

# 30262

## CONSULTING SERVICES AGREEMENT (LONG BEACH/BLD)

**THIS CONSULTING SERVICES AGREEMENT** (this "Consulting Agreement") is entered effective OCTOBER 2, 2007 (the "Effective Date"), pursuant to a minute order adopted by the City Council of the City of Long Beach at its meeting on June 12, 2007, by and between THE CITY OF LONG BEACH, a California municipal corporation (the "City") and BIG LEAGUE DREAMS CONSULTING, LLC, a California limited liability company ("BLD").

### RECITALS

A. The City intends to construct a high quality, multi-purpose recreational sports park to be known as the Big League Dreams Long Beach Sports Park (the "Sports Park") in the City of Long Beach. The Sports Park will offer lighted baseball/softball fields; a covered structure(s) for indoor soccer and other group and community event uses; batting cages; outdoor soccer fields with artificial turf; and food and beverage concession facilities (the "Sports Park Improvements") for use by the citizens of Long Beach and to attract tournaments and other events to the City which may produce economic benefits to the City and its residents. The Sports Park shall be located on approximately fifty (50) acres of City-owned property south of Spring Street between Orange and California Avenues in the City of Long Beach (such approximately fifty-acre site being hereinafter referred to as the "Property"). To construct the Sports Park, the City requires the expertise of a company experienced in land and project evaluation and conceptualization, project financing, planning and design and construction consulting with respect to such facilities. By this Consulting Agreement, the City wishes to engage BLD to provide such land and project evaluation and conceptualization, project financing, planning and design and construction consulting services to develop the Sports Park and construct the Sports Park Improvements.

B. Prior to development of the Sports Park, the City will (i) obtain the funding necessary to develop the Sports Park and the City Council of the City will need to approve of the same, and (ii) acquire the approximately 7.8-acre parcel at the southwest corner of Spring Street and Orange Avenue (the "Ameri-Gas Property").

C. The City also wishes to contract the operation and maintenance of the Sports Park to an experienced operator. Accordingly, the City and Big League Dreams Long Beach, LLC ("BLD Long Beach"), an affiliate of BLD, will execute a Maintenance and Operations Agreement for the Sports Park and the Sports Park Improvements (the "MOA").

D. Effective July 1, 2006, the City and Big League Dreams USA, LLC ("BLD USA"), also an affiliate of BLD, executed a license agreement by which BLD USA licensed the use of the name "Big League Dreams" and other intellectual property rights held by BLD USA to the City for use in connection with the Sports Park and agreed not

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to operate another Big League Dreams facility within a specified radius from the Sports Park (the "License Agreement").

## AGREEMENT

1. **Contract for Services** The City hereby retains the services of BLD to render land and project evaluation and conceptualization, project financing, planning and design and construction advice and consulting services in connection with the development of the Sports Park, which advice and consulting services shall include recommendations on features and amenities which should be included in the Sports Park and their layout and design in return for the compensation set forth in Section 4. BLD shall not be compensated beyond the amount of the Fees (as hereinafter defined) unless, prior to the commencement of services giving rise to additional fees (a) BLD notifies City and City agrees that such services outside the scope of this Consulting Agreement are to be performed, (b) BLD estimates in writing the additional compensation required for the additional services and outlines the scope of the additional services, (c) City is in agreement with the additional services and amount of additional compensation, (d) City obtains City Council approval for a contract amendment for the agreed upon changes, and (e) said contract amendment is executed by both parties.

### 2. **Services of BLD**

2.1 **Consulting Services** BLD shall furnish its skill and judgment to the City and work with the City's architects, engineers, vendors and contractors to evaluate and conceptualize, plan and design and construct the Sports Park in an expeditious and economical manner consistent with the interests of City. The consulting services to be provided by BLD are described in Exhibit A hereto and shall be furnished in three phases. Phase 1 shall commence on the Effective Date and shall terminate upon the execution by the City of an additional agreement with a professional services provider for design development services beyond the 35% Schematic Design Phase professional services associated with the Property described in the contract the City approved at its meeting on November 14, 2006 with the Post, Buckley, Schuh & Jernigan, Inc. firm. Phase 2 shall commence on the execution by the City of an additional agreement with a professional services provider for such additional design development services associated with the Property and shall terminate upon the execution of a contract by the City to a general contractor to construct the Sports Park and the Sports Park Improvements. Phase 3 shall commence upon the execution of a contract by the City to a general contractor to construct the Sports Park and the Sports Park Improvements and shall terminate upon the expiration of the Term (as defined in Section 3). Phase 1, Phase 2 and Phase 3 consulting services shall together be referred to as the "Consulting Services."

2.2 **Limitations on Services** BLD shall not be obligated to provide any services which may only be provided by holders of professional licenses. BLD shall provide its expertise with respect to the look, conceptual design and operational aspects of the Sports Park, but shall not be responsible for "plan checking" plans or drawings by licensed architects, engineers, building contractors or other professionals.

3. **Term and Termination** Unless sooner terminated as otherwise provided in this Section 3, this Consulting Agreement shall commence on the Effective Date and continue until the last day of the month immediately following completion of construction of the Sports Park Improvements, as evidenced by the issuance of a certificate of occupancy or the City's authorization to BLD Long Beach to commence the operation and maintenance of the Sports Park pursuant to the MOA (the "Term"). The Effective Date shall be the date the City executes this Consulting Agreement, which date shall be written by the City in the preamble hereof when the City executes this Consulting Agreement.

3.1 **Bankruptcy or Dissolution** Either party may terminate this Consulting Agreement immediately upon written notice in the event the other files or has an action filed against it for bankruptcy which is not withdrawn or stayed within sixty (60) days. The City may terminate this Consulting Agreement immediately upon written notice in the event of the dissolution of BLD.

3.2 **Breach** If either party, after (a) receipt of written notice from the other specifying the nature of an actual breach of this Consulting Agreement and (b) the expiration of a thirty (30) day period (which shall be extended, as applicable, in the event the cure may not be completed within thirty (30) days but the party seeking to cure the breach commences doing so within the thirty (30) day period and thereafter diligently works to complete the cure until it has done so) during which the breach may be cured, fails or refuses to remedy the specified breach, the other party may terminate this Consulting Agreement immediately by giving written notice of termination to the party in breach.

3.3 **City Early Termination Rights** The City shall have the right, at any time prior to the commencement of Phase 2 and 3 of the Consulting Agreement but subject to the obligation set forth in Section 4 to pay BLD no less than four installments of the Fees under any circumstances, on thirty (30) days' written notice to BLD, to terminate this Consulting Agreement if either of the following occur: (i) the City fails to acquire the Ameri-Gas Property despite reasonable efforts to do so, (ii) formal notification is provided by the Director of the Department of Parks, Recreation and Marine indicating that the Sports Park project has been suspended indefinitely, or (iii) the City Council of the City of Long Beach does not approve the contract for additional design services in connection with Phase 2 of this Consulting Agreement or does not approve the contract for construction of the Sports Park and the Sports Park

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Improvements in connection with Phase 3 of this Consulting Agreement. In the event the City terminates this Consulting Agreement pursuant to this Section 3.3, the City shall, on or before the effective date of such termination, discontinue the use of and return to BLD the Previous Plans (as defined in Exhibit A) in the same format such Previous Plans were delivered to the City.

4. **Compensation** For the Consulting Services described herein, the City shall pay to BLD the fees specified in this Section 4. Provided this Consulting Agreement has not been sooner terminated as provided in Section 3, the City shall pay BLD \$600,000 for the Consulting Services (the "Fees") in fifteen (15) equal installments of \$40,000 each in accordance with the following schedule (the "Fees").

<u>Phase</u>	<u>Installment Numbers</u>
Phase 1	One (1) through four (4)
Phase 2	Five (5) through nine (9)
Phase 3	Ten (10) through fifteen (15)

The first, second, third and fourth installments of the Fees (a total of \$160,000) shall be paid to BLD within forty-five (45) days from the Effective Date of this Consulting Agreement. Each subsequent installment shall be paid on the fifteenth (15th) day of each month thereafter subject to the following conditions. First, no fewer than four (4) installments of the Fees shall be paid by the City to BLD regardless of when Phase 1 or this Consulting Agreement terminates. Second, once all four (4) Phase 1 installment payments have been made to BLD by the City, the City shall not be obligated to make any additional installments of Fees until Phase 2 commences. Third, once all four (4) Phase 1 and all five (5) Phase 2 payments have been made to BLD by the City, the City shall not be obligated to make any additional installments of Fees until Phase 3 commences. Fourth, the fifteenth (15<sup>th</sup>) and final installment payment shall not be due until the fifteenth (15<sup>th</sup>) day of the month immediately following the month in which the Sports Park Improvements are completed, as evidenced by the issuance of a certificate of occupancy or the commencement of Sports Park operational and maintenance responsibility by BLD Long Beach with the approval of the City. BLD shall nonetheless be obligated to continue to provide Consulting Services each month through the completion of construction without additional compensation in the event the conditions set forth above do not require the City to make an installment payment of the Fees during any given month during the Term. In the event Phase 1, Phase 2 and Phase 3 are completed in less than fifteen (15) months from the Effective Date, the schedule of payments to BLD by the City set forth above shall not accelerate. In the event this Consulting Agreement is terminated as provided in Section 3 prior to completion of the Sports Park Improvements, BLD shall be entitled to retain all Fees already paid and to receive all Fees otherwise due but unpaid in accordance with the payment schedule set forth in this Section 4 through the effective date of termination.

5. **Plans and Specifications**

5.1 **Use by the Parties** Subject to Section 5.2, this Consulting Agreement creates a non-exclusive and perpetual right for the City to copy, use, modify or reuse, in connection with the Sports Park, any and all plans, specifications, studies, drawings, estimates and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared by or for BLD under this Consulting Agreement. BLD shall have the right at any time, in connection with any other sports park or facility which BLD or any affiliate of BLD may design, build, own, maintain, operate, lease, manage, consult with respect to or otherwise be associated with now or in the future, to use (including, without limitation, use as "previous plans" in the manner plans from a previous Big League Dreams facility are to be furnished to the City as specified in Exhibit A) all design concepts, plans, project specifications and construction documents, drawings and specifications for all architectural elements prepared by or for the City in connection with the Sports Park. In each contract the City shall enter with such firm(s), the City shall contractually obligate each engineering, design and architectural firm selected to engineer, design and/or draft architectural plans and construction documents, drawings and specifications for the Sports Park to furnish the final version of such concepts, plans, drawings and specifications to BLD in digital form at no cost or expense to BLD.

5.2 **Intellectual Property** BLD represents that BLD USA has a proprietary interest in the look, design, style, shape, color scheme and architecture of Big League Dreams Sports Parks, including, without limitation, the outfield fences, crowd scenes and other stadium replica features; concession facility design; and the overall layout of the Sports Park (collectively, the "Total Image"). Further, BLD represents that BLD USA has certain intellectual property rights in the name "Big League Dreams" and in the Big League Dreams Sports Park logo and marks (collectively the "Name and Marks"). The License Agreement licensed the City certain rights with respect to the Total Image and the Name and Marks for use with the Sports Park. No license of any kind with respect to such is granted to the City by this Consulting Agreement.

6. **Right to Assignment** Each party shall have the right to assign its rights and obligations under this Consulting Agreement only to an "Affiliate" of such party. Affiliates of BLD shall include any entity which owns or controls, or which is owned or controlled by, or which is under common control with, BLD, or any entity which purchases all or substantially all of the assets of BLD. Affiliates of City include any other governmental entity controlled by the City of Long Beach.

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7. **Relationship of Parties** The relationship of BLD to the City shall at all times be that of an independent contractor. No partnership, joint venture or similar relationship has been formed or is contemplated. No employee of BLD shall be entitled to any benefits accorded by the City to the City's employees, including, without limitation, workers' compensation, disability insurance, pension or retirement benefits, health insurance, vacation or sick pay, it being agreed that such benefits, if any, to be made available to employees of BLD shall be made available by BLD at BLD's own expense. This Consulting Agreement gives no rights or benefits to anyone not a party hereto.

8. **Manner of Performance** BLD represents and warrants that BLD has the qualifications, experience and ability to perform this Consulting Agreement in a professional manner. BLD shall provide properly qualified and experienced personnel to perform BLD's obligations under this Consulting Agreement. BLD shall have the sole discretion and control over the manner, method, details and means of its performance of the Consulting Services.

9. **Indemnification** BLD shall indemnify, defend and hold harmless the City and its elected and appointed officials, officers, employees and volunteers (individually and collectively the "Indemnitees"), from and against any and all liabilities, claims, actions, proceedings, suits, damages, judgments, costs and expenses of whatever nature, including reasonable attorneys' fees and disbursements (collectively "Claims"), which the Indemnitees may suffer and incur or to which the Indemnitees may become subject by reason of or arising out of any injury or death of any person(s) or any damage to property occurring as a result of the negligence or willful acts or omissions of BLD, its agents, officers, members, directors or employees in performing any of the Consulting Services during the Term. This indemnity shall not apply to any Claims which arise out of or otherwise occur as a result of the negligence or willful acts or omissions of the Indemnitees or any agent, representative or contractor of such Indemnitees or of any third party. This indemnity shall survive the termination of this Consulting Agreement (i) for a period of one year or (ii) until the resolution of all Claims made against any Indemnitee within one year from the termination of this Agreement, whichever shall later occur. This indemnity also shall not apply to any legal challenge to contest this Consulting Agreement, the MOA, the License Agreement, the Environmental Impact Report or the renovation of the Sports Park.

10. **Insurance Requirements** During the Term, BLD shall maintain the following noted insurance:

<u>Coverage</u>	<u>Required</u>	<u>Not Required</u>
Commercial General Liability	X	
Comprehensive Vehicle Liability	X	

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Workers' Compensation and Employee Liability X  
Professional Liability (Errors and Omissions) X

10.1 **Minimum Scope and Limits of Insurance** Coverage shall comply with the Insurance Requirements set forth in the attached Exhibit B hereto.

11. **Modification** No modification or extension of this Consulting Agreement shall be valid unless the same is in writing, approved by the City Council of the City of Long Beach and executed by both parties.

12. **Non-Exclusive Relationship** BLD and its Affiliates may continue to conduct other business activities with other municipalities. BLD shall, however, expend sufficient time and devote sufficient resources to properly perform BLD's obligations under this Consulting Agreement.

13. **Attorneys' Fees** In the event either party files a lawsuit to enforce the provisions of this Consulting Agreement, the prevailing party in such an action shall be entitled to reasonable attorneys' fees and costs as fixed by the court.

14. **Notices** All notices required or permitted hereunder shall be in writing and shall be deemed to be delivered three (3) days after having been deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to the parties at the respective addresses set forth below or at such other addresses as may have been theretofore specified by written notice delivered in accordance herewith:

If to the City:  
City of Long Beach  
333 West Ocean Blvd., 13th Floor  
Long Beach, CA 90802  
Attention: City Manager

With a copy to:  
City of Long Beach  
Department of Parks, Recreation and Marine  
2760 Studebaker Road  
Long Beach, CA 90815  
Attention: Director

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If to BLD:  
Big League Dreams Consulting, LLC  
16339 Fairfield Ranch Road  
Chino Hills, California 91709  
Attention: Scott Parks LeTellier  
Chief Executive Officer

15. **No Discrimination** In the performance of this Consulting Agreement, BLD shall not discriminate against any employee or applicant for employment because of race, religion, color, gender, sexual orientation, national origin or medical condition.

16. **Compliance with Laws** BLD shall comply with all applicable laws, ordinances and codes of the federal, state and local governments.

17. **Governing Law** This Consulting Agreement shall be construed under and in accordance with the laws of the State of California. BLD expressly consents to the jurisdiction of the courts of the State of California and agrees that venue for any legal action in connection with this Consulting Agreement shall be exclusively in Los Angeles County, California.

18. **Severability** If any one or more of the provisions contained in this Consulting Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision thereof and this Consulting Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

19. **Survival** The terms, provisions and representations contained in this Consulting Agreement, or inferable therefrom, shall survive the termination of this Consulting Agreement for a period of one (1) year unless otherwise provided herein.

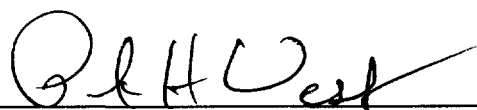


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20. **Integration** This Consulting Agreement supersedes any prior understandings or written or oral agreements between the parties respecting the within subject matter.


**IN WITNESS WHEREOF**, the parties have executed this Consulting Agreement to be effective as of the date and year on which this Consulting Agreement has been executed by the City and written by the City in the Preamble hereof as the Effective Date.

**CITY OF LONG BEACH**

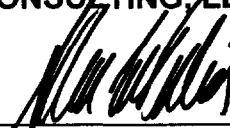
  
\_\_\_\_\_  
Gerald R. Miller PATRICK H. WEST  
City Manager

APPROVED AS TO FORM:  
Robert E. Shannon, City Attorney

6/13/07

  
\_\_\_\_\_  
By: Richard F. Anthony  
Deputy City Attorney

**BIG LEAGUE DREAMS  
CONSULTING, LLC**

  
\_\_\_\_\_  
Scott Parks LeTellier  
Chief Executive Officer

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**EXHIBIT A**

**Deliverables**

BLD shall provide, at no expense to the City, copies (without architect or engineer signatures or stamps) of complete construction documents, drawings and specifications for all architectural elements from an existing BLD facility (the "Previous Plans") for use and reference in the creation of construction documents, drawings and specifications for the construction of the Sports Park. Any incorporation of the Previous Plans into the construction plans for the Sports Park shall require the approval and signature of the architects and engineers retained by the City for the design and construction of the Sports Park. The above deliverables shall cover the following Sports Park project elements at a minimum, as such were designed for use at the prior facility:

1. Stadium Club sports-themed concession facility with indoor seating
2. Entry Gate Building
3. Offices
4. Batting Cages
5. Pavilion
6. Dugouts
7. Fixed or Stadium Seating
8. Maintenance Buildings
9. Entry Fences and Gates
10. Replica Features
11. Enclosures
12. Signage
13. Site Layout and Civil Drawings excluding Parking Areas
14. Landscape and Irrigation Plans for Fields

BLD shall provide the Previous Plans in the following delivery methods:

1. Compact Disc (CD) with files in "pdf" format

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2. Compact Disc (CD) with files in Autocad "dwg" format

If file compression is used, it shall be self-extracting. BLD shall be responsible for the uncorrupted delivery of the finished product.

**Consulting Services**

BLD shall review, assist and advise the City on the following:

**Phase 1**

- Attend regular on-site planning meetings and participate in regular telephone updates.
- Conceptualization: Review and evaluation of land options and features and assist the City in determining the features and amenities of the Sports Park, including incorporation of sustainable design features in accordance with City requirements.
- Assist the City with Site development concerns: Environmental, traffic, grading, and drainage.
- Preliminary design: conceptual design and site layout alternatives.
- Financial forecasting: Five year and thirty-five year income/expense estimates.
- Public relations and project marketing: Committees, community groups and media.
- Assist the City in identifying financing options.
- Economic impact: assist the City in developing analyses of the economic impact generated by the Sports Park through added jobs, taxes, tourism, etc.
- Assist the City in planning and design team selections.

**Phase 2**

- Continue assistance from Phase 1 as applicable
- Regular on-site planning meetings and regular telephone updates.
- Assist the City with construction management team selection.
- Participate in RFQ process, review bids and provide input prior to selection of contractor and award of bid, as requested by the City.

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**Phase 3**

- Continue assistance from Phases 1 and 2 as applicable
- Provide monthly (or more frequently as required) on-site troubleshooting and inspections.
- Attend monthly on-site meetings and participate in regular telephone progress updates.
- Assist in obtaining furnishings, fixtures and equipment for the Sports Park at competitive prices.
- Assist the City in controlling design changes to approved plans that increase construction costs.
- Assist the City in revising size and scope of Sports Park project and re-bidding if construction bids exceed project budget.

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EXHIBIT B**

**Insurance Requirements**

Concurrent with execution of this Consulting Agreement, BLD Consulting shall procure and maintain the insurance set forth below for the benefit of BLD Consulting and the City.

10.1 The following insurance, including any extensions, renewals, or holding over thereof, shall be procured and maintained by or on behalf of BLD Consulting from insurance carriers having at least a rating of A VIII by A.M. Best Co. or admitted to write insurance in California, unless otherwise agreed by City at City's discretion. Such insurance shall be at least of the coverages and limits listed unless otherwise agreed by City at City's discretion.

(a) Commercial general liability insurance or self-insurance equivalent in coverage scope to ISO CG 00 01 11 85, including, as may be applicable to BLD Consulting's operations, products and completed operations, sudden and accidental pollution liability, and fire legal liability, naming the **City of Long Beach, its officials, employees, and agents** as additional insured on a form at least as broad as ISO CG 20 26 11 85 from and against claims, demands, causes of action, expenses, costs, or liability for injury to or death of persons, or damage to or loss of property arising out activities performed by or on behalf of BLD Consulting in an amount not less than Two Million Dollars (US \$2,000,000) per occurrence and in aggregate. Said insurance shall be primary insurance with respect to City and shall include cross liability protection.

(b) Workers' Compensation Insurance as required by the Labor Code of the State of California.

(c) Automobile Liability Insurance equivalent in scope to ISO CA 00 10 06 92 in an amount not less than One Million Dollars (US \$1,000,000) combined single limit per accident for bodily injury and property damage covering non-owned and hired vehicles and owned vehicles (Symbol 1) operated under this Agreement.

10.2 BLD Consulting agrees to provide City with any policy information requested by City and to make available to City all books, records and other information relating to such insurance during normal business hours.

10.3 Insurance required by paragraph 10 shall be primary insurance as respects the City. Any insurance or self-insurance maintained by the City shall be

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excess of this insurance. Coverage shall state that the insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability, and all policies shall be endorsed to provide thirty (30) days' notice of cancellation (10 days if cancelled for nonpayment of premium) and 30 days' notice of nonrenewal to BLD Consulting and City.

10.4 Any self-insurance program, self-insurance retention, or deductibles must be approved separately in writing by City and shall protect the **City of Long Beach, its officials, employees, and agents** in the same manner and to the same extent as they would have been protected had the policy or policies not contained retention provisions. Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided, changed, or canceled by either party except after thirty (30) days prior written notice to City, and shall be primary and not contributing to any other insurance or self-insurance maintained by City.

10.5 BLD Consulting and City hereby waive all rights of subrogation, one against the other, but only to the extent that collectible commercial insurance is available. The foregoing waivers of subrogation shall be endorsed to the insurance policies maintained hereunder.

10.6 BLD Consulting shall deliver to City certificates of insurance and original endorsements for approval as to sufficiency and form prior to the commencement of services hereunder. The certificates and endorsements for each insurance policy shall contain the original signature of a person authorized by that insurer to bind coverage on its behalf. "Claims-made" policies, except for paragraph 10.1(d), are not acceptable unless City's Risk Manager determines that "Occurrence" policies are not available in the market for the risk being insured. If a "Claims-made" policy is accepted, it must provide for an extended reporting period of not less than one hundred eighty (180) days.

10.7 Such insurance as required herein shall not be deemed to limit BLD Consulting's liability relating to performance under this Consulting Agreement. City reserves the right to require complete certified copies of all said policies at any time. The procuring of insurance shall not be construed as a limitation on liability or as full performance of the indemnification and hold harmless provisions of this Consulting Agreement. BLD Consulting understands and agrees that, notwithstanding any insurance, BLD Consulting's obligation to defend, indemnify, and hold City, its officials, agents, and employees harmless hereunder is for the full and total amount of any damage, injuries, loss, expense, costs, or liabilities caused by or in any manner connected with or attributed to the acts or omissions of BLD Consulting, its officers, agents, contractors or employees in connection with or arising under the provisions of this Consulting Agreement.

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**10.8 If BLD Consulting fails to maintain any insurance as required under this Consulting Agreement, BLD Consulting shall be in breach of this Consulting Agreement, and the City shall have the right to declare this Consulting Agreement in default, subject to the notice and cure provisions of Section 3.2 hereof.**

**10.9 Any modification or waiver of the insurance requirements herein shall be made only with the written approval of the City's Risk Manager or designee.**