

0150-09977-0004

TRANSMITTAL

TO The City Council	DATE 05/11/2023	COUNCIL FILE NO. C.F. 18-0572
FROM The Mayor		COUNCIL DISTRICT

Second Amended and Restated Professional Services Agreement C-131837 with GovernmentJobs.com, Inc., doing business as NEOGOV to continue providing an applicant tracking system and test management system.

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).

Please see the City Administrative Officer report attached.



MAYOR
(Chris Thompson for)

MWS:RR:11230107t

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

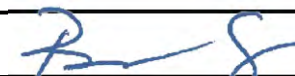
To: The Mayor	Date: 04-26-23	C.D. No. All	CAO File No.: 0150-09977-0004				
Contracting Department/Bureau: Personnel Department		Contact: Sherry Cox (213) 473-9122					
Reference: Personnel Department transmittal dated February 14, 2023; referred by Mayor for report on February 14, 2023							
Purpose of Contract: To provide an applicant tracking system and test management system							
Type of Contract: () New contract (X) Amendment, C-131837		Contract Term Dates: Current: June 1, 2018 – May 31, 2023 Proposed: June 1, 2018 – May 31, 2023					
Contract/Amendment Amount: \$1,141,715							
Proposed amount \$160,000 + Prior award(s) \$981,715 = Total \$1,141,715							
Source of funds: General Fund							
Name of Contractor: Governmentjobs.com, Inc. dba NEOGOV							
Address: 300 Continental Blvd. Rm 565, El Segundo, CA 90245							
	Yes	No	N/A	Contractor has complied with:	Yes	No	N/A
1. Council has approved the purpose	X			8. Business Inclusion Program		X	
2. Appropriated funds are available	X			9. Equal Benefits & First Source Hiring Ordinances	X		
3. Charter Section 1022 findings completed			X	10. Contractor Responsibility Ordinance	X		
4. Proposals have been requested		X		11. Disclosure Ordinances	X		
5. Risk Management review completed	X			12. Bidder Certification CEC Form 50	X		
6. Standard Provisions for City Contracts included	X			13. Prohibited Contributors (Bidders) CEC Form 55	X		
7. Workforce that resides in the City: 0%				14. CA Iran Contracting Act of 2010*	X		

RECOMMENDATION

That the Mayor and Council approve, and authorize the General Manager of the Personnel Department to execute, the Second Amended and Restated Professional Services Agreement C-131837 with GovernmentJobs.com, Inc., doing business as NEOGOV to (i) increase the expenditure authority by \$160,000 resulting in a not to exceed compensation of \$1,141,715, (ii) continue the five-year term effective June 1, 2018 through May 31, 2023, and (iii) update the City's standard contracting provisions to include the "Standard Provisions for City Contracts (Rev.9/22)[v.1]," subject to approval as to form by the City Attorney.

SUMMARY

In accordance with Executive Directive No. 3 (Villaraigosa Series), the Personnel Department (Department) requests approval to execute the proposed Second Amended and Restated Personal Services Agreement C-131837 (Agreement) with GovernmentJobs.com, Inc. dba NEOGOV (Contractor) to provide an applicant tracking system and test management system (Services). Approval of the proposed Agreement will increase the expenditure authority by \$160,000 resulting in a not to exceed compensation amount of \$1,141,715 and continue the current five-year term effective June 1, 2018 through May 31, 2023. The Agreement includes a ratification clause to allow the

Robert Roth			
RR	Analyst	11230107	Assistant City Administrative Officer

Contractor to continue providing Services prior to execution of the proposed Agreement.

The scope of services provided under the Agreement continues to include:

- Recruitment activities such as providing online job announcements and descriptions and posting job bulletins for examinations;
- Selection activities such as creating and administering multiple choice tests which integrate the scoring process;
- Applicant tracking to record applications submitted and view applicant history; and,
- Reporting and analysis of data such as time-to-hire, recruitment costs, staff workload, and applicant qualifications.

The Department states it has expended approximately \$869,000 through March 30, 2023, leaving a remaining available balance of \$112,715. The Department indicates it has increased recruitment and testing activities, which is resulting in additional costs that are anticipated to exceed the current expenditure authority. The proposed Agreement provides an additional \$160,000 of expenditure authority to pay anticipated invoice costs through the end of the contract term on May 31, 2023. The Department is currently negotiating a new contract with the Contractor to continue providing similar services. The new contract is anticipated to require Council consideration and will be submitted under a separate request.

In accordance with Charter Section 1022, the Personnel Department determined that City employees do not have expertise to perform the scope of work outlined in this Agreement because of the proprietary nature of the systems and software. In accordance with Los Angeles Administrative Code (LAAC) Section 10.5(b), City Council approval of the proposed Agreement is required because this Agreement has a cumulative term that exceeds three years. Additionally, the City Attorney advises that Council approval of the Agreement is also required because the Council previously took action to approve the current contract (C.F. 18-0572). Per Executive Directive No. 3 (Villaraigosa Series), the approval of the Mayor is required because the total compensation exceeds \$25,000.

FISCAL IMPACT STATEMENT

Funding is provided in the Personnel Department's 2022-23 Budget within the Contractual Services account line items for Civil service selection process maintenance and automation (\$189,000), Job assessment, test administration, and scoring services (\$22,800), and Targeted Local Hire Program process automation (\$100,000). There is no additional fiscal impact resulting from the recommendation in this report.

FINANCIAL POLICIES STATEMENT

As budgeted funds are available to support the proposed Agreement and expenditures, the recommendation of this report complies with the City's Financial Policies.

**BOARD OF CIVIL SERVICE
COMMISSIONERS**

Room 360, PERSONNEL BUILDING

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**CITY OF LOS ANGELES
CALIFORNIA**



KAREN R. BASS
MAYOR

PERSONNEL DEPARTMENT

PERSONNEL BUILDING
700 EAST TEMPLE STREET
LOS ANGELES, CA 90012

—
Dana H. Brown
GENERAL MANAGER

February 14, 2023

Honorable Karen Bass
Mayor, City of Los Angeles
Room 303, City Hall
Los Angeles, CA 90012

Attention: Heleen Ramirez, Legislative Coordinator

**Subject: REQUEST FOR REVIEW AND APPROVAL OF PROPOSED SECOND
AMENDED AND RESTATED PROFESSIONAL SERVICES
AGREEMENT (CONTRACT NO. C-131837) WITH
GOVERNMENTJOBS.COM, INC. dba NEOGOV**

In accordance with Executive Directive No. 3, attached for your review and approval is a draft Second Amended and Restated Professional Services Agreement (Contract No. C-131837) between GovernmentJobs.com, Inc. (dba NEOGOV) ("Contractor") and the City of Los Angeles Personnel Department ("City") to provide online data management services for selection, applicant tracking, and testing management services.

Background

The City's Personnel Department, Employee Selection Division supports the City's hiring and succession planning efforts by producing candidate eligible lists through competitive examination and certification of candidates for hiring consideration. Operating departments certify these eligible lists to fill positions performing vital City services throughout the City.

To streamline and improve its recruitment, application, examining, and hiring processes, the Employee Selection Division executed a sole-source contract (Contract No. C-113556) with NeoGov effective June 2008 that automated the entire hiring process from requisition to hire. NeoGov's enterprise application provides a single, integrated proprietary system for processing applications, exam scores, interview scheduling, and creating and certifying eligible lists. Accordingly, NeoGov has been the City's Online Application and Candidate Tracking System since 2008 to receive applications, schedule and score candidate exams, and place thousands of candidates on eligible lists. It has proven to be a reliable system necessary to achieve the City's hiring needs.

Basis for the Second Amended and Restated Agreement Requiring City Council Approval

Effective August 2018, the City of Los Angeles and NeoGov entered into a new sole-source contract (Contract No. C-131837) with NeoGov to continue to provide the City's Online Application and Candidate Tracking System as follows:

- The term of Contract No. C-131837 is three years, from June 1, 2018 through May 31, 2021.
- Effective September 16, 2021, the City of Los Angeles and NeoGov entered into a First Amended and Restated Agreement to extend the contract by an additional two years through May 31, 2023 for a total five-year term from June 1, 2018 to May 31, 2023 (C.F.# 18-0572) and maintain the maximum compensation not to exceed \$981,715 over the five-year term of the contract.

The current contract with NeoGov has a total maximum compensation of \$981,715 and will expire on May 31, 2023. Due to the increased use of the Contractor's services during the five-year term of the contract, the total maximum compensation needs to be increased by \$160,000 to cover estimated expenditures through the end of the contract term on May 31, 2023.

To ensure there is no lapse in coverage in providing critical online data management services for selection, applicant tracking, and testing management services, the City and Contractor have agreed to enter into a Second Amended and Restated Agreement as follows:

- Update the City's Standard Provisions for City Contracts to adhere to new City contracting requirements since the First Amended and Restated Agreement was executed;
- Update the City's representatives; and
- Increase the maximum compensation by \$160,000 from \$981,715 to \$1,141,715 over the five-year term of the contract.

In accordance with Los Angeles Administrative Code Section 10.5(b), Council approval is required to execute the Second Amended and Restated Professional Services Agreement.

Scope of Services

Under the terms of the five-year Agreement, the Contractor will continue to provide the following services:

- Recruitment – Provide online job announcements and descriptions, automatically post job bulletins for examinations, and include a description of the job
- Selection – Create and administer multiple choice tests and integrate the scoring process through the use of FastTestWeb/TestWriter
- Applicant Tracking – Record various applications submitted by applicants and view applicant history
- Reporting and Analysis – Track and analyze data such as time-to-hire, recruitment costs, staff workload, applicant qualifications, etc.

- Automation – Allow Personnel Department staff to identify candidates eligible for hire and allow for the flexibility to refer additional candidates if appropriate
- Test Management – Provide a computer based testing (CBT) component for the online administration of multiple choice tests and the provision of immediate scoring feedback and results

Contract Term

The term of the Second Amended and Restated Professional Services Agreement is five years from June 1, 2018 through May 31, 2023, subject to the termination provisions in the contract and availability of City budgeted funds.

Compensation

The City's total obligation shall not exceed \$1,141,715 over the five-year term of the Agreement for complete and satisfactory performance of the services in accordance with the terms of the Agreement.

Contract Compliance

The Contractor's compliance documentation statuses are as follows:

- Equal Benefits and First Source Hiring Ordinance affidavit is current
- Disclosure Ordinance affidavit has been requested
- Contractor's insurance certificate is current

The headquarters address for this Contractor is as follows:

NeoGov, Inc.
300 Continental Blvd.
Rm 565
El Segundo, CA 90245

The draft Second Amended and Restated Professional Services Agreement has been reviewed by the City Attorney as to form and language.

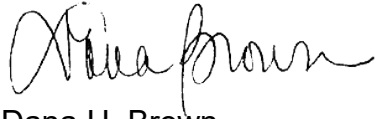
Fiscal Impact

Funding for this Agreement is included in the Personnel Department Budget, Fund No. 100, Contractual Services Account No. 003040.

Recommendation

That the Council approve and authorize the General Manager of the Personnel Department, or designee, to execute a Second Amended and Restated Professional Services Agreement (Contract No. C-131837) with GovernmentJobs.com, Inc. (dba NEOGOV) to: (i) update City's Standard Provisions for City Contracts to adhere to new City contracting requirements, (ii) update the City's representatives, and (iii) increase the maximum compensation by \$160,000 from \$981,715 to \$1,141,715 over the five-year term of the Agreement.

Please contact Michael Daco at (213) 473-9195 with any additional questions.

A handwritten signature in black ink, appearing to read "Dana H. Brown". The signature is fluid and cursive, with the first name "Dana" being the most prominent.

Dana H. Brown
General Manager

Attachment

ec: Robert Roth, CAO

SECOND AMENDED AND RESTATED
PROFESSIONAL SERVICES AGREEMENT

Contractor: GOVERNMENTJOBS.COM, INC. dba NEOGOV

**Regarding: Online Data Management Services for Selection,
Applicant Tracking, and Testing Management
Services**

Said Agreement is Number: C-131837

**Second Amended and Restated Professional Services Agreement
GOVERNMENTJOBS.COM, INC. dba NEOGOV**

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ATTACHMENTS

- Attachment A – Standard Provisions for City Contracts (Rev. 9/22) [v.1]
- Attachment B – Confidentiality Agreement
- Attachment C – Scope of Work
- Attachment D – Required Functionality
- Attachment E – Fee Schedule

**SECOND AMENDED AND RESTATED PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF LOS ANGELES AND
GOVERNMENTJOBS.COM, INC. dba NEOGOV (C-131837)**

THIS SECOND AMENDED AND RESTATED AGREEMENT (Contract No. C-131837) is made and entered into by and between the City of Los Angeles (“City”), a municipal corporation, acting by and through its Personnel Department (“Department”) and GovernmentJobs.com, Inc. (dba NEOGOV), (“Contractor”), a California corporation, with reference to the following:

RECITALS

1. City requires an integrated applicant and testing management system that processes applications, administers civil service examinations, and produces an eligible lists of candidates that can be used citywide and refer candidates while applying the City’s Rule of Three Whole Scores;
2. Contractor is a technology company with a principal market specializing in software-as-a-service solutions for governmental entities, and offers a uniquely developed integrated applicant management and testing management system that provides a solution for the City’s applicant tracking and testing management requirements;
3. Other applicant tracking systems that have been developed for the private sector are not integrated with a testing management system and do not provide for item analysis, seniority point calculation, or “three-whole scores” eligible list generation, as required by the City;
4. Other applicant tracking systems that have been developed for government agencies do not have an integrated testing management system that provides for online testing;
5. City desires to license and use Contractor’s software system to process applications, administer civil service examinations, and produce specialized “three-whole scores” eligible lists of candidates;
6. City, pursuant to Charter Section 1022, has determined that it does not have personnel available in its employ with sufficient time or the necessary expertise to undertake these specialized professional tasks in a timely manner, and it is therefore more feasible, economical, and in City’s best interest to secure these services by contract;
7. The services to be performed are of an expert and technical nature and temporary and occasional in character, as Contractor has developed specialized software that meets the City’s unique requirements for processing applications and testing and scoring candidates, such that, pursuant to Charter Section 371(a)(2), competitive bidding is not practical or advantageous;

8. City has determined that no other software, system or vendor can provide the services in the form, format or at the cost required by City with the flexibility and structure to meet the City's requirements; therefore, pursuant to Charter Section 371(a)(10), competitive bidding is undesirable, impracticable, and impossible;
9. At its meeting on July 2, 2018 (CF# 18-0572) the Los Angeles City Council authorized the Personnel Department General Manager or designee to execute the professional services agreement with GovernmentJobs.com (dba NeoGov) for the cumulative term of June 1, 2018 through May 31, 2023 to provide applicant tracking and test management systems with optional customization services in an amount not to exceed \$981,715;
10. On or about August 30, 2018, City and Contractor entered into City of Los Angeles Contract Number C-131837 ("Original Contract"), pursuant to which Contractor agreed, for consideration and upon the terms and conditions provided in the Original Contract, to perform the above-referenced work and furnish deliverables;
11. On or about September 16, 2021, City and Contractor entered into a First Amended and Restated Agreement ("First Amended and Restated Agreement") to extend the expiration date to May 31, 2023 and maintain the funding under the Original Agreement not to exceed \$981,715;
12. Contractor meets City's requirements for contracting and is willing to allow City and its applicants to use the system in accordance with the terms and conditions of this Agreement;
13. Contractor is duly licensed and certified under the laws of the State of California to engage in the business of software as a service;
14. City has a continuing need to utilize Contractor's professional services;
15. At its meeting on [DATE], (CF# 22-XXXX) the Los Angeles City Council authorized the Personnel Department General Manager or designee to enter into this Second Amended and Restated Agreement ("Second Amended and Restated Agreement") to (i) update City's Standard Provisions for City Contracts to adhere to new City contracting requirements, (ii) update City's representatives, and (iii) raise the compensation ceiling of this Agreement by \$160,000 to \$1,141,715;
16. City and Contractor now wish to enter into this Second Amended and Restated Agreement to (i) update City's Standard Provisions for City Contracts to adhere to new City contracting requirements, (ii) update City's representatives, and (iii) raise the compensation ceiling of this Agreement by \$160,000 to \$1,141,715; and

NOW, THEREFORE, in consideration of the promises and of the covenants,

representations, and agreements set forth herein, the parties hereby covenant, represent, and agree as follows:

ARTICLE A – PURPOSE AND SCOPE

1. Purpose. The purpose of Contractor’s work under this Agreement is to provide an Applicant Tracking System (“ATS”) and Test Management System (“TMS”) for the submittal, development, or administration of job applications, multiple-choice tests, essays, Training and Experience (“T&Es”) questionnaires, and a Computer Based Testing (“CBT”) component for online administration of essays, T&Es, and multiple choice tests that includes immediate scoring feedback and results.
2. Services to be provided. As directed by City, Contractor agrees to provide an ATS, TMS, and CBT component (includes a computer-based testing system), as set forth in **Attachment C, Scope of Work**, which is hereby incorporated into this Agreement by reference, and perform such other functions as further articulated in this Agreement.

ARTICLE B – NOTICES AND TERM

1. Representatives of the Parties and Service of Notices

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

- 1.1.1 The representative of City will be, unless otherwise stated in the Agreement:

Dana H. Brown, General Manager
Personnel Department
700 E. Temple Street, Room 305
Los Angeles, California 90012

With copies to:

Steve Rivera
Chief Personnel Analyst
Personnel Department, Selection Division
700 E. Temple Street, Room 320
Los Angeles, California 90012
steve.rivera@lacity.org

- 1.1.2 The representative of Contractor will be:

Shane Evangelist
Chief Executive Officer

NEOGOV, Inc
222 North Sepulveda Blvd., Suite 2000
El Segundo, CA 90245

- 1.2 Formal notices, demands, and communications required hereunder by either party will be made in writing and may be effected by personal delivery or by registered or certified mail, postage prepaid, return receipt requested and will be deemed communicated as of the date of mailing.
- 1.3 If the name of the person designated to receive the notices, demands, or communications, or the address of such person is changed, written notice will be given, in accordance with Article I, within five (5) business days of said change.
2. Time of Performance. The term of this Agreement will commence on June 1, 2018 and end on May 31, 2023, or at such time as all funding provided herein has been expended, whichever occurs first, subject to the termination provisions herein and availability of City budgeted funds.
 - 2.1 Ratification Clause. Due to the need for Contractor's services to be provided continuously on an ongoing basis, Contractor may have provided services 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 ratified.

ARTICLE C – DATA SECURITY AND PRIVACY

1. Data Ownership. As between the parties, City is the sole and exclusive owner of all data and information provided to Contractor by or on behalf of City pursuant to this Agreement and any and all updates or modifications thereto or derivatives thereof made by Contractor ("City Data"), and all intellectual property rights in the foregoing, whether or not provided to any other party under this Agreement. City Data is Confidential Information for the purposes of this Agreement. Contractor shall not use City Data for any purpose other than that of rendering the services under this Agreement, nor sell, assign, lease, dispose of or otherwise exploit City Data. Contractor shall not possess or assert any lien or other right against or to City Data. City may request an export of City Data stored within the systems or held by Contractor in any form or format at no charge to City.

Subject to the restrictions articulated elsewhere in this Agreement, City grants Contractor a non-transferable, non-exclusive, terminable at-will license, solely for the term of this Agreement, to use City Data solely for purposes of performing the services pursuant to this Agreement for City's benefit.

All documents and records (hereinafter collectively referred to as "Documents") provided by City to Contractor shall remain the property of City and must be returned to City upon termination of this Contract or at the request of City.

The provisions of this Section survive expiration or termination of this Agreement.

2. Data Protection

2.1 Contractor shall use best efforts, but in no event less than information security industry standard protections, to prevent unauthorized use, disclosure, or exposure of City Data. To this end, Contractor shall safeguard the confidentiality, integrity, and availability of City Data.

2.2 Contractor shall implement and maintain appropriate administrative, technical, and organization security measures to safeguard against unauthorized access, disclosure, or theft of City Data. Such security measures shall be in accordance with recognized industry best practices and the standard of care imposed by state and federal laws and regulations relating to the protection of such information. In the absence of any legally imposed standard of care and not less stringent than the measures Contractor applies to Contractor's own personal data and non-public data of similar kind.

2.3 Unless otherwise expressly agreed to by City in writing, Contractor shall encrypt all City Data at rest and in transit and limit access to only those individuals whose access is essential for performance of the services contemplated by this Agreement.

2.4 At no time may any content or City processes be copied, disclosed, or retained by Contractor or any party related to Contractor for subsequent use in any transaction that does not include City.

3. Compliance with Privacy Laws. Contractor shall ensure that Contractor's performance of Contractor's obligations under this Agreement complies with all applicable local, state, and federal privacy laws and regulations. If this Agreement or any practices which could be, or are, employed in performance of this Agreement are inconsistent with or do not satisfy the requirements of any of these privacy laws and regulations, City and Contractor shall in good faith execute an amendment to this Agreement sufficient to comply with these laws and regulations and Contractor shall complete and deliver any documents necessary to compliance.

4. Confidential Information. Contractor understands that all original material, whether written or readable by machine, including written or recorded data, documents, graphic displays, reports, and other documentation or other materials which contain information relating to Contractor's performance hereunder are considered confidential property of City. Contractor understands the sensitive nature of the above and therefore agrees that neither its officers, partners, employees, agents,

contractors or subcontractors will release, disseminate, or otherwise publish said reports or other such data, information, documents, graphic displays, nor other materials except as provided herein or as authorized, in writing, by City's representative. This section shall remain in effect after the termination of this Agreement until such time as the Confidential Information has been released by City. Contractor must submit a signed copy of the **Confidentiality Agreement**, that is attached hereto as **Attachment B**, and incorporated herein, and require it from each subcontractor. The provisions of this subsection shall survive expiration or termination of this Agreement.

5. Provision of Data. Upon termination of this Agreement for any cause or reason (including City's breach), Contractor shall provide City with a copy of all City Data in Contractor's possession in a mutually agreeable machine-readable format.
6. Data, Development, and Access-Point Location. Storage of City Data shall be located in the continental United States of America. Contractor shall not allow its personnel or contractors to store City Data on portable devices, including personal computers, except for devices that are used and kept only at Contractor's continental United States of America headquarters or data centers. Contractor shall neither access, nor allow a third party to access systems housing City Data from any location outside of the continental United States of America. Notwithstanding anything to the contrary in this Agreement, and only after obtaining prior written approval of City, Contractor may grant personnel and contractors located outside the continental United States remote read-only access to City Data only as required to provide proctoring and other technical support in relation to the services contemplated herein. Contractor shall obtain the City's prior written approval for each of its employees, contractors, officers, partners, consultants, principals, agents, affiliates, or subsidiaries who are essential for the purpose of providing the services under this Agreement ("Authorized Persons"). When Contractor submits a request for City's prior written approval, it shall describe the proposed Authorized Person's role and the necessity for the proposed Authorized Person to access City Data. Contractor shall at all times cause such Authorized Persons to abide strictly by Contractor's obligations under this Agreement and the industry standards for information security. Contractor hereby agrees that only Authorized Persons who are bound in writing by confidentiality and other obligations sufficient to protect City Data in accordance with the terms and conditions of this Agreement will access City Data, and will do so only for the purpose of enabling Contractor to perform its obligations under this Agreement.
7. Data Breach. Contractor shall protect City Data using the most secure means and technology that is consistent with industry standards for the type of data at issue. Contractor shall notify City as soon as reasonably feasible, but in any event within twenty-four (24) hours in writing and telephonically of Contractor's discovery or reasonable belief of any unauthorized access of City Data ("Data Breach"), or of any incident affecting, or potentially affecting City Data related to cyber security ("Security Incident"), including, but not limited to, denial of service attack, system

outage, instability, or degradation due to computer malware or virus. Contractor shall begin remediation immediately. Contractor shall provide daily updates, or more frequently if required by City, regarding findings and actions performed by Contractor until the Data Breach or Security Incident has been effectively resolved to City's satisfaction. Contractor shall conduct an investigation of the Data Breach or Security Incident and shall share the report of the investigation with City. If directed by City, Contractor shall retain an independent third party to conduct the investigation at Contractor's sole cost. At City's sole discretion, City and/or its authorized agents shall have the right to lead or participate in the investigation. Contractor shall cooperate fully with City, its agents and law enforcement. Contractor is responsible for all costs associated with a Data Breach or Security Incident, including, if directed by City, the provision of identity theft protection and/or credit monitoring services to individuals affected by the Security Incident. If required by law or directed by City, Contractor will be responsible for notifying individuals impacted by the Security Incident or Data Breach, with City having final approval of the content of the notification. In the event City incurs any costs related to the breach referenced above, City will seek reimbursement from Contractor or reduce Contractor's invoice for costs associated with breach of security.

7.1 Data Breach Liability. If City is subject to any claims relating to any Data Breach or Security Incident, Contractor shall fully indemnify and hold harmless City and defend City against any such claims, including reimbursement of any costs incurred by City relating to those claims. This obligation is in addition to any of Contractor's other indemnification obligations in this Agreement.

8. Firewalls and Access Controls

8.1 Access Precautions. Contractor shall use precautions, including, but not limited to, physical software and network security measures, employee screening, training and supervision, and appropriate agreements with employees to:

8.1.1 Prevent anyone other than City, Contractor, and authorized City or Contractor personnel from monitoring, using, gaining access to, or learning the import of City Data;

8.1.2 Protect appropriate copies of City Data from loss, corruption, or unauthorized alteration; and

8.1.3 Prevent the disclosure of City and Contractor passwords and other access control information to anyone other than authorized City personnel.

8.2 Security Best Practices. Contractor shall implement the following security best practices with respect to any service provided:

8.2.1 Least Privilege: Contractor shall authorize access only to the minimum

amount of resources required for a function.

8.2.2 Separation of Duties: Contractor shall divide functions among its staff members to reduce the risk of one person committing fraud undetected.

8.2.3 Role-Based Security: Contractor shall restrict access to authorized users and base access control on the role a user plays in an organization.

9. Access Restrictions. Contractor shall restrict the use of, and access to, administrative credentials for City accounts and Contractor's systems to only those of Contractor's employees and other agents whose access is essential for the purpose of providing the services of this Agreement. Contractor shall require these personnel to log on using an assigned user-name and password when administering City accounts or accessing City Data.

9.1 These controls must enable Contractor to promptly revoke or change access in response to terminations or changes in job functions, as applicable. Contractor shall encrypt all passwords, passphrases, and PINs, using solutions that are certified against U.S. Federal Information and Processing Standard 140-2, Level 2, or equivalent industry standard, and verify that the encryption keys and keying material are not stored with any associated data. Contractor will implement any City request to revoke or modify user access within twenty-four (24) hours or the next business day of receipt of City's request. Contractor will disable user accounts after at most ten (10) consecutive invalid authentication attempts.

10. Right of Audit by City. Without limiting any other audit rights of City, City may review Contractor's data privacy and data security program prior to the commencement of this Agreement and from time to time during the term of this Agreement. During the performance of this Agreement, on an ongoing basis from time to time and without notice, City, may, by itself or by retaining a certified public accounting firm or information security professional, perform, or have performed, an on-site audit of Contractor's data privacy and information security program. In lieu of an on-site audit, at City's discretion and upon request by City, Contractor agrees to complete, within fourteen (14) days of receipt, an audit questionnaire provided by City regarding Contractor's data privacy and information security program.

11. Written Information Security Policy. Contractor shall establish and maintain a formal, documented, mandated, company-wide information security program, including security policies, standards, and procedures (collectively "Information Security Policy"), and communicate the Information Security Policy to all of its respective employees and contractors in a relevant, accessible, and understandable form. Contractor shall regularly review and evaluate the Information Security Policy to ensure its operational effectiveness, compliance with all applicable laws and regulations, and to address new threats and risks. Upon execution of this Agreement and thereafter within three (3) business days of City's request, Contractor shall make

available for City's review Contractor's Information Security Policy and any related SOC audits, information security certifications, or other evidence that Contractor has in place appropriate policies and procedures regarding information protection and security.

12. Change in Service. Contractor shall notify City of any changes, enhancement, and upgrades to Contractor's systems, or changes in other related software services, as applicable, which can impact the security of the services.

13. Availability of Standards.

13.1 Contractor shall save application files to tape nightly, weekly, monthly, and annually, while program files shall be saved weekly. Nightly backup tapes shall be retained for 30 days. Weekly backup tapes shall be retained for 2 months. Monthly backup tapes shall be retained for 12 months. Annual backup tapes shall be saved permanently. If data restoration or recovery shall be necessary, Contractor shall do so using the most current backup tapes. All backup tapes shall be taken to offsite, secure storage facilities.

13.2 All City data contained in the primary facility shall be continuously captured and replicated to a secondary site. Should a disaster occur on the main site, the secondary site must be capable of being used live until the primary site is recovered; at which time Contractor shall provide synchronization tools to mirror all data changes between both sites before resuming processing at the primary site or server.

13.3 If such secondary site does not exist, Contractor shall be responsible for developing and presenting a contingency plan to City regarding the possibility of losing their primary facility. Contractor shall present such a contingency plan to City no later than 60 days after execution of this Contract. Contractor shall implement said contingency plan no later than 30 days after City approval.

13.4 Contractor shall notify City of any downtime periods that equal or exceed thirty (30) minutes or more. Within two (2) hours of discovering or receiving notice of downtime, Contractor shall determine whether the source of the downtime is limited to the system provided under this Agreement ("System"). If Contractor determines that the System is not the source of the downtime, Contractor will attempt to determine the source of the downtime within an additional two (2) hour period. In any event, Contractor will notify City of the source of the downtime within sixty (60) minutes of identifying the source.

14. Limitation of Liability. Except for the active negligence or willful misconduct of City or any of its Boards, Officers, Agents, Employees, Assigns and Successors in Interest, Contractor undertakes and agrees to defend, indemnify and hold harmless

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

- 14.1 If promptly notified in writing of any action brought against City based on a claim that Contractor's Services infringe a United States patent, copyright or trademark right of a third party (except to the extent such claim or infringement relates to any third party software incorporated into Contractor's applications), Contractor will defend such action at its expense and will pay any and all fees, costs or damages that may be finally awarded in such action or any settlement resulting from such action (provided that City shall permit Contractor to control the defense of such action and shall not make any compromise, admission of liability or settlement or take any other action impairing the defense of such claim without Contractor's prior written approval).
- 14.2 City acknowledges and agrees: (i) that Contractor has no proprietary, financial, or other interest in the goods or services that may be described in or offered through city's web site; and (ii) that except with respect to any material supplied by Contractor, City is solely responsible (as between Contractor and City) for the content, quality, performance, and all other aspects of the goods or services and the information or other content contained in or provided through City's web site.
- 14.3 Other than those warranties expressly set forth in this Agreement, Contractor does not make any warranties to City or any other person or entity, either express or implied (including, without limitation, any warranties of merchantability or fitness for a particular purpose) with respect to the services provided hereunder Contractor shall not be liable to City or to any other person or entity, under any circumstance or due to any event whatsoever, for consequential or indirect damages, including, without limitation, loss of profit, loss of use or business stoppage.

ARTICLE D – PAYMENT AND INVOICING

1. Payment Terms and Deliverables. City's total obligation under this Agreement shall not exceed \$1,141,715 for the term of this Agreement for complete and satisfactory performance of the terms of this Agreement as provided in **Attachment E, Fee Schedule**.
2. Limitation of City's Obligation to Make Payments to Contractor. Notwithstanding any other provision of this Agreement, including any exhibits or attachments incorporated therein, and in order for City to comply with its governing legal requirements, City shall have no obligation to make any payments to Contractor unless City shall have first made an appropriation of funds equal to or in excess of its obligation to make any payments as provided in said Agreement. Contractor agrees that any services provided by Contractor, purchases made by Contractor or expenses incurred by Contractor in excess of said appropriation(s) shall be free and without charge to City and City shall have no obligation to pay for said services, purchases or expenses. Contractor shall have no obligation to provide any services, provide any equipment or incur any expenses in excess of the appropriated amount(s) until City appropriates additional funds for this Agreement.
3. Invoicing
 - 3.1 Invoicing
 - 3.1.1 Invoices must be submitted to:

Steve Rivera
Chief Personnel Analyst
Personnel Department, Selection Division
700 E. Temple Street, Room 320
Los Angeles, California 90012
steve.rivera@lacity.org
 - 3.1.2 To ensure that services provided under personal services contracts are measured against services as detailed in the Agreement, the Controller of the City of Los Angeles has developed a policy requiring that specific supporting documentation be submitted with invoices.
 - 3.1.3 Contractor shall submit invoices that conform to City standards and include, at a minimum, the following information:
 - i. Name and address of Contractor
 - ii. Name and address of City department being billed
 - iii. Date of invoice and date service was completed
 - iv. Description of completed task and amount due for task, including:
 - a) Name of personnel working on task

- b) Hours spent on task and timesheet supporting charges (if applicable)
- c) Rate per hour and total due
- v. Certification by a duly authorized officer
- vi. Discount and terms (if applicable)
- vii. Remittance Address (if different from Contractor's address)

3.1.4 All invoices must be submitted on Contractor's letterhead, contain Contractor's official logo, or other unique and identifying information such as the name and address of Contractor. Evidence that tasks have been completed, in the form of a report, brochure, or photograph, shall be attached to all invoices. Invoices must be submitted within 30 days of service, or monthly, and will be payable to Contractor no later than 30 days after acknowledged receipt of a complete invoice. Invoices are considered complete when appropriate documentation or services provided are signed off as satisfactory by City's Fiscal Officer. Notwithstanding the foregoing, City shall not be responsible for, and Contractor waives the right to seek, any late fees, late charges, penalties, and/or interest.

3.1.5 Invoices and supporting documentation must be prepared at the sole expense and responsibility of Contractor. City shall not compensate Contractor for costs incurred in invoice preparation. City may request, in writing, changes to the content and format of the invoice and supporting documentation at any time. City reserves the right to request additional supporting documentation to substantiate costs at any time.

3.1.6 Subcontractors' Requirements. Tasks that are completed by subcontractors must be supported by subcontractor invoices, copies of pages from reports, brochures, photographs, or other unique documentation that substantiates their charges.

3.1.7 ***Failure to adhere to these policies may result in nonpayment or non-approval of demands, pursuant to Charter Section 262(a)***, which requires the Controller to inspect the quality, quantity, and condition of services, labor, materials, supplies, or equipment received by any City office or department, and to approve demands before they are drawn on the Treasury.

ARTICLE E – REPRESENTATIONS AND WARRANTIES

1. Responsibility to Provide Services in Accordance with Applicable Standards and Requirement to Possess All Valid Permits and Licenses. Contractor represents and warrants that the work performed hereunder shall be completed in a manner consistent with professional standards among those firms in 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.

2. Compliance with Statutes and Regulations. Contractor, in the performance of this Agreement, shall comply with all applicable statutes, rules, regulations, and orders of the United States, the State of California, the County and City of Los Angeles. Contractor shall comply with new, amended, or revised laws, regulations, and procedures that apply to the performance of this Agreement.

ARTICLE F – STANDARD PROVISIONS FOR CITY CONTRACTS

1. Standard Provisions for City Contracts. Contractor agrees to, and shall comply with, the **Standard Provisions for City Contracts (Rev. 9/22) [v.1]**, which are attached hereto as **Attachment A** and made a part hereof as though fully set forth herein.
2. Disclosure of Border Wall Contracting. Contractor shall comply with Los Angeles Administrative Code (LAAC) Section 10.50 et seq., “Disclosure of Border Wall Contracting.” City may terminate this Agreement at any time if City determines that Contractor failed to fully and accurately complete the required affidavit and disclose all Border Wall Bids and Border Wall Contracts, as defined in LAAC Section 10.50.1.

ARTICLE G – MISCELLANEOUS

1. Insurance. Contractor shall maintain the level of insurance required in the completed Form Gen. 146, Required Insurance and Minimum Limits, which is attached as [Exhibit 1] to **Attachment A, Standard Provisions for City Contracts (Rev. 9/22), [v.1]**. The insurance must name City as additional insured with respect to liability coverage. No policies or certificates with respect to such insurance may be cancelled or materially changed without at least 30 days’ prior written notice by the respective insurer to City.
2. Separation Assistance. In the event of separation, Contractor shall provide separation assistance to City to facilitate separation. Contractor shall further guarantee elimination from Contractor's services of all City Data upon separation.
3. Contractor’s Personnel & Subcontractors. Except as expressly provided in Subsection 3.1 below, Contractor shall use its own employees to perform the services described in this Agreement. In the event City is dissatisfied with the performance of any Contractor personnel, Contractor shall, at City’s request, meet with City to attempt to resolve City’s concerns. In the event that Contractor replaces any project personnel, Contractor shall do so with equally or better qualified staff upon submitting written notice to Contractor. In addition, City reserves the right to approve in advance any changes in project personnel or levels of commitment by Contractor to the project.
 - 3.1 Subcontractors/No Third Party Beneficiaries. Contractor may utilize subcontractors to assist in performance of this Agreement. Notwithstanding the

fact that Contractor may utilize subcontractors, Contractor shall remain responsible for performing all aspects of this Agreement. City has the right to approve Contractor's subcontractors and City reserves the right to request replacement of a subcontractor. City does not have any obligation to pay subcontractors and nothing herein creates any privity between City and the subcontractors. Nothing herein is intended to create any third party beneficiary of this Agreement.

4. Additional Contractor Software Terms. No shrink-wrap, terms of use, click-wrap, privacy policy, or other terms and conditions or agreements ("Additional Contractor Software Terms") provided with any products, services, documentation, or software hereunder shall govern any services under this Agreement, even if use of the foregoing requires an affirmative "acceptance" of those Additional Contractor Software Terms before access is permitted. All such Additional Contractor Software Terms shall be of no force or effect and shall be deemed rejected by the City in their entirety.
5. Non-Exclusive Agreement. Contractor understands and agrees that this is a non-exclusive Agreement to provide services to City and that City has entered into contracts with other contractors and will continue to do so. City may terminate this Agreement and use any of the contractors with whom City has current or future contracts and, therefore, City cannot estimate nor guarantee the volume or amount of work to be received by Contractor under this Agreement.
6. Contractor's Interaction with the Media; Publicity. Contractor shall refer all inquiries from the news media to City, shall immediately contact City to inform City of the inquiry, and shall comply with the procedures of City's Public Affairs staff regarding statements to the media relating to this Agreement or Contractor's services hereunder.
7. Ambiguity. No ambiguity in this Agreement may be interpreted against any one party by virtue of that party being drafter of the Agreement.
8. Amendments to Agreement. Any changes in the terms of this Agreement, including changes in the services to be performed by Contractor, extension of the term, and any increase or decrease in pricing, must be incorporated into this Agreement by a written amendment properly executed by both parties.
9. Notice of Delays. Except as otherwise provided under this Agreement, when either party has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this Agreement, that party shall, within one (1) business day, give notice thereof, including all relevant information with respect thereto, to the other party.
10. Entire Agreement. This Agreement contains the full and complete Agreement between the parties. No verbal agreement or conversation with any officer or

employee of either party will affect or modify any of the terms and conditions of this Agreement. The parties acknowledge that they have read and understood this Agreement and had an opportunity to consult with counsel of their choosing.

11. Order of Precedence. In the event of any inconsistency between the provisions in the body of this Agreement and the attachments, the provisions in the body of this Second Amended and Restated Agreement take precedence, followed by **Attachment A, Standard Provisions for City Contracts (Rev. 9/22 [v.1])**, followed by the provisions in the body of the Original Contract, followed by any other exhibits or attachments to this Agreement.

This Agreement may be executed in one or more counterparts, and by the Parties in separate counterparts, each of which when executed shall be deemed to be an original, but all of which taken together shall constitute one and the same agreement. The Parties further agree that facsimile signatures or signatures scanned into .pdf (or signatures in another electronic format designated by City) and sent by e-mail shall be deemed original signatures.

(Signature Page to Follow)

IN WITNESS THEREOF, the parties hereto have caused this Second Amended and Restated Agreement to be executed by their respective duly authorized representatives.

THE CITY OF LOS ANGELES

GOVERNMENTJOBS.COM, INC*

By: _____
DANA H. BROWN
General Manager
Personnel Department

By: _____
Principal and President

Date: _____

Date: _____

GOVERNMENTJOBS.COM, INC*

By: _____
Vice President and
COO/Secretary

Date: _____

APPROVED AS TO FORM:

ATTEST:

HYDEE FELDSTEIN SOTO, City Attorney

HOLLY L. WOLCOTT, City Clerk

By: _____
BRENT NICHOLS
Deputy 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-131837

ATTACHMENT A

Standard Provisions for City Contracts (Rev. 9/22) [v.1]

STANDARD PROVISIONS FOR CITY CONTRACTS

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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 of this Contract. The language of this Contract shall be construed according to its fair meaning and not strictly for or against **CITY** or **CONTRACTOR**. The word "**CONTRACTOR**" includes the party or parties identified in this Contract. The singular shall include the plural and if there is more than one **CONTRACTOR**, unless expressly stated otherwise, their obligations and liabilities shall be joint and several. Use of the feminine, masculine, or neuter genders shall be deemed to include the genders not used.

PSC-2. Applicable Law, Interpretation and Enforcement

Each party's performance shall comply with all applicable laws of the United States of America, the State of California, and **CITY**, including but not limited to, laws regarding health and safety, labor and employment, wage and hours and licensing. 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, or procedures that apply to the performance of this Contract with no additional compensation paid to **CONTRACTOR**.

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 federal, state or local law or regulation, the validity of the remaining parts, terms or provisions of this Contract shall not be affected.

PSC-3. 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**;
- 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 **CITY** by the person designated by the City Council, or by the board, officer or employee authorized to enter into this Contract.

PSC-4. Integrated Contract

This Contract sets forth all of the rights and duties of the parties with respect to the subject matter of this Contract, and replaces any and all previous Contracts or understandings, whether written or oral, relating thereto. This Contract may be amended only as provided for in the provisions of PSC-5 hereof.

PSC-5. Amendment

All amendments to this Contract shall be in writing and signed and approved pursuant to the provisions of PSC-3.

PSC-6. Excusable Delays

Neither party shall be liable for its delay or failure to perform any obligation under and in accordance with this Contract, if the delay or failure arises out of fires, floods, earthquakes, epidemics, quarantine restrictions, other natural occurrences, strikes, lockouts (other than a lockout by the party or any of the party's Subcontractors), freight embargoes, terrorist acts, insurrections or other civil disturbances, or other similar events to those described above, but in each case the delay or failure to perform must be beyond the control and without any fault or negligence of the party delayed or failing to perform (these events are referred to in this provision as "Force Majeure Events").

Notwithstanding the foregoing, a delay or failure to perform by a Subcontractor of **CONTRACTOR** shall not constitute a Force Majeure Event, unless the delay or failure arises out of causes beyond the control of both **CONTRACTOR** and Subcontractor, and without any fault or negligence of either of them. In such case, **CONTRACTOR** shall not be liable for the delay or failure to perform, unless the goods or services to be furnished by the Subcontractor were obtainable from other sources in sufficient time to permit **CONTRACTOR** to perform timely. As used in this Contract, the term "Subcontractor" means a subcontractor at any tier.

In the event **CONTRACTOR'S** delay or failure to perform arises out of a Force Majeure Event, **CONTRACTOR** agrees to use commercially reasonable best efforts to obtain the goods or services from other sources, and to otherwise mitigate the damages and reduce the delay caused by the Force Majeure Event.

PSC-7. Waiver

A waiver of a default of any part, term or provision of this Contract 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-8. Suspension

At **CITY'S** sole discretion, **CITY** may suspend any or all services provided under this Contract by providing **CONTRACTOR** with written notice of suspension. Upon receipt of the notice of suspension, **CONTRACTOR** shall immediately cease the services suspended and shall not incur any additional obligations, costs or expenses to **CITY** until **CITY** gives written notice to recommence the services.

PSC-9. Termination

A. Termination for Convenience

CITY may terminate this Contract for **CITY'S** convenience at any time by providing **CONTRACTOR** thirty days written notice. Upon receipt of the notice of termination, **CONTRACTOR** shall immediately take action not to incur any additional obligations, costs or expenses, except as may be necessary to terminate its activities. **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 effect the termination. Thereafter, **CONTRACTOR** shall have no further claims against **CITY** under this Contract. All finished and unfinished documents and materials procured for or produced under this Contract, including all intellectual property rights **CITY** is entitled to, shall become **CITY** property upon the date of the termination. **CONTRACTOR** agrees to execute any documents necessary for **CITY** to perfect, memorialize, or record **CITY'S** ownership of rights provided herein.

B. Termination for Breach of Contract

1. Except as provided in PSC-6, 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, **CITY** may give **CONTRACTOR** written notice of the default. **CITY'S** default notice will indicate whether the default may be cured and the time period to cure the default to the sole satisfaction of **CITY**. Additionally, **CITY'S** default notice may offer **CONTRACTOR** an opportunity to provide **CITY** with a plan to cure the default, which shall be submitted to **CITY** within the time period allowed by **CITY**. At **CITY'S** sole discretion, **CITY** may accept or reject **CONTRACTOR'S** plan. If the default cannot be cured or if **CONTRACTOR** fails to cure within the period allowed by **CITY**, then **CITY** may terminate this Contract due to **CONTRACTOR'S** breach of this Contract.
2. If the default under this Contract is due to **CONTRACTOR'S** failure to maintain the insurance required under this Contract, **CONTRACTOR** shall immediately: (1) suspend performance of any services under this Contract for which insurance was required; and (2) notify its employees and Subcontractors of the loss of insurance coverage and Contractor's obligation to suspend performance of

services. **CONTRACTOR** shall not recommence performance until **CONTRACTOR** is fully insured and in compliance with **CITY'S** requirements.

3. 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 **CITY** may immediately terminate this Contract.
4. If **CONTRACTOR** engages in any dishonest conduct related to the performance or administration of this Contract or violates **CITY'S** laws, regulations or policies relating to lobbying, then **CITY** may immediately terminate this Contract.
5. Acts of Moral Turpitude
 - a. **CONTRACTOR** shall immediately notify **CITY** if **CONTRACTOR** or any Key Person, as defined below, is charged with, indicted for, convicted of, pleads nolo contendere to, or forfeits bail or fails to appear in court for a hearing related to, any act which constitutes an offense involving moral turpitude under federal, state, or local laws ("Act of Moral Turpitude").
 - b. If **CONTRACTOR** or a Key Person is convicted of, pleads nolo contendere to, or forfeits bail or fails to appear in court for a hearing related to, an Act of Moral Turpitude, **CITY** may immediately terminate this Contract.
 - c. If **CONTRACTOR** or a Key Person is charged with or indicted for an Act of Moral Turpitude, **CITY** may terminate this Contract after providing **CONTRACTOR** an opportunity to present evidence of **CONTRACTOR'S** ability to perform under the terms of this Contract.
 - d. Acts of Moral Turpitude include, but are not limited to: violent felonies as defined by Penal Code Section 667.5, crimes involving weapons, crimes resulting in serious bodily injury or death, serious felonies as defined by Penal Code Section 1192.7, and those crimes referenced in the Penal Code and articulated in California Public Resources Code Section 5164(a)(2); in addition to and including acts of murder, rape, sexual assault, robbery, kidnapping, human trafficking, pimping, voluntary manslaughter, aggravated assault, assault on a peace officer, mayhem, fraud, domestic abuse, elderly abuse, and child abuse, regardless of whether such acts are punishable by felony or misdemeanor conviction.

- e. For the purposes of this provision, a Key Person is a principal, officer, or employee assigned to this Contract, or owner (directly or indirectly, through one or more intermediaries) of ten percent or more of the voting power or equity interests of **CONTRACTOR**.
 6. In the event **CITY** terminates this Contract as provided in this section, **CITY** may procure, upon such terms and in the manner as **CITY** may deem appropriate, services similar in scope and level of effort to those so terminated, and **CONTRACTOR** shall be liable to **CITY** for all of its costs and damages, including, but not limited to, any excess costs for such services.
 7. 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 been issued pursuant to PSC-9(A) Termination for Convenience.
 8. The rights and remedies of **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.
- C. In the event that this Contract is terminated, **CONTRACTOR** shall immediately notify all employees and Subcontractors, and shall notify in writing all other parties contracted with under the terms of this Contract within five working days of the termination.

PSC-10. Independent Contractor

CONTRACTOR is an independent contractor and not an agent or employee of **CITY**. **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 **CITY**.

PSC-11. Contractor's Personnel

Unless otherwise approved by **CITY**, **CONTRACTOR** shall use its own employees to perform the services described in this Contract. **CITY** has the right to review and approve any personnel who are assigned to work under this Contract. **CONTRACTOR** shall remove personnel from performing work under this Contract if requested to do so by **CITY**.

CONTRACTOR shall not use Subcontractors to assist in performance of this Contract without the prior written approval of **CITY**. If **CITY** permits the use of Subcontractors, **CONTRACTOR** shall remain responsible for performing all aspects of this Contract and paying all Subcontractors. **CITY** has the right to approve **CONTRACTOR'S** Subcontractors, and **CITY** reserves the right to request replacement of any

Subcontractor. **CITY** does not have any obligation to pay **CONTRACTOR'S** Subcontractors, and nothing herein creates any privity of contract between **CITY** and any Subcontractor.

PSC-12. Assignment and Delegation

CONTRACTOR may not, unless it has first obtained the written permission of **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-13. Permits

CONTRACTOR and its directors, officers, partners, agents, employees, and Subcontractors, shall obtain and maintain all licenses, permits, certifications and other documents necessary for **CONTRACTOR'S** performance of this Contract. **CONTRACTOR** shall immediately notify **CITY** of any suspension, termination, lapses, non-renewals, or restrictions of licenses, permits, certificates, or other documents that relate to **CONTRACTOR'S** performance of this Contract.

PSC-14. Claims for Labor and Materials

CONTRACTOR shall promptly pay when due all amounts owed 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), and shall pay all amounts due under the Unemployment Insurance Act or any other applicable law with respect to labor used to perform under this Contract.

PSC-15. Current Los Angeles City Business Tax Registration Certificate Required

For the duration of this Contract, **CONTRACTOR** shall maintain valid Business Tax Registration Certificate(s) as required by **CITY'S** Business Tax Ordinance, Section 21.00 *et seq.* of the Los Angeles Municipal Code ("LAMC"), and shall not allow the Certificate to lapse or be revoked or suspended.

PSC-16. 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 or as otherwise approved by **CITY**. These records shall be retained for a period of no less than three years from the later of the following: (1) final payment made by **CITY**, (2) the expiration of this Contract or (3) termination of this Contract. The records will be subject to examination and audit by authorized **CITY** personnel or **CITY'S** representatives at any time. **CONTRACTOR** shall provide any reports requested by **CITY** regarding

performance of this Contract. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

In lieu of retaining the records for the term as prescribed in this provision, **CONTRACTOR** may, upon **CITY'S** written approval, submit the required information to **CITY** in an electronic format, e.g. USB flash drive, at the expiration or termination of this Contract.

PSC-17. Bonds

All bonds required by **CITY** shall be filed with the Office of the City Administrative Officer, Risk Management for its review and acceptance in accordance with Los Angeles Administrative Code ("LAAC") Sections 11.47 *et seq.*, as amended from time to time.

PSC-18. Indemnification

Except for the active negligence or willful misconduct of **CITY**, or any of its boards, officers, agents, employees, assigns and successors in interest, **CONTRACTOR** shall defend, indemnify and hold harmless **CITY** and any of its boards, officers, agents, employees, assigns, and successors in interest from and against all lawsuits 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 **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, arising in any manner by reason of an act, error, or omission by **CONTRACTOR**, Subcontractors, or their boards, officers, agents, employees, assigns, and successors in interest. The rights and remedies of **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. This provision will survive expiration or termination of this Contract.

PSC-19. Intellectual Property Indemnification

CONTRACTOR, at its own expense, shall defend, indemnify, and hold harmless the **CITY**, and any of its boards, officers, agents, employees, assigns, and successors in interest from and against all lawsuits 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 **CITY**, including but not limited to, costs of experts and consultants), damages or liability of any nature 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: (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, in performing the work under this Contract; or (2) as a result of **CITY'S** actual or intended use of any Work Product (as defined in PSC-21) furnished by **CONTRACTOR**, or its Subcontractors, under this Contract. The rights and remedies of **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. This provision will survive expiration or termination of this Contract.

PSC-20. 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, patent, copyright, trademark, trade secret, right of publicity and proprietary information.

PSC-21. Ownership and License

Unless otherwise provided for herein, all finished and unfinished works, tangible or not, created under this Contract including, without limitation, documents, materials, data, reports, manuals, specifications, artwork, drawings, sketches, blueprints, studies, memoranda, computation sheets, computer programs and databases, schematics, photographs, video and audiovisual recordings, sound recordings, marks, logos, graphic designs, notes, websites, domain names, inventions, processes, formulas, matters and combinations thereof, and all forms of intellectual property originated and prepared by **CONTRACTOR** or its Subcontractors under this Contract (each a "Work Product"; collectively "Work Products") shall be and remain the exclusive property of **CITY** for its use in any manner **CITY** deems appropriate. **CONTRACTOR** hereby assigns to **CITY** all goodwill, copyright, trademark, patent, trade secret and all other intellectual property rights worldwide in any Work Products originated and prepared under this Contract. **CONTRACTOR** further agrees to execute any documents necessary for **CITY** to perfect, memorialize, or record **CITY'S** ownership of rights provided herein.

CONTRACTOR agrees that a monetary remedy for breach of this Contract may be inadequate, impracticable, or difficult to prove and that a breach may cause **CITY** irreparable harm. **CITY** may therefore enforce this requirement by seeking injunctive relief and specific performance, without any necessity of showing actual damage or irreparable harm. Seeking injunctive relief or specific performance does not preclude **CITY** from seeking or obtaining any other relief to which **CITY** may be entitled.

For all Work Products delivered to **CITY** that are not originated or prepared by **CONTRACTOR** or its Subcontractors under this Contract, **CONTRACTOR** shall secure a grant, at no cost to **CITY**, for 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 **CITY**.

Any subcontract entered into by **CONTRACTOR** relating to this Contract shall include this provision to contractually bind its Subcontractors performing work under this Contract such that **CITY'S** ownership and license rights of all Work Products are preserved and protected as intended herein.

PSC-22. Data Protection

- A. **CONTRACTOR** shall protect, using the most secure means and technology that is commercially available, **CITY**-provided data or consumer-provided data acquired in the course and scope of this Contract, including but not limited to customer lists and customer credit card or consumer data, (collectively, the “City Data”). **CONTRACTOR** shall notify **CITY** in writing as soon as reasonably feasible, and in any event within twenty-four hours, of **CONTRACTOR’S** discovery or reasonable belief of any unauthorized access of City Data (a “Data Breach”), or of any incident affecting, or potentially affecting City Data related to cyber security (a “Security Incident”), including, but not limited to, denial of service attack, and system outage, instability or degradation due to computer malware or virus. **CONTRACTOR** shall begin remediation immediately. **CONTRACTOR** shall provide daily updates, or more frequently if required by **CITY**, regarding findings and actions performed by **CONTRACTOR** until the Data Breach or Security Incident has been effectively resolved to **CITY’S** satisfaction. **CONTRACTOR** shall conduct an investigation of the Data Breach or Security Incident and shall share the report of the investigation with **CITY**. At **CITY’S** sole discretion, **CITY** and its authorized agents shall have the right to lead or participate in the investigation. **CONTRACTOR** shall cooperate fully with **CITY**, its agents and law enforcement.
- B. If **CITY** is subject to liability for any Data Breach or Security Incident, then **CONTRACTOR** shall fully indemnify and hold harmless **CITY** and defend against any resulting actions.

PSC-23. Insurance

During the term of this Contract and without limiting **CONTRACTOR’S** obligation to indemnify, hold harmless and defend **CITY**, **CONTRACTOR** shall provide and maintain at its own expense a program of insurance having the coverages and limits not less than the required amounts and types as determined by the Office of the City Administrative Officer of Los Angeles, Risk Management (template Form General 146 in Exhibit 1 hereto). The insurance must: (1) conform to **CITY’S** requirements; (2) comply with the Insurance Contractual Requirements (Form General 133 in Exhibit 1 hereto); and (3) otherwise be in a form acceptable to the Office of the City Administrative Officer, Risk Management. **CONTRACTOR** shall comply with all Insurance Contractual Requirements shown on Exhibit 1 hereto. Exhibit 1 is hereby incorporated by reference and made a part of this Contract.

PSC-24. Best Terms

Throughout the term of this Contract, **CONTRACTOR**, shall offer **CITY** the best terms, prices, and discounts that are offered to any of **CONTRACTOR’S** customers for similar goods and services provided under this Contract.

PSC-25. 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-26. Mandatory Provisions Pertaining to Non-Discrimination in Employment

Unless otherwise exempt, this Contract is subject to the applicable non-discrimination, equal benefits, equal employment practices, and affirmative action program provisions in LAAC Section 10.8 et seq., as amended from time to time.

- A. **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 **CITY**. In performing this Contract, **CONTRACTOR** shall not discriminate in any of its hiring or employment practices against any employee or applicant for employment because of such person's race, color, religion, national origin, ancestry, sex, sexual orientation, gender, gender identity, age, disability, domestic partner status, marital status or medical condition.
- B. The requirements of Section 10.8.2.1 of the LAAC, the Equal Benefits Ordinance, and the provisions of Section 10.8.2.1(f) are incorporated and made a part of this Contract by reference.
- C. The provisions of Section 10.8.3 of the LAAC are incorporated and made a part of this Contract by reference and will be known as the "Equal Employment Practices" provisions of this Contract.
- D. The provisions of Section 10.8.4 of the LAAC are incorporated and made a part of this Contract by reference and will be known as the "Affirmative Action Program" provisions of this Contract.

Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-27. Child Support Assignment Orders

CONTRACTOR shall comply with the Child Support Assignment Orders Ordinance, Section 10.10 of the LAAC, as amended from time to time. Pursuant to Section 10.10(b) of the LAAC, **CONTRACTOR** shall fully comply with all applicable State and Federal employment reporting requirements. Failure of **CONTRACTOR** to comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignment or Notices of Assignment, or the failure of any principal owner(s) of **CONTRACTOR** to comply with any Wage and Earnings Assignment or Notices of Assignment applicable to them personally, shall constitute a default by the **CONTRACTOR** under this Contract. Failure of **CONTRACTOR** or principal owner to cure

the default within 90 days of the notice of default will subject this Contract to termination for breach. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-28. Living Wage Ordinance

CONTRACTOR shall comply with the Living Wage Ordinance, LAAC Section 10.37 *et seq.*, as amended from time to time. **CONTRACTOR** further agrees that it shall comply with federal law proscribing retaliation for union organizing. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-29. Service Contractor Worker Retention Ordinance

CONTRACTOR shall comply with the Service Contractor Worker Retention Ordinance, LAAC Section 10.36 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-30. Access and Accommodations

CONTRACTOR represents and certifies that:

- A. **CONTRACTOR** shall 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. **CONTRACTOR** shall not discriminate 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. **CONTRACTOR** shall provide reasonable accommodation upon request to ensure equal access to **CITY**-funded programs, services and activities;
- D. Construction will be performed in accordance with the Uniform Federal Accessibility Standards (UFAS), 24 C.F.R. Part 40; and
- E. The buildings and facilities used to provide services under this Contract 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 **CITY** is relying upon these certifications and representations as a condition to funding this Contract. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-31. Contractor Responsibility Ordinance

CONTRACTOR shall comply with the Contractor Responsibility Ordinance, LAAC Section 10.40 *et seq.*, as amended from time to time.

PSC-32. Business Inclusion Program

Unless otherwise exempted prior to bid submission, **CONTRACTOR** shall comply with all aspects of the Business Inclusion Program as described in the Request for Proposal/Qualification process, throughout the duration of this Contract. **CONTRACTOR** shall utilize the Business Assistance Virtual Network (“BAVN”) at <https://www.labavn.org/>, to perform and document outreach to Minority, Women, and Other Business Enterprises. **CONTRACTOR** shall perform subcontractor outreach activities through BAVN. **CONTRACTOR** shall not change any of its designated Subcontractors or pledged specific items of work to be performed by these Subcontractors, nor shall **CONTRACTOR** reduce their level of effort, without prior written approval of **CITY**.

PSC-33. Slavery Disclosure Ordinance

CONTRACTOR shall comply with the Slavery Disclosure Ordinance, LAAC Section 10.41 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-34. First Source Hiring Ordinance

CONTRACTOR shall comply with the First Source Hiring Ordinance, LAAC Section 10.44 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-35. Local Business Preference Ordinance

CONTRACTOR shall comply with the Local Business Preference Ordinance, LAAC Section 10.47 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-36. Iran Contracting Act

In accordance with California Public Contract Code Sections 2200-2208, all contractors entering into, or renewing contracts with **CITY** for goods and services estimated at \$1,000,000 or more are required to complete, sign, and submit the "Iran Contracting Act of 2010 Compliance Affidavit."

PSC-37. Restrictions on Campaign Contributions and Fundraising in City Elections

Unless otherwise exempt, if this Contract is valued at \$100,000 or more and requires approval by an elected **CITY** office, **CONTRACTOR**, **CONTRACTOR’S** principals, and **CONTRACTOR’S** Subcontractors expected to receive at least \$100,000 for performance under the Contract, and the principals of those Subcontractors (the “Restricted Persons”)

shall comply with Charter Section 470(c)(12) and LAMC Section 49.7.35. Failure to comply entitles **CITY** to terminate this Contract and to pursue all available legal remedies. Charter Section 470(c)(12) and LAMC Section 49.7.35 limit the ability of the Restricted Persons to make campaign contributions to and engage in fundraising for certain elected **CITY** officials or candidates for elected **CITY** office for twelve months after this Contract is signed. Additionally, a **CONTRACTOR** subject to Charter Section 470(c)(12) is required to comply with disclosure requirements by submitting a completed and signed Ethics Commission Form 55 and to amend the information in that form as specified by law. Any **CONTRACTOR** subject to Charter Section 470(c)(12) shall include the following notice in any contract with any Subcontractor expected to receive at least \$100,000 for performance under this Contract:

“Notice Regarding Restrictions on Campaign Contributions and Fundraising in City Elections

You are a subcontractor on City of Los Angeles Contract # _____ Pursuant to the City of Los Angeles Charter Section 470(c)(12) and related ordinances, you and your principals are prohibited from making campaign contributions to and fundraising for certain elected City of Los Angeles (“**CITY**”) officials and candidates for elected **CITY** office for twelve months after the **CITY** contract is signed. You are required to provide the names and contact information of your principals to the **CONTRACTOR** and to amend that information within ten business days if it changes during the twelve month time period. Failure to comply may result in termination of this Contract and any other available legal remedies. Information about the restrictions may be found online at ethics.lacity.org or by calling the Los Angeles City Ethics Commission at (213) 978-1960.”

PSC-38. Contractors’ Use of Criminal History for Consideration of Employment Applications

CONTRACTOR shall comply with the City Contractors’ Use of Criminal History for Consideration of Employment Applications Ordinance, LAAC Section 10.48 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-39. Limitation of City’s Obligation to Make Payment to Contractor

Notwithstanding any other provision of this Contract, including any exhibits or attachments incorporated therein, and in order for **CITY** to comply with its governing legal requirements, **CITY** shall have no obligation to make any payments to **CONTRACTOR** unless **CITY** shall have first made an appropriation of funds equal to or in excess of its obligation to make any payments as provided in this Contract. **CONTRACTOR** agrees that any services provided by **CONTRACTOR**, purchases made by **CONTRACTOR** or expenses incurred by **CONTRACTOR** in excess of the appropriation(s) shall be free and without charge to **CITY** and **CITY** shall have no obligation to pay for the services, purchases or expenses. **CONTRACTOR** shall have no obligation to provide any services,

provide any equipment or incur any expenses in excess of the appropriated amount(s) until **CITY** appropriates additional funds for this Contract.

PSC-40. Compliance with Identity Theft Laws and Payment Card Data Security Standards

CONTRACTOR shall comply with all identity theft laws including without limitation, laws related to: (1) payment devices; (2) credit and debit card fraud; and (3) the Fair and Accurate Credit Transactions Act (“FACTA”), including its requirement relating to the content of transaction receipts provided to Customers. **CONTRACTOR** also shall comply with all requirements related to maintaining compliance with Payment Card Industry Data Security Standards (“PCI DSS”). During the performance of any service to install, program or update payment devices equipped to conduct credit or debit card transactions, including PCI DSS services, **CONTRACTOR** shall verify proper truncation of receipts in compliance with FACTA.

PSC-41. Compliance with California Public Resources Code Section 5164

California Public Resources Code Section 5164 prohibits a public agency from hiring a person for employment or as a volunteer to perform services at any park, playground, or community center used for recreational purposes in a position that has supervisory or disciplinary authority over any minor, if the person has been convicted of certain crimes as referenced in the Penal Code, and articulated in California Public Resources Code Section 5164(a)(2).

If applicable, **CONTRACTOR** shall comply with California Public Resources Code Section 5164, and shall additionally adhere to all rules and regulations that have been adopted or that may be adopted by **CITY**. **CONTRACTOR** is required to have all employees, volunteers and Subcontractors (including all employees and volunteers of any Subcontractor) of **CONTRACTOR** working on premises to pass a fingerprint and background check through the California Department of Justice at **CONTRACTOR’S** sole expense, indicating that such individuals have never been convicted of certain crimes as referenced in the Penal Code and articulated in California Public Resources Code Section 5164(a)(2), if the individual will have supervisory or disciplinary authority over any minor.

PSC-42. Possessory Interests Tax

Rights granted to **CONTRACTOR** by **CITY** may create a possessory interest. **CONTRACTOR** agrees that any possessory interest created may be subject to California Revenue and Taxation Code Section 107.6 and a property tax may be levied on that possessory interest. If applicable, **CONTRACTOR** shall pay the property tax. **CONTRACTOR** acknowledges that the notice required under California Revenue and Taxation Code Section 107.6 has been provided.

PSC-43. Confidentiality

All documents, information and materials provided to **CONTRACTOR** by **CITY** or developed by **CONTRACTOR** pursuant to this Contract (collectively “Confidential Information”) are confidential. **CONTRACTOR** shall not provide or disclose any Confidential Information or their contents or any information therein, either orally or in writing, to any person or entity, except as authorized by **CITY** or as required by law. **CONTRACTOR** shall immediately notify **CITY** of any attempt by a third party to obtain access to any Confidential Information. This provision will survive expiration or termination of this Contract.

PSC-44. COVID-19

Employees of Contractor and/or persons working on its behalf, including, but not limited to, subcontractors (collectively, “Contractor Personnel”), while performing services under this Agreement and prior to interacting in person with City employees, contractors, volunteers, or members of the public (collectively, “In-Person Services”) must be fully vaccinated against the novel coronavirus 2019 (“COVID-19”). “Fully vaccinated” means that 14 or more days have passed since Contractor Personnel have received the final dose of a two-dose COVID-19 vaccine series (Moderna or Pfizer-BioNTech) or a single dose of a one-dose COVID-19 vaccine (Johnson & Johnson/Janssen) and all booster doses recommended by the Centers for Disease Control and Prevention. Prior to assigning Contractor Personnel to perform In-Person Services, Contractor shall obtain proof that such Contractor Personnel have been fully vaccinated. Contractor shall retain such proof for the document retention period set forth in this Agreement. Contractor shall grant medical or religious exemptions (“Exemptions”) to Contractor Personnel as required by law. If Contractor wishes to assign Contractor Personnel with Exemptions to perform In-Person Services, Contractor shall require such Contractor Personnel to undergo weekly COVID-19 testing, with the full cost of testing to be borne by Contractor. If Contractor Personnel test positive, they shall not be assigned to perform In-Person Services or, to the extent they have already been performing In-Person Services, shall be immediately removed from those assignments. Furthermore, Contractor shall immediately notify City if Contractor Personnel performing In-Person Services (1) have tested positive for or have been diagnosed with COVID-19, (2) have been informed by a medical professional that they are likely to have COVID-19, or (3) meet the criteria for isolation under applicable government orders.

PSC-45. Contractor Data Reporting

If Contractor is a for-profit, privately owned business, Contractor shall, within 30 days of the effective date of the Contract and on an annual basis thereafter (i.e., within 30 days of the annual anniversary of the effective date of the Contract), report the following information to City via the Regional Alliance Marketplace for Procurement (“RAMP”) or via another method specified by City: Contractor’s and any Subcontractor’s annual revenue, number of employees, location, industry, race/ethnicity and gender of majority owner (“Contractor/Subcontractor Information”). Contractor shall further request, on an annual basis, that any Subcontractor input or update its business profile, including the Contractor/Subcontractor Information, on RAMP or via another method prescribed by City.

EXHIBIT 1

INSURANCE CONTRACTUAL REQUIREMENTS

CONTACT For additional information about compliance with City Insurance and Bond requirements, contact the Office of the City Administrative Officer, Risk Management at (213) 978-RISK (7475) or go online at www.lacity.org/cao/risk. The City approved Bond Assistance Program is available for those contractors who are unable to obtain the City-required performance bonds. A City approved insurance program may be available as a low cost alternative for contractors who are unable to obtain City-required insurance.

CONTRACTUAL REQUIREMENTS

CONTRACTOR AGREES THAT:

- 1. Additional Insured/Loss Payee.** The CITY must be included as an Additional Insured in applicable liability policies to cover the CITY'S liability arising out of the acts or omissions of the named insured. The CITY is to be named as an Additional Named Insured and a Loss Payee As Its Interests May Appear in property insurance in which the CITY has an interest, e.g., as a lien holder.
- 2. Notice of Cancellation.** All required insurance will be maintained in full force for the duration of its business with the CITY. By ordinance, all required insurance must provide at least thirty (30) days' prior written notice (ten (10) days for non-payment of premium) directly to the CITY if your insurance company elects to cancel or materially reduce coverage or limits prior to the policy expiration date, for any reason except impairment of an aggregate limit due to prior claims.
- 3. Primary Coverage.** CONTRACTOR will provide coverage that is primary with respect to any insurance or self-insurance of the CITY. The CITY'S program shall be excess of this insurance and non-contributing.
- 4. Modification of Coverage.** The CITY reserves the right at any time during the term of this Contract to change the amounts and types of insurance required hereunder by giving CONTRACTOR ninety (90) days' advance written notice of such change. If such change should result in substantial additional cost to CONTRACTOR, the CITY agrees to negotiate additional compensation proportional to the increased benefit to the CITY.
- 5. Failure to Procure Insurance.** 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 by CONTRACTOR.

CONTRACTOR'S failure to procure or maintain required insurance or a self-insurance program during the entire term of this Contract shall constitute a material breach of this Contract under which the CITY may immediately suspend or terminate this Contract or, at its discretion, procure or renew such insurance to protect the CITY'S interests and pay any and all premiums in connection therewith and recover all monies so paid from CONTRACTOR.

- 6. Workers' Compensation.** By signing this Contract, CONTRACTOR hereby certifies that it is aware of the provisions of Section 3700 *et seq.*, of the California 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 time during the performance of the work pursuant to this Contract.

7. California Licensee. All insurance must be provided by an insurer admitted to do business in California or written through a California-licensed surplus lines broker or through an insurer otherwise acceptable to the CITY. Non-admitted coverage must contain a **Service of Suit** clause in which the underwriters agree to submit as necessary to the jurisdiction of a California court in the event of a coverage dispute. Service of process for this purpose must be allowed upon an agent in California designated by the insurer or upon the California Insurance Commissioner.

8. Aggregate Limits/Impairment. If any of the required insurance coverages contain annual aggregate limits, CONTRACTOR must give the CITY written notice of any pending claim or lawsuit which will materially diminish the aggregate within thirty (30) days of knowledge of same. You must take appropriate steps to restore the impaired aggregates or provide replacement insurance protection within thirty (30) days of knowledge of same. The CITY has the option to specify the minimum acceptable aggregate limit for each line of coverage required. No substantial reductions in scope of coverage which may affect the CITY'S protection are allowed without the CITY'S prior written consent.

9. Commencement of Work. For purposes of insurance coverage only, this Contract will be deemed to have been executed immediately upon any party hereto taking any steps that can be considered to be in furtherance of or towards performance of this Contract. The requirements in this Section supersede all other sections and provisions of this Contract, including, but not limited to, PSC-3, to the extent that any other section or provision conflicts with or impairs the provisions of this Section.



Required Insurance and Minimum Limits

Name: GovernmentJobs.com, Inc. (dba NEOGOV)

Date: 03/26/2021

Agreement/Reference: Online Data Management Services for Selection, Applicare Tracking and Testing Management Services

Evidence of coverages checked below, with the specified minimum limits, must be submitted and approved prior to occupancy/start of operations. Amounts shown are Combined Single Limits ("CSLs"). For Automobile Liability, split limits may be substituted for a CSL if the total per occurrence equals or exceeds the CSL amount.

	Limits
<input checked="" type="checkbox"/> Workers' Compensation (WC) and Employer's Liability (EL)	WC <u>Statutory</u> EL <u>1,000,000</u>
<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <input type="checkbox"/> Waiver of Subrogation in favor of City </div> <div style="width: 45%;"> <input type="checkbox"/> Longshore & Harbor Workers <input type="checkbox"/> Jones Act </div> </div>	
<input checked="" type="checkbox"/> General Liability	<u>1,000,000</u>
<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <input type="checkbox"/> Products/Completed Operations <input type="checkbox"/> Fire Legal Liability <input type="checkbox"/> _____ </div> <div style="width: 45%;"> <input type="checkbox"/> Sexual Misconduct _____ </div> </div>	
<input type="checkbox"/> Automobile Liability (for any and all vehicles used for this contract, other than commuting to/from work)	_____
<input checked="" type="checkbox"/> Professional Liability (Errors and Omissions)	<u>1,000,000</u>
Discovery Period <u>12 months after completion of project or termination of agreement</u>	
<input type="checkbox"/> Property Insurance (to cover replacement cost of building - as determined by insurance company)	_____
<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <input type="checkbox"/> All Risk Coverage <input type="checkbox"/> Flood _____ <input type="checkbox"/> Earthquake _____ </div> <div style="width: 45%;"> <input type="checkbox"/> Boiler and Machinery <input type="checkbox"/> Builder's Risk <input type="checkbox"/> _____ </div> </div>	
<input checked="" type="checkbox"/> Cyber Liability and Data Breach	<u>1,000,000</u>
<input type="checkbox"/> _____	
<input type="checkbox"/> Surety Bonds - Performance and Payment (Labor and Materials) Bonds	_____
<input type="checkbox"/> Crime Insurance	_____

Other: 1) In the absence of imposed Auto Liability requirements, all contractors using vehicles during the course of their contract must adhere to the financial responsibility laws of the State of California.

Second Amended and Restated Professional Services Agreement
GOVERNMENTJOBS.COM, INC. dba NEOGOV
Attachment B – Confidentiality Agreement

I _____, (hereinafter referred to as “Contractor”), have entered into a contract (hereinafter referred to as the “Agreement”) with the City of Los Angeles to provide various services to the City of Los Angeles (hereinafter referred to as “City”).

I will provide temporary services to City and as part of these services I will have access to confidential information. “Confidential Information” includes 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 me by City pursuant to the Agreement or this Confidentiality Agreement, regardless of whether the information is marked or otherwise identified in writing as confidential, and regardless of whether the Confidential Information is received prior to execution of this Confidentiality Agreement.

I further understand that all Confidential Information provided to me by City, or accessed or reviewed by me during the performance of this assignment will remain the property of City.

I agree to use Confidential Information solely in connection with providing services to City under the Agreement and for no other purpose.

I agree not to provide Confidential Information, nor disclose its content or any information contained in it, either orally or in writing or in any form to transmit information, to any other person or entity, unless required by law or court order. I further agree not to make copies of any Confidential Information unless a formal request is made and approved by City.

I agree to promptly notify City of all requests, notices, subpoenas, pleadings, or other means, for the release of Confidential Information received by me.

I agree that I will not divulge to any unauthorized person, Confidential Information or any other information obtained while performing work pursuant to the Agreement between me and City.

I will be responsible for protecting the confidentiality and maintaining the security of all Confidential Information in my possession. I agree to use the same standard of care to protect City’s Confidential Information as I use to protect my own confidential and proprietary information, but not less than a reasonable standard.

Upon request by City, or completion or termination of my assignment under the Agreement, I will promptly return or destroy all Confidential Information in my possession at City's discretion, and provide City with written certification stating that such Confidential Information has been returned or destroyed.

This Confidentiality Agreement is to apply in conjunction with any prior confidentiality agreement between myself and City, and will not nullify such agreements; however, this Confidentiality Agreement will take precedence. Any conflicts with any other agreements will be modified to comply with the terms and intent of this Confidentiality Agreement.

I acknowledge that violation of this Confidentiality Agreement may subject me to civil and/or criminal action and that the City of Los Angeles will seek all possible legal redress.

Print Contractor Name Contractor Signature

Print Contractor Title Date

Contractor Address

Agreement Number: C-131837

Second Amended and Restated Professional Services Agreement
GOVERNMENTJOBS.COM, INC. dba NEOGOV
Attachment C – Scope of Work

1. Contractor shall:

- 1.1 Provide an Applicant Tracking System (“ATS”) which will provide the services in accordance with Attachment D – Required Functionality, attached hereto and incorporated herein by reference as if set forth in full at this point.
- 1.2 Provide all product upgrades to the ATS and accompanying components at no cost to the City. Quarterly product upgrades will be automatic and available upon the next login following a product upgrade rollout. The City may consider the purchase of customization services for enhancements to the ATS, if deemed necessary by City to perform its work prior to a scheduled roll-out.
- 1.3 Provide a Test Management System (“TMS”) component for the development and administration of multiple-choice tests, essays, and Training and Experience (“T&E”) Questionnaires and the ability to conduct detailed statistical analysis on test items, groups, sections, and tests and a Computer Based Testing (“CBT”) component for online administration of multiple choice tests and immediate scoring feedback and results.
- 1.4 Provide customized features and other services to meet the City’s business needs. Such features may include system upgrades and reporting mechanisms that are not included in the quarterly upgrades; and such services may be in the form of consulting, programming, or other services, as directed by City.

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GOVERNMENTJOBS.COM, INC. dba NEOGOV
Attachment D – Required Functionality

Contractor shall provide City a System with no less than the following functionalities:

I. APPLICANT TRACKING SYSTEM (ATS)

A. RECRUITMENT

1. Allows users to customize online job application
 - Allows multiple versions of an application
2. Accepts job applications online
 - Accepts thousands of applications in one day
3. Integrates online applications with City's website
 - Allows NeoGov's Career Pages to integrate with the Personnel Department's website for ease of use
4. Provides online job announcements and descriptions
 - Ability to automatically post job bulletins for examinations and include a description of the job
5. Allows online job interest card submission and automatic email response
 - Allows potential applicants to submit interest cards for various City jobs and automatically sends out emails once those jobs open for filing
6. Proactively searches City's applicant database
 - Ability to generate numerous reports and/or search for specific information for all City applicants
7. Provides real-time database of all applicant information
 - Ability to provide up-to-the-minute information about a specific examination and/or the entire applicants for the City
8. Allows recruitment and examination planning

- Allows staff from various sections to include specific recruitment and examination information for those involved to see

B. SELECTION

1. Creates, stores, and reuses supplemental exam questions
 - Ability to easily reuse previously used screening questions by creating an item bank
2. Defines unique scoring plans per recruitment, or copies existing scoring plans
 - Ability to create questions and create an algorithm to determine applicants' qualifications
3. Creates multiple choice tests from the TMS item bank
 - Ability to integrate the scoring process through the use of Biddle [FastTestWeb/TestWriter]
4. Administers online tests
 - Ability to administer essay or multiple-choice tests through Biddle[FastTestWeb/TestWriter]
5. Creates tests in a paper/pencil format
6. Scores, ranks, and refers applicants
 - Ability to make changes to the answer key, provide bonus points, seniority points, and refer candidates based on the City's Rule of Three Whole Scores

C. APPLICANT TRACKING

1. Provides email and hardcopy notifications
2. Collects and reports EEO Data
3. Tracks applicants by step/hurdle
4. Schedules written, oral, and other exams

- Allows candidates to self-schedule and/or Personnel Department to create a roster schedule of candidates
5. Records detailed applicant history
 - Allows to easily view the various applications submitted by applicants
 6. Tracks and matches skills
 - Allows to view specific skills indicated by applicants such as languages spoken, written, and/or speak

D. REPORTING AND ANALYSIS

1. Collects and reports on EEO data, including gender and ethnicity information
2. Analyzes and reports on adverse impact and applicant flow
 - Ability to determine adverse impact for the candidate group for each evaluation step in the Exam Plan
3. Tracks and analyzes data such as time-to-hire, recruitment costs, staff workload, applicant qualifications, etc.
4. Allows access to all standard systems reports
5. Provides Ad Hoc reporting tool

E. AUTOMATION

1. Creates and routes job requisitions
 - Allows City Department to submit certification requests and route them to the proper section
2. Refers and certifies applicants electronically based on the Rule of Three Whole Scores
 - Allows Personnel Department staff to identify candidates eligible for hire and allows for the flexibility to refer additional candidates if appropriate

II. TEST MANAGEMENT SYSTEM (TMS)

A. TEST MANAGEMENT

1. Allows City to create written tests and conduct detailed statistical analysis on written test items, groups, sections, and tests
2. Provides a computer based testing (CBT) component in the TMS for the online administration of multiple choice tests and the provision of immediate scoring feedback and results
3. Allows for the electronic storage, categorization, and retrieval of no less than 100,000 Items that can be imported into the Item Bank or created within the TMS
 - “Item” means an examination group comprised of one question, four possible answers, and an answer key or correct answer
4. Produces test questions in the form of multiple-choice questions, including a prompt and response option, a correct (keyed) response, or open-ended questions, which would allow for text/written (essay) responses
5. Provides an Item Bank that, in addition to storing items, allows for the storage of tests, which would be comprised of test questions stored within the system
6. Ensures confidentiality of items and tests by requiring permissions to be granted to view certain items or tests
7. Produces item history information, and item analysis
8. Includes off-the-shelf tests that can be used to assess such competencies as customer service, math, or other related competencies

9. Provides a web-based online test administration system that will allow for the City to administer tests to candidates online

10. Includes integration with online proctoring companies, which through integration, would be a seamless process for candidates to be administered the test online and proctored online on or before June 30, 2019

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GOVERNMENTJOBS.COM, INC. dba NEOGOV
Attachment E – Fee Schedule

1. City shall compensate Contractor for completed services as follows.

	Applicant Tracking System	Test Management System	Text Messaging	Customization Services (As Needed)	
<u>Year 1</u> 2019	\$148,343	\$40,000	\$18,000	\$110,000	Total Maximum Authorized Obligation
<u>Year 2</u> 2020	\$148,343	\$40,000	\$18,000		
<u>Year 3</u> 2021	\$148,343	\$40,000	\$18,000		
<u>Year 4</u> 2022	\$148,343	\$40,000	\$18,000		
<u>Year 5</u> 2023	\$148,343	\$40,000	\$18,000		
Total Cost	\$741,715	\$200,000	\$90,000	\$110,000	\$1,141,715

2. City shall pay Contractor an annual System Licensing fee of \$148,343 for 12-month periods beginning July 1, 2019 for the Applicant Tracking System (ATS). For periods covered by this agreement that are less than 12 months, City shall pay Contractor a pro-rated amount on a monthly basis. The annual System Licensing fee will be due on June 30 prior to the start of a new fiscal year.
3. City shall pay Contractor an annual System Licensing fee of \$40,000 for 12-month periods beginning July 1, 2019 for the Test Management System (TMS). For periods covered by this agreement that are less than 12 months, City shall pay Contractor a pro-rated amount on a monthly basis.
4. City shall pay Contractor an annual fee of \$18,000 for 12-month periods beginning July 1, 2019 for the system's Text Messaging functionality. For periods covered by this agreement that are less than 12 months, City shall pay Contractor a pro-rated amount on a monthly basis.
5. City shall pay Contractor for all customization services rendered at a rate of \$150 per documented labor hour, not to exceed \$110,000 for the life of the Contract. This rate shall remain fixed during this Contract, inclusive of extensions. Customized features may include, but are not limited to, system upgrades and reporting mechanisms that are not included in the quarterly upgrades; and such services may be in the form of consulting, programming, or other services.

6. City's total obligation under this Agreement shall not exceed \$1,141,715 for complete and satisfactory performance of the terms of this Agreement.