

**AGREEMENT FOR KERMAN AREA MULTI-GENERATIONAL RESILIENCY CENTER
ARCHITECTURAL DESIGN SERVICES BETWEEN
THE CITY OF KERMAN AND ELS ARCHITECTURE AND URBAN DESIGN**

This Agreement for Kerman Area Multi-Generational Resiliency Center Architectural Design Services ("Agreement") is made and entered into by and between the City of Kerman, a California municipal corporation (hereinafter referred to as "CITY") and els Architecture and Urban Design (hereinafter referred to as "CONSULTANT").

RECITALS

WHEREAS, CITY seeks a qualified consultant to provide Architectural Design Services for the Kerman Area Multi-Generational Resiliency Center.

WHEREAS, CITY has engaged in a competitive Requests for Proposals process.

WHEREAS, CONSULTANT warrants that it is specially trained, experienced, expert, and competent to perform such services and hereby represents that it desires to and is professionally and legally capable of performing the services called for by this Agreement.

WHEREAS, the CITY desires to have CONSULTANT perform services described in this Agreement and CONSULTANT desires to perform those services.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals which are part of this Agreement and the terms and conditions hereinafter contained, it is mutually agreed as follows:

1. Scope of Services. CONSULTANT shall perform to the satisfaction of CITY, services as requested by CITY as specifically set forth in **Exhibit "A"**, which is attached hereto and hereafter referred as the "Kerman Area Multi-Generational Resiliency Center Scope of Work"
2. Term of Agreement. This Agreement shall be effective from November 12, 2025 to June 30, 2027 subject to any earlier termination in accordance with this Agreement.
3. Compensation. CONSULTANT'S sole compensation for satisfactory performance of all services required or rendered pursuant to this Agreement shall be at the rate and schedules attached hereto as **Exhibit "B"** and shall not exceed \$1,228,725.00.
4. Termination.
 - a) Termination for Convenience. Either party may terminate this Agreement at any time by giving notice of such termination (including the effective termination

date) at least thirty (30) calendar days before the effective date of such termination.

- b) Termination for Cause. If for any cause either party fails to fulfill in a timely and proper manner its obligations under this Agreement (the "breaching party"), the other party (the "terminating party") shall have the right to terminate the Agreement by giving not less than five (5) working days' written notice to the breaching party of the intent to terminate and specifying the effective date thereof. The terminating party shall, however, provide the breaching party with a detailed statement of the grounds for termination. This statement shall include, as appropriate, references to specific provisions of this Agreement, dates, dollar amounts and other information relevant to the decision to terminate for cause.
- c) In the event of termination, all finished or unfinished documents, reports, or other materials prepared by CONSULTANT under this Agreement shall become CITY's property. CONSULTANT shall be entitled to receive compensation for all satisfactory work completed prior to the effective date of termination.
- d) This Agreement shall terminate without any liability of CITY to CONSULTANT upon: (i) CONSULTANT's filing for protection under the federal bankruptcy laws, or any bankruptcy petition or petition for receiver commenced by a third party against CONSULTANT; or (ii) CITY's non-appropriation of funds sufficient to meet its obligations hereunder during any CITY fiscal year of this Agreement.
- e) Immediately upon any termination of this Agreement, CONSULTANT shall: (i) immediately stop all work hereunder; (ii) immediately cause any and all of its subcontractors to cease work; and (iii) return to CITY any and all unearned payments and all properties and materials in the possession of CONSULTANT that are owned by CITY. Subject to the terms of this Agreement, CONSULTANT shall be paid compensation for services satisfactorily performed prior to the effective date of termination. CONSULTANT shall not be paid for any work or services performed or costs incurred which reasonably could have been avoided.
- f) Upon any termination of the Agreement, CITY may (i) exercise any right, remedy (in contract, law or equity), or privilege which may be available to it under applicable laws of the State of California or any other applicable law; (ii) proceed by appropriate court action to enforce the terms of the Agreement; and/or (iii) recover all direct, indirect, consequential, economic, and incidental damages for the breach of the Agreement. If it is determined that CITY improperly terminated this Agreement for default, such termination shall be deemed a termination for convenience.
- g) Notice of termination shall be mailed as follows:

CITY:

City of Kerman
850 S. Madera Avenue
Kerman, CA 93630

CONSULTANT:

ELS Architecture and Urban Design
2040 Addison Street
Berkley, CA 94704

5. **Indemnification.** To the furthest extent allowed by law, CONSULTANT agrees to indemnify, hold harmless, and defend, City and each of its officers, officials, employees, agents, and volunteers from and against all claims, demands, costs, or liability, and expenses including attorney's fees arising out of the performance of the work described in this Agreement, caused in whole or in part by the sole negligence, recklessness, or willful misconduct of CONSULTANT, its principals, officers, employees, agents, or volunteers in the performance of this Agreement or anyone for whose acts any of them may be liable excluding, however, such claims, demands, loss, damages, or arising from City's sole negligence or willful acts.
6. **Insurance.**
 - a) Throughout the life of this Agreement, CONSULTANT shall pay for and maintain in full force and effect all insurance as required in **Exhibit "C"** or as may be authorized, and any additional insurance as may be required, in writing by City Manager or his or her designee at any time and in her sole discretion.
 - b) If at any time during the life of the Agreement or any extension, CONSULTANT or any of its subcontractors fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to CONSULTANT shall be withheld until notice is received by CITY that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to CITY. Any failure to maintain the required insurance shall be sufficient cause for CITY to terminate this Agreement. No action taken by CITY pursuant to this section shall in any way relieve CONSULTANT of its responsibilities under this Agreement. This phrase "fail to maintain any required insurance" shall include, without limitation, notification received by CITY that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.
7. **Nondiscrimination.** To the extent required by controlling federal, state, and local law, CONSULTANT shall not employ discriminatory practices in the provision of services, employment of personnel, or in any other respect on the basis of race, religious creed,

color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran, or veteran of the Vietnam era.

8. Independent Contractor.

- a) In the furnishing of the services provided for herein, CONSULTANT is acting solely as an independent contractor. Neither CONSULTANT, nor any of its officers, agents, or employees shall be deemed an officer, agent, employee, joint venture, partner, or associate of CITY for any purpose. CITY shall have no right to control or supervise or direct the manner or method by which CONSULTANT shall perform its work and functions. However, CITY shall retain the right to administer this Agreement so as to verify that CONSULTANT is performing its obligations in accordance with the terms and conditions thereof.
- b) Because of its status as an independent contractor, CONSULTANT and its officers, agents, and employees shall have absolutely no right to employment rights and benefits available to CITY employees. CONSULTANT shall be solely liable and responsible for all payroll and tax withholding and for providing to, or on behalf of, its employees all employee benefits including, without limitation, health, welfare, and retirement benefits. In addition, together with its other obligations under this Agreement, CONSULTANT shall be solely responsible, indemnify, defend, and save CITY harmless from all matters relating to employment and tax withholding for and payment of CONSULTANT'S employees, including, without limitation, (i) compliance with Social Security and unemployment insurance withholding, payment of workers compensation benefits, and all other laws and regulations governing matters of employee withholding, taxes and payment; and (ii) any claim of right or interest in CITY employment benefits, entitlements, programs and/or funds offered employees of CITY whether arising by reason of any common law, de facto, leased, or co-employee rights or other theory. It is acknowledged that during the term of this Agreement, CONSULTANT may be providing services to others unrelated to CITY or to this Agreement.

9. Notices. Any notice required or intended to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally, transmitted by facsimile followed by telephone confirmation of receipt, or sent by United States registered or certified mail, with postage prepaid, return receipt requested, addressed to the party which notice is to be given at the party's address set forth on the signature page of this Agreement or at such other address as the parties may from time to time designate by written notice. Notices served by United States mail in the manner above described shall be deemed sufficiently served or given at the time of mailing thereof.

10. Assignment. This Agreement is personal to CONSULTANT and there shall be no assignment by CONSULTANT of its rights of obligations under this Agreement without the prior

written approval of the City Manager or her designee.

11. **Compliance with Law.** In providing the services required under this Agreement, CONSULTANT shall at all times comply with all applicable laws of the United States, the State of California, and CITY, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this Agreement.

12. **Waiver.** The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

13. **Governing Law and Venue.** This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California.

14. **Headings.** The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify, or add to the interpretation or meaning of the provisions of this Agreement.

15. **Severability.** The provisions of this Agreement are severable. The invalidity or unenforceability of any one provision in this Agreement shall not affect the other provisions.

16. **Interpretation.** The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against either party, but rather by construing the terms in accordance with their generally accepted meaning.

17. **Attorneys' Fees.** If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant, or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorneys' fees and legal expenses.

18. **Exhibits.** Each exhibit and attachment referenced in this Agreement is, by the reference, incorporated into and made a part of this Agreement.

19. **Precedence of Documents.** In the event of any conflict between the body of this Agreement and any Exhibit or Attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within

the Exhibit or Attachment. Furthermore, any terms or conditions contained within any Exhibit or Attachment hereto which purport to modify the allocation of risk between the parties, provided for within the body of this Agreement, and shall be null and void.

20. **Cumulative Remedies.** No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

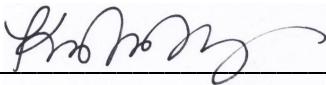
21. **No Third-Party Beneficiaries.** The rights, interests, duties and obligations defined within this Agreement are intended for the specific parties hereto as identified in the preamble of this Agreement. Notwithstanding anything stated to the contrary in this Agreement, it is not intended that any rights or interests in this Agreement benefit or flow to the interest of any third parties.

IN WITNESS WHEREOF, the parties have executed this Architectural Design Services Agreement as follows:

CITY OF KERMAN
A municipal corporation

John Jansons, City Manager
Date: November __, 2025

ELS Architecture and Urban Design



Kim-Van Truong, President/CEO
Date: October 31, 2025

ATTEST:

Josie Camacho, City Clerk
Date: November __, 2025

APPROVED AS TO FORM

Hilda Cantu Montoy, City Attorney
Date: _____