonable times to CITY.
- 3.4 **Termination**. CITY 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.

4. Insurance requirements.

- 4.1 COMMENCEMENT OF WORK. CONTRACTOR 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.
- 4.2 WORKERS COMPENSATION INSURANCE. During the duration of this Agreement, CONTRACTOR and all subcontractors shall maintain Workers Compensation Insurance in the amount and type required by law, if applicable.
- 4.3 INSURANCE AMOUNTS. CONTRACTOR shall maintain the following insurance for the duration of this Agreement:
- (a) Commercial general liability in an amount of \$1,000,000.00 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 \$1,000,000. 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/contractor shall obtain continuing insurance coverage for the prior acts or omissions of professional/contractor 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, 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 CONTRACTOR. CONTRACTOR 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, leased, hired, or borrowed by the CONTRACTOR. CONTRACTOR 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, CONTRACTOR'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 CONTRACTOR'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 CONTRACTOR in the event of any default or breach by CITY, or for any amount, which may become due to CONTRACTOR.
6. **Non-Discrimination.** CONTRACTOR 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 CONTRACTOR 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.**

- 8.1 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.
- 8.2 Compliance with Federal Requirements. This Agreement requires compliance with certain provisions of Title 2 C.F.R. 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. CONTRACTOR agrees to comply with all applicable federal laws, regulations, and policies governing the funds provided under this Agreement. During the performance of this Agreement, CONTRACTOR shall comply with all applicable federal laws and regulations, including, including, but not limited to, the following: Fund payments are considered to be federal financial assistance subject to the Single Audit Act (31 U.S.C. 7501-7507); CONTRACTOR is subject to a single audit or program specific audit pursuant to 2 C.F.R. 200.501(a) when CONTRACTOR spends \$750,000 or more in federal awards during their fiscal year; Fund payments are subject to 2 C.F.R. 200.303 regarding internal controls; Fund payments are subject to 2 C.F.R. 200.330 through 200.332 regarding CONTRACTOR monitoring and management; Fund payments are subject to Subpart F regarding audit requirements. Subcontracts, if any, shall contain a provision making them subject to all of the provisions stipulated in this Agreement, including but not limited to 2 C.F.R. 200.303, 2 C.F.R. 200.330-332, 2 C.F.R. 200.501(a), and 2 C.F.R. Part 200 Subpart F. With respect to any conflict between such federal requirements and the terms of this Agreement and/or the provisions of state law and except as otherwise required under federal law or regulation, the more stringent requirement shall control.
- 8.3 Program Fraud & False or Fraudulent Statements or Related Acts. CONTRACTOR and any subcontractors must comply with 31 U.S.C. Chapter 38, Administrative Remedies for False Claims and Statements, which shall apply to the activities and actions of Subrecipient and any subcontractors pertaining to any matter resulting from a contract.
- 8.4 Debarment / Suspension and Voluntary Exclusion. Non-Federal entities and contractors are subject to the debarment and suspension regulations implementing Executive Order 12549, Debarment and

Suspension (1986) and Executive Order 12689, Debarment and Suspension (1989) at 2 C.F.R. Part 180 and the Department of Homeland Security's regulations at 2 C.F.R. Part 3000 (Nonprocurement Debarment and Suspension). These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities. A contract award must not be made to parties listed in the Systems of Award Management ("SAM") Exclusions. SAM Exclusions is the list maintained by the General Services Administration that contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. SAM exclusions can be accessed at www.sam.gov.

- 8.5 Access to Records. As required by 2 C.F.R. 200.331(a)(5), CITY, or any duly authorized representative of CITY, shall have the right of access to any records, documents, financial statements, papers, or other records of CONTRACTOR that are pertinent to this Agreement, in order to comply with any audits pertaining to funds allocated to CONTRACTOR under this Agreement. The right of access also includes timely and reasonable access to CONTRACTOR's personnel for the purpose of interview and discussion related to such documents. The right of access is not limited to the required retention period, but lasts as long as the records are retained.
- 8.6 Internal Controls. CONTRACTOR must comply with 2 C.F.R. 200.303 and establish and maintain effective internal control over the funds allocated under this Agreement and provide reasonable assurance that the Subrecipient is managing the award in compliance with Federal statutes, regulations, and the terms and conditions of the award.
- 8.7 Personally Identifiable Information. CONTRACTOR must comply with 2 C.F.R. 200.303(e) and take reasonable measures to safeguard protected personally identifiable information, as defined in 2 C.F.R. 200.82, and other information designated as sensitive or the Subrecipient considers sensitive consistent with applicable Federal, state and local laws regarding privacy and obligations of confidentiality.
- 8.8 Hatch Act. CONTRACTOR must comply with provisions of the Hatch Act of 1939 (Chapter 15 of Title V of the U.S.C.) limiting the political activities of public employees, as it relates to the programs funded.
- 8.9 Conflicts of Interest. CONTRACTOR shall maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal

award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.

9. **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. (CONTRACTOR) Mind OC
Attention: Marshall Moncrief, MFT, MBA
18650 MacArthur Blvd., Suite 220
Irvine, CA 92612
- 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
Attention: City Manager

10. **Contractor's Proposal.** This Agreement shall include CONTRACTOR's proposal, 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.

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

12. **Familiarity with Work.** By executing this Agreement, CONTRACTOR 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 Contractor 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 CONTRACTOR's risk, until written instructions are received from CITY.

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

14. **Limitation Upon Subcontracting and Assignment.** The experience, knowledge, capability, and reputation of CONTRACTOR, its principals and employees were a substantial inducement for CITY to enter into this Agreement. CONTRACTOR 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 CONTRACTOR is permitted to subcontract any part of this Agreement,

CONTRACTOR 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 CONTRACTOR. CITY will deal directly with and will make all payments to CONTRACTOR.

15. **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.
16. **Indemnification.** CONTRACTOR 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 damage to property, or interference with use of property, arising out of, or in any way connected with performance of the Agreement by CONTRACTOR, CONTRACTOR's agents, officers, employees, subcontractors, or independent contractors hired by CONTRACTOR. The only exception to CONTRACTOR's responsibility to protect, defend, and hold harmless CITY, is due to the sole negligence 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 CONTRACTOR.

17. **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.

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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.

CITY OF GARDEN GROVE

Date: _____

By: _____

Lisa L. Kim
City Manager

ATTEST:

By: _____

Teresa Pomeroy
City Clerk

Date: _____

MIND OC

By: _____

By: _____

APPROVED AS TO FORM:

By: _____

City Attorney

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

ATTACHMENT "A"
CONTRACTOR'S PROPOSAL