

CONTRACT SUMMARY SHEET

TO: THE OFFICE OF THE CITY CLERK,
COUNCIL/PUBLIC SERVICES DIVISION
ROOM 395, CITY HALL

DATE: 08/04/2014

(PLEASE DO NOT STAPLE THE CONTRACT FOR THE CLERK'S FILE)

FORM MUST BE TYPEWRITTEN

FROM (DEPARTMENT): BOARD OF PUBLIC WORKS

CONTACT PERSON: DAVID P. CHANQUIN PHONE: 213 978-0260

CONTRACT NO.: P-124330 COUNCIL FILE NO.: 13-0949-S1

ADOPTED BY COUNCIL: 06/27/2015
DATE
APPROVED BY BPW: 02/28/2014
DATE

NEW CONTRACT
AMENDMENT NO.
ADDENDUM NO.
SUPPLEMENTAL NO.
CHANGE ORDER NO.

CONTRACTOR NAME: TRC SOLUTIONS, INC.

TERM OF CONTRACT: 08/04/2014 THROUGH: 08/03/2019

TOTAL AMOUNT: N/A

PURPOSE OF CONTRACT:

FOR ON-CALL CONSULTANT TO PROVIDE AS-NEEDED PLANNING AND TECHNICAL SUPPORT SERVICES FOR THE BUREAU OF SANITATION'S WASTEWATER, STORMWATER AND SOLID RESOURCES PROGRAMS

NOTE: CONTRACTS ARE PUBLIC RECORDS - SCANNED AND UPLOADED TO THE INTERNET

PRINT

CONTRACT NO. C- 124330

ON-CALL CONSULTANT SERVICES AGREEMENT

BETWEEN

THE CITY OF LOS ANGELES

AND

TRC SOLUTIONS INC.

(A Wholly-Owned Subsidiary of TRC Companies Inc.)

FOR

DEPARTMENT OF PUBLIC WORKS

BUREAU OF SANITATION

PLANNING AND TECHNICAL SERVICES FOR

WASTEWATER, STORMWATER, AND SOLID RESOURCES PROGRAMS

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ON-CALL CONSULTANT SERVICES AGREEMENT

This AGREEMENT, is made and entered into by and between the City of Los Angeles, a municipal corporation acting by order of and through its Board of Public Works, hereinafter called the "CITY", and "TRC SOLUTIONS INC." hereinafter referred to as the "CONSULTANT"; is set forth as follows:

WITNESSETH

WHEREAS, the CITY has a need for contracting/consulting services for highly specialized and technical expertise to support the Bureau of Sanitation's projects on an emergency or as-needed basis; and

WHEREAS, the CONSULTANT's services are deemed to be vital to meet the CITY's commitment to protect public health and the environment; and

WHEREAS, the CITY plans to utilize the CONSULTANT to provide services over the course of a 5-year period with an optional 5-year extension; and

WHEREAS, on January 13, 2012, the Board of Public Works authorized the Bureau of Sanitation to distribute a Request for Qualifications (RFQ) for the said services and to negotiate a contract with a qualified proposer; and

WHEREAS, on March 28, 2012, the Bureau of Sanitation received 26 of Statements of Qualifications in response to the RFQ; and

WHEREAS, the CONSULTANT was selected to be placed on the list of pre-qualified proposers to perform said services as determined by CITY staff based on the evaluation criteria set forth in the RFQ; and

WHEREAS, the CONSULTANT meets the State requirements to perform professional engineering work as required in the Professional Engineers Act; and

WHEREAS, the services to be provided by CONSULTANT are of an expert and technical nature; and

NOW, THEREFORE, in consideration of the foregoing and of the benefits which will accrue to the parties hereto in carrying out the terms and conditions of this AGREEMENT, it is understood and agreed by and between the parties hereto as follows:

ARTICLE 1 – SECTION HEADINGS AND CONSTRUCTION OF PROVISIONS AND TITLES HEREIN

All titles, subtitles, and/or section headings appearing herein have been inserted for convenience and shall not be deemed to govern, limit, modify or in any manner affect

the scope, meaning, intent or construction of any of the terms or provisions hereof. The language of this CONTRACT shall be construed according to its fair meaning and not strictly for or against the CITY or the CONSULTANT. The singular shall include the plural; use of the feminine, masculine, or neuter genders shall be deemed to include the genders not used. The terms "include" and "including" do not exclude items not enumerated that are in the same general class.

ARTICLE 2 – DEFINITIONS

It is understood that the following words and phrases are used herein; each shall have the meaning set forth opposite the same:

AGREEMENT/CONTRACT	This contractual agreement between the CITY and TRC SOLUTIONS INC. for planning and technical expertise and services to support Wastewater, Solid Resources, Stormwater, Climate Change Adaptation Programs and other related projects.
BOARD	The Board of Public Works of the City of Los Angeles.
BUREAU	Bureau of Sanitation, Department of Public Works, City of Los Angeles.
CALENDAR DAYS	Each day beginning at 12:01 a.m. and ending twenty-four (24) hours thereafter at 12:00 midnight unless otherwise specified.
CITY	The City of Los Angeles, Board of Public Works or its subordinate Bureaus. Depending on the context in which it is used, the term CITY may also refer to the geographic area known as the City of Los Angeles, the City Council, other Departments of the City of Los Angeles, or any person employed by the City of Los Angeles who is authorized to represent the City of Los Angeles in manners concerning this document.
ON-CALL MANAGER	CITY'S designated representative for all issues related to this AGREEMENT
CONSULTANT	TRC SOLUTIONS INC.
DIRECTOR	Director of the Bureau of Sanitation or his/her designated representative
MBE/WBE/SBE/EBE/DVBE/ OBE	Minority/Women/Small/Emerging/Disabled Veteran/Other Business Enterprises

NOTICE TO PROCEED	The written notice by the DIRECTOR or his designee to the successful proposer to commence the work.
SUBCONSULTANT	An individual or company having an agreement with CONSULTANT to provide services, equipment, or materials to CONSULTANT
TAF	Task Order Agreement Form
TOS	Task Order Solicitation, a detail description of submittal requirements including scope of services, schedule, and payment.

ARTICLE 3 – PROJECT DESCRIPTION

The BUREAU’s mission is to protect the public health and the environment, delivering services through the management and administration of the Wastewater Program, Watershed Protection Program, Solid Resources Program, and the Climate Change Adaptation Programs. To meet these specialized needs, where long term staffing is not feasible and existing staffing is not available or unable to perform the required tasks, the BUREAU seeks to establish a new on-call list of consulting firms to continue providing the supporting services on an as needed basis.

ARTICLE 4 – RESPONSIBILITIES OF AND SERVICES TO BE PERFORMED BY THE CONSULTANT

- 4.1 CONSULTANT shall perform the services described in Article 4.4. CONSULTANT shall perform such work with a degree of skill and diligence normally employed by professional analysts or contractors performing the same or similar services.
- 4.2 CONSULTANT warrants that the services will be performed consistent with generally accepted industry standards.
- 4.3 Maintenance of Records

CONSULTANT shall maintain all records, in their original form, pertaining to the performance of this CONTRACT, including records of financial transactions. These records shall be retained for a period of no less than three (3) years following final payment made by the CITY hereunder or the expiration date of this CONTRACT, whichever occurs last. Said records shall be subject to examination and audit by authorized CITY personnel or by the CITY’S representative at any time during the term of this CONTRACT and within the three (3) years following final payment made by the CITY hereunder or the expiration date of this CONTRACT, whichever occurs last. CONSULTANT shall provide any reports requested by the CITY regarding performance of this

CONTRACT. Any subcontract entered into by CONSULTANT, as authorized under the terms of this CONTRACT, shall include a like provision for work to be performed under this CONTRACT.

4.4 Scope of Services

The proposed scope of work will include but not be limited to:

- Wastewater Program - Planning, Scientific and Technical Issues, Operational Support Services, Plant Optimization, Sewer System Structural and Hydraulic Condition Assessment, Sewer Capacity Plan, Rehabilitation Plan, Development of Industrial Waste Discharge Standards, Fats, Oil and Grease, Regulatory Compliance Requirements, Odor Control Implementation and Testing, amongst other services.
- Biosolids Program – Planning, Scientific and Technical Issues, Maintenance and Operational Support Services, Development of Biomass Alternative Technologies and Management, Regulatory Compliance Requirements, amongst other services.
- Stormwater Program – Planning, Scientific and Technical Issues, Operational Support Services, Evaluation of discharge limits for Santa Monica Bay, Ballona Creek, Los Angeles River and Long Beach Harbors, Total Maximum Daily Loads (TMDLs) Compliance, Regulatory Compliance Requirements, amongst other services.
- Solid Resources Program - Strategic Planning, Scientific and Technical Issues, Operational Support Services, Commercial Recycling Planning, Development of Resource Recovery as an Alternative to the Use of Landfills, Regulatory Compliance Requirements, EPA grant funded for Brownfield sites' assessment Phase I and Phase II, amongst other services.
- Climate Change Adaptation Program, a nascent program that is still under formation.
- Financial Revenue and Bond Program – Financial Analysis, Financial Screening, Funding Sources, review of current rate structure, amongst other services.
- Information Technology (IT) Services – Technical Assistance
- Strategic Planning/Safety and Training Program – Specialized Training and Human Resources Development, support the BUREAU's ongoing labor-management strategic planning effort, amongst other services.
- Quality Assurance/Value Assessment – Review feasibility, constructability and cost-effectiveness of recommended projects and programs.
- Provide services to build support to critically and urgently needed system enhancements, programs and service upgrades or certain pilot projects/programs.
- Public Outreach/Education Program – Including, but not limited to, communicating

and coordinating with community groups; arranging community meetings and public hearings; media outreach, developing or using social media; and preparing printed, digital, or electronic literature for public dissemination.

Assignment of Work:

Initially, the selected consultants will be listed in random order. The CITY reserves the right to assign Task Orders under these contracts in any manner the serve the CITY and the project the best and will generally be done in one of the following manners noted below:

- For Large Task Orders with an estimated cost of equal to or more than \$1,000,000. The CITY will issue a Task Order Solicitation (TOS) and will request all consultants on the list to submit proposals on an upcoming project. For each desired Task Order, the project will be awarded to the pre-qualified on-call consultant whose proposal represents the best overall value to the CITY for the requested work. The selected proposer will be moved to the bottom of the list for the purpose of subsequent work assignments.
- For Moderately sized Task Orders greater than \$250,000 but less than \$1,000,000. The CITY will issue a TOS and will request the top three (3) consultant firms on the list to submit a proposal. The project will be awarded to the pre-qualified on-call consultant whose proposal represents the best overall value to the CITY for the requested work. The selected proposer will be moved to the bottom of the list for the purpose of subsequent work assignments.
- For Smaller sized Task Orders equal to or less than \$250,000. The CITY will issue a TOS to the first firm on the list. Negotiations will follow on the terms for the project, specifically on the scope of work, deliverables, schedule, and costs. If an agreement cannot be reached with the first firm, the CITY reserves the right to negotiate with the next firm on the list and so on until an agreement is reached. The successful consultant will then be rotated to the bottom of the list for the purpose of subsequent work assignments.

The CITY reserves the right to advertise any Task Order, regardless of the size, to the entire list. In addition and under special conditions, the CITY may choose to award the Task Order regardless of the size to the first ranked firm on the list subject to the concurrence of the BOARD.

Once an agreement is reached, the CITY will issue a NOTICE TO PROCEED. Cost incurred by the consultant prior to the NOTICE TO PROCEED shall be payable to consultant if said costs were incurred in completing any task specifically authorized by this contract and said costs are reviewed and approved by the CITY and said approval of payment occurs after the contract is fully executed.

4.5 CONSULTANT Schedule of Services

- 4.5.1 The CONSULTANT shall prepare and submit a proposed schedule of the services to be performed as instructed by the TOS Manager, within fifteen (15) calendar days, after receiving the CITY's NOTICE TO PROCEED. The CONSULTANT shall perform the work in accordance with the approved schedule and prepare revisions and updates in a timely manner. The CITY may withhold payment to the CONSULTANT for failure to comply with requirements of this procedure.
- 4.5.2 The CONSULTANT's schedule of services shall show the dates on which each part or division of the work is expected to be started and completed and shall show all submittals associated with each work activity, allowing a minimum of fifteen (15) CALENDAR DAYS for the TOS Manager's review of each submittal unless a longer period of time is specified elsewhere in this CONTRACT or the TAF. The work activities making up the schedule shall be of sufficient detail to assure that adequate planning has been done for proper execution of the work and such that it provides an appropriate basis for monitoring and evaluating the progress of the work. The CONSULTANT shall also submit a separate progress schedule listing all submittals required under the CONTRACT and when it is anticipated that each submittal will be submitted. The ON-CALL MANAGER will review the CONSULTANT's schedules and provide comments relative to overall compliance with requirements of the CONTRACT documents.
- 4.5.3 An updated schedule of services shall be submitted to the ON-CALL MANAGER as specified in the Task Order. The submittal of the updated CONSULTANT's schedule of services, which will satisfy the requirements of this Section, accurately reflects the status of the work and incorporates all changes into the schedule. Updated schedules shall also be submitted at such other times as the ON-CALL MANAGER may direct. Upon approval of an amendment or issuance of a NOTICE TO PROCEED with a change, the approved amendments shall be reflected in the next scheduled update submittal by the CONSULTANT, or other updated submittal approved by the TOS Manager. If specified in the Task Order, as a condition precedent to final payment, the CONSULTANT shall submit to the ON-CALL MANAGER a final schedule of services that accurately reflects the manner in which the services were actually completed.
- 4.5.4 The CONSULTANT shall submit a written explanation with the original schedule submittal and show sufficient detail as to how the work is to be performed to enable the CITY to make an evaluation. If the explanation is not adequate to establish that the schedule is valid and practical, a review conference may be held to reach an understanding on required revisions. The CONSULTANT shall make such revisions in the schedule and narrative and resubmit within ten (10) CALENDAR DAYS after the conference unless granted an extension by the ON-CALL MANAGER.

4.5.5 The CONSULTANT shall submit progress reports as specified in the TAF. This may consist of a monthly narrative progress report and may include an updated schedule of services. The purpose of the report is to provide a brief description of the status of the work and to identify any problems and open issues that may affect timely completion.

4.5.6 As directed in the CONTRACT or the Task Order, the CONSULTANT shall participate in progress meetings with the TOS Manager. These meetings shall be held regularly at the discretion of the TOS Manager. All meetings are to be comprehensively documented by the CONSULTANT and related documentation distributed to attendees.

ARTICLE 5 – KEY CONSULTANT PERSONNEL

5.1 CONSULTANT designates the following person to represent CONSULTANT in all matters pertaining to this AGREEMENT:

Name: David Zarider
Address: 123 Technology Drive, Irvine, CA 92618
Phone Number: (949) 727-9336

Additional technical specialists shall be assigned subject to the ON-CALL MANAGER'S approval.

5.2 CONSULTANT agrees that personnel assigned to these positions at the commencement of services under this AGREEMENT shall serve in these positions as long as required by the CONTRACT, and CONSULTANT shall not change personnel assigned to these positions without the prior consent and approval of ON-CALL MANAGER, whose consent shall not be withheld unreasonably.

5.3 The CITY shall have the right to review and approve any personnel who are assigned to work under this CONTRACT. CONSULTANT agrees to remove personnel from performing work under this CONTRACT if requested to do so by the CITY.

ARTICLE 6 – RESPONSIBILITIES OF AND TASKS TO BE PERFORMED BY CITY

CITY designates Division Manager of the Wastewater Engineering Services Division as its ON-CALL MANAGER to represent the CITY in all matters within the scope of the AGREEMENT relating to the conduct and approval of the work to be performed. Whenever the term "approval of CITY," "consult with CITY," "confer with CITY," or similar terms are used, they shall refer to the ON-CALL MANAGER. The ON-CALL MANAGER may designate an assistant to act in his/her stead.

The CITY shall furnish, without charge, facilities and resources available to the CONSULTANT as deemed reasonably necessary and appropriate by CITY.

ARTICLE 7 – TERM OF AGREEMENT AND TIME OF EFFECTIVENESS

The term of this AGREEMENT shall be for five (5) years with a five (5)-year renewal option to be exercised at the CITY's sole discretion, from the date of full execution unless terminated as provided under Article 8 or extended by amendment or change order to this AGREEMENT and signed by the parties.

The date of full execution is deemed to be the date when all the following events have occurred:

- This AGREEMENT has been signed on behalf of CONSULTANT by the person or persons authorized to bind CONSULTANT hereto;
- This AGREEMENT has been approved by the City Council or by the board, officer or employee authorized to give such approval;
- The Office of the City Attorney has indicated in writing its approval of this AGREEMENT as to form; and
- This AGREEMENT has been signed on behalf of the CITY by the person designated by the City Council, or by the BOARD, officer or employee authorized to enter into this AGREEMENT.

ARTICLE 8 – TERMINATION

- 8.1 This AGREEMENT may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this AGREEMENT through no fault of the terminating party, provided that no termination may be effected unless the other party is given (1) not less than ten (10) CALENDAR DAYS' written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination.
- 8.2 This AGREEMENT may be terminated in whole or in part in writing by the CITY for its convenience, provided that the CONSULTANT is given (1) not less than thirty (30) CALENDAR DAYS' written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination. Upon receipt of said written notice, CONSULTANT shall immediately take action not to incur any additional obligations, cost or expense, except as may be reasonably necessary to terminate its activities.
- 8.3 This AGREEMENT may be immediately terminated in writing by the CITY if (1) a federal or state proceeding for relief of debtors is undertaken by or against CONSULTANT, or if CONSULTANT makes an assignment for the benefit of creditors or (2) CONSULTANT engages in any dishonest conduct related to the

performance or administration of this AGREEMENT or violates the CITY'S lobbying policies.

- 8.4 If termination for default is effected by the CITY, an equitable adjustment in the price provided for in this AGREEMENT shall be made, but (1) no amount shall be allowed for anticipated profit on unperformed services or other work, and (2) any payment due the CONSULTANT at the time of termination may be adjusted to cover any additional costs to the CITY because of the CONSULTANT'S default.

If termination for default is effected by the CONSULTANT or if termination for convenience is effected by the CITY, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for any termination shall provide for payment to the CONSULTANT for services rendered and expenses incurred prior to the termination, excluding attorney's fees, in addition to termination settlement costs reasonably incurred by the CONSULTANT relating to written commitments that were executed prior to the termination. Thereafter, CONSULTANT shall have no further claims against the CITY under this AGREEMENT.

- 8.5 Upon receipt of a termination action under Articles 8.1, 8.2 or 8.3 above, the CONSULTANT shall (1) promptly discontinue all affected work (unless the notice directs otherwise), and (2) deliver or otherwise make available to the CITY all finished or unfinished documents and materials produced or procured under this CONTRACT, including all intellectual property rights thereto, which shall become CITY property upon date of such termination. CONSULTANT agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights provided herein.
- 8.6 Upon termination under Articles 8.1, 8.2 or 8.3 above, the CITY may take over the work and may award another party an AGREEMENT to complete the work under this AGREEMENT.
- 8.7 If, after the termination for failure of the CONSULTANT to fulfill contractual obligations, it is determined that the CONSULTANT had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of the CITY. In such event, adjustment of the AGREEMENT price shall be made as provided in Article 8.4 of this article.
- 8.8 The rights and remedies of the CITY provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this CONTRACT.

ARTICLE 9 – SUBCONTRACTORS

CONSULTANT shall not use subconsultants to assist in performance of this AGREEMENT without the prior written approval of the CITY. If the CITY permits the use of subconsultants, CONSULTANT shall remain responsible for performing all aspects of this

AGREEMENT. The CITY has the right to approve CONSULTANT's subconsultants and the CITY reserves the right to request replacement of subconsultants. The CITY does not have any obligation to pay CONSULTANT's subconsultants and nothing herein creates any privities between the CITY and the subconsultants. Wholly-owned subsidiaries of the CONSULTANT shall not be considered subcontractors/subconsultants.

Schedule A, a list of potential MBE/WBE/SBE/EBE/DVBE/OBE Subconsultants, provided herein is referred to as **Exhibit A**. The CONSULTANT shall make every effort to equitably utilize the subconsultants listed on **Exhibit A**.

This listing, **Exhibit A**, is not exclusive and upon written requested by the CONSULTANT, additional subcontractors/subconsultants may be added with the approval of the DIRECTOR or designee. Substitution of any subconsultant requires approval from the BOARD for Task Order greater than \$250,000.

The CONSULTANT shall provide the Task Order List of Subconsultants (Schedule B, **Exhibit B**). The Schedule B is required prior to commencement of the work. The CONSULTANT shall provide an overall contract summary of the utilization profile of subconsultants as part of the monthly invoice (Schedule C, **Exhibit C**). The summary shall include all tasks completed to date or underway. Upon completion of each Task Work Order, the CONSULTANT shall prepare and submit the "Final Report of Subcontracting" Form (Schedule D, **Exhibit D**) to the Awarding Authority within 15 working days after completion of the Task Work Order.

ARTICLE 10 – COMPENSATION, INVOICING, AND PAYMENT

Compensation for services provided under this CONTRACT shall be provided on a Cost Reimbursement –Billing Salary Rate basis, a Cost Reimbursement - Hourly Billing Rate basis, a Lump Sum basis, or a combination thereof, at the sole discretion of the CITY. For the Cost Reimbursement – Billing Salary Rate basis, compensation is defined as the sum of: (1) Billing Salary Rates; (2) Overhead; (3) Other Direct Cost with no markup; (4) Subcontract Expenses plus administrative fee as stated herein; and (5) Profit as defined herein. For the Cost Reimbursement – Hourly Billing Rate basis, compensation is defined as the sum of: (1) Hourly Billing Rates; (2) Other Direct Cost with no markup; and (3) Subcontract Expenses plus administrative fee as stated herein. For the Lump Sum basis, compensation is defined solely as the Lump Sum.

10.1 Cost Reimbursement – Billing Salary Rate Basis

10.1.1 "Billing Salary Rates" negotiated by Task Order shall be at the rates approved by the ON-CALL MANAGER, to be charged by CONSULTANT for employees' time directly chargeable to their performance of the project work. Any adjustments to the CONSULTANT's Billing Salary Rate shall be in accordance with established BUREAU policies, existing at the time the adjustment is approved. Actual CONSULTANT employee salaries may be increased at the discretion of CONSULTANT's management. However, Billing Salary Rate

increases are limited to once per year, per employee, on the anniversary date of the CONSULTANT's CONTRACT execution, and are subject to the approval of the DIRECTOR. In no case shall the "Billing Salary Rates" exceed the actual salary rates paid to the employee.

If a CONSULTANT employee is promoted to a new classification or position, documentation shall be provided to the ON-CALL MANAGER. CONSULTANT shall provide explanation of the higher responsibilities of the CONSULTANT employee in the new classification or position as relating to the Task Order. CONSULTANT may increase the Billing Salary Rate due to promotion, subject to the approval of the ON-CALL MANAGER.

Subconsultant Billing Salary Rates are negotiated per Task Order. Any adjustments to subconsultants' Billing Salary Rates for a TASK ORDER shall be reviewed and approved by the ON-CALL MANAGER prior to invoicing. Adjustments to subconsultants' Billing Salary Rates may be increased one time per year, per employee, on the anniversary date of the CONSULTANT's CONTRACT execution, and are subject to approval of the ON-CALL MANAGER. Any such increases shall be in accordance with established BUREAU policy existing at the time the adjustment was approved.

10.1.2 "Overhead" (including payroll burden, general and administrative expenses, and all other expenses not included in Section 10.1.3) shall be at a rate applied to Billing Salary Rate. Payroll burden includes the cost of benefits for employees, which include, but are not limited to, employer paid costs for employee insurance programs, employer-paid payroll-related taxes, sick leave, holidays, vacation and retirement. Overhead for this Consultant Services Contract is fixed for the duration of the CONTRACT at a rate of 173.36 percent for CONSULTANT personnel located in the CONSULTANT's Office and fixed at a rate of 130.82 percent for CONSULTANT personnel located in a CITY office. At the ON-CALL MANAGER's discretion, the subconsultants' overhead rates are subject to review and approval by the ON-CALL MANAGER and shall remain fixed for the duration of the CONTRACT.

The CONSULTANT Office rate shall apply to CONSULTANT personnel on temporary assignment, not to exceed one month, at one of the CITY's offices. The CITY Office rate shall apply when the CONSULTANT personnel are on assignment at one of the CITY's offices for a period exceeding one month. The overhead rate selection for every CONSULTANT employee shall be approved by the ON-CALL MANAGER.

10.1.3 "Other Direct Cost" includes those costs of CONSULTANT directly identifiable to or incurred in the performance of services hereunder, including but not limited to reproduction, freight, messenger service, travel (in accordance with established CITY policies), equipment rented by CONSULTANT, auto rental,

and mileage charges (based on IRS allowable amounts), and supplies used in the work . CONSULTANT must obtain CITY approval prior to incurring any travel expenses. Expenses related to CONSULTANT travel will be reimbursed based upon the CITY's policies and procedures that are in place at the travel time (**Exhibit E**). Any specialized items purchased for the task at the request of the CITY shall be charged to the CITY, and shall become the property of the CITY and delivered to the CITY. Any other items purchased for the task shall be the property of the CONSULTANT, shall not be charged to the CITY, and will not be reimbursed. Communication expenses, cost of office space, equipment, and supplies furnished to CITY personnel at CONSULTANT's location shall be paid by the CITY. The CITY shall receive the full benefit of any free travel, frequent flyer mileage, discounts and/or any other advantages which are acquired by the CONSULTANT as a result of CITY sponsored travel.

10.1.4 "Subcontract Expenses" shall be the actual amount paid by CONSULTANT to subconsultant for their services to the CITY plus an administrative fee of five (5) percent. No administrative fee is allowed on Other Direct Costs by the subconsultants. The subconsultants shall bill the CONSULTANT for other direct costs as cost with no markup.

10.1.5 "Profit" shall be limited to ten (10) percent and shall be applied to the summation of "Billing Salary Rates" and "Overhead".

10.2 Cost Reimbursement - Hourly Billing Rate Basis

Cost Reimbursement - Hourly Billing Rate is a method of compensation whereby CONSULTANT is compensated on an hourly basis pursuant to established Hourly Billing Rates set forth in **Exhibit F**. The Hourly Billing Rates shall be approved by the ON-CALL MANAGER for CONSULTANT employees' time directly chargeable to their performance of the project work. The Hourly Billing Rate shall include salary, fringe benefits, overhead, profit and all other business expenses incurred by CONSULTANT. Reimbursement for Other Direct Costs and Subcontract Expenses shall be in accordance with Sections 10.1.3 and 10.1.4 of this CONTRACT.

Actual CONSULTANT salaries may be increased at the discretion of CONSULTANT's management. However, Hourly Billing Rate increases are limited to once per year, per employee, on the anniversary date of the CONSULTANT's CONTRACT execution, and are subject to the approval of the ON-CALL MANAGER. Any adjustments to the CONSULTANT's Hourly Billing Rates for a Task Order shall be in accordance with established BUREAU policies, existing at the time the adjustment is approved.

If a CONSULTANT employee is promoted to a new classification or position, documentation shall be provided to the ON-CALL MANAGER. CONSULTANT shall

provide explanation of the higher responsibilities of the CONSULTANT employee in the new classification or position as relating to the Task Order. CONSULTANT may increase the Hourly Billing Rate due to promotion, subject to the approval of the ON-CALL MANAGER.

Subconsultant Hourly Billing Rates are negotiated by Task Order. Any adjustments to subconsultants' Hourly Billing Rates shall be reviewed and approved by the ON-CALL MANAGER prior to invoicing. Adjustments to subconsultants' Hourly Billing Rates may be increased one time per year, per employee, on the anniversary date of the CONSULTANT's CONTRACT execution, and are subject to approval of the ON-CALL MANAGER. Any such increases shall be in accordance with established BUREAU policy existing at the time the adjustment is approved.

10.3 Lump Sum Basis

Lump Sum Basis is a method of compensation whereby CONSULTANT is compensated for percent completion of designated milestones for a specific task order. All of the CONSULTANT's costs including employee salaries, overhead, other direct costs, subcontract expenses, and profit are included in the Lump Sum Amount.

10.4 Proposed Project Cost Breakdown

At the discretion of the ON-CALL MANAGER, the Sample Project Service Cost Proposal Worksheet (**Exhibit G**), attached hereto and incorporated herein by this reference, may be used or modified for the estimated total cost by task for each Task Order. For Task Orders specifying a Cost Reimbursement – Billing Salary Rate compensation method, the Proposed Project Cost Worksheet shall be based upon the estimated hours of labor at estimated Billing Salary Rates, the allocated overhead, Other Direct Cost, Subcontract Expenses, and profit. For Task Orders specifying a Cost Reimbursement - Hourly Billing Rate compensation method, the Proposed Project Cost Worksheet shall be based upon the estimated hours of labor at estimated Hourly Billing Rates, Other Direct Cost, and Subcontract Expenses. For Task Orders specifying a Lump Sum compensation method, the Proposed Project Cost Worksheet shall set forth the total project cost and the appropriate payment milestones.

The amount shown for each task on a Proposed Project Cost Worksheet are estimates only, and unexpended funds allocated for one task may be used for another task as long as the total Cost Breakdown specified in the Task Order is not exceeded. Such reallocation of funds must have the prior written approval of the ON-CALL MANAGER.

10.5 Compensation

CONSULTANT agrees to perform the work specified in Article 4.4, and CITY shall compensate CONSULTANT on a Cost Reimbursement – Billing Salary Rate basis, a Cost Reimbursement - Hourly Billing Rate basis, a Lump Sum basis, or a combination thereof, at the sole discretion of the ON-CALL MANAGER. ON-CALL MANAGER shall designate the compensation method in the Task Orders to be issued under this CONTRACT. If the TASK ORDER Solicitation specifies the compensation as being on a Cost Reimbursement – Billing Salary Rate basis or a Cost Reimbursement - Hourly Billing Rate basis, payment shall be made in accordance with the Proposed Project Cost Breakdown to be provided for ON-CALL MANAGER approval prior to issuance of NOTICE TO PROCEED for any Task under this CONTRACT. Billing Salary Rates, Hourly Billing Rates, Subcontract Expenses, Overhead, and Other Direct Costs shall be in accordance with rates set herein. The total cost ceiling shall be stated in the Task Order.

If the Task Order Solicitation specifies the compensation as being on a Lump Sum basis, payment shall be made upon the satisfactory completion of the tasks or milestones, or percent completion thereof, as set forth in the Task Order. The total cost ceiling shall be stated in the Task Order.

10.6 Invoicing and Payment

10.6.1 For Task Orders specifying a Cost Reimbursement – Billing Salary Rate basis or a Cost Reimbursement - Hourly Billing Rate basis method of payment, CONSULTANT shall, once each month, submit to ON-CALL MANAGER an original and three (3) copies of a complete and valid invoice with required back up documents in a format acceptable to the CITY which will include all costs for services provided during the preceding month. ON-CALL MANAGER shall review CONSULTANT's invoice and notify CONSULTANT of exceptions or disputed items and their dollar value.

10.6.2 For Task Orders specifying a Lump Sum method of payment, CONSULTANT shall submit to the ON-CALL MANAGER, upon the satisfactory completion of each task/milestone, an original and three (3) copies of a complete and valid invoice in a format acceptable to the ON-CALL MANAGER. ON-CALL MANAGER shall review CONSULTANT's invoices and notify CONSULTANT of exceptions or disputed items and their dollar value. The total invoice amount, less any exceptions or disputed items shall be considered approved for payment.

All invoices shall be prepared in such form and supported by such copies of invoices, payrolls, time sheets, and other documents of proof as may be required by ON-CALL MANAGER to establish the amount of such invoices for allowable expenses.

- 10.6.3 CITY will make a good faith effort to pay CONSULTANT all amounts approved for payment within thirty (30) days after ON-CALL MANAGER receives CONSULTANT's correct and valid invoice, including all required documentation.
- 10.6.4 The CITY will not pay for CONSULTANT's nor subconsultant's personnel for invoice preparation. The CITY will not pay for CONSULTANT's nor subconsultant's communications expenses and computer lease, rental or hourly time charges.
- 10.6.5 For Task Orders over \$100,000, a Subconsultant Utilization Invoice Attachment [**Exhibit C**], listing subconsultant amounts invoiced shall also be submitted as part of the monthly invoice. CONSULTANT must provide an explanation for any item that falls short of the planned utilization with specific plans and recommendations for recovering any shortfalls in utilization. No such invoice shall be paid without the Subconsultant Utilization Invoice Attachment.
- 10.6.6 All invoices shall be subject to audit. Support for any Other Direct Cost items less than \$25 need not be submitted by CONSULTANT unless specifically requested by CITY.
- 10.6.7 All charges related to the performance of the CONSULTANT's work for any Task Order, including the work of any subcontractors or subconsultants, shall be invoiced to the CITY within six months of TOS expiration. The CITY will not reimburse the CONSULTANT for any charges related to any Task Order invoiced to the CITY after six months.
- 10.6.8 If the project requires and if mutually agreed upon by the CONSULTANT and the CITY, specialty subconsultant services may be requested on a specific project Task Order. The Cost Reimbursement - Hourly Billing Rate method of compensation will be used when invoicing the CITY for the specialty subconsultant services. Hourly Billing Rates shall be at the rates approved by the ON-CALL MANAGER to be charged by the subconsultant for employees' time directly chargeable to their performance of the project work. The Hourly Billing Rate shall include salary, fringe benefits, overhead, profit and all other business expenses incurred by the subconsultant.
- 10.6.9 Within 15 days of discovery, CONSULTANT shall notify the ON-CALL MANAGER in writing when costs reach 75 percent (75%) of the amount authorized for the Task Order. Failure to provide written notification may result in late payment of invoices.
- 10.6.10 CITY shall not be obligated to reimburse CONSULTANT for costs incurred

in excess of the Proposed Project Cost Breakdown set forth. CONSULTANT shall not be obligated to continue performance (including actions under the temporary stop work or termination clauses) or otherwise incur costs in excess of the Proposed Project Cost Breakdown, either, unless and until, ON-CALL MANAGER shall have notified CONSULTANT in writing, or, unless and until CONSULTANT notifies ON-CALL MANAGER prior to work and ON-CALL MANAGER agrees to additional work in writing, that such Proposed Project Cost Breakdown has been increased and shall have specified in such notice an estimated Proposed Project Cost Breakdown which shall thereupon constitute the cost performance of this CONTRACT. In the absence of the specified notice, CITY shall not be obligated to reimburse CONSULTANT for any costs in excess of the Proposed Project Cost Breakdown set forth, whether those costs were incurred during the course of the CONTRACT or as a result of termination.

- 10.6.11 CITY liability under this CONTRACT shall only be to the extent of the present appropriation to fund the CONTRACT. No action, statement, or omission of any officer, agent, or employee of CITY shall impose any obligation upon CITY, such officer, agent, or employee, except to the extent CITY has appropriated funds and otherwise in accordance with the terms of this CONTRACT.

CONSULTANT and CITY agree that no indebtedness for work performed which results in costs under this CONTRACT shall arise against CITY until and unless there is an appropriation of funds to pay for such work. However, if CITY shall appropriate funds for any successive fiscal years, CITY's liability shall be extended to the extent of such appropriation subject to the terms and conditions of this CONTRACT.

10.6.12 False Claims Act

CONSULTANT acknowledges that it is aware of liabilities resulting from submitting a false claim for payment by the CITY under the California False Claims Act (Cal. Gov. Code 12650 et.seq.), including treble damages, costs of legal actions to recover payments and civil penalties of up to \$10,000 per false claim.

ARTICLE 11 – AMENDMENTS, CHANGES, OR MODIFICATIONS

Amendments, changes or modifications in the terms of this AGREEMENT may be made at any time by mutual written AGREEMENT between the parties hereto and shall be signed by the persons authorized to bind the parties thereto.

ARTICLE 12 – INDEMNIFICATION AND INSURANCE

12.1 INDEMNIFICATION

Except for the active negligence or willful misconduct of CITY, or any of its Boards, Officers, Agents, Employees, Assigns and Successors in Interest, CONSULTANT undertakes and agrees to defend, indemnify and hold harmless CITY and any of its Boards, Officers, Agents, Employees, Assigns and Successors in Interest from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the CITY, including but not limited to, costs of experts and consultants), damage or liability of any nature whatsoever, for death or injury to any person, including CONSULTANT'S employees and agents or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason to the extent of the negligent acts, errors, omissions or willful misconduct incident to the performance of this AGREEMENT by the CONSULTANT or its SUBCONSULTANTS of any tier. Rights and remedies available to the CITY under this provision are cumulative of those provided for elsewhere in this AGREEMENT and those allowed under the laws of the United States, the State of California, and the CITY. The provisions of this paragraph shall survive expiration or termination of this AGREEMENT.

12.2 INSURANCE

During the term of this CONTRACT and without limiting the CONSULTANT'S indemnification of the CITY, the CONSULTANT shall provide and maintain at its own expense during the term of this CONTRACT a program of insurance having the coverage and limits customarily carried and actually arranged by CONSULTANT but not less than the amounts and types listed on the Insurance Requirements Sheet (Form Gen 146/IR), in **EXHIBIT H** hereto, covering its operations hereunder. Such insurance shall conform to CITY requirements as established by Charter, ordinance, or policy and shall comply with the instructions set forth, in **EXHIBIT H**, and which can also be found at the Board of Public Work's website: <http://bpw.lacity.org/Secretariat/Insurance.html>, in the form Instructions and Information on Complying with CITY Insurance Requirements, rev 05/12, and shall otherwise be in a form acceptable to the City Administrative Officer, Risk Management. The CONSULTANT shall comply with all insurance Contractual Requirements shown on **EXHIBIT H** hereto. **EXHIBIT H** is hereby incorporated by reference and made a part of this CONTRACT.

12.3 BONDS

All bonds which may be required hereunder shall conform to CITY requirements established by Charter, ordinance or policy, and shall be filed with the Office of the City Administrative Officer, Risk Management for its review and acceptance in

accordance with Sections 11.47 through 11.56 of the Los Angeles Administrative Code.

ARTICLE 13 – INDEPENDENT CONTRACTORS

CONSULTANT is acting hereunder as an independent contractor and not as an agent or employee of the CITY. CONSULTANT shall not represent or otherwise hold out itself or any of its Directors, officers, partners, employees, or agents to be an agent or employee of the CITY. CITY shall not represent or otherwise hold itself out or any of its Directors, officers, partners, employees or agents to be an agent or employee of CONSULTANT.

ARTICLE 14 – WARRANTY AND RESPONSIBILITY OF CONSULTANT

- 14.1 CONSULTANT warrants that the work performed hereunder shall be completed in a manner consistent with professional standards practiced among those firms within CONSULTANT'S profession, doing the same or similar work under the same or similar circumstances.
- 14.2 CONSULTANT shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of all designs, drawings, specifications, reports, and other services furnished by CONSULTANT under this AGREEMENT. CONSULTANT shall, at no additional cost to CITY, correct or revise any errors, omissions, or other deficiencies in its designs, drawings, specifications, reports, calculations, and other services.
- 14.3 The CONSULTANT shall exhibit proper professional judgment in the use of information furnished by CITY in Article 6. In the event that said information is not delivered timely or that it is discovered to be incorrect or misleading, CONSULTANT will notify the CITY in a reasonable manner after the discovery of such tardiness or incorrect or misleading information and promptly make a determination of its costs and schedule impact on this AGREEMENT, as well as recommendations for the correction of such incorrect or misleading information.
- 14.4 CONSULTANT shall perform such professional services as may be necessary to accomplish the work required to be performed under this AGREEMENT in accordance with this AGREEMENT.
- 14.5 Except as specified in Article 12 and as otherwise provided in this AGREEMENT, the CONSULTANT shall be and shall remain liable, in accordance with applicable law, for all damages to CITY caused by CONTRACTOR'S/CONSULTANT'S negligent performance of any of the services furnished under this AGREEMENT, except for errors, omissions, or other deficiencies to the extent attributable to CITY, CITY-furnished data, or any third party.

ARTICLE 15 – INTELLECTUAL PROPERTY INDEMNIFICATION

The CONSULTANT, at its own expense, undertakes and agrees to defend, indemnify, and hold harmless the CITY, and any of its Boards, Officers, Agents, Employees, Assigns, and Successors in Interest from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the CITY, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever arising out of the infringement, actual or alleged, direct or contributory, of any intellectual property rights, including, without limitation, patent, copyright, trademark, trade secret, right of publicity and proprietary information right (1) on or in any design, medium, matter, article, process, method, application, equipment, device, instrumentation, software,

hardware, or firmware used by CONSULTANT, or its SUBCONSULTANTS of any tier, in performing the work under this CONTRACT; or (2) as a result of the CITY'S actual or intended use of any Work Product furnished by CONSULTANT, or its SUBCONSULTANTS of any tier, under the AGREEMENT. Rights and remedies available to the CITY under this provision are cumulative of those provided for elsewhere in this CONTRACT and those allowed under the laws of the United States, the State of California, and the CITY. The provisions of this article shall survive expiration or termination of this CONTRACT.

ARTICLE 16 – INTELLECTUAL PROPERTY WARRANTY

The CONSULTANT represents and warrants that its performance of all obligations under this CONTRACT do not infringe in any way, directly or contributorily, upon any third party's intellectual property rights, including, without limitation, patents, copyrights, trademarks, trade secrets, right of publicity and proprietary information.

ARTICLE 17 – OWNERSHIP AND LICENSE

Unless otherwise provided for herein, all Work Products originated and prepared by CONSULTANT or its SUBCONSULTANTS of any tier under this CONTRACT shall be and remain the exclusive property of the CITY for its use in any manner it deems appropriate. Reuse of work products on projects not covered by this agreement is at the sole risk of the CITY. Work Products are all works, tangible or not, created under this CONTRACT including, without limitation, documents, material, data, reports, manuals, specifications, artwork, drawings, sketches, computer programs and databases, schematics, photographs, video and audiovisual recordings, sound recordings, marks, logos, graphic designs, notes, websites, domain names, inventions, processes, formulas matters and combinations thereof, and all forms of intellectual property. CONSULTANT hereby assigns, and agrees to assign, all goodwill, copyright, trademark, patent, trade secret and all other intellectual property rights worldwide in any Work Products originated and prepared by CONSULTANT under this CONTRACT. CONSULTANT further agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights provided herein.

For all Work Products delivered to the CITY that are not originated or prepared by CONSULTANT or its SUBCONSULTANTS of any tier under this CONTRACT, CONSULTANT hereby grants a non-exclusive perpetual license to use such Work Products for any CITY purposes.

CONSULTANT shall not provide or disclose any Work Product to any third party without prior written consent of the CITY.

Any subcontract entered into by CONSULTANT relating to this CONTRACT, to the extent allowed hereunder, shall include a like provision for work to be performed under this CONTRACT to contractually bind or otherwise oblige its SUBCONSULTANTS performing work under this CONTRACT such that the CITY'S ownership and license rights of all Work Products are preserved and protected as intended herein. Failure of CONSULTANT to comply with this requirement or to obtain the compliance of its SUBCONSULTANTS with such obligations shall subject CONSULTANT to the imposition of any and all sanctions allowed by law, including but not limited to termination of CONSULTANT'S CONTRACT with the CITY.

ARTICLE 18 – SUCCESSORS AND ASSIGNS

All of the terms, conditions, and provisions hereof shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns provided, however, that no assignment of the AGREEMENT shall be made without written consent of the parties to this AGREEMENT as required under Article 27.

ARTICLE 19 – CONTACT PERSONS - PROPER ADDRESSES - NOTIFICATION

All notices shall be made in writing and may be given by personal delivery or by mail. Such notices sent by mail should be registered or certified and sent to the designated contact person for each party and addressed as follows:

To The CITY:

Contact Person: Division Manager, Wastewater Engineering Services Division
Address: 2714 Media Center Drive, Los Angeles, CA 90065

To CONSULTANT:

Contact Person: David Lennon (DLennon@trcsolutions.com)
Address: 123 Technology Drive, Irvine, CA 92618

ARTICLE 20 – FORCE MAJEURE

In the event that performance on the part of any party hereto is delayed or suspended as a result of circumstances beyond the reasonable control and without the fault and negligence of said party, none of the parties shall incur any liability to the other parties as a result of such delay or suspension. Circumstances deemed to be beyond the control of the parties hereunder include, but are not limited to, acts of God or of the

public enemy; insurrection; acts of the Federal Government or any unit of State or Local Government in either sovereign or contractual capacity; fires; floods; earthquakes; epidemics; quarantine restrictions; strikes; freight embargoes or delays in transportation, to the extent that they are not caused by the party's willful or negligent acts or omissions, and to the extent that they are beyond the party's reasonable control.

ARTICLE 21 – SEVERABILITY

Should any portion of this AGREEMENT be determined to be void or unenforceable, such shall be severed from the whole and the AGREEMENT will continue as modified.

ARTICLE 22 – DISPUTES

Should a dispute or controversy arise concerning provisions of this AGREEMENT or the performance of work hereunder, the parties may elect to submit such to a court of competent jurisdiction.

ARTICLE 23 – ENTIRE AGREEMENT

This AGREEMENT contains all of the agreements, representations, and understandings of the parties hereto and supersedes and/or incorporates any previous understandings, proposals, commitments, or agreements, whether oral or written, and may be modified or amended only as herein provided.

ARTICLE 24 – APPLICABLE LAW, INTERPRETATION, AND ENFORCEMENT

Each party's performance hereunder shall comply with all applicable laws of the United States of America, the State of California, and the CITY including but not limited to laws regarding health and safety, labor and employment, wage and hours and licensing laws which affect employees. This AGREEMENT and its performance shall be enforced and interpreted under the laws of the State of California. All causes of action arising directly or indirectly from the business relationship evidenced by this AGREEMENT must be filed in the appropriate state or federal court located in Los Angeles County, California, and each party agrees to be subject to the jurisdiction of the State of California regardless of their residence. CONSULTANT shall comply with new, amended, or revised laws, regulations, and/or procedures that apply to the performance of this AGREEMENT.

If any part, term or provision of this AGREEMENT is held void, illegal, unenforceable, or in conflict with any law of a federal, state, or local government having jurisdiction over this AGREEMENT, the validity of the remaining parts, terms or provisions of the AGREEMENT shall not be affected thereby.

ARTICLE 25 – CURRENT LOS ANGELES CITY BUSINESS TAX REGISTRATION CERTIFICATE REQUIRED

If applicable, CONSULTANT represents that it has obtained and presently holds the Business Tax Registration Certification(s) required by the CITY'S Business Tax Ordinance, section 21.00 *et seq.* of the Los Angeles Municipal Code. For the term covered by this AGREEMENT, the CONSULTANT shall maintain, or obtain as necessary, all such Certificates required of it under Business Tax Ordinance and shall not allow any such Certificate to be revoked or suspended. Should any such certificate(s) become suspended or revoked, it is the CONSULTANT'S responsibility to report the matter immediately to the ON-CALL MANAGER.

ARTICLE 26 – WAIVER

A waiver of a default of any part, term or provision of this AGREEMENT shall not be construed as a waiver of any succeeding default or as a waiver of the part, term or provision itself. A party's performance after the other party's default shall not be construed as a waiver of that default.

ARTICLE 27 – PROHIBITION AGAINST ASSIGNMENT OR DELEGATION

The CONSULTANT may not, unless it has first obtained the written permission of the CITY:

- a) Assign or otherwise alienate any of its rights hereunder this AGREEMENT, including the right of payment; or
- b) Delegate, subcontract, or otherwise transfer any of its duties hereunder.

ARTICLE 28 – PERMITS

The CONSULTANT and its directors, officers, partners, agents, employees, and SUBCONSULTANTS, to the extent allowed hereunder, shall obtain and maintain all permits, licenses, certifications, and other documents necessary for the CONSULTANT'S performance of the services hereunder and shall pay any fees required therefore. CONSULTANT certifies to immediately notify the CITY of any suspension, termination, lapses, non-renewals, or restrictions of licenses, permits, certificates, or other documents.

ARTICLE 29 – DISCOUNTS

CONSULTANT agrees to offer the CITY any discount terms that are offered to its best customers for the goods and services to be provided hereunder and apply such discounts to payments made under this AGREEMENT which meet the discount terms.

ARTICLE 30 – CLAIMS FOR LABOR AND MATERIALS

The CONSULTANT shall promptly pay when due all amounts payable for labor and materials furnished in the performance of this AGREEMENT, so as to prevent any lien or other claim under any provision of law from arising against any CITY property (including reports, documents, and other tangible or intangible matter produced by the CONSULTANT hereunder), against the CONSULTANT'S rights to payments hereunder, or against the CITY, and shall pay all amounts due under the Unemployment Insurance Act with respect to such labor.

ARTICLE 31 – BREACH

Except for Force Majeure, if any party fails to perform, in whole or in part, any promise, covenant, or agreement set forth herein, or should any representation made by it be untrue, any aggrieved party may avail itself of all rights and remedies, at law or equity, in the courts of law. Said rights and remedies are cumulative of those provided for herein except that in no event shall any party recover more than once, suffer a penalty or forfeiture, or be unjustly compensated.

ARTICLE 32 – NON-DISCRIMINATION

Unless otherwise exempt, this CONTRACT is subject to the non-discrimination provisions in Sections 10.8 through 10.8.2 of the Los Angeles Administrative Code, as amended from time to time. The CONSULTANT shall comply with the applicable non-discrimination and affirmative action provisions of the laws of the United States of America, the State of California, and the CITY. In performing this CONTRACT, CONSULTANT shall not discriminate in its employment practices against any employee or applicant for employment because of such person's race, religion, national origin, ancestry, sex, sexual orientation, age, disability, domestic partner status, marital status or medical condition. Any subcontract entered into by CONSULTANT, to the extent allowed hereunder, shall include a like provision for work to be performed under this CONTRACT.

Failure of CONSULTANT to comply with this requirement or to obtain the compliance of its SUBCONSULTANTS with such obligations shall subject CONSULTANT to the imposition of any and all sanctions allowed by law, including but not limited to termination of CONSULTANT'S CONTRACT with the CITY.

ARTICLE 33 – EQUAL EMPLOYMENT PRACTICES

Unless otherwise exempt, this CONTRACT is subject to the equal employment practices provisions in Section 10.8.3 of the Los Angeles Administrative Code, as amended from time to time.

A. During the performance of this CONTRACT, CONSULTANT agrees and represents

that it will provide equal employment practices and CONSULTANT and each SUBCONSULTANT hereunder will ensure that in his or her employment practices persons are employed and employees are treated equally and without regard to or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.

1. This provision applies to work or service performed or materials manufactured or assembled in the United States.
 2. Nothing in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.
 3. CONSULTANT agrees to post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.
- B. CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of CONSULTANT, state that all qualified applicants will receive consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
- C. As part of the CITY'S supplier registration process, and/or at the request of the awarding authority, or the Board of Public Works, Office of Contract Compliance, CONSULTANT shall certify in the specified format that he or she has not discriminated in the performance of CITY contracts against any employee or applicant for employment on the basis or because of race, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status or medical condition.
- D. CONSULTANT shall permit access to and may be required to provide certified copies of all of his or her records pertaining to employment and to employment practices by the awarding authority or the Office of Contract Compliance for the purpose of investigation to ascertain compliance with the Equal Employment Practices provisions of CITY contracts. On their or either of their request CONSULTANT shall provide evidence that he or she has or will comply therewith.
- E. The failure of any CONSULTANT to comply with the Equal Employment Practices provisions of this CONTRACT may be deemed to be a material breach of CITY contracts. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made or penalties assessed except upon a full and fair hearing after notice and an opportunity to be heard have been given to CONSULTANT.
- F. Upon a finding duly made that CONSULTANT has failed to comply with the Equal Employment Practices provisions of a CITY contract, the CONTRACT may be

forthwith canceled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the CITY. In addition thereto, such failure to comply may be the basis for a determination by the awarding authority or the Board of Public Works that the CONSULTANT is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Charter of the City of Los Angeles. In the event of such a determination, CONSULTANT shall be disqualified from being awarded a contract with the CITY for a period of two years, or until CONSULTANT shall establish and carry out a program in conformance with the provisions hereof.

- G. Notwithstanding any other provision of this CONTRACT, the CITY shall have any and all other remedies at law or in equity for any breach hereof.
- H. Intentionally blank.
- I. Nothing contained in this CONTRACT shall be construed in any manner so as to require or permit any act which is prohibited by law.
- J. At the time a supplier registers to do business with the CITY, or when an individual bid or proposal is submitted, CONSULTANT shall agree to adhere to the Equal Employment Practices specified herein during the performance or conduct of CITY Contracts.
- K. Equal Employment Practices shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:
 - 1. Hiring practices;
 - 2. Apprenticeships where such approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;
 - 3. Training and promotional opportunities; and
 - 4. Reasonable accommodations for persons with disabilities.
- L. Any subcontract entered into by CONSULTANT, to the extent allowed hereunder, shall include a like provision for work to be performed under this CONTRACT. Failure of CONSULTANT to comply with this requirement or to obtain the compliance of its SUBCONSULTANTS with all such obligations shall subject CONSULTANT to the imposition of any and all sanctions allowed by law, including but not limited to termination of the CONSULTANT'S CONTRACT with the CITY.

ARTICLE 34 – AFFIRMATIVE ACTION PROGRAM

Unless otherwise exempt, this CONTRACT is subject to the affirmative action program provisions in Section 10.8.4 of the Los Angeles Administrative Code, as amended from

time to time.

- A. During the performance of a CITY contract, CONSULTANT certifies and represents that CONSULTANT and each SUBCONSULTANT hereunder will adhere to an affirmative action program to ensure that in its employment practices, persons are employed and employees are treated equally and without regard to or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
 - 1. This provision applies to work or services performed or materials manufactured or assembled in the United States.
 - 2. Nothing in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.
 - 3. CONSULTANT shall post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.
- B. CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of CONSULTANT, state that all qualified applicants will receive consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
- C. As part of the CITY'S supplier registration process, and/or at the request of the awarding authority or the Office of Contract Compliance, CONSULTANT shall certify on an electronic or hard copy form to be supplied, that CONSULTANT has not discriminated in the performance of CITY contracts against any employee or applicant for employment on the basis or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
- D. CONSULTANT shall permit access to and may be required to provide certified copies of all of its records pertaining to employment and to its employment practices by the awarding authority or the Office of Contract Compliance, for the purpose of investigation to ascertain compliance with the Affirmative Action Program provisions of CITY contracts, and on their or either of their request to provide evidence that it has or will comply therewith.
- E. The failure of any CONSULTANT to comply with the Affirmative Action Program provisions of CITY contracts may be deemed to be a material breach of contract. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made except upon a full and fair hearing after notice and an opportunity to be heard has been given to CONSULTANT.

- F. Upon a finding duly made that CONSULTANT has breached the Affirmative Action Program provisions of a CITY contract, the CONTRACT may be forthwith cancelled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the CITY. In addition thereto, such breach may be the basis for a determination by the awarding authority or the Board of Public Works that the said CONSULTANT is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Los Angeles City Charter. In the event of such determination, such CONSULTANT shall be disqualified from being awarded a contract with the CITY for a period of two years, or until he or she shall establish and carry out a program in conformance with the provisions hereof.
- G. In the event of a finding by the Fair Employment and Housing Commission of the State of California, or the Board of Public Works of the City of Los Angeles, or any court of competent jurisdiction, that CONSULTANT has been guilty of willful violation of the California Fair Employment and Housing Act, or the Affirmative Action Program provisions of a CITY contract, there may be deducted from the amount payable to CONSULTANT by the CITY under the contract, a penalty of ten dollars (\$10.00) for each person for each calendar day on which such person was discriminated against in violation of the provisions of a CITY contract.
- H. Notwithstanding any other provisions of a CITY contract, the CITY shall have any and all other remedies at law or in equity for any breach hereof.
- I. Intentionally blank.
- J. Nothing contained in CITY contracts shall be construed in any manner so as to require or permit any act which is prohibited by law.
- K. CONSULTANT shall submit an Affirmative Action Plan which shall meet the requirements of this chapter at the time it submits its bid or proposal or at the time it registers to do business with the CITY. The plan shall be subject to approval by the Office of Contract Compliance prior to award of the CONTRACT. The awarding authority may also require contractors and suppliers to take part in a pre-registration, pre-bid, pre-proposal, or pre-award conference in order to develop, improve or implement a qualifying Affirmative Action Plan. Affirmative Action Programs developed pursuant to this section shall be effective for a period of twelve months from the date of approval by the Office of Contract Compliance. In case of prior submission of a plan, CONSULTANT may submit documentation that it has an Affirmative Action Plan approved by the Office of Contract Compliance within the previous twelve months. If the approval is 30 days or less from expiration, CONSULTANT must submit a new Plan to the Office of Contract Compliance and that Plan must be approved before the CONTRACT is awarded.
 - 1. Every contract of \$5,000 or more which may provide construction,

demolition, renovation, conservation or major maintenance of any kind shall in addition comply with the requirements of Section 10.13 of the Los Angeles Administrative Code.

2. CONSULTANT may establish and adopt as its own Affirmative Action Plan, by affixing his or her signature thereto, an Affirmative Action Plan prepared and furnished by the Office of Contract Compliance, or it may prepare and submit its own Plan for approval.
- L. The Office of Contract Compliance shall annually supply the awarding authorities of the CITY with a list of contractors and suppliers who have developed Affirmative Action Programs. For each contractor and supplier the Office of Contract Compliance shall state the date the approval expires. The Office of Contract Compliance shall not withdraw its approval for any Affirmative Action Plan or change the Affirmative Action Plan after the date of contract award for the entire contract term without the mutual agreement of the awarding authority and CONSULTANT.
- M. The Affirmative Action Plan required to be submitted hereunder and the pre-registration, pre-bid, pre-proposal or pre-award conference which may be required by the Board of Public Works, Office of Contract Compliance or the awarding authority shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:
1. Apprenticeship where approved programs are functioning and other on-the-job training for non-apprenticeable occupations;
 2. Classroom preparation for the job when not apprenticeable;
 3. Pre-apprenticeship education and preparation;
 4. Upgrading training and opportunities;
 5. Encouraging the use of contractors, subcontractors and suppliers of all racial and ethnic groups, provided, however, that any contract subject to this ordinance shall require the contractor, subcontractor or supplier to provide not less than the prevailing wage, working conditions and practices generally observed in private industries in the contractor's, subcontractor's or supplier's geographical area for such work;
 6. The entry of qualified women, minority and all other journeymen into the industry; and
 7. The provision of needed supplies or job conditions to permit persons with disabilities to be employed, and minimize the impact of any disability.
- N. Any adjustments which may be made in the contractor's or supplier's work force

to achieve the requirements of the CITY'S Affirmative Action Contract Compliance Program in purchasing and construction shall be accomplished by either an increase in the size of the work force or replacement of those employees who leave the work force by reason of resignation, retirement or death and not by termination, layoff, demotion or change in grade.

- O. Affirmative Action Agreements resulting from the proposed Affirmative Action Plan or the pre-registration, pre-bid, pre-proposal or pre-award conferences shall not be confidential and may be publicized by the contractor at his or her discretion. Approved Affirmative Action Agreements become the property of the CITY and may be used at the discretion of the CITY in its Contract Compliance Affirmative Action Program.
- P. Intentionally blank.
- Q. All CONTRACTORS subject to the provisions of this section shall include a like provision in all subcontracts awarded for work to be performed under the CONTRACT with the CITY and shall impose the same obligations, including but not limited to filling and reporting obligations, on the subcontractors as are applicable to the CONTRACTOR. Failure of the CONTRACT to comply with this requirement or to obtain the compliance of its subcontractors with all such obligations shall subject to CONTRACTOR to the imposition of any and all sanctions allowed by law, including but not limited to termination of the CONTRACTOR'S CONTRACT with the CITY.

ARTICLE 35 – CHILD SUPPORT ASSIGNMENT ORDERS

This CONTRACT is subject to the Child Support Assignment Orders Ordinance, Section 10.10 of the Los Angeles Administrative Code, as amended from time to time. Pursuant to the Child Support Assignment Orders Ordinance, CONSULTANT will fully comply with all applicable State and Federal employment reporting requirements for CONSULTANT'S employees. CONSULTANT shall also certify (1) that the Principal Owner(s) of CONSULTANT are in compliance with any Wage and Earnings Assignment Orders and Notices of Assignment applicable to them personally; (2) that CONSULTANT will fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment in accordance with Section 5230, et seq. of the California Family Code; and (3) that CONSULTANT will maintain such compliance throughout the term of this CONTRACT.

Pursuant to Section 10.10(b) of the Los Angeles Administrative Code, the failure of CONSULTANT to comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignment Orders or Notices of Assignment, or the failure of any Principal Owner(s) of CONSULTANT to comply with any Wage and Earnings Assignment Orders or Notices of Assignment applicable to them personally, shall constitute a default by the CONSULTANT under this CONTRACT, subjecting this

CONTRACT to termination if such default shall continue for more than ninety (90) days after notice of such default to CONSULTANT by the CITY.

Any subcontract entered into by CONSULTANT, to the extent allowed hereunder, shall include a like provision for work to be performed under this CONTRACT. Failure of CONSULTANT to obtain compliance of its SUBCONSULTANTS shall constitute a default by CONSULTANT under this CONTRACT, subjecting this CONTRACT to termination where such default shall continue for more than ninety (90) days after notice of such default to CONSULTANT by the CITY.

CONSULTANT certifies that, to the best of its knowledge, it is fully complying with the Earnings Assignment Orders of all employees, and is providing the names of all new employees to the New Hire Registry maintained by the Employment Development Department as set forth in Section 7110(b) of the California Public Contract Code.

ARTICLE 36 – LIVING WAGE ORDINANCE AND SERVICE CONTRACTOR WORKER RETENTION ORDINANCE

A. Unless otherwise exempt in accordance with the provisions of this Ordinance, this AGREEMENT is subject to the applicable provisions of the Living Wage Ordinance (LWO), Section 10.37 et seq. of the Los Angeles Administrative Code, as amended from time to time, and the Service Contractor Worker Retention Ordinance (SCWRO), Section 10.36 et seq., of the Los Angeles Administrative Code, as amended from time to time. These Ordinances require the following:

1. The CONSULTANT assures payment of a minimum initial wage rate to employees as defined in the LWO and as may be adjusted each July 1 and provision of benefits of compensated and uncompensated days off and health benefits, as defined in the LWO.
2. The CONSULTANT further pledges that it will comply with federal law proscribing retaliation for union organizing and will not retaliate for activities related to the LWO. CONSULTANT shall require each of its SUBCONSULTANTS within the meaning of the LWO to pledge to comply with the terms of federal law proscribing retaliation for union organizing. CONSULTANT shall receive and retain on file the executed pledges from each such SUBCONSULTANT within ninety (90) days of the execution of the Subcontract. CONSULTANT’S evidence of executed pledges from each such SUBCONSULTANT shall fully discharge the obligation of the CONSULTANT to comply with the provision in the LWO contained in Section 10.37.6(c) concerning compliance with such federal law.
3. The CONSULTANT, whether an employer, as defined in the LWO, or any other person employing individuals, shall not discharge, reduce in compensation, or otherwise discriminate against any employee for

complaining to the CITY with regard to the employer's compliance or anticipated compliance with the LWO, for opposing any practice proscribed by the LWO, for participating in proceedings related to the LWO, for seeking to enforce his or her rights under the LWO by any lawful means, or otherwise asserting rights under the LWO. CONSULTANT shall post the Notice of Prohibition Against Retaliation provided by the CITY.

4. Any Subcontract entered into by the CONSULTANT relating to this AGREEMENT, to the extent allowed hereunder, shall be subject to the provisions of LWO and the SCWRO, and shall incorporate the LWO and the SCWRO.
 5. The CONSULTANT shall comply with all rules, regulations and policies promulgated by the CITY'S Designated Administrative Agency, which may be amended from time to time.
- B. Under the provisions of Section 10.36.3(c) and Section 10.37.6(c) of the Los Angeles Administrative Code, the CITY shall have the authority, under appropriate circumstances, to terminate this AGREEMENT and otherwise pursue legal remedies that may be available if the CITY determines that the subject CONSULTANT has violated provisions of the LWO and the SCWRO or both.
- C. Where under the LWO Section 10.37.6(d), the CITY'S Designated Administrative Agency has determined (a) that the CONSULTANT is in violation of the LWO in having failed to pay some or all of the living wage, and (b) that such violation has gone uncured, the CITY in such circumstances may impound monies otherwise due the CONSULTANT in accordance with the following procedures. Impoundment shall mean that from monies due the CONSULTANT, the CITY may deduct the amount determined to be due and owing by the CONSULTANT to its employees. Such monies shall be placed in the holding account referred to in LWO Section 10.37.6(d) (3) and disposed of under procedures there described through final and binding arbitration. Whether the CONSULTANT is to continue work following an impoundment shall remain in the sole discretion of the CITY. The CONSULTANT may not elect to discontinue work either because there has been an impoundment or because of the ultimate disposition of the impoundment by the arbitrator.
- D. The AGREEMENT shall inform employees making less than Twelve Dollars (\$12.00) per hour of their possible right to the federal Earned Income Credit (EIC). CONSULTANT shall also make available to employees the forms informing them about the EIC and forms required to secure advance EIC payments from CONSULTANT.

ARTICLE 37 – AMERICANS WITH DISABILITIES ACT

The CONSULTANT hereby certifies that it will comply with the Americans with Disabilities Act 42 U.S.C. Section 12101 et seq. and its implementing regulations. The CONSULTANT will provide reasonable accommodations to allow qualified individuals with disabilities to have access to and to participate in its programs, services and activities in accordance with the provisions of the Americans with Disabilities Act. The CONSULTANT will not discriminate against persons with disabilities nor against persons due to their relationship to or association with a person with a disability. Any subcontract entered into by the CONSULTANT, relating to this AGREEMENT, to the extent allowed hereunder, shall be subject to the provisions of this paragraph.

ARTICLE 38 – CONTRACTOR RESPONSIBILITY ORDINANCE

Unless otherwise exempt, this CONTRACT is subject to the provisions of the Contractor Responsibility Ordinance, Section 10.40 et seq., of the Los Angeles Administrative Code, as amended from time to time, which requires CONSULTANT to update its responses to the responsibility questionnaire within thirty (30) CALENDAR DAYS after any change to the responses previously provided if such change would affect CONSULTANT'S fitness and ability to continue performing this CONTRACT.

In accordance with the provisions of the Contractor Responsibility Ordinance, by signing this CONTRACT, CONSULTANT pledges, under penalty of perjury, to comply with all applicable federal, state and local laws in the performance of this CONTRACT, including but not limited to, laws regarding health and safety, labor and employment, wages and hours, and licensing laws which affect employees. CONSULTANT further agrees to: (1) notify the CITY within thirty (30) CALENDAR DAYS after receiving notification that any government agency has initiated an investigation which may result in a finding that CONSULTANT is not in compliance with all applicable federal, state and local laws in performance of this CONTRACT; (2) notify the CITY within thirty (30) CALENDAR DAYS of all findings by a government agency or court of competent jurisdiction that CONSULTANT has violated the provisions of Section 10.40.3(a) of the Contractor Responsibility Ordinance; (3) unless exempt, ensure that its SUBCONSULTANT(S), as defined in the Contractor Responsibility Ordinance, submit a Pledge of Compliance to the CITY; and (4) unless exempt, ensure that its SUBCONSULTANT(S), as defined in the Contractor Responsibility Ordinance, comply with the requirements of the Pledge of Compliance and the requirement to notify the CITY within thirty (30) CALENDAR DAYS after any government agency or court of competent jurisdiction has initiated an investigation or has found that the subcontractor has violated Section 10.40.3(a) of the Contractor Responsibility Ordinance in performance of the subcontract.

ARTICLE 39 – LOS ANGELES BUSINESS INCLUSION PROGRAM

CONSULTANT agrees and obligates itself to utilize the services of Minority, Women, Small, Emerging, Disabled Veteran and Other Business Enterprise

(MBE/WBE/SBE/EBE/DVBE/OBE) firms on a level so designated in its proposal, if any. CONSULTANT certifies that it has complied with Mayoral Executive Directive 14 regarding the Outreach Program for Personal Services Contracts (if applicable). CONSULTANT shall not change any of these designated subconsultants, nor shall CONSULTANT reduce their level of effort, without prior written approval of the CITY, provided that such approval shall not be unreasonably withheld.

CONSULTANT agrees and obligates itself to submit a signed MBE/WBE/SBE/EBE/DVBE/OBE Utilization Profile, provided herein as [**Exhibit C**], for each invoice as described in Article 10, listing current MBE/WBE/SBE/EBE/DVBE/OBE amounts invoiced as part of the invoicing procedures.

ARTICLE 40 – EQUAL BENEFITS ORDINANCE

Unless otherwise exempt, this CONTRACT is subject to the provisions of the Equal Benefits Ordinance (EBO), Section 10.8.2.1 of the Los Angeles Administrative Code, as amended from time to time.

- A. During the performance of the CONTRACT, the CONSULTANT certifies and represents that the CONSULTANT will comply with the EBO.
- B. The failure of the CONSULTANT to comply with the EBO will be deemed to be a material breach of this CONTRACT by the CITY.
- C. If the CONSULTANT fails to comply with the EBO, the CITY may cancel, terminate or suspend this CONTRACT, in whole or in part, and all monies due or to become due under this CONTRACT may be retained by the CITY. The CITY may also pursue any and all other remedies at law or in equity for any breach.
- D. Failure to comply with the EBO may be used as evidence against CONSULTANT in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40 et seq., Contractor Responsibility Ordinance.
- E. If the CITY'S Designated Administrative Agency determines that a CONSULTANT has set up or used its contracting entity for the purpose of evading the intent of the EBO, the CITY may terminate the CONTRACT. Violation of this provision may be used as evidence against CONSULTANT in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40 et seq., Contractor Responsibility Ordinance.

The CONSULTANT shall post the following statement in conspicuous places at its place of business available to employees and applicants for employment:

"During the performance of a Contract with the City of Los Angeles, the Contractor will provide equal benefits to its employees with spouses and its employees with domestic partners. Additional information about the City of Los

Angeles' Equal Benefits Ordinance may be obtained from the Department of Public Works, Office of Contract Compliance at (213) 847-2625."

ARTICLE 41 – SLAVERY DISCLOSURE ORDINANCE

Unless otherwise exempt in accordance with the provisions of this Ordinance, this AGREEMENT is subject to the Slavery Disclosure Ordinance, Section 10.41 of the Los Angeles Administrative Code, as may be amended from time to time. CONSULTANT certifies that it has complied with the applicable provisions of this Ordinance. Failure to fully and accurately complete the affidavit may result in termination of this AGREEMENT.

ARTICLE 42 – CONTRACTOR PERFORMANCE EVALUATION ORDINANCE

At the end of this AGREEMENT, the CITY will conduct an evaluation of the CONSULTANT'S performance. The CITY may also conduct evaluations of the CONSULTANT'S performance during the term of the AGREEMENT. As required by Section 10.39.2 of the Los Angeles Administrative Code, evaluations will be based on a number of criteria, including the quality of the work product or service performed, the timeliness of performance, financial issues, and the expertise of personnel that the CONSULTANT assigns to the AGREEMENT. A Contractor who receives a "Marginal" or "Unsatisfactory" rating will be provided with a copy of the final CITY evaluation and allowed fourteen (14) CALENDAR DAYS to respond. The CITY will use the final CITY evaluation, and any response from the CONSULTANT, to evaluate proposals and to conduct reference checks when awarding other service contracts.

ARTICLE 43 – MUNICIPAL LOBBYING ORDINANCE

Any Contractor for the CITY shall submit a certification, on a form prescribed by the City Ethics Commission, that the CONSULTANT acknowledges and agrees to comply with the disclosure requirements and prohibitions established in the Los Angeles Municipal Lobbying Ordinance, **Exhibit M**, if the CONSULTANT qualifies as a lobbying entity under the Ordinance. The exemptions contained in Los Angeles Administrative Code Section 10.40.4 shall not apply to this subsection.

ARTICLE 44 – FIRST SOURCE HIRING ORDINANCE

Unless otherwise exempt in accordance with the provisions of this Ordinance, this CONTRACT is subject to the applicable provisions of the First Source Hiring Ordinance (FSHO), Section 10.44 et seq. of the Los Angeles Administrative Code, as amended from time to time.

CONSULTANT shall, prior to the execution of the CONTRACT, provide to the Designated Administrative Agency (DAA) a list of anticipated employment opportunities that CONSULTANT estimate they will need to fill in order to perform the services under the CONTRACT. The Department of Public Works Office of Contract Compliance is the DAA.

CONSULTANT further pledges that it will, during the term of the CONTRACT, shall a) At least seven (7) business days prior to making an announcement of a specific employment opportunity, provide notifications of that employment opportunity to the Community Development Department (CDD), which will refer individuals for interview; b) Interview qualified individuals referred by CDD; and c) Prior to filling any employment opportunity, the CONSULTANT shall inform the DAA of the names of the Referral Resources used, the names of the individuals they referred, the names of the referred individuals who the CONSULTANT interviewed and the reasons why referred individuals were not hired.

Any Subcontract entered into by the CONSULTANT relating to this AGREEMENT, to the extent allowed hereunder, shall be subject to the provisions of FSHO, and shall incorporate the FSHO.

CONSULTANT shall comply with all rules, regulations and policies promulgated by the designated administrative agency, which may be amended from time to time.

Where under the provisions of Section 10.44.13 of the Los Angeles Administrative Code the Designated Administrative Agency has determined that the CONSULTANT intentionally violated or used hiring practices for the purpose of avoiding the article, the determination must be documented in the Awarding Authority's Contractor Evaluation, required under Los Angeles Administrative Code Section 10.39 et seq., and must be documented in each of the CONSULTANT'S subsequent Contractor Responsibility Questionnaires submitted under Los Angeles Administrative Code Section 10.40 et seq. This measure does not limit the CITY'S authority to act under this article.

Under the provisions of Section 10.44.8 of the Los Angeles Administrative Code, the Awarding Authority shall, under appropriate circumstances, terminate this CONTRACT and otherwise pursue legal remedies that may be available if the Designated Administrative Agency determines that the subject CONSULTANT has violated provisions of the FSHO.

ARTICLE 45 – COMPLIANCE WITH LOS ANGELES CITY CHARTER SECTION 470(c)(12) FOR MEASURE H/CONTRACTOR CONTRIBUTIONS/FUNDRAISING

The CONSULTANT, Subcontractors, and their Principals are obligated to fully comply with City of Los Angeles Charter Section 470(c)(12) and related ordinances, regarding limitations on campaign contributions and fundraising for certain elected CITY officials or candidates for elected CITY office if the contract is valued at \$100,000 or more and requires approval of a CITY elected official. Additionally, CONSULTANT is required to provide and update certain information to the CITY as specified by law. Any CONSULTANT subject to Charter Section 470(c)(12), shall include the following notice in any contract with a subcontractor expected to receive at least \$100,000 for performance under this contract:

Notice Regarding Los Angeles Campaign Contribution and Fundraising

Restrictions

As provided in Charter Section 470(c)(12) and related ordinances, you are subcontractor on City of Los Angeles contract #_____. Pursuant to City Charter Section 470(c)(12), subcontractor and its principals are prohibited from making campaign contributions and fundraising for certain elected City officials or candidates for elected City office for 12 months after the City contract is signed. Subcontractor is required to provide to contractor names and addresses of the subcontractor's principals and contact information and shall update that information if it changes during the 12 month time period. Subcontractor's information included must be provided to contractor within 5 business days. Failure to comply may result in termination of contract or any other available legal remedies include fines. Information about the restrictions may be found at the City Ethics Commission's website at <http://ethics.lacity.org/> or by calling 213/978-1960.

CONSULTANT, Subcontractors, and their Principals shall comply with these requirements and limitations. Violation of this provision shall entitle the CITY to terminate this AGREEMENT and pursue any and all legal remedies that may be available.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT on the day and year written below.

CITY OF LOS ANGELES

**TRC SOLUTIONS INC.
(A Wholly-Owned Subsidiary
of TRC Companies Inc.)**

By: *Kevin James*

By: *Dain Zick*

Title: Commissioner, Board of Public Works

Title: SR. Vice President

Date: *JUL 23 2014*

Date: *2/25/2014*

By: _____

Title: Commissioner, Board of Public Works

Date: _____

APPROVED AS TO FORM

MICHAEL N. FEUER, City Attorney

By: *[Signature]*

John A. Carvalho

Title: Deputy City Attorney

Date: *2/27/14*

ATTEST:

Holly L. Wolcott Interim
~~JUNE LAGMAY~~, City Clerk

By: *Veronica Warner*



C-124330

Title: Deputy City Clerk

Date: *8/4/14*