Agreement No. ____ (CCS)

CONTRACTUAL SERVICES AGREEMENT

This Contractual Services Agreement ("Agreement"), entered into as of _____ ("Execution Date"), by and between the CITY OF SANTA MONICA, a municipal corporation ("City"), and ABC CORPORATION ("ABC"), is made with reference to the following:

RECITALS:

A. The City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of the City.

B. ABC is qualified to do business, and is doing business, in the State of California. ABC represents it has the background, knowledge, experience, and expertise necessary to provide the services set forth in this Agreement.

C. The City and ABC desire to enter into an agreement for the ABC to provide contractual services to the City as set forth herein, upon the terms and conditions set forth below.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

TERMS AND CONDITIONS

1. **Term.** This Agreement begins on the Execution Date and terminates on _____, 20___, unless sooner terminated in accordance with Section 14.

2. **ABC Services.** ABC will perform all of the services ("Services") described in Exhibit A, Scope of Services. ABC will complete the Services in accordance with Exhibit B, Budget.

3. **City Services.** The City agrees to:

   3.1 Make available to ABC any currently existing documents, data or information required for the performance of the Services.

   3.2 Designate a representative authorized to act on behalf of City.

   3.3 Promptly examine and render findings on all documents submitted for staff review by ABC.

4. **Compensation.** The City will compensate ABC for the Services performed in an amount not to exceed $_____, as set forth in Exhibit B.

5. **Invoices.** ABC will invoice the City for the Services in accordance with Exhibit B and the City will pay any undisputed amount within 30 days of receipt.

6. **Notices**. All notices, demands, requests or approvals to be given under this Agreement, must be in writing and will be deemed served when delivered personally,

by email, or on the third business day after deposit in the United States mail, postage prepaid, registered or certified, addressed as follows:

6.1 All notices, demands, requests or approvals to the City:

<Name of Division or Department>
City of Santa Monica
<Division or Department Address>
Santa Monica, California 90401
Attention: <Name of City Contact>
Re: Agreement No. <Number>

with a copy to:

Santa Monica City Attorney's Office
1685 Main Street, Third Floor
Santa Monica, California 90401
Attention: City Attorney
Re: Agreement No. <Number>

6.2 All notices, demands, requests or approvals to ABC:

ABC
1234 Main Street
Anytown, USA
Attention: ABC Person
<ABC's Contact Information>
Re: Agreement No. <Number>

7. **Independent Parties**. Both parties to this Agreement will be acting in an independent capacity and not as agents, employees, partners, or joint venturers of one another. Neither the City nor its officers or employees will have any control over the conduct of ABC or any of ABC's agents, employees, or subcontractors, except as otherwise provided in this Agreement.

8. **Integrated Agreement**. This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties. Any preliminary negotiations and agreements of any kind or nature are merged into this Agreement. No oral agreement or implied covenant may be held to vary the provisions of this Agreement. This Agreement may be modified only by written agreement signed by City and ABC, and approved as to form by the City Attorney.

9. **Insurance**. Prior to commencing work, ABC must procure, maintain and pay for insurance against claims for injuries to persons or damage to property that may arise from or in connection with the performance of the Services by ABC or ABC's agents, representatives, employees or subconsultants for the duration of this Agreement. ABC

must obtain insurance that, at a minimum, meets the requirements for insurance set forth in Exhibit C, Insurance Requirements and Verifications.

10. Defense and Indemnification.

10.1 ABC agrees to defend, indemnify, protect, and hold harmless the City, its agents, officers, boards and commissions, and employees (collectively, "City") from and against any and all liability, claims, demands, damages, or costs, including but not limited to attorney's fees, or payments for injury to any person or property (collectively, "Losses") caused or claimed to be caused by the act, errors, and/or omissions of ABC, or ABC's employees, agents, officers, and subcontractors. ABC's responsibilities under this Section 10.1 include liability arising from, connected with, caused by, or claimed to be caused by the active or passive negligent acts or omissions of the City, which may be in combination with the acts or omissions of ABC, its employees, agents or officers, or subcontracors; provided, however, that ABC's duty to defend, indemnify, protect and hold harmless shall not include any Losses arising from the sole negligence or willful misconduct of the City. Notwithstanding ABC's obligation to defend City hereunder, City has the right to conduct its own defense and seek reimbursement for reasonable costs of defense from ABC, if City chooses to do so.

10.2 **Enforcement Costs.** ABC agrees to pay any and all costs the City incurs enforcing the indemnity, defense and hold harmless provisions set forth in Section 10.1.

11. Prohibition Against Transfers.

11.1 ABC may not assign, hypothecate, or transfer this Agreement or any interest therein directly or indirectly, by operation of law or otherwise without the prior written consent of City. Any attempt to do so without the City's consent will be null and void, and any assignee, hypothecatee or transferee acquires no right or interest by reason of such attempted assignment, hypothecation or transfer.

11.2 The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of ABC or of any general partner or joint venturer or syndicate member of ABC, if a partnership or joint venture or syndicate exists, which results in changing the control of ABC, will be construed as an assignment of this Agreement. Control means 50% or more of the voting power of the corporation.

12. Permits and Licenses. ABC, at its sole expense, must obtain and maintain during the term of this Agreement all required business and professional permits, licenses and certificates.

13. **Waiver**. A waiver of any breach of this Agreement may not be deemed a waiver of any subsequent breach of the same or any other term, covenant, or condition of this Agreement.

14. **Default and Termination**.

    14.1 If ABC fails or refuses to perform any of the provisions of this Agreement, and if the default is not cured within a period of five days after the City's written notice of default specifying the nature of the default, City may immediately terminate this Agreement by written notice to ABC.

    14.2 The City has the option, at its sole discretion and without cause, of terminating this Agreement by giving ten days' written notice to ABC. Upon termination of this Agreement, City will pay ABC any compensation earned and unpaid up to the effective date of termination.

15. **Compliance with Law**. ABC must comply with all laws of the State of California and the United States, and all ordinances, rules and regulations enacted or issued by City.

16. **Discrimination**. ABC may not discriminate in the provision of services hereunder because of race, color, religion, national origin, ancestry, sex, age, sexual orientation, marital status, AIDS or disability.

17. **Nuisance**. ABC may not maintain, commit, or permit the maintenance or commission of any nuisance in connection with the performance of services under this Agreement.

18. **Records**.

    18.1 ABC must maintain complete and accurate records with respect to costs, expenses, receipts and other such information required by the City for any services provided where compensation is on the basis of hourly rates, subcontractor costs, or other direct costs. ABC must keep the records, together with supporting documents, separate from other documents and records and maintain them for a period of three years after receipt of final payment.

    18.2 ABC must maintain records in sufficient detail to permit an evaluation of the Services and in accordance with generally accepted accounting principles. ABC must clearly identify all records and make them readily accessible to the City. At the City's request, ABC must provide records in an electronic format and, if necessary, access to any proprietary software to view such electronic records.

    18.3 ABC must allow the City to have free access to ABC's books and records and to inspect all work, data, documents, proceedings and activities related to this Agreement. The City has the right to examine or audit ABC's records, and ABC agrees to cooperate with any examination or audit of its records. If a City audit discloses an error of 5% or more in information reported by ABC, ABC agrees to pay the cost of the City's audit computed on the basis of four times the direct payroll of the audit staff completing the audit and audit report.

19. Work Product; Reports.

19.1 Any work product prepared or caused to be prepared by ABC or any subcontractor for this Agreement will be the exclusive property of City. No work product given to or prepared by ABC or any subcontractor pursuant to this Agreement may be made available to any individual or organization by ABC without prior written approval by City.

19.2 At the City's request, ABC must furnish reports concerning the status of the Services.

20. Standard of Care. ABC agrees to provide all Services, including services performed by any subconsultant, in a manner consistent with the level of care and skill ordinarily exercised by members of ABC's profession currently practicing in the same locality under similar conditions.

21. Subcontractors.

21.1 If ABC proposes to have any subcontractor perform any part of the Services, ABC must submit a request for approval in writing, describing the scope of work to be subcontracted, the name of the proposed subcontractor, and the total price or hourly rates used in preparing an estimated cost for the subconsultant's services. The City, in its sole discretion, may grant or deny the request.

21.2 ABC will be responsible for the quality of any subcontractor's work. Every subcontract or agreement of any kind entered into between ABC and any subcontractor (or between any subcontractor and others) must contain the following provision:

> This agreement is consistent with all terms and conditions of the Agreement No. _____ (CCS) entered into between the City of Santa Monica and ABC on _____.

22. Governing Law. The laws of the State of California, without regard to any choice of law provisions, will govern this Agreement.

23. Venue and Jurisdiction. The City and ABC agree that the Services will take place in Los Angeles County. Any litigation arising out of this Agreement may only be brought in either the United States District Court, Central District of California, or the Superior Court of California, County of Los Angeles, West District, as appropriate. The parties agree that venue exists in either court, and each party expressly waives any right to transfer to another venue. The parties further agree that either court will have personal jurisdiction over the parties to this Agreement.

24. Survival of Provisions and Obligations. Any provision of this Agreement, which by its nature must be exercised after termination of this Agreement, will survive termination

and remain effective for a reasonable time. Any obligation that accrued prior to termination of this Agreement will survive termination of this Agreement.

25. **Execution in Counterparts**. This Agreement may be executed in counterparts with the same effect as if both parties hereto had executed the same document. All counterparts shall be construed together and shall constitute a single modification. Any signature to this Agreement transmitted electronically through DocuSign or PDF shall be deemed an original signature and be binding upon the parties hereto (it being agreed that such electronic signature shall have the same force and effect as an original signature).

26. **Exhibits.** The following exhibits are incorporated by reference into this Agreement as though fully set forth herein.

Exhibit A	Scope of Services
Exhibit B	Budget
Exhibit C	Insurance Requirements

In witness whereof, the parties have caused this Agreement to be executed the day and year first above written.

ATTEST:

_____

CITY OF SANTA MONICA,
a municipal corporation

By: _____

APPROVED AS TO FORM:

_____

By: _____

Exhibit A
Scope of Services

Exhibit B
Budget

Exhibit C
Insurance Requirements