

**CITY OF GARDEN GROVE
CONSULTANT AGREEMENT**

THIS AGREEMENT is made this 26th day of August 2014, by the CITY OF GARDEN GROVE, a municipal corporation, ("CITY"), and LPA, 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's desires to utilize the services of CONSULTANT to provide architectural and engineering design services for the preparation of final building plans, contract documents and specifications, and a cost estimate for the renovation of the Community Meeting Center located at 11300 Stanford Avenue, Garden Grove, California 92840.
2. CONSULTANT is qualified by virtue of experience, training, education and expertise to accomplish these services.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. Term of Agreement. This Agreement shall cover services rendered for preparation of final building plans, contract documents and specifications, and a cost estimate for the renovation of the Community Meeting Center.
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 the provision of services under this agreement shall be within accepted and in accordance with customary and usual practices in CONSULTANT'S profession. By executing this Agreement, CONSULTANT warrants that it has carefully considered how the work should be performed and fully understands the facilities, difficulties, and restrictions attending XXXX performance of the work under this agreement.
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 \$126,240. 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 that 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 and all subcontractors shall not commence work under this Agreement until all certificates and endorsements have been received and approved by CITY. All insurance required by this Agreement shall contain a Statement of Obligation on the part of the carrier to notify CITY of any material change, cancellation, or termination at least thirty (30) days in advance. All subcontractors shall provide the same insurance as required herein of CONSULTANT. CONSULTANT shall be responsible to collect and maintain all insurance for all subcontractors.
- 4.2 Workers Compensation Insurance. For the duration of this Agreement, CONSULTANT shall maintain Workers Compensation Insurance in the amount and type required by California Law, if applicable. The insurer shall waive its rights of subrogation against 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 not less than \$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 an AM Best's Guide Rating of A-, Class VII or better, as approved by CITY;

- b) Automobile liability in an amount not less than \$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 an AM Best's Guide Rating of A-, Class VII or better, as approved by CITY.
- c) Professional liability in an amount not less than \$1,000,000 per occurrence. Insurance companies must be acceptable to CITY and have an AM Best's Guide Rating of A-, Class VII or better, as approved by 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, CONSULTANT shall obtain continuing insurance coverage for the prior acts or omissions of 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 CONSULTANT. CONSULTANT shall provide to CITY proof of insurance and endorsement forms that conform to CITY's requirements, as approved by 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, 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 CITY.

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

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

5. Non-Liability of Officials and Employees of 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 understood and agreed that CONSULTANT, including CONSULTANT's employees, shall act and be independent contractor(s) and not agent(s) or employee(s) of CITY, and that no relationship of employer-employee exists between the parties. CONSULTANT's assigned personnel shall not obtain or be entitled to any rights or benefits that accrue to, or are payable to, CITY employees, and CONSULTANT shall so inform each employee organization and each employee who is hired or retained under this Agreement. CITY is not required to make any deductions or withholdings from the compensation payable to CONSULTANT under the provisions of this Agreement, and is not required to issue W-2 Forms for income and employment tax purposes for any of CONSULTANT's assigned personnel. CONSULTANT hereby expressly assumes all responsibility and liability for the payment of wages and benefits to its assigned personnel, and all related reporting and withholding obligations. CONSULTANT hereby agrees to indemnify and hold CITY harmless from any and all claims or liabilities that CITY may incur arising from any contention by any third party, including, but not limited to, any employee of CONSULTANT or any federal or state agency or other entity, that an employer-employee relationship exists by reason of this Agreement, including, without limitation, claims that CITY is responsible for retirement or other benefits allegedly accruing to CONSULTANT's assigned personnel.
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, if any, 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. 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 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.
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:

LPA, Inc
5161 California Ave, Suite 100
Irvine, CA 92617
 - (b) Address of CITY is as follows (with a copy to):

Project Manager:	City Attorney
Janet Pelayo	City of Garden Grove
City of Garden Grove	P.O. Box 3070
P.O. Box 3070	Garden Grove, CA 92842
Garden Grove, CA 92842	
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 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.

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 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.

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

Dated: _____, 2014

ATTEST

City Clerk

Dated: _____, 2014

APPROVED AS TO FORM:

Garden Grove City Attorney
Dated: _____, 2014

"CITY"
CITY OF GARDEN GROVE
By: _____
City Manager

"CONSULTANT"
LPA, Inc.
By: _____
Title: _____
Dated: _____, 2014

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