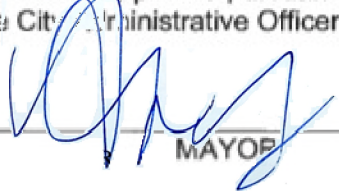


TRANSMITTAL			0150-11032-0000
TO The City Council		DATE 11/01/17	COUNCIL FILE NO. 10-1627
FROM The Mayor			COUNCIL DISTRICT Various
Proposed First Amendment to the First Supplemental Agreement with WageWorks, Inc. (C-125997) to Provide Administrator Services for Tax-Advantaged Flexible Savings Account Plans and Commuter Benefit Program Spending Accounts Transmitted for your consideration. The Council has 60 days from the date of receipt to act, otherwise the contract will be deemed approved pursuant to Administrative Code Section 10.5(a). See the City Administrative Officer report attached.  _____ MAYOR (Ana Guerrero)			
RHL-LC:11180021			

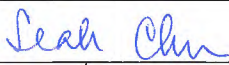
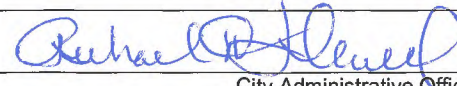
Report From
OFFICE OF THE CITY ADMINISTRATIVE OFFICER
Analysis of Proposed Contract
(\$25,000 or Greater and Longer than Three Months)

To: The Mayor	Date: 10-31-17	C.D. No. All	CAO File No.: 0150-11032-0000
Contracting Department/Bureau: Personnel Department		Contact: Daisy Tam 213-978-1666	
Reference: Transmittal from the Personnel Department dated October 5, 2017; referred for report on October 11, 2017.			
Purpose of Contract: To provide administrator services for the City of Los Angeles' Flexible Savings Account Plans and Commuter Benefit Program spending accounts.			
Type of Contract: () New contract (X) Amendment, Contract No. C-125997		Contract Term Dates: January 1, 2013 through December 31, 2018	
Contract/Amendment Amount: Administrative fee of \$3 per participant per month			
Proposed amount \$ + Prior award(s) \$ = Administrative fee paid in accordance with the compensation schedule established in the contract and the number of participants			
Source of funds: Department No. 61; No City Funds – Fees collected from Plan participants to pay contract expenses.			
Name of Contractor: WageWorks, Inc.			
Address: 1100 Park Place, 4 th Floor, San Mateo, CA 94403			
	Yes	No	N/A
1. Council has approved the purpose	X		
2. Appropriated funds are available			X
3. Charter Section 1022 findings completed	X		
4. Proposals have been requested	X		
5. Risk Management review completed	X		
6. Standard Provisions for City Contracts included	X		
7. Workforce that resides in the City: 0 % * Applicable to contracts of \$1,000,000 or more			
8. Business Inclusion Program	X		
9. Equal Benefits Ordinance		X	
10. First Source Hiring Ordinance		X	
11. Contractor Responsibility Ordinance		X	
12. Slavery Disclosure Ordinance		X	
13. Bidder Certification CEC Form 50		X	
14. Prohibited Contributors (Bidders) CEC Form 55		X	
15. CA Iran Contracting Act of 2010*			X
16. Arizona Policy			X

RECOMMENDATIONS

That the City Council:

- 1) Approve, and authorize the General Manager of the Personnel Department to execute, the First Amendment to the First Supplemental Agreement to Contract No. C-125997 with WageWorks, Inc. (Contractor), to extend the term of the contract by one year for a new term effective January 1, 2013 through December 31, 2018 to provide administrator services for the City of Los Angeles' Flexible Savings Account Plans and Commuter Benefit Program spending accounts, subject to the review of the City Attorney; and
- 2) Instruct the Department to coordinate with the Bureau of Contract Administration for the verification of the contract compliance documentation submitted through the Los Angeles Business Virtual Network and ensure receipt of all contract compliance documentation, prior to executing the First Amendment to the First Supplemental Agreement.

	
LC Analyst 11180021	City Administrative Officer

SUMMARY

The Personnel Department (Department) requests authority to execute the First Amendment to the First Supplemental Agreement (Amendment) to Contract No. C-125997 with WageWorks Inc. to provide administrator services for the City of Los Angeles tax-advantaged Flexible Savings Account (FSA) Plans and the Commuter Benefit Program spending accounts. The City's FSA Program consists of a Healthcare FSA (HCFSA) and a Dependent Care FSA (DCFSA). The City's Commuter Benefit Program consists of a Transit Spending Account and a Parking Spending Account. The Amendment extends the term of the contract by one year through December 31, 2018 and expands the scope of work to include the provision of mandated annual nondiscrimination testing for the HCFSA and DCFSA at no additional cost to the City or the participants. This nondiscrimination testing is required pursuant to Internal Revenue Service guidelines. Participants will continue to pay a maximum monthly administrative fee of \$3. The City does not contribute any funds to administer these accounts.

On March 2, 2017, the Department released a Request for Proposals (RFP) for tax-advantaged spending accounts services and received two proposals by the RFP deadline of April 10, 2017. One of the two proposers was deemed unresponsive. On May 23, 2017, the Joint Labor-Management Benefits Committee approved the Department's recommendation to cancel the RFP process because having only one responsive proposer limited the City's ability to negotiate favorable terms. In order to meet the City's October 2017 Open Enrollment period deadlines, a successor contractor had to be in place by July 2017. The Department did not have sufficient time to rebid, review, and award another RFP by July 2017. Therefore, an amendment to extend the term of the First Supplemental Agreement is necessary for the Department to complete a new competitive process and transition to a new contractor, if necessary.

The Contractor submitted Equal Benefits Ordinance, First Source Hiring Ordinance, Non-discrimination/Equal Employment Practices Provisions, and Slavery Disclosure Ordinance compliance documentation through the Los Angeles Business Virtual Network. However, these documents have not yet been verified. It is recommended that the Department work with the Bureau of Contract Administration to have these documents verified prior to executing the First Amendment to the First Supplemental Agreement. The Department must also ensure that other contract compliance documentation such as the Bidder Certification CEC Form 50 and Prohibited Contributors CEC Form 55 have been requested from the Contractor.

In accordance with Charter Section 1022, the Personnel Department determined that there are no classifications of City employees that can perform these services. In accordance with Los Angeles Administrative Code Section 10.5, City Council approval of the proposed Amendment is required because the cumulative term of the contract exceeds five years.

FISCAL IMPACT STATEMENT

There is no fiscal impact to the General Fund associated with the recommendations provided in this report. All costs of administering the Flexible Savings Account Plans and Commuter Benefit Program spending accounts are funded solely by participant fees.

Attachment

BOARD OF CIVIL SERVICE
COMMISSIONERS

Room 360, PERSONNEL BUILDING

JONATHAN M. WEISS
PRESIDENT

JEANNE A. FUGATE
VICE PRESIDENT

COMMISSIONERS:
GABRIEL J. ESPARZA
NANCY P. McCLELLAND
RAUL PÉREZ

BRUCE WHIDDEN
COMMISSION EXECUTIVE DIRECTOR

CITY OF LOS ANGELES
CALIFORNIA



ERIC GARCETTI
MAYOR

PERSONNEL DEPARTMENT

PERSONNEL BUILDING
700 EAST TEMPLE STREET
LOS ANGELES, CA 90012

Wendy G. Macy
GENERAL MANAGER

October 5, 2017

Honorable Eric Garcetti
Mayor, City of Los Angeles
Room 303, City Hall
Los Angeles, CA 90012

Attention: Mandy Morales, Legislative Coordinator

Subject: **REQUEST FOR REVIEW OF PROPOSED FIRST AMENDMENT TO THE
FIRST SUPPLEMENTAL AGREEMENT TO CONTRACT NO. C-125997
WITH WAGeworks INC.**

In accordance with Executive Directive No. 3, attached for your review and approval is a draft First Amendment to the First Supplemental Agreement to Contract No. C-125997 with WageWorks Inc. (WageWorks) to provide administrative services for two tax-advantaged Flexible Savings Account (FSA) Plans the City offers for tax savings on eligible expenses, consisting of a Healthcare Flexible Spending Account (HCFSA), a Dependent Care Flexible Savings Account (DCFSA), and a Commuter Benefit Program, consisting of a Transit Spending Account (TSA) and Parking Spending Account (PSA).

The current contract with WageWorks will expire on December 31, 2017. A First Amendment to the First Supplemental Agreement is required to extend the term of the contract through December 31, 2018 to provide time to (1) solicit competitive proposals for services, (2) provide services through Open Enrollment and implementation of the 2018 Plan Year, and (3) provide sufficient time for transition in the event a new service provider is selected. On May 23, 2017, the Joint Labor Management Benefits Committee (JLMBC) approved a recommendation to the General Manager of the Personnel Department to extend the term of the contract through December 31, 2018, subject to the approval of the City Council.

Background

In accordance with Los Angeles Administrative Code Section 4.303, the JLMBC recommends, and the Personnel Department maintains and administers, on behalf of the City of Los Angeles, suitable employee benefits programs, as authorized by the City Council, for officers and employees of the City of Los Angeles. The Personnel Department has authority to enter into contracts to assist in its provision of the City's Civilian Benefits Program, including administrative services for the HCFSA, DCFSA,

TSA, and PSA. The Personnel Department entered into a contract with WageWorks for these services on January 1, 2013 with two one-year options to renew, following a competitive search process. Both renewal options were subsequently exercised for a contract term effective January 1, 2013 through December 31, 2015. In August 2015, the City Council approved extension of the term of the contract by two additional years for a new two-year term effective January 1, 2016 to December 31, 2017.

Basis for First Amendment to the First Supplemental Agreement

On March 2, 2017, the Personnel Department released a Request for Proposal (RFP) for Tax-Advantaged Spending Accounts services with a deadline for vendors to respond by April 10, 2017. The City received two proposals in response to the RFP. Of the two proposals, one proposal failed the RFP Part B compliance review, resulting in disqualification of the proposal from further evaluation and leaving the City with one remaining proposal to consider for the provision of services. The Department determined that the consideration of one proposal is contrary to the interests of the City in considering a wider array of providers and negotiating the most favorable contractual terms.

Insufficient time exists to re-issue the RFP, conduct a review process, and make a selection for the 2018 Plan Year. All final decisions for 2018 relative to plan design and service provider selection were required to be made no later than July 2017 in order to meet the recordkeeping/programming, administrative, and communications deadlines for the October Open Enrollment period. As such, at its May 23, 2017 meeting, the JLMBC approved a recommendation to the General Manager of the Personnel Department to cancel the RFP process and extend the term of the current contract through

December 31, 2018, subject to the approval of the City Council.

Staff anticipates that the RFP will be presented to the JLMBC for review and approval at its October 2017 meeting and released shortly thereafter.

Under the terms of the current contract, WageWorks provides the following services, including but not limited to:

- Providing service administration of tax-advantaged spending accounts for City employees;
- Developing and implementing strategies to increase employee participation in the spending account options;
- Communicating with and assisting members in navigating benefits and service complexity; and
- Providing support services that effectively integrate with the City's LAwell Civilian Benefits Program and engage its membership.

The First Amendment to the First Supplemental Agreement extends the term of the contract with WageWorks through December 31, 2018, incorporates the updated Standard Provisions, Rev. 01/17, and includes a new provision under the Scope of

Services for WageWorks to provide annual nondiscrimination testing for the HCFSA and DCFSA accounts. The IRS requires that Section 125 FSA Plans (the City's Civilian Benefits Program is a Section 125 Plan) be nondiscriminatory, such that it does not discriminate in favor of "Highly compensated individuals" or "Key employees" regarding eligibility for pre-tax contributions and actual benefits provided. To ensure that a plan is compliant, it must perform and pass a series of nondiscrimination tests each year. WageWorks has agreed to perform the series of tests included in the "Comprehensive Testing Bundle" at no cost to the City. The specific tests to be performed shall be determined by the City and its benefits consultant.

WageWorks has agreed to maintain the current fee structure with no increase in rates.

Contract Compliance

WageWorks's (Contractor) compliance documentation status is as follows:

The Contractor's Affirmative Action Plan, Equal Employment Practice, Equal Benefits, Slavery Disclosure, and First Source Hiring Ordinance affidavits are current.

Per Charter Section 1022, the Personnel Department, Classifications Division determined that the City does not have classifications that possess the knowledge and expertise to perform the work proposed to be contracted.

The Contractor's insurance certificate is current.

The Contractor's address is as follows:

Representative of Contractor Address: 1100 Park Place, 4th Floor
San Mateo, California 94403

This First Amendment to the First Supplemental Agreement to Contract No. C-125997 has been reviewed by the City Attorney as to form and language.

Fiscal Impact

There is no impact on the General Fund. All costs of administering the tax-advantaged spending accounts are covered by participant fees.

Recommendation

That the General Manager of the Personnel Department, or designee, on behalf of the JLMBC, be authorized to negotiate and execute a First Amendment to the First Supplemental Agreement to Contract No. C-125997 with WageWorks, for administrative services of the City's Tax Savings Plans, to provide annual nondiscrimination testing of the City's Healthcare Flexible Spending and Dependent Care Reimbursement Accounts at no cost to the City, and to extend the term of the contract for a revised contract term effective January 1, 2013 to December 31, 2018 subject to the review and approval of the City Attorney.

Please contact Sherry Cox at (213) 473-9122 with any additional questions.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'Wendy G. Macy', written over the closing 'submitted,'.

Wendy G. Macy
General Manager

Attachments

cc: Leah Chu, CAO

**FIRST AMENDMENT TO THE FIRST SUPPLEMENTAL AGREEMENT TO THE
PROFESSIONAL SERVICES AGREEMENT (CONTRACT NO. C-125997)
BETWEEN THE CITY OF LOS ANGELES
AND
WAGeworks, INC.**

This FIRST AMENDMENT TO THE FIRST SUPPLEMENTAL AGREEMENT to the Professional Services Agreement (City Contract No. C-125997) is made and entered into by and between the City of Los Angeles, a municipal corporation acting through its Personnel Department (hereafter referred to as "**City**") and WageWorks, Inc., a Delaware corporation (hereinafter referred to as "**Contractor**"), with reference to the following:

RECITALS

1. Effective January 1, 2013, the City and Contractor entered into the Professional Services Agreement (City Contract No. C-125997) ("Agreement"), wherein Contractor became a provider of two tax-advantaged Flexible Saving Account ("FSA") Plans the City offers for tax savings on eligible expenses, consisting of a Healthcare Flexible Spending Account ("HCFSA"), a Dependent Care Flexible Savings Account ("DCFSA"), and a Commuter Benefit Program which consists of a Transit Spending Account ("TSA") and Parking Spending Account ("PSA") (collectively "the Tax Savings Plans") to the City for the term commencing January 1, 2013 through December 31, 2015;
2. Effective January 1, 2016, the City and Contractor executed a First Supplemental Agreement to the Agreement, which is attached hereto as Attachment No. 1, to continue services for the period of January 1, 2016 through December 31, 2017 under the same terms and conditions of the Agreement, except as otherwise stated therein;
3. The term of the First Supplemental Agreement ends on December 31, 2017, but the City has a continuing need for the Tax Savings Plans provided by Contractor and the parties have agreed to enter into a First Amendment to the First Supplemental Agreement to City Contract No. C-125997 for the provision of the Tax Savings Plans for the period of January 1 through December 31, 2018 and to revise the Scope of Services;
4. The Joint Labor-Management Benefits Committee ("JL-MBC"), at its May 23, 2017 meeting, adopted a motion recommending to the City Council that Contractor's provision of the Tax Savings Plans be extended for Plan Year January 1, 2018 to December 31, 2018 and to revise the Scope of Services;
5. Pursuant to Los Angeles Administrative Code Division 4, Chapter 7, Article 5 and Division 10, Chapter 1, Article 1, the City, with City Council approval on X, 2017, agreed to execute an amendment to the First Supplemental Agreement to extend the term thereof for the period of January 1 to December 31, 2018, and to revise the Scope of Services;

6. The City and Contractor agree to extend the time of performance for the provision of the Tax Savings Plans for the period commencing January 1 through December 31, 2018, under the same terms and conditions as are contained in the First Supplemental Agreement, except as otherwise provided herein; and
7. The City and Contractor agree that the compensation payable for the Tax Savings Plans services for the additional year shall be at the same rate as set forth in the Agreement.

NOW THEREFORE, City and Contractor, in consideration of the promises and of the recitals, terms and conditions, and representations below, agree as follows:

1. Paragraph 2 of the First Supplemental Agreement is revised to read as follows:

The term of this First Supplemental Agreement will be from January 1, 2016 through December 31, 2018 ("Term").

2. Article II, Section C of the Agreement is hereby amended to read in its entirety as follows:

C. Scope of Services

Contractor, during the Term, shall perform the services set forth in the Scope of Work, which consists of the administration of (i) the Commuter Benefit Program as set forth in Exhibit B, which is attached hereto and incorporated herein by reference, and which consists of the TSA and PSA, (ii) the HCFSA and DCFSA as set forth in Exhibit C, which is attached hereto and incorporated herein by reference, and (iii) the Nondiscrimination Testing as set forth in Exhibit E, which is attached hereto and incorporated herein by reference.

3. The list of ATTACHMENTS on the Table of Contents of the Agreement is hereby amended to (i) delete "Exhibit A – Standard Provisions for City Contracts (Rev. 06/14)" and replace it with "Exhibit A – Standard Provisions for City Contracts (Rev. 01/17)" and (ii) add "Exhibit E – Nondiscrimination Testing."
4. Article I, Section A of the Agreement is hereby deleted and replaced with the following:

Terms of Agreement

This Agreement, including all exhibits and attachments, and specifically the Standard Provisions for City Contracts (Rev. 01/17) in their entirety, which is attached hereto as Exhibit A and incorporated herein, shall constitute the terms of this Agreement.

5. Exhibit A to the Agreement, entitled "Standard Provisions for City Contracts (Rev. 06/14)" is hereby deleted and replaced with "Standard Provisions for City Contracts (Rev. 01/17)," which is attached hereto as Attachment No. 2 and incorporated herein by reference.

6. A new Exhibit E to the Agreement entitled "Nondiscrimination Testing," which is attached hereto as Attachment No. 3 and incorporated herein, is hereby add to the Agreement after Exhibit D.
7. In the event of any inconsistency between the provisions of this First Amendment to the First Supplemental Agreement and the attachments and exhibits attached thereto, said inconsistency shall be resolved by giving precedence in the following order, except as required by applicable ordinances and law:
 1. The body of this First Amendment to the First Supplemental Agreement;
 2. The body of the First Supplemental Agreement;
 3. The body of City Contract No. C-125997;
 4. Standard Provisions for City Contracts (Rev. 1/17);
 5. The other attachments/exhibits to the Agreement
8. This First Amendment to the First Supplemental Agreement shall take effect upon the occurrence of all of the following events:
 - a. This First Amendment to the First Supplemental Agreement has been signed on behalf of the Contractor by the person or persons authorized to bind the Contractor hereto;
 - b. This First Amendment to the First Supplemental Agreement has been approved by the City's Council and by the board, officer and employee authorized to give such approval;
 - c. The Office of the City Attorney has indicated in writing its approval of this First Amendment to the First Supplemental Agreement as to form; and
 - d. This First Amendment to the First Supplemental Agreement has been signed on behalf of the City by the person designated to so sign by the City's Council or by the board, officer or employee authorized to enter into this First Amendment to the First Supplemental Agreement.

(SIGNATURE PAGE FOLLOWS)

IN WITNESS THEREOF, the parties, intending to create a document under seal effective on the Effective Date, have caused this First Amendment to the First Supplemental Agreement to be executed by their duly authorized representatives.

THE CITY OF LOS ANGELES

WAGeworks, INC.

By: _____
WENDY G. MACY
General Manager
Personnel Department

By: _____
EDWARD TAFFET
Vice President
Legal Affairs

Date: _____

Date: _____

APPROVED AS TO FORM:

ATTEST:

MICHAEL N. FEUER, City Attorney

HOLLY L. WOLCOTT, City Clerk

By: _____
Curtis S. Kidder
Assistant City Attorney
Office of the City Attorney

By: _____
Deputy City Clerk

Date: _____

Date: _____

* Approved Signature Methods:

- 1) Two signatures: One of the Chairman of the Board of Directors, President, or Vice-President, and one of the Secretary, Assistant Secretary, Chief Financial Officer, or Assistant Treasurer.
- 2) One signature of a Corporate-designated individual together with a properly attested resolution of the Board of Directors authorizing the individual to sign.

City Business License Number: _____

Internal Revenue Service Taxpayer Identification Number: _____

Agreement Number: C-125997

CONTRACT SUMMARY SHEET

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

DATE: June 8, 2016

FROM (DEPARTMENT): Personnel Department

CONTACT PERSON: Maria Koo PHONE: (213) 978-1597

CONTRACT NO.: C-125997

COUNCIL FILE NO.: 10-1627

ADOPTED BY COUNCIL: 8/16/2015
DATE

APPROVED BY BPW: _____
DATE

☐ NEW CONTRACT
☐ AMENDMENT NO. ____
☐ ADDENDUM NO. ____
☒ SUPPLEMENTAL NO. 1
☐ CHANGE ORDER NO. ____

CONTRACTOR NAME: WAGEWORKS, INC.

TERM OF CONTRACT: January 1, 2016 THROUGH: December 31, 2017

TOTAL AMOUNT: Depends upon enrollment, paid by employees.

PURPOSE OF CONTRACT:

First Supplemental Agreement to extend the time of performance of Contractor's Tax Savings Plans, which includes a Healthcare Flexible Spending Account, Dependent Care Reimbursement Account, and a Commuter Benefit Program which consists of a Transit Spending Account and Parking Spending Account for the City of Los Angeles Flexible Benefits Program.

**FIRST SUPPLEMENTAL AGREEMENT TO THE
PROFESSIONAL SERVICES AGREEMENT (CONTRACT NO. C-125997)
BETWEEN THE CITY OF LOS ANGELES
AND
WAGEWORKS, INC.**

This FIRST SUPPLEMENTAL AGREEMENT to the Professional Services Agreement (City Contract No. C-125997) between the City of Los Angeles, a municipal corporation acting through its Personnel Department (hereafter referred to as "City") and WageWorks Inc. a Delaware corporation (hereinafter referred to as "Contractor"), is entered into with reference to the following:

RECITALS

1. Effective January 1, 2013, the City and Contractor entered into the Professional Services Agreement (Contract No. C-125997) ("Agreement"), wherein Contractor became a provider of two tax-advantaged Flexible Saving Account ("FSA") Plans the City offers for tax savings on eligible expenses, consisting of a Healthcare Flexible Spending Account ("HCFSA"), a Dependent Care Flexible Savings Account ("DCFSA"), and a Commuter Benefit Program which consists of a Transit Spending Account ("TSA") and Parking Spending Account ("PSA") (collectively "the Tax Savings Plans") to the City for the term commencing January 1, 2013 through December 31, 2015;
2. The term of the Agreement expired on December 31, 2015, but the City has a continuing need for the Tax Savings Plans and the parties desire to enter into a First Supplemental Agreement to the Agreement for the provision of the Tax Savings Plans provided by Contractor for the period of January 1, 2016 through December 31, 2017;
3. The Joint Labor-Management Benefits Committee ("JL-MBC"), at its June 16, 2015 meeting, adopted a motion recommending to the City Council that Contractor's provision of the Tax Savings Plans be extended for Plan Year January 1, 2016 to December 31, 2017;
4. The City Council, at its August 16, 2015 meeting, adopted a motion extending the time of performance of Contractor's Tax Savings Plans services for the period of January 1, 2016 to December 31, 2017 (Council File 10-1627);
5. City and Contractor agree to extend the time of performance for the provision of the Tax Savings Plans for two additional years, commencing January 1, 2016 through December 31, 2017, under a First Supplemental Agreement to the Agreement with the same terms, covenants and conditions as are contained therein, except as otherwise provided herein;

6. City and Contractor agree that the compensation payable for FSA Plans services for the two additional years shall be at the same rate as set forth in the Agreement.

NOW THEREFORE, City and Contractor, in consideration of the promises and of the recitals, terms, covenants and representations below, agree as follows:

1. The Agreement is attached hereto as Exhibit I and incorporated by this reference into this First Supplemental Agreement. The terms and conditions of the Agreement shall be the terms and conditions of this First Supplemental Agreement, except as expressly modified herein below.
2. The term of this First Supplemental Agreement will be from January 1, 2016 through December 31, 2017 ("Term").
3. In the event of any inconsistency between the provisions of this First Supplemental Agreement, the Agreement and the attachments and exhibits attached thereto, said inconsistency shall be resolved by giving precedence to the documents in the following order, except as required by applicable ordinances and law:
 1. The body of this First Supplemental Agreement;
 2. The body of the original Agreement;
 3. Standard Provisions for City Contracts (Rev. 6/14)
 4. The other attachments/exhibits to the Agreement
4. This First Supplemental Agreement shall take effect upon the occurrence of all of the following events:
 - a. This First Supplemental Agreement has been signed on behalf of the Contractor by the person or persons authorized to bind the Contractor hereto;
 - b. The Office of the City Attorney has indicated in writing its approval of this First Supplemental Agreement as to form; and
 - c. This First Supplemental Agreement has been signed on behalf of the City by the person designated to so sign by the City's Council or by the board, officer or employee authorized to enter into this First Supplemental Agreement.
5. Due to the need for Contractor's services to be provided on an ongoing basis and upon the commencement of the Term hereof, Contractor may have provided services during the Term, but prior to the execution of this First Supplemental Agreement. To the extent that said services were performed in accordance with

the terms and conditions of this First Supplemental Agreement, those services are hereby accepted by the City and shall be treated as services performed under this First Supplemental Agreement.

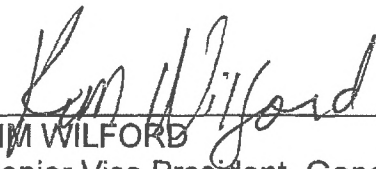
(SIGNATURE PAGE FOLLOWS)

IN WITNESS, whereof, the parties hereto have caused this First Supplemental Agreement to be executed by their respective duly authorized representatives.

THE CITY OF LOS ANGELES

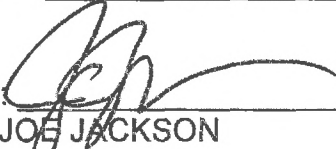
WAGEWORKS, INC.

By: 
WENDY G. MACY
General Manager
Personnel Department

By: 
KIM WILFORD
Senior Vice President, General
Counsel and Corporate Secretary

Date: 5/5/16

Date: 4/28/16

By: 
JOE JACKSON
CEO

Date: 4/28/16

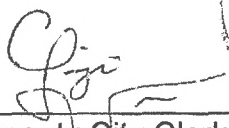
APPROVED AS TO FORM:

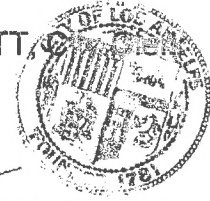
ATTEST:

MICHAEL N. FEUER, City Attorney

HOLLY L. WOLCOTT

By: 
Curtis S. Kidder
Assistant City Attorney

By: 
Deputy City Clerk



Date: 5-18-16

Date: 6-8-16

* Approved Signature Methods:

- 1) Two signatures: One of the Chairman of the Board of Directors, President, or Vice-President, and one of the Secretary, Assistant Secretary, Chief Financial Officer, or Assistant Treasurer.
- 2) One signature of a Corporate-designated individual together with a properly attested resolution of the Board of Directors authorizing the individual to sign.

City Business License Number _____
Internal Revenue Service Taxpayer Identification Number 94-3351864
Agreement Number C-125997

PROFESSIONAL SERVICES AGREEMENT

Contractor: WAGEWORKS, INC.

Regarding: HEALTHCARE FLEXIBLE SPENDING ACCOUNT,
DEPENDENT CARE REIMBURSEMENT ACCOUNT, AND
COMMUTER SPENDING ACCOUNT PLANS

Said Agreement is Number C-125997

**Professional Services Agreement
HEALTHCARE FLEXIBLE SPENDING ACCOUNT, DEPENDENT CARE
REIMBURSEMENT ACCOUNT, AND COMMUTER SPENDING ACCOUNT PLANS**

Table of Contents

<u>Section</u>	<u>Description</u>	<u>Page</u>
Article I	INTRODUCTION	2
Article II	TERM AND SERVICES TO BE PROVIDED.....	3
Article III	COMPENSATION.....	3
Article IV	CONTRACT REQUIREMENTS AND STANDARD PROVISIONS	5
Article V	MISCELLANEOUS	5
Signature Page		10

ATTACHMENTS

Exhibit A – Standard Provisions for City Contracts (Rev. 06/14)

Exhibit B to Professional Services Agreement
Commuter Benefit Program – Transit and Parking Spending Accounts

Exhibit C to Professional Services Agreement
Healthcare & Dependent Care Flexible Spending Accounts

Addendum I – Business Associate Agreement (BAA)

Exhibit D - Confidentiality Agreement

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF LOS ANGELES AND
WAGeworks, INC.**

This Professional Services Agreement ("Agreement") is made and entered into by and between the City of Los Angeles (hereinafter the "City"), a municipal corporation, acting by and through its Personnel Department, and WageWorks, Inc., a California not-for-profit corporation (hereinafter referred to as the "Contractor"), with reference to the following:

RECITALS

1. The City has established a modified Civilian Flexible Benefits Program ("Flex Program") for its eligible civilian employees in accordance with Section 125 of the Internal Revenue Code ("IRS Code") and all applicable Federal Regulations and State of California statutes and which includes two tax-advantaged Flexible Saving Account ("FSA") Plans the City offers for tax savings on eligible expenses, consisting of a Health Care Flexible Spending Account ("HCFSA"), a Dependent Care Flexible Spending Account ("DCFSA"), and a Commuter Benefit Program which consists of a Transit Spending Account ("TSA") and Parking Spending Account ("PSA") (collectively "the Tax Savings Plans");
2. The City desires to engage the services of a qualified entity to provide administration services for the Tax Savings Plans ("Benefits administrative services");
3. The City publicly solicited proposals for Benefits administrative services and Contractor submitted a proposal dated April 11, 2012 ("the Proposal"), which offers to provide these services as specified in the City's Request for Proposal;
4. The City reviewed the Proposal, finds it to be satisfactory in response to the services needed by the City, and accepts Contractor's offer to provide the services indicated in the Proposal;
5. The services to be performed are of an expert and technical nature and it is not economical or feasible for the City to have the work performed by its own employees;
6. The City's Joint Labor-Management Benefits Committee (JLMBC), at its meeting of July 2, 2012, approved the retention of Contractor for the provision of Benefits administrative services for the Tax Savings Plans for the period of January 1 to December 31, 2013, subject to the successful negotiation of all necessary contractual terms and conditions;
7. The JLMBC, at its meeting of June 13, 2013, approved the extension of the term of this Agreement for the period of January 1 to December 31, 2014;
8. The JLMBC, at its meeting of July 2, 2014, approved the extension of the term of this Agreement for the period of January 1 to December 31, 2015; and

9. Funds for the services to be provided under this Agreement will be from the City's Employees Benefits Trust Fund.

NOW, THEREFORE, in consideration of the promises and of the recitals and the agreements, covenants and representations set forth herein, the parties hereby covenant, represent, and agree as follows:

ARTICLE I. INTRODUCTION

A. Terms of Agreement This Agreement, including all exhibits and attachments, and specifically the Standard Provisions for City Contracts (Rev. 6/14) in their entirety, which is attached hereto as Exhibit A and incorporated herein, shall constitute the terms of this Agreement.

B. Representatives of the Parties and Service of Notices

1. The representatives of the respective parties authorized to administer this Agreement and to whom formal notices, demands, and communications shall be given are as follows:

- a. The representatives of the City shall be, unless otherwise stated in the Agreement:

Steven Montagna, Employee Benefits Division Chief
City of Los Angeles, Personnel Department, Employee Benefits Division
200 North Spring Street, Room 867
Los Angeles, CA 90012
(213) 978-1621
Steven.Montagna@lacity.org

- b. The representative of Contractor shall be:

Kim Wilford
Senior Vice President, General Counsel & Corporate Secretary
WageWorks, Inc.
1100 Park Place, 4th Floor
San Mateo, CA 94403
(877)-244-8898 Telephone
(866)-672-2715 Fax

2. Formal notices, demands, and communications required hereunder by either party shall be made in writing and may be effected by personal delivery or by registered or certified mail, postage prepaid, return receipt requested and shall be deemed communicated as of the date of mailing.
3. If the name of the person designated to receive the notices, demands or communications, or the address of such person is changed, written notice shall

be given, in accordance with Article I, within five (5) working days of said change.

ARTICLE II.

TERM AND SERVICES TO BE PROVIDED

A. Time of Performance

The term of this Agreement will commence on January 1, 2013 and will end on December 31, 2015, subject to the termination provisions herein ("Term"). The Term includes (i) the initial period of January 1 to December 31, 2013, (ii) the first extension of the term for the period of January 1 to December 31, 2014, and (iii) the second extension of the term for the period of January 1 to December 31, 2015.

The City reserves the right to extend the Term for two additional one-year periods, if so desired by the City in its sole and absolute discretion and subject to the approval of the City Council.

B. Purpose of the Agreement and Services to be Provided

The purpose of the work performed by Contractor under this Agreement is to provide Benefits administrative services for the two tax-advantaged FSA Plans and the Commuter Benefit Program the City offers for tax savings on eligible expenses for eligible civilian employees.

C. Scope of Services

Contractor, during the Term, shall perform the services set forth in the Scope of Work, which consists of the administration of (i) the Commuter Benefit Program as set forth in Exhibit B, which is attached hereto and incorporated herein by reference, and which consists of the TSA and PSA, and (ii) the HCFSA and DCFSA as set forth in Exhibit C, which is attached hereto and incorporated herein by reference.

ARTICLE III.

COMPENSATION

A. Administrative Fee

1. City shall pay Contractor a monthly administrative fee of Three Dollars (\$3.00) per participant per month ("PPPM") enrolled in any of the Tax Savings Plans (but a maximum of one fee per City employee) ("Participant(s)").
2. Payment of the administrative fee by the City will be made on a bi-weekly basis and will be direct deposited to Contractor's bank account. The amount of the administrative fee will be deducted from the Participants' paychecks on a biweekly basis (24 pay periods annually) and deposited into a City account.

3. The City, upon request by Contractor, will provide documentation regarding the total number of Participants each quarter and the fees paid to Contractor based on the number of Participants.
4. City shall, upon request of Contractor, provide a listing of Participants currently enrolled in any Tax Savings Plan.

B. Tax Savings Plans Funding

1. City shall transfer to Contractor the amount of funds ("Funding") contributed bi-weekly by each Participant enrolled in the Tax Savings Plans. The City's Account Administrator will prepare a report each pay period which identifies the name of each Participant enrolled in each of the Plans and the dollar amount of contribution for each such Participant. The report will be reviewed by the City's Personnel Department and electronically transmitted to Contractor.
2. Transfer of the total Participant contributions to the Tax Savings Plans will be done on a bi-weekly basis and will be direct deposited to Contractor's Union Bank account. All such funds contributed by City employees shall be used for the services provided by Contractor for the Tax Savings Plans as set forth in the Scope of Services. City acknowledges and agrees that any Funding submitted by City to Contractor shall not be segregated or set aside in a trust or escrow account by Contractor. City further agrees to pay Contractor the entire amount delivered to Participants in any Plan, regardless of whether City collects sufficient payroll deductions from the Participants.
3. Upon termination of the Agreement, Contractor shall immediately return any and all unused Participant contributions to the City or otherwise transfer them to such persons or entities as expressly designated by the City. The City may request an accounting of all Participants' contributions made during the Term and Contractor shall provide such an accounting within thirty (30) days.

C. Run-Out Period

Contractor shall, upon request by City and the amendment of this Agreement, provide FSA administrative services following the termination of this Agreement for eligible claims incurred prior to the end of the Term or other termination of the Agreement. The provision of FSA administrative services shall continue for a period of four months, or such longer period as agreed to by the parties, and terms of this Agreement shall be applicable thereto except as may be set forth in the amendment. The administrative fee for the Run-Out Period shall be a one-time fee based on the number of Participants with a balance of \$1 or more times the monthly fee set forth in Article III (A) above.

D. Initial City Funding

1. City agrees to provide an initial funding amount of \$205,131.21 for estimated benefit costs during 2013. Estimated benefit costs shall be based on an estimate

of the aggregate annual elections or available benefits of all Participants in the Tax Savings Plans; however, the initial funding amount shall not be used for benefits provided to any Participant in any of the Tax Savings Plans, unless expressly authorized in writing by the City.

2. Participant contributions to the FSA Plans that are unused at the end of each plan year shall be forfeited by the Participant and Contractor shall, upon direction of the City, either transfer the total amount of unused contributions to the City or hold such funds with the initial funding amount until transferred to the City.
3. The initial funding amount will be rolled-over to 2014 and to 2015.
4. Upon the termination of this Agreement, Contractor shall immediately return the initial Funding amount, less any amounts used for the provision of benefits as authorized by the City, to the City without any additional request or demand.

ARTICLE IV. **CONTRACT REQUIREMENTS AND STANDARD PROVISIONS**

A. **Contract Requirements and Standard Provisions for City Contracts**

Contractor agrees to comply with the Standard Provisions for City Contracts. The term "contract" as used in the Standard Provisions for City Contracts shall mean this Agreement. For the purposes of this Agreement, the following provisions are not applicable to Contractor: PSC-31, PSC-38, and PSC-40.

B. **Responsible Banking Ordinance**

Contractor agrees to comply with the Responsible Banking Ordinance, as detailed in Section 20.95.1 in Chapter 5.1 of the Los Angeles Administrative Code.

C. **Responsibility to Provide Services in Accordance with Applicable Standards and Requirement to Possess All Valid Permits and Licenses**

Contractor warrants that the work performed hereunder will be completed in a manner consistent with professional standards among those firms in the Contractor's profession, doing the same or similar work, under the same or similar circumstances. Contractor must possess and maintain valid licenses and permits required to perform the services described herein.

ARTICLE V. **MISCELLANEOUS**

A. **Suspension**

In addition to any other provisions of this Agreement, the City may suspend all or part of the services hereunder for failure by Contractor to comply with the terms and

conditions of this Agreement by giving written notice, which shall be effective upon receipt. Said notice shall set forth the specific conditions of noncompliance and the period provided for corrective action. Within five (5) working days of receipt of the notice Contractor shall reply in writing setting forth the corrective actions that will be undertaken, subject to City approval in writing. Performance shall not resume without the prior written approval of City.

B. Termination of Agreement

The termination provision contained in the Standard Provisions for City Contracts (PSC-10) shall survive the expiration or termination of this Agreement. All unfinished documents and materials produced or procured by Contractor under this Agreement shall, upon termination, be provided to the City on an "AS IS" basis without any warranties of any nature whatsoever and Contractor shall have no liability from the use of any such unfinished documents and materials.

C. Ownership

In addition to the requirements set forth in the Standard Provisions for City Contracts, Contractor's performance of services is subject to the following (which shall take precedence over the terms in the Standard Provisions for City Contracts in the event of any inconsistency).

1. Contractor acknowledges and agrees that all documents, publications, databases, videos, reports, analyses, studies, drawings, information, or data (hereinafter collectively referred to as "Materials"), created or developed by Contractor specifically and exclusively for the City pursuant to the terms of this Agreement, are "Work Made for Hire" and shall become the property of the City for its use in any manner it deems appropriate; provided that, to the extent permitted by law, the City agrees not to disclose to any third party, other than its attorneys, accountants, and financial contractors with a need to know, the Materials or any advice given to the City by Contractor. Contractor assigns any and all of its respective interests and rights in such Materials to the City. Notwithstanding such ownership of Materials, it is understood and agreed by Contractor that the City shall have an unencumbered right, and a nonexclusive, irrevocable, royalty-free license to use, access, manufacture, improve upon, and allow others to do so for all government purposes, the Materials created and developed under this Agreement.
2. All documents and records (hereinafter collectively referred to as "Documents") provided by the City to Contractor shall remain the property of the City and must be returned to the City upon termination of this Agreement or at request of the City; provided, however, Contractor may retain copies of Documents in accordance with its legal, disaster recovery, and records retention requirements, but subject to its confidentiality obligations pursuant to Section D below.
3. Notwithstanding the foregoing, Contractor shall retain all of its rights in its own intellectual capital (such as methodologies, know how, models, tools and graphic or digitized representation of any of these) now possessed or subsequently

developed by Contractor (the "Intellectual Property"), and Contractor shall not be restricted in any way with respect thereto. To the extent any Materials incorporate any Intellectual Property, Contractor hereby grants the City a non-exclusive, non-transferable, right to use such Intellectual Property solely for purposes of utilizing the Materials internally in accordance with the terms of this Agreement.

4. To the extent applicable, the provisions of this Section shall survive the expiration or termination of this Agreement.

D. Confidentiality

1. All Documents and information provided to Contractor by the City are confidential. All Materials are to be considered confidential. Contractor agrees not to provide Documents or Materials, nor disclose their content or any information therein, either orally or in writing, to any other person or entity, except as authorized by the City or as required by law. Contractor shall immediately, but in no case later than forty-eight (48) hours from discovery of such attempt, notify City representative of any attempt by a third party to obtain access to Documents or Materials. Contractor is authorized to include the City's name on a representative list of Contractor's clients, unless specifically directed by the City in writing to exclude it from such a list. Inclusion on such a list does not constitute an endorsement of Contractor or any services provided by Contractor or its affiliates.
2. Contractor shall comply with the requirements of privacy and confidentiality related to protected health information under the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereunder as set forth in the Confidentiality Agreement and the Business Associate Agreement; which are attached hereto as Exhibit D and Addendum I respectively and incorporated herein by these references.
3. The provisions of this Section shall survive termination of this Agreement.

H. Non-Exclusive Contract

This Agreement does not establish an exclusive contract between Contractor and City for the provision of the Scope of Work hereunder. City expressly reserves all rights to utilize others to provide some or all of the tasks included in the Scope of Work, to direct others to perform some or all of the tasks included in the Scope of Work without utilizing Contractor, and to seek bids or proposals from others to perform some or all of the tasks included in the Scope of Work.

I. Independent Audit/Contractor Evaluation

1. City reserves the right, at its sole expense, and limited to one (1) time per calendar year, to assign an independent auditor to assess the quality of services being provided and the extent to which Contractor and its subcontractors, if any, are conducting City business within generally accepted industry standard

practices. Any audit shall be, be conducted with at least thirty (30) days' prior written notice to Contractor, and Contractor shall cooperate fully with any such audit.

2. Following the end of the Term, City may conduct an evaluation of Contractor's performance hereunder. As required by the Los Angeles Administrative Code, evaluations will be based on specified criteria, including the quality of work performed, the timeliness of performance, financial issues and the expertise of personnel that Contractor assigned to perform the Scope of Work. A contractor that received a "Marginal" or "Unsatisfactory" rating will be provided with a copy of the final City evaluation and allowed fourteen (14) calendar days to respond. City will use the final evaluation and any response from Contractor to evaluate proposals and to conduct reference checks when awarding future service contracts.

J. California Public Records Act

City is a public entity subject to the disclosure requirements of the California Public Records Act ("CPRA") (Government Code Section 6254, et seq.). If Contractor believes that any documents submitted to City contain proprietary information and that such information falls within one or more of the exceptions to the CPRA, then Contractor must clearly mark such information as confidential and proprietary. In the event of a CPRA request for such information, City will make best efforts to provide notice to Contractor prior to the date of disclosure. Should Contractor contend that any documents are exempt from disclosure under the CPRA and desires to prevent disclosure, it must obtain a protective order, injunctive relief or other appropriate remedy in Los Angeles County Superior Court before the date the City must respond to the request. If Contractor fails to take such action and obtain such remedy before the response date, then City may disclose the requested documents. Contractor agrees to defend, indemnify and hold City harmless against any claim, action or litigation (including but not limited to all judgments, costs, fees and attorney's fees) that may result from denial by City of a CPRA request for documents arising from any representation or any action (or inaction) by Contractor.

K. Ambiguity

The parties acknowledge that each was represented by legal counsel or had the opportunity to consult with legal counsel in the drafting and negotiation of this Agreement. Any ambiguity in this Agreement shall not, therefore, be interpreted against any one party by virtue of that party being drafter of the Agreement.

L. Ratification

Due to the need for Contractor's services to be provided upon the commencement of the Term hereof, Contractor may have provided services during the Term but prior to the execution of this Agreement. To the extent that said services were performed in accordance with the terms and conditions of this Agreement, those services are hereby accepted by the City and shall be treated as services performed under the terms and conditions of this Agreement.

M. Order of Precedence

In the event of any inconsistency between the provisions in the body of this Agreement and the exhibits and attachments, the provisions in the body of this Agreement take precedence, followed by the Standard Provisions for City Contracts, the Responsible Banking Ordinance, and Exhibits B, C and D.

N. Counterparts

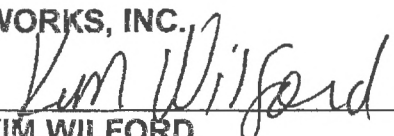
This Agreement may be executed in two or more counterparts, each of which shall be an original, but all of which together shall constitute one and the same Agreement.

IN WITNESS whereof, the parties hereto have caused this instrument to be signed by their respective duly authorized officers.

THE CITY OF LOS ANGELES

By: 
WENDY G. MACY
General Manager
Personnel Department

Date: 7/21/15

WAGEWORKS, INC.
By: 
KIM WILFORD
Senior Vice President, General Counsel
and Corporate Secretary

Date: 7/14/15

APPROVED AS TO FORM:

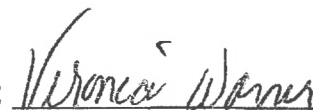
MICHAEL N. FEUER, City Attorney
Clerk

By: 
CURTIS S. KIDDER
Assistant City Attorney

Date: 7-27-15

ATTESTED:

HOLLY L. WOLCOTT, City

By: 
Deputy City Clerk 

Date: 7/27/15

* Approved Signature Methods:

- 1) Two signatures: One of the Chairman of the Board of Directors, President, or Vice-President, and one of the Secretary, Assistant Secretary, Chief Financial Officer, or Assistant Treasurer.
- 2) One signature of a Corporate-designated individual together with a properly attested resolution of the Board of Directors authorizing the individual to sign

City Business License Number _____
Internal Revenue Service Taxpayer Identification Number 94-3351864
Agreement Number C-125997

STANDARD PROVISIONS FOR CITY CONTRACTS

TABLE OF CONTENTS

PSC – 1.	CONSTRUCTION OF PROVISIONS AND TITLES HEREIN	1
PSC – 2.	NUMBER OF ORIGINALS	1
PSC – 3.	APPLICABLE LAW, INTERPRETATION AND ENFORCEMENT	1
PSC – 4.	TIME OF EFFECTIVENESS	1
PSC – 5.	INTEGRATED CONTRACT	1
PSC – 6.	AMENDMENT	2
PSC – 7.	EXCUSABLE DELAYS	2
PSC – 8.	BREACH	2
PSC – 9.	WAIVER	2
PSC – 10.	TERMINATION	2
PSC – 11.	INDEPENDENT CONTRACTOR	3
PSC – 12.	CONTRACTOR'S PERSONNEL	3
PSC – 13.	PROHIBITION AGAINST ASSIGNMENT OR DELEGATION	4
PSC – 14.	PERMITS	4
PSC – 15.	CLAIMS FOR LABOR AND MATERIALS	4
PSC – 16.	LOS ANGELES CITY BUSINESS TAX REGISTRATION CERTIFICATE	4
PSC – 17.	RETENTION OF RECORDS, AUDIT AND REPORTS	4
PSC – 18.	FALSE CLAIMS ACT	5
PSC – 19.	BONDS	5
PSC – 20.	INDEMNIFICATION	5
PSC – 21.	INTELLECTUAL PROPERTY INDEMNIFICATION	5

PSC – 22.	INTELLECTUAL PROPERTY WARRANTY	6
PSC – 23.	OWNERSHIP AND LICENSE	6
PSC – 24.	INSURANCE	6
PSC – 25.	DISCOUNT TERMS.....	6
PSC – 26.	WARRANTY AND RESPONSIBILITY OF CONTRACTOR	6
PSC – 27.	NON-DISCRIMINATION.....	7
PSC – 28.	EQUAL EMPLOYMENT PRACTICES	7
PSC – 29.	AFFIRMATIVE ACTION PROGRAM	8
PSC – 30.	CHILD SUPPORT ASSIGNMENT ORDERS	11
PSC – 31.	LIVING WAGE ORDINANCE	12
PSC – 32.	SERVICE CONTRACTOR WORKER RETENTION ORDINANCE	13
PSC – 33.	AMERICANS WITH DISABILITIES ACT	13
PSC – 34.	CONTRACTOR RESPONSIBILITY ORDINANCE.....	14
PSC – 35.	MINORITY, WOMEN, AND OTHER BUSINESS ENTERPRISE OUTREACH PROGRAM.....	14
PSC – 36.	EQUAL BENEFITS ORDINANCE	14
PSC – 37.	SLAVERY DISCLOSURE ORDINANCE.....	15
PSC – 38.	FIRST SOURCE HIRING ORDINANCE	15
PSC – 39.	LIMITATIONS ON CAMPAIGN CONTRIBUTIONS IN CITY ELECTIONS	16
PSC - 40.	IRAN CONTRACTING ACT OF 2010.....	16

STANDARD PROVISIONS FOR CITY CONTRACTS

PSC – 1. CONSTRUCTION OF PROVISIONS AND TITLES HEREIN

All titles, subtitles, or headings in this contract have been inserted for convenience, and shall not be deemed to affect the meaning 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 Contractor. The word "Contractor" herein in this contract includes the party or parties identified in the contract. The singular shall include the plural; if there is more than one Contractor herein, unless expressly stated otherwise, their obligations and liabilities hereunder shall be joint and several. Use of the feminine, masculine, or neuter genders shall be deemed to include the genders not used.

PSC – 2. NUMBER OF ORIGINALS

The number of original texts of this contract shall be equal to the number of the parties hereto, one text being retained by each party. At the City's option, one or more additional original texts of this Contract may also be retained by the City.

PSC – 3. 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 contract shall be enforced and interpreted under the laws of the State of California without regard to conflict of law principles. Contractor shall comply with new, amended, or revised laws, regulations, and/or procedures that apply to the performance of this contract.

In any action arising out of this contract, Contractor consents to personal jurisdiction, and agrees to bring all such actions, exclusively in state or federal courts located in Los Angeles County, California.

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

PSC – 4. TIME OF EFFECTIVENESS

Unless otherwise provided, this contract shall take effect when all of the following events have occurred:

- A. This contract has been signed on behalf of Contractor by the person or persons authorized to bind Contractor hereto;
- B. This contract has been approved by the City Council or by the board, officer or employee authorized to give such approval;
- C. The Office of the City Attorney has indicated in writing its approval of this contract as to form; and
- D. This contract 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 contract and has been attested to by the City Clerk.

PSC – 5. INTEGRATED CONTRACT

This contract contains the full and complete agreement between the parties, sets forth all of the rights and duties of the parties with respect to the subject matter hereof, and replaces any and all previous

agreements or understandings, whether written or oral, relating thereto. No verbal agreement nor conversation with any representative of either party shall affect or modify any of the terms and conditions of the contract.

PSC – 6. AMENDMENT

Any change to the terms of the contract, including changes in the scope of work to be performed and any increase or decrease in the amount of compensation, which are agreed to by the parties shall be incorporated into the contract by a written amendment properly executed by the authorized representatives of the parties and effective pursuant to the provisions of PSC-4. No verbal agreement with any officer or employee shall affect or modify any of the terms or conditions of the contract.

PSC – 7. EXCUSABLE DELAYS

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.

PSC – 8. BREACH

Except for excusable delays as described in PSC-7, 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.

PSC – 9. WAIVER

A waiver of a default of any part, term or provision of this contract must be in writing and 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.

PSC – 10. TERMINATION

A. TERMINATION FOR CONVENIENCE

The City may terminate this contract for the City's convenience at any time by giving Contractor thirty days written notice thereof. Upon receipt of said notice, Contractor shall immediately take action not to incur any additional obligations, cost or expenses, except as may be reasonably necessary to terminate its activities. The City shall pay Contractor its reasonable and allowable costs through the effective date of termination and those reasonable and necessary costs incurred by Contractor to affect such termination. Thereafter, Contractor shall have no further claims against the City under this contract. All finished and unfinished documents and materials procured for or produced under this Contract, including all intellectual property rights thereto, shall become City property upon the date of such termination. Contractor agrees to execute any documents necessary for the City to perfect, memorialize, or record the City's ownership of rights provided herein.

B. TERMINATION FOR BREACH OF CONTRACT

1. Except for excusable delays as provided in PSC-7, if Contractor fails to perform any of the provisions of this contract or so fails to make progress as to endanger timely performance of this contract, the City may give Contractor written notice of such default. If Contractor does not cure such default or provide a plan to cure such default which is acceptable to the City within the time permitted by the City, then the City may terminate this contract due to Contractor's breach of this contract
2. If a federal or state proceeding for relief of debtors is undertaken by or against Contractor, or if Contractor makes an assignment for the benefit of creditors, then the City may immediately terminate this contract.
3. If Contractor engages in any dishonest conduct related to the performance or administration of this contract or violates the City's lobbying policies, then the City may immediately terminate this contract.
4. In the event the City terminates this contract as provided in this section, the City may procure, upon such terms and in such manner as the City may deem appropriate, services similar in scope and level of effort to those so terminated, and Contractor shall be liable to the City for all of its costs and damages, including, but not limited to, any excess costs for such services.
5. All finished or unfinished documents and materials produced or procured under this contract, including all intellectual property rights thereto, shall become City property upon date of such termination. Contractor agrees to execute any documents necessary for the City to perfect, memorialize, or record the City's ownership of rights provided herein.
6. If, after notice of termination of this contract under the provisions of this section, it is determined for any reason that Contractor was not in default under the provisions of this section, or that the default was excusable under the terms of this contract, the rights and obligations of the parties shall be the same as if the notice of termination had not been issued pursuant to PSC-10(A) Termination for Convenience.
7. 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.

PSC – 11. INDEPENDENT CONTRACTOR

Contractor is acting hereunder as an independent contractor and not as an agent or employee of the City. No employee of Contractor has been, is, or shall be an employee of the City by virtue of the contract, and Contractor shall so inform each employee organization and each employee who is hired or retained under the contract. Contractor 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.

PSC – 12. CONTRACTOR'S PERSONNEL

Unless otherwise provided or approved by the City, Contractor shall use its own employees to perform the services described in this contract. The City shall have the right to review and approve any personnel

who are assigned to work under this contract. Contractor agrees to remove personnel from performing work under this contract if requested to do so by the City.

Contractor shall not use subcontractors to assist in performance of this contract without the prior written approval of the City. If the City permits the use of subcontractors, Contractor shall remain responsible for performing all aspects of this contract. The City has the right to approve Contractor's subcontractors, and the City reserves the right to request replacement of subcontractors. The City does not have any obligation to pay Contractor's subcontractors, and nothing herein creates any privity between the City and the subcontractors.

PSC – 13. PROHIBITION AGAINST ASSIGNMENT OR DELEGATION

Contractor shall not, unless it has first obtained the prior written consent of the City (a) Assign or otherwise alienate any of its rights under this contract, including the right to payment; or (b) Delegate, subcontract, or otherwise transfer any of its duties under this contract.

PSC – 14. PERMITS

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

PSC – 15. CLAIMS FOR LABOR AND MATERIALS

Contractor shall promptly pay when due all amounts payable for labor and materials furnished in the performance of this contract 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 Contractor hereunder), against Contractor'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.

PSC – 16. LOS ANGELES CITY BUSINESS TAX REGISTRATION CERTIFICATE

If applicable, Contractor represents that it has obtained and presently holds the Business Tax Registration Certificate(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 contract, Contractor shall maintain, or obtain as necessary, all such Certificates required of it under the Business Tax Ordinance, and shall not allow any such Certificate to be revoked or suspended.

PSC – 17. RETENTION OF RECORDS, AUDIT AND REPORTS

Contractor shall maintain all records, including records of financial transactions, pertaining to the performance of this contract, in their original form, in accordance with requirements prescribed by the City. These records shall be retained for a period of no less than five 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 or within the five years following final payment made by the City hereunder or the expiration date of this contract, whichever occurs last. Contractor shall provide any reports requested by the City regarding performance of this contract. Any subcontract entered into by Contractor, to the extent allowed hereunder, shall include a like provision for work to be performed under this contract.

PSC – 18. FALSE CLAIMS ACT

Contractor acknowledges that it is aware of liabilities resulting from submitting a false claim for payment to the City under the 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.

PSC – 19. BONDS

All bonds which may be required for performance of services 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.

PSC – 20. INDEMNIFICATION

Except for the active negligence or willful misconduct of the City, or any of its boards, officers, agents, employees, assigns and successors in interest, Contractor undertakes and agrees to defend (with counsel subject to approval by City), indemnify and hold harmless the City and 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, for death or injury to any person, including Contractor's employees and agents, or damage or destruction of any property of either party hereto or of third parties, and/or for any other damages or losses of any kind or nature arising in any manner by reason of the negligent acts, errors, omissions or willful misconduct incident to the performance of this Contract by Contractor or its subcontractors of any tier. 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 PSC-20 shall survive expiration or termination of this Contract.

PSC – 21. INTELLECTUAL PROPERTY INDEMNIFICATION

Contractor, at its own expense, undertakes and agrees to defend (with counsel subject to City approval), indemnify, and hold harmless the City, and 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, cost 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 Contractor, or its subcontractors 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 Contractor, or its subcontractors of any tier, under the Agreement. 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 records, and sound recordings, marks, logos, graphic designs, notes, websites, domain names, inventions, processes, formulas matters and combinations thereof, and all forms of intellectual property. 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 PSC-21 shall survive expiration or termination of this contract.

PSC – 22. INTELLECTUAL PROPERTY WARRANTY

Contractor represents and warrants that its performance of all obligations under this contract does 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.

PSC – 23. OWNERSHIP AND LICENSE

Unless otherwise provided for herein, all Work Products originated and prepared by Contractor or its subcontractors 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. Contractor hereby assigns, and agrees to assign, all goodwill, copyright, trademarks, patent, trade secret and all other intellectual property rights worldwide in any Work Products originated and prepared by Contractor under this contract. Contractor 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 Contractor or its subcontractors of any tier under this contract, Contractor hereby grants a non-exclusive perpetual license to use such Work Products for any City purposes.

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

Any subcontract entered into by Contractor 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 subcontractors 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 Contractor to comply with this requirement or to obtain the compliance of its subcontractors with such obligations shall subject Contractor to the imposition of any and all sanctions allowed by law including, but not limited to termination of the contract.

PSC – 24. INSURANCE

During the term of this contract and without limiting Contractor's indemnification of the City, Contractor shall provide and maintain at its own expense a program of insurance having the coverages and limits customarily carried and actually arranged by Contractor, but not less than the amounts and types listed on the Required Insurance and Minimum Limits sheet (Form General 146), covering its operations hereunder. Such insurance shall conform to City requirements established by Charter, ordinance or policy, and the Instructions and Information on Complying with City Insurance Requirements and shall otherwise be in a form acceptable to the Office of the City Administrative Officer, Risk Management.

PSC – 25. DISCOUNT TERMS

Contractor 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 discount to payments made under this contract which meet the discount terms.

PSC – 26. WARRANTY AND RESPONSIBILITY OF CONTRACTOR

Contractor warrants that the work performed hereunder shall be completed in a manner consistent with professional standards practiced among those firms within Contractor's profession, doing the same or similar work under the same or similar circumstances.

PSC -- 27. 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 Contractor 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, Contractor 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 state or medical condition. Any subcontract entered into by Contractor to the extent allowed hereunder, shall include a like provision for work to be performed under this contract.

Failure of Contractor to comply with this requirement or to obtain the compliance of its subcontractors with such obligations shall subject Contractor to the imposition of any and all sanctions allowed by law, including but not limited to termination of Contractor's contract with the City.

PSC – 28. 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, Contractor agrees and represents that it will provide equal employment practices and Contractor and each subcontractor 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. Contractor 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. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, 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, Contractor 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. Contractor 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. Contractor shall, upon request, provide evidence that it has or will comply therewith.

- E. The failure of any Contractor 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 has been given to Contractor.
- F. Upon a finding duly made that Contractor 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 such failure to comply may be the basis for a determination by the awarding authority or the Board of Public Works that the Contractor 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, Contractor shall be disqualified from being awarded a contract with the City for a period of two years, or until Contractor 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, Contractor 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 Contractor, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract. Failure of Contractor to comply with this requirement or to obtain the compliance of its subcontractors with all such obligations shall subject 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.

PSC – 29. 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, Contractor certifies and represents that Contractor and each subcontractor 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. Contractor shall post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.
- B. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, 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, Contractor shall certify on an electronic or hard copy form to be supplied, that Contractor 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. Contractor 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. Contractor shall, upon request, provide evidence that it has or will comply therewith.
- E. The failure of any Contractor 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 Contractor.
- F. Upon a finding duly made that Contractor 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 such breach may be the basis for a determination by the awarding authority or the Board of Public Works that said Contractor 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 Contractor 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 Contractor has been guilty of a 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 Contractor 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 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. Contractor shall submit an Affirmative Action Plan which shall meet the requirements of the Los Angeles Administrative Code 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, Contractor 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, Contractor 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. Contractor 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 Contractor.
- 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 minimizes 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 workforce or replacement of those employees who leave the workforce 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 and shall impose the same obligations, including but not limited to filing and reporting obligations, on the subcontractors as are applicable to the contractor. Failure of the contractor to comply with this requirement or to obtain the compliance of its subcontractors with all such obligations shall subject the contractor to the imposition of any and all sanctions allowed by law, including but not limited to termination of the Contract.

PSC – 30. 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, Contractor will fully comply with all applicable State and Federal employment reporting requirements for Contractor's employees. Contractor shall also certify (1) that Contractor will fully comply with all State and Federal employment reporting requirements applicable to Child Support Assignment Orders; (2) that the Principal Owner(s) of Contractor are in compliance with any Wage and Earnings Assignment Orders and Notices of Assignment applicable to them personally; (3) that Contractor 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 (4) that Contractor 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 Contractor 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 Contractor to comply with any Wage and Earnings Assignment Orders or Notices of Assignment applicable to them personally, shall constitute a default by the Contractor 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 Contractor by the City.

Any subcontract entered into by Contractor, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract. Failure of Contractor to obtain compliance of its subcontractors shall constitute a default by Contractor 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 Contractor by the City.

Contractor 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.

PSC – 31. LIVING WAGE ORDINANCE

- A. Unless otherwise exempt, the Contract 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. This Ordinance requires the following:
1. Contractor 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 compensated and uncompensated days off and health benefits, as defined in the LWO.
 2. Contractor further pledges that it will comply with federal law proscribing retaliation for union organizing and will not retaliate for activities related to the LWO. Contractor shall require each of its subcontractors within the meaning of the LWO to pledge to comply with the terms of federal law proscribing retaliation for union organizing. Contractor shall deliver the executed pledges from each such subcontractor to the City within ninety (90) days of the execution of the subcontract. Contractor's delivery of executed pledges from each such subcontractor shall fully discharge the obligation of Contractor with respect to such pledges and fully discharge the obligation of Contractor to comply with the provision in the LWO contained in Section 10.37.6(c) concerning compliance with such federal law.
 3. Contractor, 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. Contractor shall post the Notice of Prohibition Against Retaliation provided by the City.
 4. Any subcontract entered into by Contractor relating to this Contract, to the extent allowed hereunder, shall be subject to the provisions of PSC-31 and shall incorporate the provisions of the LWO.

5. Contractor shall comply with all rules, regulations and policies promulgated by the City's Designated Administrative Agency which may be amended from time to time.
 6. Contractor shall post a copy of the Notice to Employees Working on City Contracts Re: Living Wage Ordinance and Prohibition Against Retaliation, which is attached hereto as Attachment 1, in a prominent place in an area frequented by employees.
- B. Under the provisions of Section 10.37.6(c) of the Los Angeles Administrative Code, the City shall have the authority, under appropriate circumstances, to terminate this Contract and otherwise pursue legal remedies that may be available if the City determines that the subject Contractor has violated the LWO provision.
 - C. Where under the LWO Section 10.37.6(d), the City's Designated Administrative Agency has determined (a) that Contractor 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 Contractor in accordance with the following procedures. Impoundment shall mean that from monies due Contractor, City may deduct the amount determined to be due and owing by Contractor 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 described therein through final and binding arbitration. Whether Contractor is to continue work following an impoundment shall remain in the sole discretion of the City. Contractor 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. Contractor shall inform employees making less than Twelve Dollars (\$12.00) per hour of their possible right to the federal Earned Income Credit (EIC). Contractor shall also make available to employees the forms informing them about the EIC and forms required to secure advance EIC payments from Contractor.

PSC – 32. SERVICE CONTRACTOR WORKER RETENTION ORDINANCE

Unless otherwise exempt, this Contract is subject to the provisions of the Service Contractor Worker Retention Ordinance (SCWRO), Section 10.36 *et seq.*, of the Los Angeles Administrative Code, as amended from time to time.

PSC – 33. AMERICANS WITH DISABILITIES ACT

Contractor hereby certifies that it will comply with the Americans with Disabilities Act, 42 USC §12101 *et seq.*, and its implementing regulations (ADA), the Americans with Disabilities Act Amendments Act of 2008 (ADAAA), Pub. L. 110-325 and all subsequent amendments, Section 504 of the Rehabilitation Act of 1973 (Rehab. Act), as amended, 29 USC 794 and 24 CFR Parts 8 and 9, the Uniform Federal Accessibility Standards (UFAS), 24 CFR, Part 40, and the Fair Housing Act, 42 U.S.C. 3601, *et seq.*; 24 CFR Parts 100, 103, and 104 (FHA) and all implementing regulations. The Contractor 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 ADA, the ADAAA, the Rehab Act, the UFAS and the FHA and all subsequent amendments. Contractor will not discriminate against persons with disabilities or against persons due to their relationship to or association with a person with a disability. Any subcontract entered into by the Contractor, relating to this Agreement, to the extent allowed hereunder, shall be subject to the provisions of this paragraph.

PSC – 34. 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 Contractor to update its responses to the responsibility questionnaire within thirty calendar days after any change to the responses previously provided if such change would affect Contractor's fitness and ability to continue performing this contract.

In accordance with the provisions of the Contractor Responsibility Ordinance, by signing this contract, Contractor 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. Contractor further agrees to: (1) notify the City within thirty calendar days after receiving notification that any government agency has initiated an investigation which may result in a finding that Contractor is not in compliance with all applicable federal, state and local laws in performance of this contract; (2) notify the City within thirty calendar days of all findings by a government agency or court of competent jurisdiction that Contractor has violated the provisions of Section 10.40.3(a) of the Contractor Responsibility Ordinance; (3) unless exempt, ensure that its subcontractor(s), as defined in the Contractor Responsibility Ordinance, submit a Pledge of Compliance to the City; and (4) unless exempt, ensure that its subcontractor(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 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.

PSC – 35. MINORITY, WOMEN, AND OTHER BUSINESS ENTERPRISE OUTREACH PROGRAM

Contractor agrees and obligates itself to utilize the services of Minority, Women and Other business Enterprise firms on a level so designated in its proposal, if any. Contractor certifies that it has complied with Mayoral Directive 2001-26 regarding the Outreach Program for Personal Services Contracts Greater than \$100,000, if applicable. Contractor shall not change any of these designated subcontractors, nor shall Contractor reduce their level of effort, without prior written approval of the City, provided that such approval shall not be unreasonably withheld.

PSC – 36. 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, Contractor certifies and represents that Contractor will comply with the EBO.
- B. The failure of Contractor to comply with the EBO will be deemed to be a material breach of this contract by the City.
- C. If Contractor 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 Contractor 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 Contractor 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 Contractor in actions taken pursuant to the provisions of Los Angeles Administrative code Section 10.40 *et seq.*, Contractor Responsibility Ordinance.

Contractor 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 213-847-1922."

PSC – 37. SLAVERY DISCLOSURE ORDINANCE

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

PSC – 38. FIRST SOURCE HIRING ORDINANCE

Unless otherwise exempt, 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.

- A. Contractor shall, prior to the execution of the contract, provide to the Designated Administrative Agency (DAA) a list of anticipated employment opportunities that Contractor estimates it will need to fill in order to perform the services under the contract.
- B. Contractor further pledges that it will, during the term of the contract: (1) at least seven (7) business days prior to making an announcement of a specific employment opportunity, provide notifications of that employment opportunity to the Economic and Workforce Development Department (EWDD), which will refer individuals for interview; (2) interview qualified individuals referred by EWDD; and (3) prior to filing any employment opportunity, the Contractor 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 Contractor interviewed and the reasons why referred individuals were not hired.
- C. Any subcontract entered into by the Contractor relating to this contract, to the extent allowed hereunder, shall be subject to the provisions of FSHO, and shall incorporate the FSHO.
- D. Contractor shall comply with all rules, regulations and policies promulgated by the DAA, which may be amended from time to time.

Where under the provisions of Section 10.44.13 of the Los Angeles Administrative Code the DAA has determined that the Contractor intentionally violated or used hiring practices for the purpose of avoiding the FSHO, that determination will 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 Contractor's subsequent Contractor Responsibility Questionnaires submitted under the Los Angeles Administrative Code Section 10.40 *et seq.* This measure does not limit the City's authority to act under the FSHO.

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 DAA determines that the Contractor has violated provisions of the FSHO.

PSC – 39. LIMITATIONS ON CAMPAIGN CONTRIBUTIONS IN CITY ELECTIONS

The Contractor, 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, Contractor is required to provide and update certain information to the City as specified by law. Any Contractor 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 a 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 ten (10) business days. Failure to comply may result in termination of contract or any other available legal remedies including 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.

Contractor, 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.

PSC – 40. IRAN CONTRACTING ACT OF 2010

For Contracts for the provision of goods and/or services estimated at \$1,000,000 or more, Contractor shall comply with the requirements of the Iran Contracting Act of 2010 (Public Contract Code Sections 2200-2208). Contractor shall, upon entrance of the contract and any renewal thereof, complete, sign and submit to the City the Iran Contracting Act of 2010 Compliance Affidavit. Provision of a false certification can result in certain penalties, including termination of the contract.

CITY OF LOS ANGELES

**INSTRUCTIONS AND INFORMATION ON
COMPLYING WITH CITY INSURANCE REQUIREMENTS**

(Share this information with your insurance agent or broker.)

1. **Agreement/Reference** All evidence of insurance must identify the nature of your business with the CITY. Clearly show any assigned number of a bid, contract, lease, permit, etc., or give the project name and the job site or street address to ensure that your submission will be properly credited. Provide the **types of coverage and minimum dollar amounts** specified on the Required Insurance and Minimum Limits sheet (Form Gen. 146) included in your CITY documents.

2. **When to submit** Normally, no work may begin until a CITY insurance certificate approval number ("CA number") has been obtained, so insurance documents should be submitted as early as practicable. For **As-needed Contracts**, insurance need not be submitted until a specific job has been awarded. **Design Professionals** coverage for new construction work may be submitted simultaneously with final plans and drawings, but before construction commences.

3. **Acceptable Evidence and Approval** Electronic submission is the preferred method of submitting your documents. **Track4LA™** is the CITY'S online insurance compliance system and is designed to make the experience of submitting and retrieving insurance information quick and easy. The system is designed to be used primarily by insurance brokers and agents as they submit client insurance certificates directly to the City. It uses the standard insurance industry form known as the **ACORD 25 Certificate of Liability Insurance** in electronic format. **Track4LA™** advantages include standardized, universally accepted forms, paperless approval transactions (24 hours, 7 days per week), and security checks and balances. The easiest and quickest way to obtain approval of your insurance is to have your insurance broker or agent access **Track4LA™** at <http://track4la.lacity.org> and follow the instructions to register and submit the appropriate proof of insurance on your behalf.

Insurance industry certificates other than the ACORD 25 may be accepted. All Certificates must provide a thirty (30) days' cancellation notice provision (ten (10) days for non-payment of premium) AND an Additional Insured Endorsement naming the CITY an additional insured completed by your insurance company or its designee. If the policy includes an automatic or blanket additional insured endorsement, the Certificate must state the CITY is an automatic or blanket additional insured. An endorsement naming the CITY an Additional Named Insured and Loss Payee as Its Interests May Appear is required on property policies. All evidence of insurance must be authorized by a person with authority to bind coverage, whether that is the authorized agent/broker or insurance underwriter.

Acceptable Alternatives to Acord Certificates and other Insurance Certificates:

- A copy of the full insurance policy which contains a thirty (30) days' cancellation notice provision (ten (10) days for non-payment of premium) and additional insured and/or loss-payee status, when appropriate, for the CITY.
- Binders and Cover Notes are also acceptable as interim evidence for up to 90 days from date of approval.

Additional Insured Endorsements DO NOT apply to the following:

- Indication of compliance with statute, such as Workers' Compensation Law.
- Professional Liability insurance.

Completed **Insurance Industry Certificates other than Acord 25 Certificates** can be sent electronically (CAO.insurance.bonds@lacity.org) or faxed to the Office of the City Administrative Officer, Risk Management (213) 978-7616. Please note that submissions other than through Track4LA™ will delay the insurance approval process as documents will have to be manually processed.

Verification of approved insurance and bonds may be obtained by checking **Track4LA™**, the CITY'S online insurance compliance system, at <http://track4la.lacity.org>.

4. **Renewal** When an existing policy is renewed, have your insurance broker or agent submit a new Acord 235 Certificate through **Track4LA™** at <http://track4la.lacity.org> or submit an Insurance Industry Certificate or a renewal endorsement as outlined in Section 3 above. If your policy number changes you must also submit a new Additional Insured Endorsement with an Insurance Industry Certificate.

5. **Alternate Programs/Self-Insurance** Risk financing mechanisms such as Risk Retention Groups, risk Purchasing Groups, off-shore carriers, captive insurance programs and self-insurance programs are subject to separate approval after the CITY has reviewed the relevant audited financial statements. To initiate a review of your program you should complete the Applicant's Declaration of Self-Insurance form (<http://cao.lacity.org/risk/InsuranceForms.htm>) to the Office of the City Administrative Officer, Risk Management for consideration.

6. **General Liability** Insurance covering your operations (and products, where applicable) is required whenever the CITY is at risk of third-party claims which may arise out of your work or your presence or special event on City premises. **Sexual Misconduct** coverage is a required coverage when the work performed involves minors. **Fire Legal Liability** is required for persons occupying a portion of CITY premises. (Information on two CITY insurance programs, the SPARTA program, an optional source of low-cost insurance which meets the most minimum requirements, and the special Events Liability Insurance Program, which provides liability coverage for short-term special events on CITY premises or streets, is available at (www.2sparta.com), or by calling (800) 420-0555.)

7. **Automobile Liability** insurance is required only when vehicles are used in performing the work of your Contract or when they are driven off-road on CITY premises; it is not required for simple commuting unless CITY is paying mileage. However, compliance with California law requiring auto liability insurance is a contractual requirement.

8. **Errors and Omissions** coverage will be specified on a project-by-project basis if you are working as a licensed or other professional. The length of the claims discovery period required will vary with the circumstances of the individual job.

9. **Workers' Compensation and Employer's Liability** insurance are not required for single-person contractors. However, under state law these coverages (or a copy of the state's Consent To Self Insure) must be provided if you have any employees at any time during the period of this contract. Contractor with no employees must complete a Request for Waiver of Workers' Compensation Insurance Requirement (<http://cao.lacity.org/risk/InsuranceForms.htm>). **A Waiver of Subrogation** on the coverage is required only for jobs where your employees are working on CITY premises under hazardous conditions, e.g., uneven terrain, scaffolding, caustic chemicals, toxic materials, power tools, etc. The Waiver of Subrogation waives the insurer's right to recover (from the CITY) any workers' compensation paid to an injured employee of the contractor.

10. **Property Insurance** is required for persons having exclusive use of premises or equipment owned or controlled by the CITY. **Builder's Risk/Course of Construction** is required during construction projects and should include building materials in transit and stored at the project site.

11. **Surety** coverage may be required to guarantee performance of work and payment to vendors and suppliers. **A Crime Policy** may be required to handle CITY funds or securities, and under certain

other conditions. **Specialty coverages** may be needed for certain operations. For assistance in obtaining the CITY required bid, performance and payment surety bonds, please see the City of Los Angeles bond Assistance Program website address at <http://cao.lacity.org/risk/BondAssistanceProgram.pdf> or call (213) 258-3000 for more information.

EXHIBIT B TO PROFESSIONAL SERVICES AGREEMENT COMMUTER BENEFIT PROGRAM – TRANSIT AND PARKING SPENDING ACCOUNTS

The City of Los Angeles (“Client”) has established a transit spending account (TSA) and/or parking spending account (PSA) as part of a commuter benefit program providing qualified transportation benefits to the extent permitted under Code Section 132(f) and existing and applicable laws and regulations (the “Commuter Benefit Program”) as set forth in the Professional Services Agreement (“Agreement”). The Client, as plan administrator of the Commuter Benefit Program, remains responsible for maintaining and operating the Commuter Benefit Program, including paying all benefits owed or established under the Commuter Benefit Program to its participants. WageWorks, Inc. (“WageWorks”) shall provide certain administrative services with respect to the Commuter Benefit Program as set forth below and under the terms and conditions provided herein. In case of a conflict between this Addendum and the Agreement, the Agreement shall supersede.

1. Definitions.

Capitalized terms in this Exhibit have the same meaning as in the Agreement unless defined in this Section or otherwise defined elsewhere herein. The following capitalized and bolded terms and phrases shall have the meanings assigned to them below, unless the context clearly indicates otherwise.

“Available Benefits” means with respect to a Participant, the amount of commuter benefits available to the Participant through the Commuter Benefit Program, subject to the terms and conditions of the Commuter Benefit Program and Internal Revenue Code (“IRC”) Section 132(f) and the applicable and existing laws and regulations, including the monthly statutory benefit limits.

“Benefit Period” means the monthly coverage period, as applicable, during which transit benefits are provided to a Participant, as determined by WageWorks.

“Enrollment Deadline” means the date by which an eligible Employee must enroll in the Commuter Benefit Program or a Participant must make or change his elections with respect to the Commuter Benefit Program in order to have such enrollment and election changes be effective for a subsequent Benefit Period.

“Participant Monthly Fee” means the monthly fees described in Section 2(b) of this exhibit.

“Participant” means each employee of Client (or an affiliate of Client who is participating in the Commuter Benefit Program) who is enrolled in the Commuter Benefit Program or receiving benefits through the Commuter Benefit Program.

“Invoice Amount” means the fees and charges described in Section 2 hereinafter.

“WageWorks Card” is as defined in Appendix B-1.

2. Fees

a. Implementation Fee

The implementation fee is \$0.00.. Subsequent implementations may be subject to a fee.

b. Participant Monthly Service Fees

The FSA “Monthly Service Fee” is \$3.00 per participant per month (PPPM) subject to a monthly minimum of \$500.00.

*PPPM means Per Participant Per Month and applies to each individual with at least one account election. For example, an individual who enrolls in both the Transit Spending Account and Parking Spending Account would be charged as one participant. The fee will be charged for any month within

a plan year that the account exists and any month during the Run Out Period and Grace Period if a participant has a balance of equal to or more than \$1 on the last day of the plan year and is not enrolled in the new plan year.

c. Run-Out Administration and Fees

WageWorks shall, subject to an amendment to the Agreement, provide FSA claim processing services following the Agreement's termination for eligible claims incurred prior to the termination of the Agreement. Such run-out services shall not last longer than the end of the Run-Out Period for the plan year in which the Agreement terminates. All of the terms of this Addendum shall apply to the post-termination run-out services. However, WageWorks shall not provide the run-out services after the Agreement's termination if the Agreement was terminated because the Client failed to pay Service Fees due or for any other material breach.

d. Custom Billing Arrangement

Client shall provide a file identifying billable individuals, namely, those who (i) are or become active in the plan on or before the 15th of the month, or (ii) are participants who terminate from the plan on or after the 16th of the month, regardless of whether the individual has an account balance. Client agrees to include all billable individuals on the self-bill from Client. WageWorks reserves the right to review the accuracy of the files.

3. Initial Payment

Subject to Section III (d) of the Agreement, Client agrees to provide an initial funding amount.

4. Administrative Service Fee Payment

Subject to Article III of the Agreement, with respect to paying administrative fees, Client agrees to pay a monthly administrative fee for each employee enrolled in any of the FSA plans, with a maximum of one fee per employee. Payment will be made on a bi-weekly basis and will be direct deposited to WageWorks' account.

Must Select One:

- ☒ Wire or ACH Credit to WageWorks' account based on the provisions of Appendix B-4
☐ WageWorks to issue ACH debit against Client's account (Appendix B-4 must be completed)

a. If Client selects ACH Credit or Client wire to WageWorks, Client shall ensure that WageWorks shall receive the Monthly Service Fees (unrestricted) on the Due Date by either issuing a wire or electronic funds transfer (EFT) or ACH Credit.

5. Scope of Commuter Benefits Administrative Services

a. In addition to any optional services chosen by Client, the following is a general description of the commuter benefits administrative services ("Services") to be provided by WageWorks subject to the terms and conditions of the Agreement.

b. Enrollment and Processing Enrollment Files

Client shall be solely responsible for determining the individuals who are eligible to participate in the Commuter Benefit Program. Client shall provide WageWorks with a complete list of all Participants eligible to participate in the Commuter Benefit Program, and any demographic or other information that WageWorks may need to properly administer the Commuter Benefit Program pursuant to this Agreement. Client shall notify WageWorks on a monthly basis (or such shorter time period as agreed to by the parties) of any changes in Participant information. All Participant information shall be provided to WageWorks in an electronic format pursuant to Section 10(c). WageWorks shall process all data file(s) within a commercially reasonable time after receipt.

Late notification of Commuter Benefit Program eligibility or incorrect Commuter Benefit Program eligibility information provided by the Client to WageWorks may result in erroneous benefit claim payments. In this event, Client shall be solely responsible for any such erroneous payment and the Client shall also be solely responsible for collecting any such erroneous payments from the individual.

In addition to the eligibility information above, the Client shall provide the termination dates for participants who have terminated employment with the Client so that WageWorks can take proper action for these participants including the actions described in Appendix B-1 regarding the WageWorks Commuter Card. Client shall be responsible for any costs resulting from the failure to provide timely notice of a termination date.

Participant's Available Benefits for transit shall be available to the Participant for not less than 90 days after the date of termination or when the termination date is received by WageWorks if there is a delay in receiving information about the termination.

c. Transit Passes Delivery and Reimbursement Administrative Services (TSA)

- (i) To the extent consistent with each Participant's elections and as permitted under IRC Section 132(f), and subject to each Participant's Available Benefits, WageWorks shall purchase and mail transit media by USPS, prior to the month of use, to the designated addresses (see Section 8 below regarding address designation) of the Participants who have enrolled in the TSA Commuter Benefit Program as of the applicable Enrollment Deadline.
- (ii) To the extent consistent with each Participant's elections and as permitted under IRC Section 132(f), and subject to each Participant's Available Benefits, WageWorks shall load value onto "electronic fare media" supported by some transit agencies and WageWorks Cards for Participants who have enrolled for these options. WageWorks shall have sole discretion to determine whether a particular "electronic fare media" program is supported under the Commuter Benefit Program. Use of the WageWorks Card is subject to the terms and conditions set forth in Appendix B-1 attached hereto.
- (iii) To the extent consistent with each Participant's elections and as permitted under IRC Section 132(f), and subject to each Participant's Available Benefits, WageWorks will facilitate reimbursements of eligible transit expenses which shall be made by Client through the following reimbursement method selected below:

- ☐ Payroll
- ☒ Check and Direct Deposit

d. Parking Reimbursement Administrative Services (PSA)

- (i) To the extent consistent with each Participant's elections and as permitted under IRC Section 132(f), and subject to each Participant's Available Benefits, WageWorks shall allow Participants to use "Bill Payment Services" (referred to as "PayMyProvider" on the WageWorks website), which allows Participants to direct payments to parking providers, and WageWorks shall pay qualified parking expenses on behalf of the Participant directly to the service provider via check or other electronic funds transfer. Only payee information provided through the Employee Site or by calling the Participant Call Center during the times specified in Section 10(f) as of the date that the payment is processed will be acted upon. Mail, fax, electronic mail or voicemail directions will not be processed.
- (ii) To the extent consistent with each Participant's elections and as permitted under IRC Section 132(f), and subject to each Participant's Available Benefits, WageWorks will facilitate reimbursements of eligible parking expenses which shall be made by Client through the following reimbursement method selected below:

- ☐ Payroll
- ☒ Check and Direct Deposit

e. Payroll Data Feedback

WageWorks will provide payroll deductions information to Client at an agreed-upon time so that proper adjustment to the payroll, including eligible claims for reimbursements, if applicable, can be made.

f. Downloadable Reports

g. WageWorks shall make the following types of reports available for viewing and download from a Client accessible website: Participant commuter benefit elections made each month, payroll deductions, reimbursement and expense activity, any adjustments to Participant account balances, counts of lost passes reported by Participants and names of Participants who forfeited their benefits and the forfeited amounts. WageWorks reserves the right to modify or amend the types of reports available for download.

h. Claims Processing

Client agrees that Client and not WageWorks is responsible for the administration of the Commuter Benefits Program. WageWorks shall have no power or authority to waive, alter, breach or modify any terms and conditions of the Commuter Benefits Program. WageWorks shall make payments or distributions in accordance with the framework of policies, interpretations, rules, practices and procedures set forth in the Commuter Benefits Program and as otherwise agreed upon or directed by Client.

6. Timeliness of Selection

Eligible employees are responsible for enrolling in the Commuter Benefits Program and making or changing Commuter Benefit elections. Employee enrollment and/or Participant election changes must be made prior to the Enrollment Deadline for the Benefit Period to be effective for that Benefit Period. Employee enrollment and/or Participant election changes made after the Enrollment Deadline for a Benefit Period will be effective for the subsequent Benefit Period. The Enrollment Deadlines applicable to the Client are posted on WageWorks' website.

7. Refunds Policy

WageWorks shall not provide cash refunds of pre-tax deductions to Participants at any time. WageWorks shall provide reimbursement of any post-tax balances or deductions by either check or direct deposit to the Participant's bank account (if available).

8. Address Designation

The delivery address for transit passes, commuter cards, and reimbursement payments, shall be designated by the Participant unless Client has chosen to be the address of record in which case such address shall be used. In either case, WageWorks shall not be responsible for verifying the correctness, accuracy or completeness of address.

9. Undelivered Transit Media Claims

WageWorks will reimburse a Participant who files a timely claim for undelivered physical transit media as long as he or she files such claim within the period designated by WageWorks. If WageWorks has mailed the transit media in a properly addressed envelope to the Participant, using the address designated in accordance with Section 8, with the proper postage, Client shall be responsible for payment of the reimbursement amounts.

Notwithstanding, Client's liability under this Section 9 shall be limited as follows. If the Participant provided his delivery addresses, then Client shall be responsible for the costs of reimbursements up to the first 1% of the value of all the passes delivered in that month, and WageWorks shall be responsible for amounts in excess of that 1%. WageWorks shall bear the reimbursement costs if WageWorks either failed to

mail the media to the address as provided by Client or enrolled Employees, as applicable, or affixed improper postage.

10. Additional Administrative Services

a. Communications Materials

WageWorks will provide access to an online communications gateway ("Gateway") where Client may access and download standard electronic communications material at no additional charge. Certain quantities of standard printed communications may also be available at no additional charge. Customized items are available for additional fees, and Client agrees to pay bulk sales or similar taxes (if any), shipping and handling for any standard or customized material orders. Notwithstanding the foregoing, it is the Client's responsibility to ensure that Program descriptions, Program documents and any other documentation relating to the Commuter Benefit Program are appropriately completed, are in compliance with the requirements of the Commuter Benefit Program and applicable law, and are appropriately and timely adopted by the Client. Client shall be solely responsible for distributing materials regarding the Commuter Benefit Program to Participants on a timely basis as provided by applicable law. Client is responsible for making any filings with any applicable governmental agencies.

b. Assistance in Enrollment Meetings

Upon Client's request and reasonable notice, WageWorks will participate in enrollment meetings and benefit fairs at an additional charge.

c. File and Data Exchange

WageWorks shall provide a set of electronic file specifications for Client to deliver data to WageWorks. Client is responsible for developing the routines, programs, and other means in which to deliver electronic data to WageWorks. The parties will exchange test data to ensure that they can receive and process each other's files. WageWorks shall also work with any other third party vendor hired by Client to provide such data to WageWorks, provided that WageWorks reserves the right to require such third-party vendor to enter into a data sharing agreement with WageWorks prior to exchanging any data.

d. Adjudication of Eligible Expenses

WageWorks shall determine whether an expense is qualified under the Internal Revenue Code and regulations thereunder, and any IRS written rulings, notices, and advisories based on rules and procedures developed by WageWorks. By entering into the Agreement, Client has authorized and instructed WageWorks to implement its standard administrative procedures to provide services in accordance with this Addendum and the Agreement. Client and WageWorks agree that if Client provides WageWorks with specific written instructions (in a form acceptable to WageWorks) to provide services in a manner other than in accordance with WageWorks standard procedures, WageWorks may (but is not required to) comply with Client's written instructions. However, to the extent that WageWorks complies with such instructions, Client and not WageWorks shall be solely responsible for WageWorks' actions so taken, Client, absent any negligence or willful misconduct by WageWorks, expressly releases all claims against WageWorks in connection with any claim or cause of action that results from or in connection with WageWorks following Client's written instructions and Client shall indemnify and hold WageWorks harmless (including reasonable attorneys' fees and costs) for any claims, losses or other damages that results from or in connection with WageWorks following Client's written instructions.

e. Co-Branded Web Site

Upon request, WageWorks will add Client's logo and/or name on the Participant Site.

f. Participant Call Center

Monday through Friday from 8:00AM ET to 8:00PM ET, excluding holidays and other non-business days, customer service representatives will be available to answer phone calls regarding the administration of the benefits selected by Client. Outside these hours, Participants may access the Participant Site or use the WageWorks interactive voice response unit.

g. Client Services

Client Services shall be available to answer phone calls from Client HR representatives on issues such as employee case escalation, file transfer errors, and using the Employer Site. The hours of operations are 8:00AM ET to 8:00PM ET, Monday through Friday, except for holidays and other non-business days.

11. Additional Limitations on Confidentiality and Privacy for Commuter Benefits

Notwithstanding Section V(D) (Confidentiality) of the Agreement, in the process of providing services under this Addendum, WageWorks may be required to disclose to transit parking operators certain personal information of Participants, such as name, address, gender, or license plate numbers. The information is required by such operators as a condition precedent to receiving their services. The information that WageWorks will provide to these entities is the same information a Participant would have provided to obtain services directly from such operators. WageWorks makes no representation or warranty, as to those entities' policies and procedures for maintaining confidentiality or privacy of such data. Furthermore, certain transit operators require the disclosure of Client's name in order to allow WageWorks to procure transit media. Client hereby permits the disclosure of its name to such operators.

Appendix B-1 WageWorks Debit Card Provisions

The following additional provisions shall apply with respect to WageWorks' Card Services and the issuance of WageWorks' debit cards to Participants. The term, "Card," shall mean a WageWorks' debit card which is a magnetically coded card which can be used to:

- Purchase transit fare media at approved transit locations meeting the requirements for usage of such cards as determined by WageWorks.
 - Purchase parking services at approved parking facilities meeting the requirements for usage of such cards as determined by WageWorks.
1. All employees of the Client, who are Participants, shall automatically receive one Card without a separate fee.
 2. WageWorks shall be responsible to provide administrative services to Participants, including updating Participants' records, maintaining accurate account balances and deposit information, activating and deactivating Cards, responding to Participants' inquiries and providing appropriate notices of actions taken.
 3. Payment of Card transactions shall be withdrawn against the applicable Participant's Account and shall be reimbursed by the Client based on the benefit claims funding method chosen by the Client.
 4. WageWorks agrees to reasonably ensure compliance with proper use of the Card and take whatever action is necessary to investigate and resolve errors in Card transactions asserted by Participants.
 5. WageWorks agrees to cancel, as soon as is administratively practicable, access to a Participant's Card when a Card is reported as being lost or stolen.
 6. As provided in Exhibit A, Client has authorized and instructed WageWorks to implement its standard administrative procedures to provide services in accordance with this Addendum and the Agreement. Such standard administrative procedures may be different for one or more Card transactions or groups or categories of Card transactions, as determined solely by WageWorks.
 7. When WageWorks is informed that a Participant has terminated employment (whether by the Client or otherwise) WageWorks shall take the following actions for a WageWorks Commuter Card according to the timing specified below:
 - a. Deactivate the Card so no new transactions will be authorized against the Card balance.
 - b. Refund any post-tax card balances to the Participant by either check or direct deposit to the Participant's bank account (if provided).
 - c. Any unspent pre-tax Card balances shall not be returned to the participant and shall be returned to the Client through the Commuter Forfeiture process.

For the parking version of the Card, the actions above shall be initiated immediately after the date of termination or when the termination date is received by WageWorks if there is a delay in WageWorks receiving information about the termination.

For the transit version of the Card, the actions above shall be initiated not less than 90 days after the date of termination or when the termination date is received by WageWorks if there is a delay in WageWorks receiving information about the termination.

In both cases, the Card deactivation will take place immediately on the date applicable to the particular Card option. The other actions described in this section will be initiated within seven (7) business days of the date applicable to the particular Card option above.

Appendix B-2 (Check) –Payment information

CLIENT ACH Information If Client wishes WageWorks to issue ACH Debit:

Name of Client (Employer)	
Name of Bank:	
Address of Bank:	
Demand Deposit Account Number:	
ABA Routing Number (9 digits):	
Name (print):	
Title (print):	
Date:	
FEIN:	
Filter ID Number for EPA	
Telephone	
Email	
Authorized Banking Signature:	

If Client wishes to pay fees by wire, EFT, or ACH Credit:

WageWorks, Inc. Wire Information Name of Bank:	Union Bank of California
WW Demand Deposit Account Name and Number	WageWorks Main Account 3120004386
ABA Routing Number:	122000496
WageWorks Contact:	Account Services
FEIN:	94-3351864

EXHIBIT C TO PROFESSIONAL SERVICES AGREEMENT HEALTHCARE & DEPENDENT CARE FLEXIBLE SPENDING ACCOUNTS

The City of Los Angeles ("Client") has established a health and/or dependent care flexible spending arrangement ("FSA") as set forth in the Professional Services Agreement ("Agreement"). The Client, as plan administrator of the FSA, remains responsible for maintaining and operating the FSA, including paying all benefits owed or established under the FSA to its participants. WageWorks shall provide certain administrative services with respect to the FSA as set forth below and under the terms and conditions provided herein. In case of a conflict between this Addendum and the Agreement, the terms of the Agreement shall supersede.

1. Definitions.

Capitalized terms herein have the same meaning as in the Agreement unless defined in this Section or otherwise defined elsewhere in this Exhibit. The following capitalized and bolded terms and phrases shall have the meanings assigned to them below, unless the context clearly indicates otherwise.

"Account" means the notional accounts created for the health FSA and/or dependent care FSA to track the credits and disbursements of each Participant under the applicable FSA. Separate Accounts shall be created for a Participant's participation in a health FSA and a dependent care FSA, as well as for each applicable plan year.

"Available Benefits" means (1) for a health FSA the Participant's annual election for the plan year less the aggregate amount previously paid or reimbursed for the plan year, and (2) for a dependent care FSA, the aggregate amounts previously credited to the FSA Account from the Participant's paycheck for the plan year as reported by Client less the aggregate amount previously paid or reimbursed for the plan year.

"Participant" means each individual (e.g., employee, former employee, COBRA beneficiary) who has an FSA Account as determined by Client and reported to WageWorks.

"Monthly Service Fees" means the fees set forth in Section 2 below.

2. Fees

a. Implementation Fee

The implementation fee is \$0.00. Subsequent implementations may be subject to a fee.

b. Monthly Service Fees

The FSA "Monthly Service Fee" is \$3.00 per participant per month (PPPM) subject to a monthly minimum of \$500.00.

*PPPM means Per Participant Per Month and applies to each individual with at least one account election. For example, an individual who enrolls in both the health FSA and dependent care FSA would be charged as one Participant. The fee will be charged for any month within a plan year that the account exists and any month during the Run Out Period and Grace Period (as such terms are defined below) if a Participant has a balance of equal to or more than \$1 on the last day of the plan year and is not enrolled in the new plan year.

If Client informs Wage Works of its intention to terminate prior to the end of their plan year, and the Client requests WageWorks to administer the Run Out Period and Grace Period, WageWorks will assess on a one time basis the number of participants with a balance of equal to or more than \$1 and charge the fee as stated above. If Client notifies Wage Works after the start of the new plan year of its intention to terminate, Wage Works will invoice the Client monthly during the Run-Out Period

and Grace-Period for all Participants with a balance of equal to or more than \$1 on the last day of the previous plan year.

“Run Out Period” means the period after the close of the plan year in which claims may be submitted by an Participant or other beneficiary. This period is defined and established by the Client, and may be changed for future plan years by the Client if the change is made before the new plan year begins. Monthly Service Fees will continue to apply during any Run Out Period.

“Grace Period” means the amount of time (but no more than 2-1/2 months) following the close of the plan year that a Participant may incur eligible expenses for reimbursement and during which the eligible expenses may be applied against the Participant’s FSA Account for the prior plan year, and to the extent the balance of the Participant’s FSA Account is exhausted for the prior plan year will be applied to the balance of the Participant’s FSA Account for the current plan year (i.e., the plan year in which the expense is incurred) if the Participant has enrolled for an FSA Account for that year. Monthly Service Fees will continue to apply during any Grace Period.

c. Run-Out Administration and Fees

WageWorks shall, subject to an amendment to the Agreement, provide FSA claim processing services following the Agreement’s termination for eligible claims incurred prior to the termination of the Agreement. Such run-out services shall not last longer than the end of the Run-Out Period for the plan year in which the Agreement terminates. All of the terms of this Exhibit shall apply to the post-termination run-out services. However, WageWorks shall not provide the run-out services after the Agreement’s termination if the Agreement was terminated because the Client failed to pay Monthly Service Fees due, the Client failed to provide the benefit claims funding required under Section 3 and the applicable related appendix, or for any other material breach.

d. Custom Billing Arrangement

Client shall provide a file identifying billable individuals, namely, those who (i) are or become active in the plan on or before the 15th of the month, or (ii) are participants who terminate from the plan on or after the 16th of the month, regardless of whether the individual has an account balance. Client agrees to include all billable individuals on the self-bill from Client. WageWorks reserves the right to review the accuracy of the files.

3. Benefit Claims Funding

Subject to Article III of the Agreement, with respect to funding FSA benefit claims, Client agrees to provide an initial funding amount and on-going funding. WageWorks shall not be liable or use its own funds for the payment of benefits under the FSA, including, without limitation, where sought as damages in an action against the Client, WageWorks or the FSA. WageWorks does not insure nor underwrite the Client’s liability to provide benefits under the FSA, and the Client shall have the sole responsibility and liability for payment of all benefits under the FSA.

4. Administrative Service Fee Payment

Subject to Article III of the Agreement, with respect to paying administrative fees, Client agrees to pay a monthly administrative fee for each participant enrolled in any of the FSA plans, with a maximum of one fee per participant. Payment will be made on a bi-weekly basis and will be direct deposited to WageWorks’ account.

Must Select One:

☒ Wire or ACH Credit to WageWorks’ account based on the provisions of Appendix C-2

☐ WageWorks to issue ACH debit against Client's account (Appendix C-2 must be completed)

5. FSA – Specific Scope of Administrative Services

a. Enrollment and Processing Enrollment Files

Client shall be solely responsible for determining the individuals who are eligible to participate in the FSA. Client shall provide WageWorks with a complete list of all Participants eligible to participate in the FSA, and any demographic or other information that WageWorks may need to properly administer the FSA pursuant to the Agreement. Client shall notify WageWorks on a monthly basis (or such shorter time period as agreed to by the parties) of any changes in Participant information. All Participant information shall be provided to WageWorks in an electronic format pursuant to Section 5(c). WageWorks shall process all data file(s) within a commercially reasonable time after receipt.

In determining any person's eligibility under the Plan, WageWorks shall rely on the eligibility information furnished by the Client, and any signed statements by Participants. It is mutually understood that the effective performance of this Agreement by WageWorks will require that the Client advise it on a timely basis during the continuance of this Agreement of the identity of individuals eligible for benefits under each of the respective Plans. Information modifying a Participant's eligibility or status or election under either Plan shall identify the effective date of eligibility and the termination date of eligibility and shall be provided (via telefax, mail, e-mail, electronic submission, or Interactive Voice Response system) prior to the effective date of such modification in order to be considered by WageWorks in making benefit determinations hereunder. If Client determines that WageWorks has incorrectly applied the eligibility provisions of the applicable Benefit Plan and informs WageWorks in writing, all future transactions will be processed according to Client's interpretation as stated in writing.

Late notification of FSA eligibility or incorrect FSA eligibility information provided by the Client to WageWorks may result in erroneous benefit claim payments. In this event, Client shall be solely responsible for any such erroneous payment and the Client shall also be solely responsible for collecting any such erroneous payments from the individual.

b. Services Available to FSAs

WageWorks may provide Bill Payment Services, Reimbursement Services and the WageWorks Card Services (as those terms are defined below) for the Client's FSA. The maximum payment pursuant to any or all mechanisms shall be limited to the Available Benefits at the applicable time.

i. Bill Payment Services

"Bill Payment Services" (referred to as "Pay My Provider" on WageWorks' website) means services under which WageWorks will pay FSA eligible expenses described herein on behalf of a Participant. Payment will be made via a check or other electronic funds transfer directly to the health care or dependent care provider. Only payee information inserted on the WageWorks web site or provided through direct contact with WageWorks customer service representatives during normal business hours will be acted upon. Mail, fax, electronic mail, or voicemail directions will not be processed.

ii. WageWorks Card Services

"WageWorks Card Services" means the services under which WageWorks will pay FSA eligible expenses described herein on behalf of a Participant. Payments will be made directly to the health care provider, drugstore or other qualifying entity via the WageWorks debit card (a plastic, magnetically coded card with preset spending limits). The operation and the terms and conditions of WageWorks debit cards are set forth in Appendix C-3 attached hereto. WageWorks Card Services shall not be available for dependent care FSA benefits.

iii. Reimbursement Services

“Reimbursement Services” (referred to as “PayMeBack” on WageWorks’ website) means services under which WageWorks will reimburse FSA eligible expenses described herein on behalf of a Participant. Reimbursements shall be made to Participants via a check or direct deposit. Claims may be submitted by Participants through one or both of the following methods:

- A. Participants may submit paper-based claim forms to WageWorks for adjudication. WageWorks shall post the time and manner for submitting paper-based claims on the website accessible by Participants (“Participant Site”).
- B. At the election of the Client, WageWorks will reimburse Participants for expenses reported to WageWorks by the medical plan carriers (known as Automatic Health Plan Claim or (“AHPC”). WageWorks will deem all claims provided by such carriers as eligible medical expenses without further adjudication. Client agrees that it is responsible for ensuring that such medical plan carriers provide timely, accurate and complete data files in the format and method specified by WageWorks (e.g., posting to a SFTP). This reimbursement method shall not be available for dependent care FSA benefits.

iv. Ordering Rule

If the Available Benefits are not sufficient in a Participant’s Account on any given day, the order of payments processed shall be claims pursuant to WageWorks Card Services first, if there is any amount remaining thereafter, claims pursuant to Reimbursement Services second, and if there is any amount remaining thereafter, claims pursuant to Bill Payment Services last. To the extent that a Participant’s Account has an amount of Available Benefits for some but not all claims within a particular services category, claims will be paid or reimbursed in the order received. No claim shall be paid or reimbursed that would allow a Participant’s Account to be negative.

c. Reports

WageWorks will make standard reports available for viewing and for download from a Client-accessible website, including a summary of expenditures claimed by the Participants, the number of Participants, and the total amount of benefits paid or reimbursed, for each FSA as applicable. In addition, Client shall have access to a website where individual Participant Account transaction details may be viewed (“Service Site”). Because the Service Site contains individual health information and other personal information, Client shall be solely responsible to control the access to the Service Site based on its own internal confidentiality and HIPAA privacy policies and procedures.

d. Claims Processing and Fiduciary Duties

Client agrees that Client and not WageWorks is the plan administrator of the FSA as such term is described under Employee Retirement Income Security Act ("ERISA") or the Internal Revenue Code. WageWorks shall have no power or authority to waive, alter, breach or modify any terms and conditions of the FSA. Further, Client agrees that Client and not WageWorks is the claims fiduciary of the FSA, as such term is used under ERISA. WageWorks shall make payments or distributions in accordance with the framework of policies, interpretations, rules, practices and procedures set forth in the FSA and as otherwise agreed upon or directed by Client. WageWorks shall neither have nor shall be deemed to exercise any discretion, control, or authority with respect to the disposition of Available Benefits. WageWorks agrees that it shall perform services on behalf of the FSA, only as set forth herein. Other than appeals of denied claims, no claims are accepted after the end of the applicable Run-Out Period.

Based upon the foregoing, Client hereby assigns to WageWorks the following:

i. Initial Claims for Health Care FSA

Claims for FSA benefits must be submitted in a form that is satisfactory to WageWorks. WageWorks shall determine whether a benefit is payable under the FSA's provisions as based on the terms of this Exhibit and as mutually agreed to by WageWorks and Client. Client shall provide to WageWorks the applicable summary plan descriptions and plan documents for WageWorks to review and to assist in processing claims for the FSA. WageWorks shall use claim procedures and standards developed by WageWorks for benefit claim determination, which for a health care FSA shall be in compliance with Section 503 of ERISA and the regulations promulgated thereto with respect to initial claims for benefits.

ii. Appeals for Health Care FSA

For a health care FSA, Client represents that the FSA plan documents and summary plan description shall provide for a 2-stage appeal process pursuant to the provisions of Section 503 of ERISA and the regulations promulgated thereto. WageWorks shall process the first appeal using claim procedures and standards developed by WageWorks for benefit claim determination, which are in compliance with Section 503 of ERISA and the regulations promulgated thereto with respect to appeals of denied claims for benefits. However, the second and the final appeal shall not be the responsibility of WageWorks but shall be processed and be the responsibility of the Client or the plan administrator of the FSA. Accordingly, because WageWorks does not process the final appeal, WageWorks shall not be the claims fiduciary with respect to the FSA.

iii. Claims and Appeals for Dependent Care FSA

Claims for dependent care FSA benefits must be submitted in a form that is satisfactory to WageWorks. WageWorks shall determine whether a benefit is payable under the FSA's provisions as based on the terms herein and as mutually agreed to by WageWorks and Client. Client shall provide to WageWorks the applicable descriptions and plan documents for WageWorks to review and to assist in processing claims for the dependent care FSA. WageWorks shall use its claim procedures and standards developed by WageWorks for benefit claim determinations. WageWorks shall process one appeal of a denied dependent care claim using procedures and standards developed by WageWorks for benefit claim determinations and appeals. Any additional appeals thereafter shall be the responsibility of Client.

6. **Additional Services**

a. Communications Materials

WageWorks will provide access to an online communications gateway ("Gateway") where Client may access and download standard electronic communications material at no additional charge. Certain quantities of standard printed communications may also be available at no additional charge. Customized items are available for additional fees, and Client agrees to pay bulk sales or similar taxes (if any), shipping and handling for any standard or customized material orders. Notwithstanding the foregoing, it is the Client's responsibility to ensure that the summary plan descriptions, plan documents and any other documentation relating to the FSA are appropriately completed, are in compliance with the requirements of the FSA and applicable law, and are appropriately and timely adopted by the Client. Client shall be solely responsible for distributing summary plan descriptions, summaries of material modification and any other documentation with respect to the FSA to Participants on a timely basis as provided by applicable law. Client shall also be solely responsible for complying with HIPAA, COBRA and ERISA with respect to the FSA and making any filing with the appropriate governmental agencies, including the Department of Labor and the Internal Revenue Service with respect to the FSA.

b. Assistance in Enrollment Meetings

Upon Client's request, WageWorks will participate in enrollment meetings and benefit fairs at an additional charge.

c. File and Data Exchange

WageWorks shall provide a set of electronic file specifications for Client to deliver data to WageWorks. Client is responsible for developing the routines, programs, and other means in which to deliver electronic data to WageWorks. The parties will exchange test data to ensure that they can receive and process each other's files. WageWorks shall also work with any other third party vendor hired by Client to provide such data to WageWorks, provided that WageWorks reserves the right to require such third-party vendor to enter into a data sharing agreement with WageWorks prior to exchanging any data.

d. Adjudication of Eligible Expenses

WageWorks shall determine whether an expense is qualified under the Internal Revenue Code and regulations thereunder, and any IRS written rulings, notices, and advisories based on rules and procedures developed by WageWorks. By entering into this Agreement, Client has authorized and instructed WageWorks to implement its standard administrative procedures to provide services in accordance with this Exhibit and the Agreement. Client and WageWorks agree that if Client provides WageWorks with specific written instructions (in a form acceptable to WageWorks) to provide services in a manner other than in accordance with WageWorks standard procedures, WageWorks may (but is not required to) comply with Client's written instructions. However, to the extent that WageWorks complies with such instructions, Client and not WageWorks shall be solely responsible for WageWorks' actions so taken, Client, absent any negligence or willful misconduct by WageWorks, expressly releases all claims against WageWorks in connection with any claim or cause of action that results from or in connection with WageWorks following Client's written instructions and Client shall indemnify and hold WageWorks harmless (including reasonable attorneys' fees and costs) for any claims, losses or other damages that result from or in connection with WageWorks following Client's written instructions.

e. Co-Branded Web Site

Upon request, WageWorks will add Client's logo and/or name on the Participant Site.

f. Participant Call Center

Monday through Friday from 8:00AM ET to 8:00PM ET, excluding holidays and other non-business days, customer service representatives will be available to answer phone calls regarding the administration of the benefits selected by Client. Outside these hours, Participants may access the Participant Site or use the WageWorks interactive voice response unit.

g. Client Services

Client Services shall be available to answer phone calls from Client HR representatives on issues such as employee case escalation, file transfer errors, and using the Service Site. The hours of operations are 8:00AM ET to 8:00PM ET, Monday through Friday, except for holidays and other non-business days.

7. Business Associate Agreement

WageWorks and the health care FSA shall enter into the Business Associate Agreement, as provided in Exhibit C. A dependent care FSA shall be exempt from the Business Associate Agreement requirement.

8. No Refunds For Benefits Delivered

WageWorks will not provide or negotiate for refunds of unused services or unneeded items. WageWorks is not responsible for determining whether a Participant received a cash refund from a merchant or provider for items or services originally purchased or paid for using a WageWorks debit card. In addition, WageWorks shall not be responsible for negotiating or procuring on behalf of employee dependent care services or medical services or products. Participants must obtain or negotiate for such services on behalf of themselves (e.g., a Participant must first ensure that a child care provider will accept the Participant's child prior to establishing Bill Payment Services for that provider). Client is solely responsible for making the FSA whole if fraud is committed against the FSA by Participants or other individuals. WageWorks shall not be responsible for identifying, pursuing or correcting any fraudulent actions by Participants.

Appendix C-1 Client Wire, ACH Credit or EFT Funding Arrangement for FSA (Payroll)

The Client agrees to provide funds as follows:

- A. Client agrees to provide an initial funding amount of \$205,131.21 for estimated benefit costs. WageWorks will roll over the initial funding amount from year to year.
- B. The amount shall be provided at least 15 calendar days prior to the first day of either (i) each Plan Year or (ii) the first day of the month that the benefits will be administered by WageWorks.
- C. On such day, Client shall initiate an electronics funds transfer, wire or ACH credit to WageWorks account shown below. Failure to ensure that there are sufficient funds will delay the creation of individual accounts, preventing participants from any access to their benefits. WageWorks reserves the right to charge additional fees resulting from the initial funding being untimely. Any WageWorks service level agreements shall be waived if the initial funding is delayed.
- D. On the first business day of each week, WageWorks shall transmit an invoice reminder notice, via electronic mail to one or more electronic addresses designated by the Client, that an on-line report containing all purchases, payments and reimbursements made under the flexible spending accounts during the previous week is available for download on the WageWorks Employer Site.
- E. Client shall ensure that WageWorks receive the full amount withheld from all Participants' salaries for the benefits within three (3) days after each payroll by either issuing a wire or electronic funds transfer (EFT) or ACH credit.
- F. In cases during any given week where the amount already used for benefits by the Participants on a cumulative basis falls below the amount received as described in E above, WageWorks shall notify Client of the amount needed, and Client shall provide the necessary funding by wire or EFT no later than the second business day.
- G. Each incident of failure to make funds available timely as described above, other than *force majeure*, Client agrees to pay a late fee of 2% on the unpaid balance.
- H. After the second failure to provide timely funding in a single plan year, all applicable WageWorks services may be suspended until a funding arrangement satisfactory to WageWorks has been implemented by Client. If none can be implemented by Client, the Agreement shall be terminated. Such termination shall not relieve Client of any amounts due WageWorks.
- I. If the total funds available to WageWorks fall to zero, all applicable WageWorks services may be terminated until funds are made available to WageWorks. Client agrees to pay \$35 per Participant each time WageWorks services have to be suspended or terminated due to Client's failure to provide funds timely, plus any other out of pocket costs such as bank charges.
- J. Remaining funding balance amounts shall be reconciled and returned to Client (less any amounts owed WageWorks) as soon as administratively feasible but in no event later than 90 days after the completion of run-out and any ancillary manual claims settlement. Standard mode of return of funds shall be via ACH credit.

Client acknowledges and agrees to pay WageWorks the entire amount delivered or deliverable to Participants in Client's plans, regardless of whether Client collects sufficient payroll deductions from its Employees.

On behalf of Client, I agree to this funding arrangement:

Name of Client (Employer)	
Name of person signing for Employer (print):	
Title (print):	
Date:	
FEIN:	
Telephone:	
Email:	
Authorized Signature:	

Union Bank of California
350 California Street, 10th Fl
San Francisco, CA 94104
Account Name: WageWorks FSA/HRA Deposits Account
Account Number: 3120004394
ABA Routing #: 122000496

NOTE: DO NOT SEND FEES TO THIS ACCOUNT.

Appendix C-2 WageWorks Debit Card Provisions

The following additional provisions shall apply with respect to WageWorks' Card Services for health care FSAs and the issuance of WageWorks' debit cards to Participants. The term, "Card," shall mean a WageWorks' debit card issued to a Participant.

1. All employees of the Client who are Participants shall automatically receive one Card without a separate fee.
2. WageWorks may charge a separate fee for additional Cards requested for a spouse or another dependent over 18 years of age.
3. WageWorks shall be responsible to provide administrative services to Participants, including updating Participants' records, maintaining accurate account balances and deposit information, activating and deactivating Cards, responding to Participants' inquiries and providing appropriate notices of actions taken.
4. Payment of Card transactions shall be withdrawn against the applicable Participant's Account and shall be reimbursed by the Client based on the benefit claims funding method chosen by the Client.
5. WageWorks agrees to reasonably ensure compliance with proper use of the Card and take whatever action is necessary to investigate and resolve errors in Card transactions asserted by Participants.
6. WageWorks agrees to cancel, as soon as is administratively practicable, access to a Participant's Card when a Card is reported as being lost or stolen.
7. WageWorks agrees, upon notice from Client of termination or ineligibility of a Participant to, as soon as is administratively practicable, deactivate such Participant's Card. If Client fails to provide this notice in a timely manner causing payment of ineligible expenses, Client will be responsible for all costs incurred for subsequent Card transactions made by the terminated or ineligible Participant.
8. WageWorks will make available to the Client, for distribution to the Participants, information as to the proper use of the Card.
9. If an improper use of the Card occurs, WageWorks will turn off access to the Card until the improper use can be corrected. WageWorks will attempt to correct such improper use based on applicable law and regulations (e.g., offsetting the improper claim against a proper claim). If WageWorks cannot correct the improper use on its own, Client agrees to correct the error by adopting such measures as are required by applicable law and regulations (e.g., deducting the amount from the Participant's wages).
10. Client acknowledges that any and all data or information necessary to provide a Card will reside on servers owned by or operated on behalf of WageWorks' service providers. Client hereby grants to WageWorks and its service providers the right to receive, process and perform services with all information and data that is submitted to WageWorks in order for WageWorks to provide Cards. Client further grants to WageWorks and its service providers the right to derive and use aggregate and statistical data from such information and data.
11. Client hereby grants to WageWorks and its service providers a non-exclusive, non-transferable, royalty-free license to use Client's trademarks in connection with the Card programs, in the forms and formats approved by Client on (i) Cards; (ii) periodic statements; and (iii) other communications to Plan Participants with respect to the accounts. Client agrees that the name of the financial institution which issues the Cards, a web site Uniform Resource Locator, and a customer service phone number will be printed on all Cards.
12. Client agrees to notify WageWorks immediately upon suspicion or confirmation of inappropriate or fraudulent Card use.
13. WageWorks may charge separate or additional fees to issue replacement Cards.
14. As provided in Exhibit C, Client has authorized and instructed WageWorks to implement its standard administrative procedures to provide services in accordance with Exhibit C and the Agreement. Such standard administrative procedures may be different for one or more Card transactions or groups or categories of Card transactions, as determined solely by WageWorks.

Exhibit C-3 – Administrative Service Fee Payment information

CLIENT ACH Information If Client wishes WageWorks to issue ACH Debit:

Name of Client (Employer)	
Name of Bank:	
Address of Bank:	
Demand Deposit Account Number:	
ABA Routing Number (9 digits):	
Name (print):	
Title (print):	
Date:	
FEIN:	
Filter ID Number for EPA	
Telephone	
Email	
Authorized Banking Signature:	

If Client wishes to pay fees by wire, EFT, or ACH Credit:

WageWorks, Inc. Wire Information Name of Bank:	Union Bank of California
WW Demand Deposit Account Name and Number	WageWorks Main Account 3120004386
ABA Routing Number:	122000496
WageWorks Contact:	Account Services
FEIN:	94-3351864

Addendum I

Business Associate Agreement (BAA)

This is Addendum I to the Agreement between City of Los Angeles ("Client") and WageWorks, Inc. ("WageWorks") ("Addendum") and is entered into effective as of January 1, 2013 ("Effective Date"). In case of a conflict between this Addendum and the Agreement, this Addendum shall supersede. Capitalized terms in this Addendum have the same meaning as in the Agreement unless defined herein.

WageWorks shall comply with all requirements of privacy and confidentiality related to Protected Health Information under the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereunder, as may be amended from time to time ("HIPAA"), as the Business Associate of the Covered Entity(ies). Unless otherwise defined in this Agreement, all capitalized words that are not defined shall have the meaning given to it under HIPAA Privacy and Security Rules (under 45 CFR Part 160 through Part 164, Subparts A and E, as may be amended from time to time) and the Breach Notification Rules (under 45 CFR Part 164, Subpart D, as may be amended from time to time). Unless the context indicates otherwise, the term Protected Health Information includes Electronic Protected Health Information. Service Agreement means the underlying service agreement to which this Addendum is attached.

Section I. 1. Use and Disclosure.

WageWorks agrees to:

- i. use or disclose Protected Health Information only as permitted or required by the Agreement or as Required By Law.
- ii. use appropriate safeguards to maintain the confidentiality of Protected Health Information of Participants (and their spouses and dependants), and
- iii. use of such Protected Health Information for WageWorks' management, administrative and legal responsibilities only as permitted by law.

Section I. 2. Reports of Improper Use Or Disclosure.

WageWorks hereby agrees that it shall report to Client, as soon as reasonably possible, its discovery of any use or disclosure of Protected Health Information not provided for or allowed by the Agreement. To the extent such use or disclosure also constitutes a Privacy Breach, Section I.11 shall apply.

Section I. 3. Affiliated Service Providers.

WageWorks hereby agrees that any time Protected Health Information is provided or made available to any Affiliated Service Providers, WageWorks will enter into a subcontract with the Affiliated Service Provider that contains terms, conditions and restrictions on the use and disclosure of Protected Health Information substantially similar to those contained in this BAA, unless such Affiliated Service Provider is exempted by HIPAA from being a Business Associate (e.g., credit card processing companies).

Section I. 4. Right of Access to Protected Health Information.

WageWorks hereby agrees to make available and provide a right of access to Protected Health Information by an enrolled Employee or an enrolled Employee's dependents (as applicable).

Section I. 5. Amendment and Incorporation of Amendments.

WageWorks agrees to make Protected Health Information available for amendment and to incorporate any amendments to Protected Health Information in accordance with HIPAA and at the direction of the enrolled Employee.

Section I. 6. Provide Accounting.

WageWorks agrees to document any disclosure of Protected Health Information (if such documentation is required by HIPAA) and to provide an accounting of such disclosures to the enrolled Employee if such request originated from the Employee or the Client's designated HIPAA recipient. The request of such accounting must be made in writing. WageWorks shall respond to such request within ten (10) business days.

Section I. 7. Access to Books and Records.

For purposes of determining compliance with HIPAA, WageWorks hereby agrees to make its internal practices, books, and records relating to the use or disclosure of Protected Health Information received from, or created or received by WageWorks on behalf of the Client available to the Secretary of the Department of Health and Human Services (or the designee thereof) or the authorized representative of Client that is qualified to review such information, provided that the Client gives WageWorks thirty (30) days written notice, unless HIPAA requires that WageWorks provide such information sooner.

Section I. 8. Return or Destruction of Protected Health Information.

At termination of the Service Agreement or the expiration of the tax record retention period, whichever is earlier, WageWorks hereby agrees to destroy all Protected Health Information received from, or created or received by WageWorks on behalf of Client, and not to retain any copies of such information after termination of the Agreement or the record retention period, as applicable. If the destruction of such information is not feasible or is prohibited by laws on tax record retention, WageWorks agrees to extend the protections of the Agreement for as long as necessary to protect the information and to limit any further use or disclosure.

Section I. 9. Mitigation Procedures.

WageWorks agrees to have procedures in place for mitigating, to the extent practicable, any harmful effect that is known to WageWorks from the use or disclosure of Protected Health Information in a manner contrary to this Agreement or applicable law. To the extent such use or disclosure also constitutes a Privacy Breach, Section I.11 shall apply.

Section I. 10. HIPAA Security.

- a. WageWorks warrants that it has implemented administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of any Electronic Protected Health Information that it creates, receives, maintains or transmits on behalf of Client as required by HIPAA or that which is created, received, maintained or transmitted by WageWorks' agents or subcontractors.
- b. WageWorks shall report to Client any successful Security Incident of which it becomes aware. For purposes of the Service Agreement, "Security Incident" means the unauthorized access, use, disclosure, modification, or destruction of information or interference with the system operations in an information system. To the extent a Security Incident also constitutes a Privacy Breach, Section I.11 shall apply to the Security Incident.
- c. WageWorks shall provide in such notice the remedial or other actions undertaken to correct the unauthorized Use or Disclosure.
- d. WageWorks shall mitigate, to the extent practicable, any harmful effect that is known to WageWorks of a Use or Disclosure of Protected Health Information by itself, an agent or subcontractor in violation of the requirements of the Agreement.
- e. WageWorks', its agent's or subcontractor's obligations under this paragraph Section I.10 shall survive the expiration or termination of the Agreement.

Section I. 11. Reports of Privacy Breach.

WageWorks hereby agrees that it shall provide the following notices of any incident that, in WageWorks' reasonable determination, constitutes a Privacy Breach directly caused by WageWorks and directly related to the services WageWorks provides to Client under the Services Agreement: (i) notice to affected individuals, including any substitute notice as necessary (in accordance with 45 CFR 164.404) and (ii) if, required, immediate notice to the Secretary of the Department of Health and Human Services ("HHS"), including maintaining a log or other documentation of Privacy Breaches to be provided to the Secretary on an annual basis (in accordance with 45 CFR 164.408). WageWorks shall also inform the Client if notice to a media outlet is necessary (45 CFR 164.406), and shall assist Client in those notification efforts. Notwithstanding the foregoing, WageWorks shall not be responsible for providing or assisting with any notice to individuals, HHS, or a media outlet for Privacy Breaches caused by any person or entity other than WageWorks. For Privacy Breaches (as reasonably determined by WageWorks) discovered by WageWorks and caused by any person or entity other than WageWorks, WageWorks shall report to Client without unreasonable delay its discovery of any such Privacy Breach. WageWorks shall provide such notice to Client in accordance with 45 CFR 164.410 of the Breach Notification Rules, subject to the law enforcement delay provided in 45 CFR 164.412. A Privacy Breach shall have the same meaning as the term "breach" as defined in 45 CFR 164.402.

Section I. 12. Client's Responsibilities.

Client, on behalf of the Covered Entity(s),

- 1) agrees that WageWorks may use Protected Health Information for the administration of benefits in accordance with the Agreement and its internal management, to the extent allowed by HIPAA,
- 2) shall notify WageWorks of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 CFR § 164.520, to the extent that such limitation may affect WageWorks' use or disclosure of Protected Health Information,
- 3) shall notify WageWorks of any changes in, or revocation of, permission by an Individual to use or disclose Protected Health Information, to the extent that such changes may affect WageWorks' use or disclosure of Protected Health Information,
- 4) shall notify WageWorks of any restriction on the use or disclosure of Protected Health Information that Client has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect WageWorks' use or disclosure of Protected Health Information; and
- 5) shall establish and administer policies and procedures to ensure that accessing WageWorks' website that contains enrolled Employee PHI are restricted to authorized Client's personnel.

Section I. 13. No Third Party Beneficiaries.

No part of this BAA is intended to create any third party beneficiary rights.

Section I. 14. Termination for breach.

- a. If one party breaches its duties under this BAA, and such breach is not curable in a reasonable time, then the non-breaching party may terminate the Agreement. Nothing in this Section shall limit the non-breaching party's rights or remedies under the Agreement.
- b. Notwithstanding the foregoing, if a party (the "Knowledge Party") knows or becomes aware of a pattern or practice of the other party that constitutes a material breach or violation of such party's

obligation under this Agreement (the "Breaching Party"), the Knowledge Party shall take reasonable steps to cure the breach or end the violation, as applicable. If such steps are unsuccessful, the Knowledge Party shall terminate this Agreement, if feasible. If it is not feasible to terminate this Agreement, the Knowledge Party shall report the Breaching Party to the Secretary of the Department of Health and Human Services.

Section I. 15. HITECH Act Compliance.

The parties acknowledge that the Health Information Technology for Economic and Clinical Health Act of 2009 ("HITECH Act") includes several provisions impacting the health care industry, including significant changes to HIPAA. The Privacy Subtitle of the HITECH Act sets forth provisions that significantly change the requirements for business associates and the agreements between business associates and covered entities under HIPAA and many of these changes will be clarified in forthcoming regulations and guidance. Each party agrees to comply with the applicable provisions of the HITECH Act and any implementing regulations and guidance issued thereunder; provided, however, that WageWorks shall have the right, upon the issuance of any such implementing regulations or guidance, to terminate the Agreement and the Service Agreement upon thirty (30) days prior written notice to the Client. Also, the parties agree to negotiate a modification of this Agreement as reasonably necessary to comply with the HITECH Act and its implementing regulations, guidance, and interpretations as they become effective; provided, however, that notwithstanding any other provision of this Section I.15, any prior business associate agreement or the Service Agreement, in the event they are not able to agree upon such a modification, either party shall have the right to terminate this Agreement and/or the Service Agreement upon thirty (30) days prior written notice to the other party.

EXHIBIT D CONFIDENTIALITY AGREEMENT

WageWorks, Inc., (hereinafter referred to as "Contractor"), has entered into a Professional Services Agreement (hereinafter referred to as "Agreement") with the City of Los Angeles (hereinafter referred to as "City") to provide various services to City.

Contractor will provide temporary professional services to the City and as part of these services may have access to certain Confidential Information. "Confidential Information" includes, but is not limited to, all data; records, documents, audio or visual recordings, materials, products, technology, computer programs, specifications, manuals, business plans, software, marketing plans, financial information, and other information disclosed or submitted, orally, in writing, or by any other media, to Contractor by or on behalf of City. "Confidential Information" also includes data, records and personal information, such as social security numbers, dates of birth and home addresses for elected officials, officers and employees of City ("City Personnel"), and other personal information as defined by California Civil Code Section 1798.82.

Contractor understands and agrees that all Confidential Information provided to Contractor by or on behalf of City and/or City Personnel, or accessed or reviewed by Contractor during the performance of the Agreement is and will remain the confidential property of the City and/or City Personnel. The City acknowledges that proprietary records created in the ordinary course of Contractor's business, including Contractor's underwriting, sales, and claim files, excepting any Confidential Information therein, are Contractor's property.

Contractor agrees not to provide or divulge Confidential Information, nor disclose its content or any information contained in it, either orally or in writing, to any other person or entity except as authorized in writing by City or City Personnel, as applicable, or as authorized or required by law. Contractor further agrees not to make copies of any Confidential Information unless it does so in furtherance of Contractor's performance under the Agreement and in compliance with its obligations under law.

Contractor will be responsible for protecting the confidentiality and maintaining the security of all Confidential Information in Contractor's possession and Contractor shall ensure that its officers, employees and agents comply with the requirements herein. Contractor shall implement and maintain adequate and necessary security systems, along with policies and protocols to provide the highest reasonable level of safety and security of the Confidential Information. If there is a breach of Contractor's security system, as defined by Civil Code Section 1798.82, and Confidential Information is accessed or believed to have been accessed, then Contractor, in addition to its notification obligations under Civil Code Section 1798.82, shall include the information set forth in Civil Code Section 1798.82(d)(3) in the notification required thereby and provide a copy of such notification simultaneously to the City (if the City is not otherwise a required recipient of the notification).

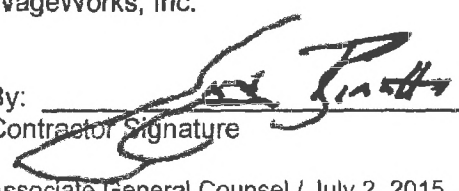
Upon request by City and upon the completion or termination of Contractor's services under the Agreement, Contractor will return to City all of City's confidential property in Contractor's possession, unless otherwise prohibited by law.

In addition to its other indemnity obligations under the Agreement, Contractor shall indemnify and defend (with counsel subject to reasonable approval by City) City and City Personnel from and against any claim, action, cause of action, loss, demands and expenses, including, but not limited to, attorneys' fees and costs of litigation, damages and liability (collectively "Claim") of any nature whatsoever arising from Contractor's breach of its obligations under this Confidentiality Agreement and/or the injuries, damages and costs of any kind caused from access by any unauthorized individual or entity to the Confidential Information held or retained in any form by Contractor. Contractor's defense obligation includes Claims by City Personnel and excludes Claims based on the active negligence and/or willful misconduct of the City. Contractor's obligations hereunder shall commence upon the receipt of any Claim by City or Contractor.

This Confidentiality Agreement is intended to impose requirements similar and in addition to those set forth in Civil Code Section 1798.82 in regards to "personal information." It is intended to apply in conjunction with any other confidentiality agreements between Contractor and City, and will not nullify such agreements; however, in the case of conflict between this Confidentiality Agreement and other confidentiality provisions, this Confidentiality Agreement will take precedence.

I, on behalf of Contractor, acknowledge that violation of this Confidentiality Agreement may result in termination of the Agreement and may subject Contractor to civil remedies and that City will seek all possible legal and equitable redress.

WageWorks, Inc.

By: 

Contractor Signature

WageWorks, Inc.

Print Contractor Name

Associate General Counsel / July 2, 2015.

Title

Date

Contractor Address 1100 Park Place, 4th Floor,

San Mateo, CA 94403

Contract Number C-125997

STANDARD PROVISIONS FOR CITY CONTRACTS

TABLE OF CONTENTS

PSC – 1.	CONSTRUCTION OF PROVISIONS AND TITLES HEREIN	1
PSC – 2.	NUMBER OF ORIGINALS	1
PSC – 3.	APPLICABLE LAW, INTERPRETATION AND ENFORCEMENT	1
PSC – 4.	TIME OF EFFECTIVENESS.....	1
PSC – 5.	INTEGRATED CONTRACT	2
PSC – 6.	AMENDMENT	2
PSC – 7.	EXCUSABLE DELAYS	2
PSC – 8.	BREACH	2
PSC – 9.	WAIVER	2
PSC – 10.	TERMINATION.....	3
PSC – 11.	INDEPENDENT CONTRACTOR.....	4
PSC – 12.	CONTRACTOR’S PERSONNEL.....	4
PSC – 13.	PROHIBITION AGAINST ASSIGNMENT OR DELEGATION.....	4
PSC – 14.	PERMITS.....	4
PSC – 15.	CLAIMS FOR LABOR AND MATERIALS	4
PSC – 16.	LOS ANGELES CITY BUSINESS TAX REGISTRATION CERTIFICATE	5
PSC – 17.	RETENTION OF RECORDS, AUDIT AND REPORTS	5
PSC – 18.	FALSE CLAIMS ACT	5
PSC – 19.	BONDS.....	5
PSC – 20.	INDEMNIFICATION.....	5
PSC – 21.	INTELLECTUAL PROPERTY INDEMNIFICATION	6

PSC – 22.	INTELLECTUAL PROPERTY WARRANTY	6
PSC – 23.	OWNERSHIP AND LICENSE	6
PSC – 24.	INSURANCE	7
PSC – 25.	DISCOUNT TERMS.....	9
PSC – 26.	WARRANTY AND RESPONSIBILITY OF CONTRACTOR.....	9
PSC – 27.	NON-DISCRIMINATION AND AFFIRMATIVE ACTION	9
PSC – 28.	EQUAL EMPLOYMENT PRACTICES	10
PSC – 29.	LIVING WAGE ORDINANCE and SERVICE CONTRACTOR WORKER RETENTION ORDINANCE	12
PSC – 30	EQUAL BENEFITS ORDINANCE	14
PSC – 31.	AMERICANS WITH DISABILITIES ACT	14
PSC – 32.	CONTRACTOR RESPONSIBILITY ORDINANCE	15
PSC – 33.	MINORITY, WOMEN, AND OTHER BUSINESS ENTERPRISE OUTREACH PROGRAM	16
PSC – 34.	SLAVERY DISCLOSURE ORDINANCE.....	16
PSC – 35.	CHILD SUPPORT ASSIGNMENT ORDERS	16
PSC – 36.	FIRST SOURCE HIRING ORDINANCE	17
PSC – 37.	LIMITATIONS ON CAMPAIGN CONTRIBUTIONS IN CITY ELECTIONS	17
PSC – 38.	IRAN CONTRACTING ACT OF 2010.....	18
PSC – 39.	FAIR CHANCE INITIATIVE FOR HIRING ORDINANCE.....	18

STANDARD PROVISIONS FOR CITY CONTRACTS

PSC – 1. CONSTRUCTION OF PROVISIONS AND TITLES HEREIN

All titles, subtitles, or headings in this contract have been inserted for convenience, and shall not be deemed to affect the meaning 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 Contractor. The word “Contractor” herein in this contract includes the party or parties identified in the contract. The singular shall include the plural; if there is more than one Contractor herein, unless expressly stated otherwise, their obligations and liabilities hereunder shall be joint and several. Use of the feminine, masculine, or neuter genders shall be deemed to include the genders not used.

PSC – 2. NUMBER OF ORIGINALS

The number of original texts of this contract shall be equal to the number of the parties hereto, one text being retained by each party. At the City’s option, one or more additional original texts of this Contract may also be retained by the City.

PSC – 3. 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 contract shall be enforced and interpreted under the laws of the State of California without regard to conflict of law principles. Contractor shall comply with new, amended, or revised laws, regulations, and/or procedures that apply to the performance of this contract.

In any action arising out of this contract, Contractor consents to personal jurisdiction, and agrees to bring all such actions, exclusively in state or federal courts located in Los Angeles County, California.

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

PSC – 4. TIME OF EFFECTIVENESS

Unless otherwise provided, this contract shall take effect when all of the following events have occurred:

- A. This contract has been signed on behalf of Contractor by the person or persons authorized to bind Contractor hereto;
- B. This contract has been approved by the City Council or by the board, officer or employee authorized to give such approval;
- C. The Office of the City Attorney has indicated in writing its approval of this contract as to form; and

- D. This contract 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 contract and has been attested to by the City Clerk.

PSC – 5. INTEGRATED CONTRACT

This contract contains the full and complete agreement between the parties, sets forth all of the rights and duties of the parties with respect to the subject matter hereof, and replaces any and all previous agreements or understandings, whether written or oral, relating thereto. No verbal agreement nor conversation with any representative of either party shall affect or modify any of the terms and conditions of the contract.

PSC – 6. AMENDMENT

Any change to the terms of the contract, including changes in the scope of work to be performed and any increase or decrease in the amount of compensation, which are agreed to by the parties shall be incorporated into the contract by a written amendment properly executed by the authorized representatives of the parties and effective pursuant to the provisions of PSC-4. No verbal agreement with any officer or employee shall affect or modify any of the terms or conditions of the contract.

PSC – 7. EXCUSABLE DELAYS

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.

PSC – 8. BREACH

Except for excusable delays as described in PSC-7, 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.

PSC – 9. WAIVER

A waiver of a default of any part, term or provision of this contract must be in writing and 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.

PSC – 10. TERMINATION

A. TERMINATION FOR CONVENIENCE

The City may terminate this contract for the City's convenience at any time by giving Contractor thirty days written notice thereof. Upon receipt of said notice, Contractor shall immediately take action not to incur any additional obligations, cost or expenses, except as may be reasonably necessary to terminate its activities. The City shall pay Contractor its reasonable and allowable costs through the effective date of termination and those reasonable and necessary costs incurred by Contractor to affect such termination. Thereafter, Contractor shall have no further claims against the City under this contract. All finished and unfinished documents and materials procured for or produced under this Contract, including all intellectual property rights thereto, shall become City property upon the date of such termination. Contractor agrees to execute any documents necessary for the City to perfect, memorialize, or record the City's ownership of rights provided herein.

B. TERMINATION FOR BREACH OF CONTRACT

1. Except for excusable delays as provided in PSC-7, if Contractor fails to perform any of the provisions of this contract or so fails to make progress as to endanger timely performance of this contract, the City may give Contractor written notice of such default. If Contractor does not cure such default or provide a plan to cure such default which is acceptable to the City within the time permitted by the City, then the City may terminate this contract due to Contractor's breach of this contract
2. If a federal or state proceeding for relief of debtors is undertaken by or against Contractor, or if Contractor makes an assignment for the benefit of creditors, then the City may immediately terminate this contract.
3. If Contractor engages in any dishonest conduct related to the performance or administration of this contract or violates the City's lobbying policies, then the City may immediately terminate this contract.
4. In the event the City terminates this contract as provided in this section, the City may procure, upon such terms and in such manner as the City may deem appropriate, services similar in scope and level of effort to those so terminated, and Contractor shall be liable to the City for all of its costs and damages, including, but not limited to, any excess costs for such services.
5. All finished or unfinished documents and materials produced or procured under this contract, including all intellectual property rights thereto, shall become City property upon date of such termination. Contractor agrees to execute any documents necessary for the City to perfect, memorialize, or record the City's ownership of rights provided herein.
6. If, after notice of termination of this contract under the provisions of this section, it is determined for any reason that Contractor was not in default under the provisions of this section, or that the default was excusable

under the terms of this contract, the rights and obligations of the parties shall be the same as if the notice of termination had not been issued pursuant to PSC-10(A) Termination for Convenience.

7. 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.

PSC – 11. INDEPENDENT CONTRACTOR

Contractor is acting hereunder as an independent contractor and not as an agent or employee of the City. No employee of Contractor has been, is, or shall be an employee of the City by virtue of the contract, and Contractor shall so inform each employee organization and each employee who is hired or retained under the contract. Contractor 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.

PSC – 12. CONTRACTOR'S PERSONNEL

Unless otherwise provided or approved by the City, Contractor shall use its own employees to perform the services described in this contract. The City shall have the right to review and approve any personnel who are assigned to work under this contract. Contractor agrees to remove personnel from performing work under this contract if requested to do so by the City.

Contractor shall not use subcontractors to assist in performance of this contract without the prior written approval of the City. If the City permits the use of subcontractors, Contractor shall remain responsible for performing all aspects of this contract. The City has the right to approve Contractor's subcontractors, and the City reserves the right to request replacement of subcontractors. The City does not have any obligation to pay Contractor's subcontractors, and nothing herein creates any privity between the City and the subcontractors.

PSC – 13. PROHIBITION AGAINST ASSIGNMENT OR DELEGATION

Contractor shall not, unless it has first obtained the prior written consent of the City (a) Assign or otherwise alienate any of its rights under this contract, including the right to payment; or (b) Delegate, subcontract, or otherwise transfer any of its duties under this contract.

PSC – 14. PERMITS

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

PSC – 15. CLAIMS FOR LABOR AND MATERIALS

Contractor shall promptly pay when due all amounts payable for labor and materials furnished in the performance of this contract 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 Contractor hereunder), against Contractor'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.

PSC – 16. LOS ANGELES CITY BUSINESS TAX REGISTRATION CERTIFICATE

If applicable, Contractor represents that it has obtained and presently holds the Business Tax Registration Certificate(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 contract, Contractor shall maintain, or obtain as necessary, all such Certificates required of it under the Business Tax Ordinance, and shall not allow any such Certificate to be revoked or suspended.

PSC – 17. RETENTION OF RECORDS, AUDIT AND REPORTS

Contractor shall maintain all records, including records of financial transactions, pertaining to the performance of this contract, in their original form, in accordance with requirements prescribed by the City. These records shall be retained for a period of no less than five 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 or within the five years following final payment made by the City hereunder or the expiration date of this contract, whichever occurs last. Contractor shall provide any reports requested by the City regarding performance of this contract. Any subcontract entered into by Contractor, to the extent allowed hereunder, shall include a like provision for work to be performed under this contract.

PSC – 18. FALSE CLAIMS ACT

Contractor acknowledges that it is aware of liabilities resulting from submitting a false claim for payment to the City under the 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.

PSC – 19. BONDS

All bonds which may be required for performance of services 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.

PSC – 20. INDEMNIFICATION

Except for the active negligence or willful misconduct of the City, or any of its boards, officers, agents, employees, assigns and successors in interest, Contractor undertakes and agrees to defend (with counsel subject to approval by City), indemnify and hold harmless the City and 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, for death or injury to any person, including Contractor's employees and agents, or damage or destruction of any property of either

party hereto or of third parties, and/or for any other damages or losses of any kind or nature arising in any manner by reason of the negligent acts, errors, omissions or willful misconduct incident to the performance of this Contract by Contractor or its subcontractors of any tier. 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 PSC-20 shall survive expiration or termination of this Contract.

PSC – 21. INTELLECTUAL PROPERTY INDEMNIFICATION

Contractor, at its own expense, undertakes and agrees to defend (with counsel subject to City approval), indemnify, and hold harmless the City, and 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, cost 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 Contractor, or its subcontractors 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 Contractor, or its subcontractors of any tier, under the Agreement. 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 records, and sound recordings, marks, logos, graphic designs, notes, websites, domain names, inventions, processes, formulas matters and combinations thereof, and all forms of intellectual property. 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 PSC-21 shall survive expiration or termination of this contract.

PSC – 22. INTELLECTUAL PROPERTY WARRANTY

Contractor represents and warrants that its performance of all obligations under this contract does 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.

PSC – 23. OWNERSHIP AND LICENSE

Unless otherwise provided for herein, all Work Products originated and prepared by Contractor or its subcontractors 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. Contractor hereby assigns, and agrees to assign, all goodwill, copyright, trademarks, patent, trade secret and all other intellectual property rights worldwide in any Work Products originated and prepared by Contractor under this contract. Contractor 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 Contractor or its

subcontractors of any tier under this contract, Contractor hereby grants a non-exclusive perpetual license to use such Work Products for any City purposes.

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

Any subcontract entered into by Contractor 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 subcontractors 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 Contractor to comply with this requirement or to obtain the compliance of its subcontractors with such obligations shall subject Contractor to the imposition of any and all sanctions allowed by law including, but not limited to termination of the contract.

PSC – 24. INSURANCE

A. General Conditions

1. During the term of this Agreement and without limiting Contractor's indemnification of the City, Contractor shall provide and maintain at its own expense a program of insurance having coverage and limits customarily carried and actually arranged by the Contractor but not less than the amounts and types listed on the Required Insurance And Minimum Limits Sheet (Form Gen. 146) in Exhibit A hereto, covering its operations hereunder. Such insurance shall conform to City requirements established by Charter, ordinance or policy, shall comply with instructions set forth on the City of Los Angeles – Instructions And Information On Complying With City Insurance Requirements (Revised 10/09) document, and shall otherwise be in a form acceptable to the Office of the City Administrative Officer, Risk Management. Specifically, such insurance shall: 1) protect City as an Insured or an Additional Interest Party, or a Loss Payee As Its Interest May Appear, respectively, when such status is appropriate and available depending on the nature of applicable coverages; 2) provide City at least thirty (30) days advance written notice of cancellation, material reduction in coverage or reduction in limits when such change is made at option of the insurer; 3) be primary with respect to City's insurance plan. Except when City is a named insured, Contractor's insurance is not expected to respond to claims which may arise from acts or omissions of the City.
2. The standard City of Los Angeles insurance conditions are incorporated into the sample standard subcontract provisions. The specific insurance coverages and limits shall be described by contractor in RFP. These coverages and limits should be tailored to the individual subcontract. For City contracts, ***Required Insurance and Minimum Limits*** are set by the City Risk Management staff in the Office of the City Administrative Officer of the City of Los Angeles on the Form Gen. 146. Electronic submission is the preferred method of submitting your evidence of insurance documents. **Track4LA™** is the City's online insurance compliance

system and is designed to make the experience of submitting and retrieving insurance information quick and easy. The system is designed to be used primarily by insurance brokers and agents as they submit client insurance certificates directly to the City. It uses the standard insurance industry form known as the **ACORD 25 Certificate of Liability Insurance** in electronic format. The easiest and quickest way to obtain approval of your insurance is to have your insurance broker or agent access **Track4LA™** at <http://track4la.lacity.org> and follow the instructions to register and submit the appropriate proof of insurance on your behalf. Additional instructions and information on complying with City of Los Angeles insurance requirements can be found at http://cao.lacity.org/risk/Submitting_proof_of_Insurance.pdf.

B. Modification of Coverage

City reserves the right at any time during the term of this Agreement to change the amounts and types of insurance required hereunder by giving Contractor/Consultant ninety (90) days advance written notice of such change. If such change should result in substantial additional cost to the Contractor/Consultant, City agrees to negotiate additional compensation proportional to the increased benefit to City.

C. Failure to Procure Insurance

1. All required insurance must be submitted and approved by the Office of the City Administrative Officer/Risk Management prior to the inception of any operations or tenancy by Contractor/Consultant. The required coverages and limits are subject to availability on the open market at reasonable cost as determined by City. Non-availability or non-affordability must be documented by a letter from Contractor's/Consultant's insurance broker or agent indicating a good faith effort to place the required insurance and showing as a minimum the names of the insurance carriers and the declinations or quotations received from each.
2. Within the foregoing constraints, Contractor's/Consultant's failure to procure or maintain required insurance or a self-insurance program during the entire term of this Agreement shall constitute a material breach of this Agreement under which City may immediately suspend or terminate this Agreement or, at its discretion, procure or renew such insurance to protect City's interests and pay any and all premiums in connection therewith and recover all monies so paid from Contractor/Consultant.

D. Workers' Compensation

1. By signing this Agreement, Contractor/Consultant hereby certifies that it is aware of the provisions of §3700 *et seq.*, of the Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that

Code, and that it will comply with such provisions at all such times as they may apply during the performance of the work pursuant to this Agreement.

2. A Waiver of Subrogation in favor of City will be required when work is performed on City premises under hazardous conditions.

PSC – 25. DISCOUNT TERMS

Contractor 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 discount to payments made under this contract which meet the discount terms.

PSC – 26. WARRANTY AND RESPONSIBILITY OF CONTRACTOR

Contractor warrants that the work performed hereunder shall be completed in a manner consistent with professional standards practiced among those firms within Contractor's profession, doing the same or similar work under the same or similar circumstances.

PSC – 27. NON-DISCRIMINATION AND AFFIRMATIVE ACTION

- A. The Contractor shall comply with the applicable nondiscrimination and affirmative action provisions of the laws of the United States of America, the State of California, and the City. In performing this Agreement, the Contractor shall not discriminate in its employment practices, including compensation, against any employee or applicant for employment because of such person's race, religion, national origin, ancestry, sex, sexual orientation, gender identification, transgender status, sex stereotypes, age, physical handicap, mental disability, medical condition, marital status, domestic partner status, pregnancy, childbirth and related medical conditions, citizenship, and political affiliation or belief. The Contractor shall comply with Executive Order 11246, entitled "Equal Employment Opportunity", as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).
- B. The Contractor shall comply with the provisions of the Los Angeles Administrative Code §10.8 through 10.13, to the extent applicable hereto. If this Agreement contains a consideration in excess of One Thousand Dollars (\$1,000) or more, Contractor shall comply with the Equal Employment Practices Provisions of the Los Angeles Administrative Code Section 10.8.3., in which event, said provisions are incorporated herein by this reference. If this Agreement contains a consideration in excess of Twenty-Five Thousand Dollars (\$25,000), the Affirmative Action Program of this Agreement shall be the mandatory contract provisions set forth in Los Angeles Administrative Code §10.8.4, in which event, said provisions are incorporated herein by this reference. The Contractor shall also comply with all rules, regulations, and policies of the City's Board of Public Works, Office of Contract Compliance relating to nondiscrimination and affirmative action.

- C. Any subcontract entered into by the Contractor relating to this Agreement, to the extent allowed hereunder, shall be subject to the provisions of this section.
- D. No person shall on the grounds of race, religion, national origin, ancestry, sex, sexual orientation, gender identification, transgender status, sex stereotypes, age, physical handicap, mental disability, medical condition, marital status, domestic partner status, pregnancy, childbirth and related medical conditions, citizenship, and political affiliation or belief be excluded from participation in, be denied the benefit of, or be subjected to discrimination under this program/project. For purposes of this Section, Title 24 Code of Federal Regulations Part 107 and Section 570.601(b) defines specific discriminatory actions that are prohibited and corrective action that shall be taken in situation as defined therein.

PSC – 28. 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, Contractor agrees and represents that it will provide equal employment practices and Contractor and each subcontractor 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, gender identification, transgender status, sex stereotypes, age, physical handicap, mental disability, medical condition, domestic partner status, marital status, pregnancy, childbirth and related medical conditions, citizenship and political affiliation or belief.
 - 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. Contractor 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. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration, including compensation, for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, gender identification, transgender status, sex stereotypes, age, physical handicap, mental disability, medical condition, domestic partner status, marital status, pregnancy, childbirth and related medical conditions, citizenship, and political affiliation or belief.

- 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, Contractor 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 of compensation or because of race, religion, ancestry, national origin, sex, sexual orientation, gender identification, transgender status, sex stereotypes, age, physical handicap, mental disability, medical condition, domestic partner status, marital status, pregnancy, childbirth and related medical conditions, citizenship, and political affiliation or belief.
- D. Contractor 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. Contractor shall, upon request, provide evidence that it has or will comply therewith.
- E. The failure of any Contractor 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 has been given to Contractor.
- F. Upon a finding duly made that Contractor 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 such failure to comply may be the basis for a determination by the awarding authority or the Board of Public Works that the Contractor 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, Contractor shall be disqualified from being awarded a contract with the City for a period of two years, or until Contractor 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. Nothing contained in this Contract shall be construed in any manner so as to require or permit any act which is prohibited by law.
- I. At the time a supplier registers to do business with the City, or when an individual bid or proposal is submitted, Contractor shall agree to adhere to

the Equal Employment Practices specified herein during the performance or conduct of City Contracts.

- J. 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.
- K. Any subcontract entered into by Contractor, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract. Failure of Contractor to comply with this requirement or to obtain the compliance of its subcontractors with all such obligations shall subject 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.

PSC – 29. LIVING WAGE ORDINANCE and SERVICE CONTRACTOR WORKER RETENTION ORDINANCE

- A. Unless otherwise exempt in accordance with the provisions of this Ordinance, this contract is subject to the applicable provisions of the Living Wage Ordinance (LWO), §10.37 *et seq.* of the Los Angeles Administrative Code, as amended from time to time, and the Service Contractor Worker Retention Ordinance (SCWRO), §10.36 *et seq.*, of the Los Angeles Administrative Code, as amended from time to time. The Ordinances require the following:
 - 1. Contractor/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 as defined in the LWO;
 - 2. Contractor/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. Contractor/Consultant shall require each of its Subcontractors within the meaning of the LWO to pledge to comply with the terms of federal law proscribing retaliation for union organizing. Contractor/Consultant shall deliver the executed pledges from each such subcontractor to the City within ninety (90) days of the execution of the Subcontract. Contractor's/Consultant's delivery of executed pledges from each such Subcontractor shall fully discharge the obligation of the Contractor/Consultant to comply with the provision in the LWO

contained in §10.37.6(c) concerning compliance with such federal law.

3. The Contractor/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 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. Contractor/Consultant shall post the Notice of Prohibition Against Retaliation provided by the City.
 4. Any Subcontract entered into by the Contractor/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 "Living Wage Ordinance and Service Contractor Worker Retention Ordinance" language.
 5. Contractor/Consultant shall comply with all rules, regulations and policies promulgated by the designated administrative agency, which may be amended from time to time.
- B. Under the provisions of §10.36.3(c) and §10.37.5(c) of the Los Angeles Administrative Code, the City shall have the authority, under appropriate circumstances, to terminate this contract and otherwise pursue legal remedies that may be available if the City determines that the subject Contractor/Consultant has violated provisions of the LWO and the SCWRO.
- C. Where under the LWO §10.37.6(d), the designated administrative agency has determined (a) that the Contractor/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 awarding authority in such circumstances may impound monies otherwise due the Contractor/Consultant in accordance with the following procedures. Impoundment shall mean that from monies due the Contractor/Consultant, the awarding authority may deduct the amount determined to be due and owing by the Contractor/Consultant to its employees. Such monies shall be placed in the holding account referred to in LWO §10.37.6(d)(3) and disposed of under procedures there described through final and binding arbitration. Whether the Contractor/Consultant is to continue work following an impoundment shall remain in the unfettered discretion of the awarding authority. The Contractor/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.

PSC – 30 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, Contractor certifies and represents that Contractor will comply with the EBO.
- B. The failure of Contractor to comply with the EBO will be deemed to be a material breach of this contract by the City.
- C. If Contractor 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 Contractor 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 Contractor 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 Contractor in actions taken pursuant to the provisions of Los Angeles Administrative code Section 10.40 *et seq.*, Contractor Responsibility Ordinance.

Contractor 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 213-847-1922.”

PSC – 31. AMERICANS WITH DISABILITIES ACT

In implementing this Agreement, Contractor represents and certifies that it will:

- A. Comply with the Americans with Disabilities Act, as amended, 42 U.S.C. Section 12101 *et seq.*, the Rehabilitation Act of 1973, as amended, 29 U.S.C. Section 701 *et seq.*, the Fair Housing Act, and its implementing regulations and any subsequent amendments; and California Government Code Section 11135.
- B. Not discriminate in the provision of its programs, services or activities on the basis of disability or on the basis of a person's relationship to, or association with, a person who has a disability.

- C. Provide reasonable accommodation upon request to ensure equal access to all of its programs, services and activities.

Contractor represents and certifies that any construction for housing performed with funds provided through this Agreement will be done in accordance with the Uniform Federal Accessibility Standards (UFAS), 24 CFR, Part 40.

Contractor represents and certifies that its buildings, and facilities used to provide services in accordance with this Agreement, are in compliance with the federal and state standards for accessibility as set forth in the 2010 ADA Standards, California Title 24, Chapter 11, or other applicable federal and state law.

Contractor understands that the City is relying upon these certifications and representations as a condition to funding this Agreement.

Contractor will require its subcontractors, if any, to include this language in any subcontract.

PSC – 32. CONTRACTOR RESPONSIBILITY ORDINANCE

Unless otherwise exempt in accordance with the provisions of the Ordinance, this Contract is subject to the provisions of the Contractor Responsibility Ordinance, §10.40 *et seq.*, of Article 14, Chapter 1 of Division 10 of the Los Angeles Administrative Code, which requires Contractor/Consultant to update its responses to the responsibility questionnaire within thirty calendar days after any change to the responses previously provided if such change would affect Contractor's/Consultant's fitness and ability to continue performing the contract. In accordance with the provisions of this Ordinance, by signing this Contract, Contractor/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, wage and hours, and licensing laws which affect employees. The Contractor/Consultant further agrees to: (1) notify the awarding authority within thirty calendar days after receiving notification that any government agency has initiated an investigation which may result in a finding that the Contractor/Consultant is not in compliance with all applicable federal, state and local laws in performance of this contract; (2) notify the awarding authority within thirty calendar days of all findings by a government agency or court of competent jurisdiction that the Contractor/Consultant has violated the provisions of §10.40.3(a) of the Ordinance; (3) ensure that its subcontractor(s), as defined in the Ordinance, submit a Pledge of Compliance to awarding authorities; and (4) ensure that its subcontractor(s), as defined in the Ordinance, comply with the requirements of the Pledge of Compliance and the requirement to notify Awarding Authorities within thirty calendar days after any government agency or court of competent jurisdiction has initiated an investigation or has found that the subcontractor has violated §10.40.3(a) of the Ordinance in performance of the subcontract.

PSC – 33. MINORITY, WOMEN, AND OTHER BUSINESS ENTERPRISE OUTREACH PROGRAM

Contractor agrees and obligates itself to utilize the services of Minority, Women and Other business Enterprise firms on a level so designated in its proposal, if any. Contractor certifies that it has complied with Mayoral Directive 2001-26 regarding the Outreach Program for Personal Services Contracts Greater than \$100,000, if applicable. Contractor shall not change any of these designated subcontractors, nor shall Contractor reduce their level of effort, without prior written approval of the City, provided that such approval shall not be unreasonably withheld.

PSC – 34. SLAVERY DISCLOSURE ORDINANCE

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

PSC – 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, Contractor will fully comply with all applicable State and Federal employment reporting requirements for Contractor's employees. Contractor shall also certify (1) that Contractor will fully comply with all State and Federal employment reporting requirements applicable to Child Support Assignment Orders; (2) that the Principal Owner(s) of Contractor are in compliance with any Wage and Earnings Assignment Orders and Notices of Assignment applicable to them personally; (3) that Contractor 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 (4) that Contractor 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 Contractor 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 Contractor to comply with any Wage and Earnings Assignment Orders or Notices of Assignment applicable to them personally, shall constitute a default by the Contractor 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 Contractor by the City.

Any subcontract entered into by Contractor, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract. Failure of Contractor to obtain compliance of its subcontractors shall constitute a default by Contractor 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 Contractor by the City.

Contractor 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.

PSC – 36. FIRST SOURCE HIRING ORDINANCE

Unless otherwise exempt, 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.

- A. Contractor shall, prior to the execution of the contract, provide to the Designated Administrative Agency (DAA) a list of anticipated employment opportunities that Contractor estimates it will need to fill in order to perform the services under the contract.
- B. Contractor further pledges that it will, during the term of the contract: (1) at least seven (7) business days prior to making an announcement of a specific employment opportunity, provide notifications of that employment opportunity to the Economic and Workforce Development Department (EWDD), which will refer individuals for interview; (2) interview qualified individuals referred by EWDD; and (3) prior to filing any employment opportunity, the Contractor 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 Contractor interviewed and the reasons why referred individuals were not hired.
- C. Any subcontract entered into by the Contractor relating to this contract, to the extent allowed hereunder, shall be subject to the provisions of FSHO, and shall incorporate the FSHO.
- D. Contractor shall comply with all rules, regulations and policies promulgated by the DAA, which may be amended from time to time.

Where under the provisions of Section 10.44.13 of the Los Angeles Administrative Code the DAA has determined that the Contractor intentionally violated or used hiring practices for the purpose of avoiding the FSHO, that determination will 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 Contractor's subsequent Contractor Responsibility Questionnaires submitted under the Los Angeles Administrative Code Section 10.40 *et seq.* This measure does not limit the City's authority to act under the FSHO.

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 DAA determines that the Contractor has violated provisions of the FSHO.

PSC – 37. LIMITATIONS ON CAMPAIGN CONTRIBUTIONS IN CITY ELECTIONS

The Contractor, 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, Contractor is required to provide and update certain information to the City as specified by law. Any Contractor 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 a 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 ten (10) business days. Failure to comply may result in termination of contract or any other available legal remedies including 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.

Contractor, 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.

PSC – 38. IRAN CONTRACTING ACT OF 2010

For Contracts for the provision of goods and/or services estimated at \$1,000,000 or more, Contractor shall comply with the requirements of the Iran Contracting Act of 2010 (Public Contract Code Sections 2200-2208). Contractor shall, upon entrance of the contract and any renewal thereof, complete, sign and submit to the City the Iran Contracting Act of 2010 Compliance Affidavit. Provision of a false certification can result in certain penalties, including termination of the contract.

PSC – 39. FAIR CHANCE INITIATIVE FOR HIRING ORDINANCE

Unless otherwise exempt under Federal or State law, City Contractors and subcontractors with 10 or more employees are prohibited under Los Angeles Administrative Code Section 10.48 from seeking a job applicant's criminal history information until a job offer is made and from withdrawing a job offer unless the employer performs an assessment of the applicant's criminal history and the duties of the position. Contractors and subcontractors are required to include information regarding the ordinance in all job solicitations and advertisements and to post notices informing job applicants of their rights. Additional information and forms may be found at Department of Public Works, Bureau of Contract Administration at <http://bca.lacity.org/>.

CITY OF LOS ANGELES
INSTRUCTIONS AND INFORMATION ON
COMPLYING WITH CITY INSURANCE REQUIREMENTS

(Share this information with your insurance agent or broker.)

1. **Agreement/Reference** All evidence of insurance must identify the nature of your business with the CITY. Clearly show any assigned number of a bid, contract, lease, permit, etc., or give the project name and the job site or street address to ensure that your submission will be properly credited. Provide the **types of coverage and minimum dollar amounts** specified on the Required Insurance and Minimum Limits sheet (Form Gen. 146) included in your CITY documents.

2. **When to submit** Normally, no work may begin until a CITY insurance certificate approval number ("CA number") has been obtained, so insurance documents should be submitted as early as practicable. For **As-needed Contracts**, insurance need not be submitted until a specific job has been awarded. **Design Professionals** coverage for new construction work may be submitted simultaneously with final plans and drawings, but before construction commences.

3. **Acceptable Evidence and Approval** Electronic submission is the preferred method of submitting your documents. **Track4LA™** is the CITY'S online insurance compliance system and is designed to make the experience of submitting and retrieving insurance information quick and easy. The system is designed to be used primarily by insurance brokers and agents as they submit client insurance certificates directly to the City. It uses the standard insurance industry form known as the **ACORD 25 Certificate of Liability Insurance** in electronic format. Track4LA™ advantages include standardized, universally accepted forms, paperless approval transactions (24 hours, 7 days per week), and security checks and balances. The easiest and quickest way to obtain approval of your insurance is to have your insurance broker or agent access **Track4LA™** at <http://track4la.lacity.org> and follow the instructions to register and submit the appropriate proof of insurance on your behalf.

Insurance industry certificates other than the ACORD 25 may be accepted. All Certificates must provide a thirty (30) days' cancellation notice provision (ten (10) days for non-payment of premium) AND an Additional Insured Endorsement naming the CITY an additional insured completed by your insurance company or its designee. If the policy includes an automatic or blanket additional insured endorsement, the Certificate must state the CITY is an automatic or blanket additional insured. An endorsement naming the CITY an Additional Named Insured and Loss Payee as Its Interests May Appear is required on property policies. All evidence of insurance must be authorized by a person with authority to bind coverage, whether that is the authorized agent/broker or insurance underwriter.

Acceptable Alternatives to Acord Certificates and other Insurance Certificates:

- **A copy of the full insurance policy** which contains a thirty (30) days' cancellation notice provision (ten (10) days for non-payment of premium) and additional insured and/or loss-payee status, when appropriate, for the CITY.
- **Binders and Cover Notes** are also acceptable as interim evidence for up to 90 days from date of approval.

Additional Insured Endorsements DO NOT apply to the following:

- Indication of compliance with statute, such as Workers' Compensation Law.
- Professional Liability insurance.

Completed **Insurance Industry Certificates other than Acord 25 Certificates** can be sent electronically (CAO.insurance.bonds@lacity.org) or faxed to the Office of the City Administrative Officer, Risk Management (213) 978-7616. Please note that submissions other than through Track4LA™ will delay the insurance approval process as documents will have to be manually processed.

Verification of approved insurance and bonds may be obtained by checking **Track4LA™**, the CITY'S online insurance compliance system, at <http://track4la.lacity.org>.

4. **Renewal** When an existing policy is renewed, have your insurance broker or agent submit a new Acord 235 Certificate through **Track4LA™** at <http://track4la.lacity.org> or submit an Insurance Industry Certificate or a renewal endorsement as outlined in Section 3 above. If your policy number changes you must also submit a new Additional Insured Endorsement with an Insurance Industry Certificate.

5. **Alternate Programs/Self-Insurance** Risk financing mechanisms such as Risk Retention Groups, risk Purchasing Groups, off-shore carriers, captive insurance programs and self-insurance programs are subject to separate approval after the CITY has reviewed the relevant audited financial statements. To initiate a review of your program you should complete the Applicant's Declaration of Self-Insurance form (<http://cao.lacity.org/risk/InsuranceForms.htm>) to the Office of the City Administrative Officer, Risk Management for consideration.

6. **General Liability** Insurance covering your operations (and products, where applicable) is required whenever the CITY is at risk of third-party claims which may arise out of your work or your presence or special event on City premises. **Sexual Misconduct** coverage is a required coverage when the work performed involves minors. **Fire Legal Liability** is required for persons occupying a portion of CITY premises. (Information on two CITY insurance programs, the SPARTA program, an optional source of low-cost insurance which meets the most minimum requirements, and the special Events Liability Insurance Program, which provides liability coverage for short-term special events on CITY premises or streets, is available at (www.2sparta.com), or by calling (800) 420-0555.)

7. **Automobile Liability** insurance is required only when vehicles are used in performing the work of your Contract or when they are driven off-road on CITY premises; it is not required for simple commuting unless CITY is paying mileage. However, compliance with California law requiring auto liability insurance is a contractual requirement.

8. **Errors and Omissions** coverage will be specified on a project-by-project basis if you are working as a licensed or other professional. The length of the claims discovery period required will vary with the circumstances of the individual job.

9. **Workers' Compensation and Employer's Liability** insurance are not required for single-person contractors. However, under state law these coverages (or a copy of the state's Consent To Self Insure) must be provided if you have any employees at any time during the period of this contract. Contractor with no employees must complete a Request for Waiver of Workers' Compensation Insurance Requirement (<http://cao.lacity.org/risk/InsuranceForms.htm>). **A Waiver of Subrogation** on the coverage is required only for jobs where your employees are working on CITY premises under hazardous conditions, e.g., uneven terrain, scaffolding, caustic chemicals, toxic materials, power tools, etc. The Waiver of Subrogation waives the insurer's right to recover (from the CITY) any workers' compensation paid to an injured employee of the contractor.

10. **Property Insurance** is required for persons having exclusive use of premises or equipment owned or controlled by the CITY. **Builder's Risk/Course of Construction** is required during construction projects and should include building materials in transit and stored at the project site.

11. **Surety** coverage may be required to guarantee performance of work and payment to vendors and suppliers. A **Crime Policy** may be required to handle CITY funds or securities, and under certain

other conditions. **Specialty coverages** may be needed for certain operations. For assistance in obtaining the CITY required bid, performance and payment surety bonds, please see the City of Los Angeles bond Assistance Program website address at <http://cao.lacity.org/risk/BondAssistanceProgram.pdf> or call (213) 258-3000 for more information.

**EXHIBIT E TO PROFESSIONAL SERVICES AGREEMENT
NONDISCRIMINATION TESTING**

The City of Los Angeles (“Client”) has established a Nondiscrimination Testing arrangement with WageWorks, Inc. (“Contractor”) as set forth in Exhibit E to the Professional Services Agreement (“Agreement”). The Contractor shall provide Nondiscrimination Testing services with respect to the two tax-advantaged Flexible Saving Account (“FSA”) Plans, consisting of a Healthcare Flexible Spending Account (“HCFSA”) and a Dependent Care Flexible Savings Account (DCFSA”) as set forth below and under the terms and conditions provided herein.

1. Nondiscrimination Testing Requirement

The IRS requires that Section 125 FSA Plans be nondiscriminatory, such that it does not discriminate in favor of “Highly compensated individuals” or “Key employees” regarding eligibility for pre-tax contributions and actual benefits provided. To ensure that a plan is compliant, it must perform and pass a series of nondiscrimination tests each year.

2. Scope of Services

The Contractor will provide a Comprehensive Nondiscrimination Testing bundle that includes a series of tests for the Client to comply with the nondiscrimination testing requirement. The Comprehensive Nondiscrimination Testing bundle includes the following:

- a. All tests in the Standard Nondiscrimination Testing bundle, which includes Section 125 Key Employee Concentration Test*, Section 129 More Than 5% Owners Test (Dependent Care FSA)** and Section 129 55% Average Benefits Test (Dependent Care FSA test);
- b. Section 125 Eligibility Test and Contribution & Benefits Test;
- c. Section 105 Health FSA Eligibility Test and Benefits Test;
- d. Section 129 Eligibility Test and Contribution & Benefits Test; and
- e. Section 105 HRA Eligibility Test and Benefits Test.

*The definition of “Key employees” excludes officers or employees of government entities. Therefore, the Section 125 Key Employee Concentration Test does not apply to the Client’s Flexible Benefits Plan.

**A government entity does not have owners. Therefore, the Section 129 More Than 5% Owners Test does not apply to the Client’s Flexible Benefits Plan.

3. Fees

The fee to perform the nondiscrimination testing is \$0.00 per session.