

CONTRACT NO. C- \_\_\_\_\_

**SERVICE AGREEMENT  
BETWEEN  
THE CITY OF LOS ANGELES  
AND  
S. GRONER ASSOCIATES  
FOR  
STORMWATER PUBLIC EDUCATION PROGRAM**

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## **STORMWATER PUBLIC EDUCATION PROGRAM**

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

### **W I T N E S S E T H**

WHEREAS, the CITY has a need for consulting services for the stormwater public education program; and

WHEREAS, the CITY is committed to protecting the public health and environment; and,

WHEREAS, the federal government issued a National Pollutant Discharge Elimination System (NPDES) Municipal MS4 Stormwater Permit to the CITY in 2012 for the reduction of polluted urban runoff; and,

WHEREAS, the CITY is mandated to meet the requirements of the NPDES Municipal MS4 Stormwater Permit; and,

WHEREAS, a key requirement of the NPDES MS4 Stormwater Permit is the development and implementation of a stormwater public information and participation program by the CITY; and,

WHEREAS, the CONTRACTOR'S services are deemed to be vital to meet LASAN's mission to protect public health and the environment; and,

WHEREAS, the CITY plans to utilize the CONTRACTOR to provide services for the Stormwater Public Education Program, during the course of a five year period with an additional two one-year renewal options; and

WHEREAS, on July 23, 2012, the Board of Public Works authorized LASAN to distribute a REQUEST FOR PROPOSALS for STORMWATER PUBLIC EDUCATION SERVICES and to negotiate a contract with a qualified proposer; and,

WHEREAS, on September 26, 2012, LASAN received four (4) proposals in response to the RFP; and,

WHEREAS, the CONTRACTOR was deemed the most qualified proposer with the best experience and expertise to perform said services as determined by CITY staff based on the evaluation criteria set forth in the RFP; and,

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

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

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

All titles, subtitles, and/or section headings appearing herein have been inserted for convenience and shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning, intent or construction of any of the terms or provisions hereof. The language of this CONTRACT shall be construed according to its fair meaning and not strictly for or against the CITY or the CONTRACTOR. The singular shall include the plural; use of the feminine, masculine, or neuter genders shall be deemed to include the genders not used. The terms “include” and “including” do not exclude items not enumerated that are in the same general class.

**ARTICLE 2 – DEFINITIONS**

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

AGREEMENT/CONTRACT	This contractual agreement between the City and S. Groner Associates for Stormwater Public Education Services.
BMPs	Best Management Practices
BOARD	The Board of Public Works of the City of Los Angeles

CALENDAR DAYS

Each day beginning at 12:01 a.m. and ending twenty-four (24) hours thereafter at 12:00 midnight.

CITY

The City of Los Angeles, Board of Public Works or its subordinate Bureaus. Depending on the context in which it is used, the term CITY may also refer to the geographic area known as the City of Angeles, the City Council, other Departments of the City of Los Angeles, or any person employed by the City of Los Angeles who is authorized to represent the City of Los Angeles in manners concerning this document.

CITY PROJECT MANAGER

CITY'S designated representative for all issues related to this AGREEMENT.

CONTRACTOR

S. Groner Associates

CONTRACTOR SERVICES

All services to be provided by the CONTRACTOR specified in this AGREEMENT.

DIRECTOR

Director of LASAN or his/her designated representative.



LARWQCB Los Angeles Regional Water Quality Control Board

LASAN Bureau of Sanitation, Department of Public Works, City of Los Angeles

MBE/WBE/SBE/EBE/DVBE/OBE Minority/Women/Small/Emerging/Disabled Veterans/Other Business Enterprises

NPDES Permit National Pollutant Discharge Elimination System (MS4) Municipal Stormwater Permit

SUBCONTRACTOR An individual or company having an agreement with CONTRACTOR to provide services, equipment, or materials to CONTRACTOR.

### **ARTICLE 3 – PROJECT DESCRIPTION**

CONTRACTOR shall provide the CITY with support on all aspects of the Stormwater Public Education Program including, but not limited to, the following:

- Creating and implementing a comprehensive stormwater public education program for the CITY in compliance with the National Pollutant Discharge Elimination System (NPDES) MS4 Municipal Stormwater Permit.
- Providing technical assistance to the CITY in educating the public and municipal employees regarding best management practices as they relate to stormwater pollution abatement.
- Assisting the CITY in documenting and reporting Stormwater Public Education activities to the LARWQCB to ensure the CITY'S compliance with requirements of the NPDES MS4 Municipal Stormwater Permit.

### **ARTICLE 4 – RESPONSIBILITIES OF AND SERVICES TO BE PERFORMED BY THE CONTRACTOR**

Services shall include, but not be limited to the following:

4.1 CONTRACTOR shall perform the services described in Article 4.4.

CONTRACTOR shall perform such work with a degree of skill and diligence normally employed by professional analysts or contractors performing the same or similar services.

4.2 CONTRACTOR warrants that the services will be performed consistent with generally accepted industry standards.

4.3 Maintenance of Records

CONTRACTOR shall maintain all records, in their original form, pertaining to the performance of this CONTRACT, including records of financial transactions. These records shall be retained for a period of no less than four (4) years following final payment made by the CITY hereunder or the expiration date of this CONTRACT, whichever occurs last. Said records shall be subject to examination and audit by authorized CITY personnel or by the CITY'S representative at any time during the term of this CONTRACT and within the four (4) years following final payment made by the CITY hereunder or the expiration date of this CONTRACT, whichever occurs last. CONTRACTOR shall provide any reports requested by the CITY regarding performance of this CONTRACT within thirty (30) business days of the request by the CITY. Any subcontract entered into by CONTRACTOR, as authorized under the terms of this CONTRACT, shall include a like provision for work to be performed under this CONTRACT.

4.4 Scope of Services

The CONTRACTOR'S tasks under the Stormwater Public Education Program include, but are not limited to, the following:

4.4.1 Mass Media, Advertising, and Online Media

- Maintain and expand the LA Stormwater's online social media program including the LA Stormwater website, blog, quarterly e-newsletter, Facebook page, YouTube channel, and Twitter accounts.

- Assist the CITY with the development and launch of mobile Applications (Apps) as appropriate.
- Assist the Watershed Protection Division and Public Works, Public Affairs Office in the creation and development of mass media advertising campaigns and earned media relations.

#### 4.4.2 Pollutant Specific Outreach

- Develop a pollutant specific outreach program that focuses on watershed-specific pollutants of concern and target audiences including, but not limited to, automotive and home do-it-yourselfers, dog owners, horse owners, and gardeners.
- Implement a pollutant specific program that focuses on placing outreach materials at the point-of-purchase in retail stores citywide, including but not limited to home improvement centers, garden centers, dog groomers, veterinary offices and feed stores.
- Develop and implement a voluntary residential low impact development outreach program.

#### 4.4.3 Community and Media Relations

- Assist with the publicity and promotion of Proposition O and grant-funded stormwater capital improvement projects.
- Assist with the coordination of community outreach events and press events associated with Proposition O, grant-funded stormwater capital improvement projects and the Enhanced Watershed Management Program (EWMP).

#### 4.4.4 School Education Program

- Develop and maintain a school education program that includes educating elementary, middle and high school students in the Los Angeles area.
- Provide assistance and support for the CITY'S sponsorship of Kids Ocean Day.

#### 4.4.5 Business Outreach and Employee Training

- Assist and support the Watershed Protection Division's environmental compliance business inspection program with the development, creation and production of outreach materials.

- Develop and create an online municipal employee stormwater training module.

#### 4.4.6 NPDES MS4 Municipal Stormwater Permit Compliance

- Assist with the creation and compilation of the Stormwater Public Information and Public Participation component of the NPDES Municipal Stormwater Permit Annual Report to ensure compliance.

#### 4.4.7 Program Management/Contract Administration

- Oversee, administer and manage the contract, ensuring completion of work by sub-consultants and interacting as needed with CITY program staff.
- Assist with other specialized and technical support services for activities related to the stormwater public education program as directed and as needed.

#### 4.5 CONTRACTOR Schedule of Services and Costs

Exhibit Q outlines the CONTRACTOR Schedule of Services and Costs.

### **ARTICLE 5 – KEY CONTRACTOR PERSONNEL**

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

Stephen Groner, Principal  
S. Groner Associates  
100 W. Broadway, Suite 290  
Long Beach, CA 90802  
(562) 597-0205  
sgroner@sga-inc.net

Additional technical specialists shall be assigned subject to the CITY PROJECT MANAGER'S approval.

- 5.2 CONTRACTOR agrees that personnel assigned to these positions at the commencement of services under this AGREEMENT shall serve in these positions as long as required by the CONTRACT, and CONTRACTOR shall not change personnel assigned to these positions without the prior consent and approval of CITY'S PROJECT MANAGER, whose consent shall not be withheld unreasonably.
- 5.3 Unless otherwise provided or approved by the CITY, CONTRACTOR shall use its own employees to perform services described in this CONTRACT. The CITY shall have the right to review and approve any personnel who are assigned to work under this CONTRACT. CONTRACTOR agrees to remove personnel from performing work under this CONTRACT if requested to do so by the CITY within thirty (30) business days of the request by the CITY.
- 5.4 CONTRACTOR shall not use subcontractors to assist in performance of this CONTRACT without the prior written approval of the CITY. If the CITY permits the use of subcontractors, CONTRACTOR shall remain responsible for performing all aspects of this CONTRACT. The CITY has the right to approve CONTRACTOR'S subcontractors, and the CITY reserves the right to request replacement of subcontractors. The CITY does not have any obligation to pay CONTRACTOR'S subcontractors, and nothing herein creates any privity of contract between the CITY and the subcontractors.

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

CITY designates Joyce Amaro as its CITY PROJECT MANAGER to represent the CITY in all matters within the scope of the AGREEMENT relating to the conduct and approval of the work to be performed. Whenever the term “approval of CITY,” “consult with CITY,” “confer with CITY,” or similar terms are used, they shall refer to the CITY PROJECT MANAGER. The CITY PROJECT MANAGER may designate an assistant to act in his/her stead. The CITY may designate another CITY employee to succeed Joyce Amaro as CITY PROJECT MANAGER. The CONTRACTOR will be notified in writing in such event. The CITY shall furnish, without charge, facilities and resources available to the CONTRACTOR as deemed reasonably necessary and appropriate by CITY.

## **ARTICLE 7 – TERM OF AGREEMENT AND TIME OF EFFECTIVENESS**

The term of this AGREEMENT shall be for five (5) years with two (2), one (1) year renewal options at the CITY’S sole discretion, from the date of full execution unless terminated as provided under Article 8 or extended by amendment or change order to this AGREEMENT and signed by the parties. In addition to the two (2), one (1) year renewal options, the CITY may elect to extend the AGREEMENT on a month-to-month basis for a maximum of six (6) months, during which period the CITY and the CONTRACTOR shall continue performance under the terms of this AGREEMENT. The CITY may extend the AGREEMENT on a month-to-month basis prior to the end of either the initial five (5) year term if the CITY elects not to renew, or the end of the seven (7) year term if the BOARD elects to renew, by providing the CONTRACTOR written notice at least 90 days prior to expiration of the AGREEMENT. During the period

of extension, the CITY shall increase the expenditure amount for services performed by the CONTRACTOR by a maximum of five (5) percent of the total contract cost. During such period of month-to-month operation, if either party decides to terminate the relationship, the CONTRACTOR shall be obligated to continue performance for at least sixty (60) days after written notice from the terminating party. The date of full execution is deemed to be the date when all the following events have occurred:

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

## **ARTICLE 8 - TERMINATION**

8.1 This AGREEMENT may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this AGREEMENT through no fault of the terminating party, provided that no termination may be effected unless the other party is given (1) not less than ten (10) CALENDAR DAYS' written notice (delivered by certified mail, return



receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination.

- 8.2 This AGREEMENT may be terminated in whole or in part in writing by the CITY for its convenience, provided that the CONTRACTOR is given (1) not less than thirty (30) CALENDAR DAYS' written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination. Upon receipt of said written notice, CONTRACTOR shall immediately take action not to incur any additional obligations, cost or expense, except as may be reasonably necessary to terminate its activities.
- 8.3 This AGREEMENT may be immediately terminated in writing by the CITY if (1) a federal or state proceeding for relief of debtors is undertaken by or against CONTRACTOR, or if CONTRACTOR makes an assignment for the benefit of creditors or (2) CONTRACTOR engages in any dishonest conduct related to the performance or administration of this AGREEMENT or violates the CITY'S lobbying policies.
- 8.4 If termination for default is effected by the CITY, an equitable adjustment in the price provided for in this AGREEMENT shall be made, but (1) no amount shall be allowed for anticipated profit on unperformed services or other work, and (2) any payment due the CONTRACTOR at the time of termination may be adjusted to cover any additional costs to the CITY because of the CONTRACTOR'S default. If termination for default is effected by the CONTRACTOR or if termination for convenience is effected by the CITY, the equitable adjustment shall include a

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

8.5 Upon receipt of a termination action under Articles 8.1, 8.2 or 8.3 above, the CONTRACTOR shall (1) promptly discontinue all affected work (unless the notice directs otherwise), and (2) deliver or otherwise make available to the CITY within thirty (30) business days of said termination action all finished or unfinished documents and materials produced or procured under this CONTRACT, including all intellectual property rights thereto, which shall become CITY property upon date of such termination. CONTRACTOR agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights provided herein within thirty (30) business days of said termination.

8.6 Upon termination under Articles 8.1, 8.2 or 8.3 above, the CITY may take over the work and may award another party an AGREEMENT to complete the work under this AGREEMENT.

8.7 If, after the termination for failure of the CONTRACTOR to fulfill contractual obligations, it is determined that the CONTRACTOR had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the

convenience of the CITY. In such event, adjustment of the AGREEMENT price shall be made as provided in Article 8.4 of this article.

8.8 The rights and remedies of the CITY provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this AGREEMENT.

#### **ARTICLE 9 – SUBCONTRACT APPROVAL**

All subcontracts in excess of \$40,000 shall require the prior approval of the CITY. A copy of all subcontracts shall be submitted to the CITY PROJECT MANAGER showing the SUBCONTRACTOR'S name and dollar amount of each subcontract. Wholly-owned subsidiaries of the CONTRACTOR shall not be considered SUBCONTRACTORS. CONTRACTOR shall not substitute SUBCONTRACTORS listed in this AGREEMENT without the prior written approval of the CITY. CONTRACTOR shall not add SUBCONTRACTORS to assist in the performance of this AGREEMENT without the prior written approval of the CITY. If the CITY permits the use of SUBCONTRACTORS, CONTRACTOR shall remain responsible for performing all aspects of this CONTRACT. The CITY has the right to approval CONTRACTOR'S SUBCONTRACTORS, and the CITY reserves the right to request replacement of SUBCONTRACTORS. The CITY does not have any obligation to pay CONTRACTOR'S SUBCONTRACTORS, and nothing herein creates any privity of contract between the CITY and the SUBCONTRACTORS.

## ARTICLE 10 – COMPENSATION, INVOICING, AND PAYMENT

### 10.1 Definitions

“Cost” as used herein is defined as the sum of: (1) Billing Salary Rates; (2) Indirect Expenses; (3) Other Direct Costs with no markup ; and, (4) Profit of as defined below.

#### 10.1.1 “Billing Salary Rates” shall be at the rates approved by the CITY

PROJECT MANAGER, to be charged by CONTRACTOR for employees’ time directly chargeable to their performance of the project work. Any adjustments to the CONTRACTOR’S direct salary rate shall be in accordance with established BUREAU policies existing at the time the adjustment is approved. Billing Salary Rate increases are limited to once per year, per employee, on the anniversary date of the CONTRACTOR’S AGREEMENT execution, and are subject to the approval of the CITY. In no case shall the “Billing Salary Rates” exceed the actual salary rate paid to the employee. Any adjustment to the SUBCONTRACTORS’ salaries and Hourly Billing Rates shall be reviewed and approved by the CITY PROJECT MANAGER prior to invoicing. Adjustments to SUBCONTRACTORS’ salaries and Hourly Billing Rates may be increased one time per year, per employee, on the anniversary date of the CONTRACTOR’S AGREEMENT execution. Any such increases shall be in accordance with established LASAN policy at the time the adjustment is approved.

10.1.2 "Indirect Expenses" (including payroll burden, overhead, and general and administrative expenses) shall be at the rate applied to Billing Salary Rate. Indirect Expenses for this Contractor Services Agreement is fixed at a rate of ten percent (10%) for CONTRACTOR personnel located in the Home Office and fixed at a rate of ten percent (10%) for CONTRACTOR located in the Field Office for the duration of the AGREEMENT.

10.1.3 "Other Direct Cost" includes those costs of CONTRACTOR directly identifiable to or incurred in the performance of services hereunder, including but not limited to reproduction, freight, messenger service, travel (in accordance with established CITY policies), equipment owned or rented by CONTRACTOR (any equipment purchased and paid for under this project shall become the property of the CITY), auto mileage charges (based on IRS allowable amounts), and supplies used in the work. Communication expenses, cost of office space, equipment, and supplies furnished to CITY personnel at CONTRACTORS' location shall be paid by the CITY. The CITY shall receive the full benefit of any free travel, frequent flyer mileage, discounts and/or any other advantages which are acquired by the CONTRACTOR as a result of CITY-sponsored travel.

10.1.4 "Subcontract Expenses" shall be the actual amount paid by CONTRACTOR to SUBCONTRACTOR for their services to the CITY plus an administrative fee of five percent (5%).

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

10.1.6 Costs incurred by the CONTRACTOR prior to the actual date of full execution of this AGREEMENT shall only be payable to CONTRACTOR if said costs were incurred in completing any task specifically authorized by this AGREEMENT and said costs are reviewed and approved by the CITY and said approval for payment occurs after this AGREEMENT is fully executed.

10.1.7 Exhibit Q, Project Services Cost Estimate, attached hereto and incorporated herein by this reference, shall be the format used for the estimated total cost by task for each Task Order. For Task Orders specifying a Cost Reimbursement Plus Profit compensation method, the Project Services Cost Estimate shall be based upon the estimated hours of labor at estimated direct labor rates, the allocated indirect expenses, other direct costs, and profit. For Task Orders specifying a Lump Sum compensation method, the Project Services Cost Estimate shall set forth the total project cost and the appropriate payment milestones.

10.1.8 Hourly Billing Rate is a method of compensation whereby CONTRACTOR is compensated on an hourly basis pursuant to established Hourly Billing Rates set forth in Exhibit Q. The hourly billing rates shall be approved by the CITY PROJECT MANAGER for CONTRACTOR employees' time directly chargeable to their performance of the project work and includes salary, fringe benefits, overhead, profit, and all other expenses incurred by CONTRACTOR. Payments shall be made upon the satisfactory

completion of the tasks or milestones as set forth in the Project Task Order.

10.1.9 The CITY will not pay for CONTRACTOR'S nor SUBCONTRACTOR'S personnel for invoice preparation. The CITY will not pay for CONTRACTOR'S nor SUBCONTRACTOR'S communication expenses and computer time charges.

## 10.2 Compensation

CONTRACTOR agrees to perform the work specified in Article 4.4, and CITY shall compensate CONTRACTOR either on a Lump Sum basis, a Cost Reimbursement Plus Profit basis or an Hourly Billing Rate basis upon mutual written agreement. CITY shall designate the compensation method in the Task Orders to be issued under this AGREEMENT. If the Task Order specifies the compensation as being on a Cost Reimbursement Plus Profit or Hourly Billing Rate basis, payment shall be made in accordance with the Task Cost Estimates to be provided for CITY approval prior to issuance of Notice to Proceed for any task under this AGREEMENT. Hourly rates, SUBCONTRACTOR fees and other direct/indirect charges shall be in accordance with rates set herein. Individuals who CONTRACTOR wishes to add to the project must have their compensation rate approved by the CITY'S PROJECT MANAGER, and a revised Scope of Services must be prepared as evidence of this addition. The total cost ceiling shall be stated in the Task Order.

If the Task Order specifies the compensation as being on a Lump Sum basis, payment shall be made upon the satisfactory completion of the tasks or

milestones as set forth in the Task Order. The total cost ceiling shall be stated in the Task Order. The total cost ceiling for this AGREEMENT is \$3,150,000.

### 10.3 Invoicing and Payment

10.3.1 For Task Orders specifying a Cost Reimbursement Plus Profit method of payment, CONTRACTOR shall, once each month, submit to the CITY an original and four (4) copies of an invoice in a format acceptable to the CITY which will include all costs and a proportionate amount of profit due CONTRACTOR for services provided during the preceding month.

Payments shall be made upon the submission of a complete and accurate invoice and supporting documentation. The CITY shall review CONTRACTOR'S invoice in accordance with the CITY'S review procedures. The CITY shall make a good faith effort to process payments in 60 days.

10.3.2 Invoices shall be prepared in such form and supported by such copies of invoices, payrolls, time sheets, and other documents of proof as may be reasonably required by the CITY to establish the amount of such invoices as allowable expenses. A Subcontractor Utilization Attachment, Exhibit B, shall also be submitted as part of the monthly invoice. CONTRACTOR must provide an explanation for any item that falls short of the planned utilization with specific plans and recommendations for recovering any shortfalls in utilization. No such invoices shall be paid without the Subcontractor Utilization Invoice Attachment. All invoices shall be subject



to audit for a period of four (4) years from the termination of this AGREEMENT.

10.3.3 The CITY shall not be obligated to reimburse CONTRACTOR for costs incurred in excess of the Project Services Cost Estimate set forth. CONTRACTOR shall not be obligated to continue performance (including actions under the temporary stop work or termination clauses) or otherwise incur costs in excess of the Project Services Cost Estimate unless and until the CITY shall have notified CONTRACTOR in writing that such Project Services Cost Estimate has been increased and shall have specified in such notice an estimated Project Services Cost Estimate, which shall thereupon constitute the cost performance of this AGREEMENT. In the absence of the specified notice, the CITY shall not be obligated to reimburse CONTRACTOR for any costs in excess of the Project Services Cost Estimate set forth, whether those costs were incurred during the course of the AGREEMENT or as a result of termination.

10.3.4 When and to the extent that the Project Services Cost Estimate has been increased, any costs incurred by CONTRACTOR in excess of the Project Services Cost Estimate for any Task Order, prior to such increase, shall be allowable to the same extent as if such costs had been incurred after the increase.

10.3.5 The CITY'S obligations under this AGREEMENT shall only be to the extent of the present appropriation to fund the AGREEMENT. No action,

statement, or omission of any officer, agent, or employee of the CITY shall impose any obligation upon the CITY, such officer, agent, or employee, except to the extent the CITY has appropriated funds and otherwise in accordance with the terms of this AGREEMENT. CONTRACTOR and CITY agree that no indebtedness for work performed which results in costs under this AGREEMENT shall arise against the CITY until and unless there is an appropriation of funds to pay for such work. However, if the CITY shall appropriate funds for any successive fiscal years, the CITY'S obligations shall be extended to the extent of such appropriation subject to the terms and conditions of this AGREEMENT.

10.3.6 For Task Orders specifying a Lump Sum method of payment or the Hourly Billing Rate method, CONTRACTOR shall submit to the CITY, upon the satisfactory completion of each task/milestone, an original and four (4) copies of an invoice in a format acceptable to the CITY. The CITY shall review CONTRACTOR'S invoice and notify CONTRACTOR of exceptions or disputed items and their dollar amount. The total invoice amount, less any exceptions or disputed items shall be considered approved by the CITY. The CITY shall pay CONTRACTOR all amounts approved for payment after CITY'S PROJECT MANAGER receives CONTRACTOR'S invoice.

#### 10.4 False Claims Act

CONTRACTOR acknowledges that it is aware of liabilities resulting from submitting a false claim for payment by the CITY under the California False

Claims Act (Cal. Gov. Code 12650 et.seq.), including treble damages, costs of legal actions to recover payments and civil penalties of up to \$10,000 per false claim.

## **ARTICLE 11 – AMENDMENTS, CHANGES OR MODIFICATIONS**

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

## **ARTICLE 12 – INDEMNIFICATION AND INSURANCE**

### 12.1 INDEMNIFICATION

Except for the active negligence or willful misconduct of the CITY, or any of its Boards, Officers, Agents, Employees, Assigns and Successors in Interest, CONTRACTOR undertakes and agrees to defend, indemnify and hold harmless the CITY and any of its Board, Officers, Agents, Employees, Assigns and Successors in Interest from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the CITY, including but not limited to, costs of experts and consultants), damage or liability of any nature whatsoever, for death or injury to any person, including 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 to the extent of the negligent acts, errors, omissions or willful

misconduct incident to the performance of this AGREEMENT by the CONTRACTOR or its SUBCONTRACTORS of any tier. Rights and remedies available to the CITY under this provision are cumulative of those provided for elsewhere in this AGREEMENT and those allowed under the laws of the United States, the State of California, and the CITY. The provisions of this paragraph shall survive expiration or termination of this AGREEMENT.

## 12.2 INSURANCE

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

## 12.3 BONDS

All bonds which may be required hereunder shall conform to CITY requirements established by Charter, ordinance or policy, and shall be filed with the Office of the City Administrative Officer, Risk Management for its review and acceptance in accordance with Sections 11.47 through 11.56 of the Los Angeles Administrative Code.

### **ARTICLE 13 – INDEPENDENT CONTRACTORS**

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

### **ARTICLE 14 – WARRANTY AND RESPONSIBILITY OF CONTRACTOR**

14.1 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.

14.2 CONTRACTOR shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of all designs, drawings, specifications, reports, and other services furnished by CONTRACTOR under this AGREEMENT. CONTRACTOR shall, at no additional cost to CITY, correct

or revise any errors, omissions, or other deficiencies in its designs, drawings, specifications, reports, calculations, and other services.

- 14.3 The CONTRACTOR shall exhibit proper professional judgment in the use of information furnished by CITY in Article 6. In the event that said information is not delivered timely or that it is discovered to be incorrect or misleading, CONTRACTOR will notify the CITY in a reasonable manner within three (3) business days after the discovery of such tardiness or incorrect or misleading information and promptly make a determination of its costs and schedule impact on this AGREEMENT, as well as recommendations for the correction of such incorrect or misleading information.
- 14.4 CONTRACTOR shall perform such professional services as may be necessary to accomplish the work required to be performed under this AGREEMENT in accordance with this AGREEMENT.
- 14.5 Except as specified in Article 12 and as otherwise provided in this AGREEMENT, the CONTRACTOR shall be and shall remain liable, in accordance with applicable law, for all damages to CITY caused by CONTRACTOR'S negligent performance of any of the services furnished under this AGREEMENT, except for errors, omissions, or other deficiencies to the extent attributable to CITY, CITY-furnished data, or any third party.

#### **ARTICLE 15 – INTELLECTUAL PROPERTY INDEMNIFICATION**

The CONTRACTOR, at its own expense, undertakes and agrees to defend, indemnify, and hold harmless the CITY, and any of its Boards, Officers, Agents, Employees,

Assigns, and Successors in Interest from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel), and cost of litigation (including all actual litigation costs incurred by the CITY, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever arising out of the infringement, actual or alleged, direct or contributory, of any intellectual property rights, including, without limitation, patent, copyright, trademark, trade secret, right of publicity and proprietary information right (1) on or in any design, medium, matter, article, process, method, application, equipment, device, instrumentation, software, hardware, or firmware used by CONTRACTOR, or its SUBCONTRACTORS of any tier, in performing the work under this CONTRACT; or (2) as a result of the CITY'S actual or intended use of any Work Product furnished by CONTRACTOR, or its SUBCONTRACTORS of any tier, under this AGREEMENT. Rights and remedies available to the CITY under this provision are cumulative of those provided for elsewhere in this CONTRACT and those allowed under the laws of the United States, the State of California, and the CITY. The provisions of this article shall survive expiration or termination of this CONTRACT.

#### **ARTICLE 16 – INTELLECTUAL PROPERTY WARRANTY**

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

## **ARTICLE 17 – OWNERSHIP AND LICENSE**

Unless otherwise provided for herein, all Work Products originated and prepared by CONTRACTOR or its SUBCONTRACTORS of any tier under this CONTRACT shall be and remain the exclusive property of the CITY for its use in any manner it deems appropriate. Work Products are all works, tangible or not, created under this CONTRACT including, without limitation, documents, material, data, reports, manuals, specifications, artwork, drawings, sketches, computer programs and databases, schematics, photographs, video and audiovisual recordings, sound recordings, marks, logos, graphic designs, notes, websites, domain names, inventions, processes, formulas, matters and combinations thereof, and all forms of intellectual property. CONTRACTOR hereby assigns, and agrees to assign, all goodwill, copyright, trademark, patent, trade secret and all other intellectual property rights worldwide in any Work Products originated and prepared by CONTRACTOR under this CONTRACT. CONTRACTOR further agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownerships of rights provided herein. For all Work Products delivered to the CITY that are not originated or prepared by CONTRACTOR or its SUBCONTRACTORS of any tier under this CONTRACT, CONTRACTOR hereby grants a non-exclusive perpetual license to use such Work Products for any CITY purposes. CONTRACTOR shall not provide or disclose any Work Product to any third party without prior written consent of the CITY. Any SUBCONTRACT entered into by CONTRACTOR relating to this CONTRACT, to the extent allowed hereunder, shall include a like provision for work to be performed under



this CONTRACT to contractually bind or otherwise oblige its SUBCONTRACTORS performing work under this CONTRACT such that the CITY'S ownership and license rights of all Work Products are preserved and protected as intended herein. Failure of CONTRACTOR to comply with this requirement or to obtain the compliance of its SUBCONTRACTORS with such obligations shall subject CONTRACTOR to the imposition of any and all sanctions allowed by law, including but not limited to termination of CONTRACTOR'S CONTRACT with the CITY.

#### **ARTICLE 18 – SUCCESSORS AND ASSIGNS**

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

#### **ARTICLE 19 – CONTACT PERSONS – PROPER ADDRESSES – NOTIFICATION**

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

To The CITY:

Contact Person: Joyce Amaro, Project Manager

Address: Watershed Protection Division, Media Technical Center  
2714 Media Center Drive, Los Angeles, CA 90065

To the CONTRACTOR:

Contact Person: Stephen Groner, Principle

Address: S. Groner Associates

100 W. Broadway, #290, Long Beach, CA 90802

#### **ARTICLE 20 – FORCE MAJEURE**

In the event that performance on the part of any party hereto is delayed or suspended as a result of circumstances beyond the reasonable control and without the fault and negligence of said party, none of the parties shall incur any liability to the other parties as a result of such delay or suspension. Circumstances deemed to be beyond the control of the parties hereunder include, but are not limited to, acts of God or of the public enemy; insurrection; acts of the Federal Government or any unit of State or Local Government in either sovereign or contractual capacity; fires; floods; earthquakes; epidemics; quarantine restrictions; strikes; freight embargoes or delays in transportation, to the extent that they are not caused by the party's willful or negligent acts or omissions, and to the extent that they are beyond the party's reasonable control.

#### **ARTICLE 21 - SEVERABILITY**

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

**ARTICLE 22 – DISPUTES**

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

**ARTICLE 23 – ENTIRE AGREEMENT**

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

**ARTICLE 24 – APPLICABLE LAW, INTERPRETATION, AND ENFORCEMENT**

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

revised laws, regulations, and/or procedures that apply to the performance of this AGREEMENT.

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

#### **ARTICLE 25 – CURRENT LOS ANGELES CITY BUSINESS TAX REGISTRATION**

##### **CERTIFICATE REQUIRED**

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

#### **ARTICLE 26 – WAIVER**

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

**ARTICLE 27 – PROHIBITION AGAINST ASSIGNMENT OR DELEGATION**

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

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

**ARTICLE 28 - PERMITS**

The CONTRACTOR and its directors, officers, partners, agents, employees, and SUBCONTRACTORS, to the extent allowed hereunder, shall obtain and maintain all permits, licenses, certifications, and other documents necessary for the CONTRACTOR’S performance of the services hereunder and shall pay any fees required therefore. CONTRACTOR certifies to immediately notify within two (2) business days, the CITY of any suspension, termination, lapses, non-renewals, or restrictions of licenses, permits, certificates, or other documents.

**ARTICLE 29 – DISCOUNTS**

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

**ARTICLE 30 – CLAIMS FOR LABOR AND MATERIALS**

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

**ARTICLE 31 – BREACH**

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

**ARTICLE 32 – NON-DISCRIMINATION**

Unless otherwise exempt, this CONTRACT is subject to the non-discrimination provisions in Sections 10.8 through 10.8.2 of the Los Angeles Administrative Code, as amended from time to time. The CONTRACTOR shall comply with the applicable non-discrimination and affirmative action provisions of the laws of the United States of

America, the State of California, and the CITY. In performing this CONTRACT, CONTRACTOR shall not discriminate in its employment practices against any employee or applicant for employment because of such person's race, religion, national origin, ancestry, sex, sexual orientation, age, disability, domestic partner status, marital status or medical condition. Any subcontract entered into by CONTRACTOR, to the extent allowed hereunder, shall include a like provision for work to be performed under this CONTRACT. Failure of CONTRACTOR to comply with this requirement or to obtain the compliance of its SUBCONTRACTORS with such obligations shall subject CONTRACTOR to the imposition of any and all sanctions allowed by law, including but not limited to termination of CONTRACTOR'S CONTRACT with the CITY.

### **ARTICLE 33 – EQUAL EMPLOYMENT PRACTICES**

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

- A. During the performance of this CONTRACT, CONTRACTOR agrees and represents that it will provide equal employment practices and CONTRACTOR and each SUBCONTRACTOR hereunder will ensure that in his or her employment practices persons are employed and employees are treated equally and without regard to or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
  - 1. This provision applies to work or service performed or materials manufactured or assembled in the United States.

2. Nothing in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.
  3. CONTRACTOR agrees to post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.
- B. CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
- C. As part of the CITY'S supplier registration process, and/or at the request of the awarding authority, or the Board of Public Works, Office of Contract Compliance, CONTRACTOR shall certify in the specified format that he or she has not discriminated in the performance of CITY CONTRACTS against any employee or applicant for employment on the basis or because of race, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status or medical condition.
- D. CONTRACTOR shall permit access to and may be required to provide certified copies of all of his or her records pertaining to employment and to employment practices by the awarding authority or the Office of Contract Compliance for the purpose of investigation to ascertain compliance with the Equal Employment Practices provisions of CITY contracts within ten (10) business days of such



request by the CITY. On their or either of their request CONTRACTOR shall provide evidence that he or she has or will comply therewith.

- E. The failure of any CONTRACTOR to comply with the Equal Employment Practices provisions of this CONTRACT may be deemed to be a material breach of CITY CONTRACTS. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made or penalties assessed except upon a full and fair hearing after notice and an opportunity to be heard have been given to CONTRACTOR.
- F. Upon a finding duly made that CONTRACTOR has failed to comply with the Equal Employment Practices provisions of a CITY CONTRACT, the CONTRACT may be forthwith canceled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the CITY. In addition thereto, such failure to comply may be the basis for a determination by the awarding authority or the Board of Public Works that the CONTRACTOR is an irresponsible bidder or proposer pursuant to the provisions of Section 10.40 of the City of Los Angeles Administrative Code, et seq. In the event of such a determination, CONTRACTOR shall be disqualified from being awarded a contract with the CITY for a period of two years, or until CONTRACTOR shall establish and carry out a program in conformance with the provisions hereof.
- G. Notwithstanding any other provision of this CONTRACT, the CITY shall have any and all other remedies at law or in equity for any breach hereof.

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

**ARTICLE 34 – AFFIRMATIVE ACTION PROGRAM**

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

- A. During the performance of a CITY contract, CONTRACTOR certifies and represents that CONTRACTOR and each SUBCONTRACTOR hereunder will adhere to an affirmative action program to ensure that in its employment practices, persons are employed and employees are treated equally and without regard to or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
  - 1. This provision applies to work or services performed or materials manufactured or assembled in the United States.
  - 2. Nothing in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.
  - 3. CONTRACTOR shall post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.
  
- B. CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.

- C. As part of the CITY'S supplier registration process, and/or at the request of the awarding authority or the Office of Contract Compliance, CONTRACTOR shall certify on an electronic or hard copy form to be supplied, that CONTRACTOR has not discriminated in the performance of CITY contracts against any employee or applicant for employment on the basis or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
- D. CONTRACTOR shall permit access to and may be required to provide certified copies of all of its records within ten (10) days pertaining to employment and to its employment practices by the awarding authority or the Office of Contract Compliance, for the purpose of investigation to ascertain compliance with the Affirmative Action Program provisions of CITY contracts, and on their or either of their request to provide evidence that it has or will comply therewith.
- E. The failure of any CONTRACTOR to comply with the Affirmative Action Program provisions of CITY contracts may be deemed to be a material breach of contract. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made except upon a full and fair hearing after notice and an opportunity to be heard has been given to CONTRACTOR.
- F. Upon finding duly made that CONTRACTOR has breached the Affirmative Action Program provisions of a CITY contract, the CONTRACT may be forthwith cancelled, terminated or suspended, in whole or in part, by the awarding

authority, and all monies due or to become due hereunder may be forwarded to and retained by the CITY. In addition thereto, such breach may be the basis for a determination by the awarding authority or the Board of Public Works that the said CONTRACTOR is an irresponsible bidder or proposer pursuant to the provisions of the City of Los Angeles Administrative Code 10.40, et seq. In the event of such determination, such CONTRACTOR shall be disqualified from being awarded a contract with the CITY for a period of two years, or until he or she shall establish and carry out a program in conformance with the provisions hereof.

- G. In the event of a finding by the Fair Employment and Housing Commission of the State of California, or the Board of Public Works of the City of Los Angeles, or any court of competent jurisdiction, that CONTRACTOR has been guilty of willful violation of the California Fair Employment and Housing Act, or the Affirmative Action Program provisions of a CITY contract, there may be deducted from the amount payable to CONTRACTOR by the CITY under the contract, a penalty of ten dollars (\$10.00) for each person for each calendar day on which such person was discriminated against in violation of the provisions of a CITY contract.
- H. Notwithstanding any other provisions of a CITY contract, the CITY shall have any and all other remedies at law or in equity for any breach hereof.
- I. Intentionally blank.
- J. Nothing contained in CITY contracts shall be construed in any manner so as to require or permit any act which is prohibited by law.

- K. CONTRACTOR shall submit an Affirmative Action Plan which shall meet the requirements of this chapter at the time it submits its bid or proposal or at the time it registers to do business with the CITY. The plan shall be subject to approval by the Office of Contract Compliance prior to award of the CONTRACT. The awarding authority may also require CONTRACTORS and suppliers to take part in a pre-registration, pre-bid, pre-proposal, or pre-award conference in order to develop, improve or implement a qualifying Affirmative Action Plan. Affirmative Action Programs developed pursuant to this section shall be effective for a period of twelve months from the date of approval by the Office of Contract Compliance. In case of prior submission of a plan, CONTRACTOR may submit documentation that it has an Affirmative Action Plan approved by the Office of Contract Compliance within the previous twelve months. If the approval is 30 days or less from expiration, CONTRACTOR must submit a new Plan to the Office of Contract Compliance must submit a new Plan to the Office of Contract Compliance and that Plan must be approved before the CONTRACT is awarded.
1. Every contract of \$5,000 or more which may provide construction, demolition, renovation, conservation or major maintenance of any kind shall in addition comply with the requirements of Section 10.13 of the Los Angeles Administrative Code.
  2. CONTRACTOR may establish and adopt as its own Affirmative Action Plan, by affixing his or her signature thereto, an Affirmative Action Plan prepared and furnished by the Office of Contract Compliance, or it may prepare and submit its own Plan for approval.

L. The Office of Contract Compliance shall annually supply the awarding authorities of the CITY with a list of contractors and suppliers who have developed Affirmative Action Programs. For each contractor and supplier the Office of Contract Compliance shall state the date the approval expires. The Office of Contract Compliance shall not withdraw its approval for any Affirmative Action Plan or change the Affirmative Action Plan after the date of contract award for the entire contract term without the mutual agreement of the awarding authority and CONTRACTOR.

M. The Affirmative Action Plan required to be submitted hereunder and the pre-registration, pre-bid, pre-proposal or pre-award conference which may be required by the Board of Public Works, Office of Contract Compliance or the awarding authority shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:

1. Apprenticeship where approved programs are functioning and other on-the-job training for non-apprenticeable occupations;
2. Classroom preparation for the job when not apprenticeable;
3. Pre-apprenticeship education and preparation;
4. Upgrading training and opportunities;
5. Encouraging the use of contractors, subcontractors and suppliers of all racial and ethnic groups, provided, however, that any contract subject to this ordinance shall require the contractor, subcontractor or supplier to provide not less than the prevailing wage, working conditions and practices generally

observed in private industries in the contractor's, subcontractor's or supplier's geographical area for such work;

6. The entry of qualified women, minority and all other journeymen into the industry; and
  7. The provision of needed supplies or job conditions to permit persons with disabilities to be employed, and minimize the impact of any disability.
- N. Any adjustments which may be made in the contractor's or supplier's work force to achieve the requirements of the CITY'S Affirmative Action Contract Compliance Program in purchasing and construction shall be accomplished by either an increase in the size of the work force or replacement of those employees who leave the work force by reason of resignation, retirement or death and not by termination, layoff, demotion or change in grade.
- O. Affirmative Action Agreements resulting from the proposed Affirmative Action Plan or the pre-registration, pre-bid, pre-proposal or pre-award conferences shall not be confidential and may be publicized by the contractor at his or her discretion. Approved Affirmative Action Agreements become the property of the CITY and may be used at the discretion of the CITY in its Contract Compliance Affirmative Action Program.
- P. Intentionally blank.
- Q. All CONTRACTORS subject to the provisions of this section shall include a like provision in all subcontracts awarded for work to be performed under the CONTRACT with the CITY and shall impose the same obligations, including but not limited to filing and reporting obligations, on the subcontractors as are



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

### **ARTICLE 35 – CHILD SUPPORT ASSIGNMENT ORDERS**

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

Pursuant to Section 10.10(b) of the Los Angeles Administrative Code, the failure of CONTRACTOR to comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignment Orders or Notices of Assignment, or the failure of any Principal Owner(s) of CONTRACTOR to comply with any Wage and Earnings Assignment Orders or Notices of Assignment applicable to them personally,

shall constitute a default by the CONTRACTOR under this CONTRACT, subjecting this CONTRACT to termination if such default shall continue for more than ninety (90) days after notice of such default to CONTRACTOR by the CITY.

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

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

## **ARTICLE 36 – LIVING WAGE ORDINANCE AND SERVICE CONTRACTOR**

### **WORKER RETENTION ORDINANCE**

- A. Unless otherwise exempt in accordance with the provisions of this Ordinance, this AGREEMENT is subject to the applicable provisions of the Living Wage Ordinance (LWO), Section 10.37 et seq. of the Los Angeles Administrative Code, as amended from time to time, which is attached hereto as Exhibit G and incorporated herein by this reference, and the Service Contractor Worker Retention Ordinance (SCWRO), Section 10.36 et seq., of the Los Angeles

Administrative Code, as amended from time to time. These Ordinances require the following:

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

enforce his or her rights under the LWO by any lawful means, or otherwise asserting rights under the LWO. CONTRACTOR shall post the Notice of Prohibition Against Retaliation provided by the CITY.

4. Any Subcontract entered into by the CONTRACTOR relating to this AGREEMENT, to the extent allowed hereunder, shall be subject to the provisions of LWO and the SCWRO, and shall incorporate the LWO and the SCWRO.
  5. The CONTRACTOR shall comply with all rules, regulations and policies promulgated by the CITY'S Designated Administrative Agency, which may be amended from time to time.
- B. Under the provisions of Section 10.36.3(c) and Section 10.37.6(c) of the Los Angeles Administrative Code, the CITY shall have the authority, under appropriate circumstances, to terminate this AGREEMENT and otherwise pursue legal remedies that may be available if the CITY determines that the subject CONTRACTOR has violated provisions of the LWO and the SCWRO or both.
- C. Where under the LWO Section 10.37.6(d), the CITY'S Designated Administrative Agency has determined (a) that the CONTRACTOR is in violation of the LWO in having failed to pay some or all of the living wage, and (b) that such violation has gone uncured, the CITY in such circumstances may impound monies otherwise due the CONTRACTOR in accordance with the following procedures.
- Impoundment shall mean that from monies due the CONTRACTOR, the CITY may deduct the amount determined to be due and owing by the CONTRACTOR to its employees. Such monies shall be placed in the holding account referred to

in LWO Section 10.37.6(d) (3) and disposed of under procedures there described through final and binding arbitration. Whether the CONTRACTOR is to continue work following an impoundment shall remain in the sole discretion of the CITY.

The CONTRACTOR may not elect to discontinue work either because there has been an impoundment or because of the ultimate disposition of the impoundment by the arbitrator.

- D. The CONTRACTOR shall inform employees making less than Twelve Dollars (\$12.00) per hour of their possible right to the federal Earned Income Credit (EIC). CONTRACTOR shall also make available to employees the forms informing them about the EIC and forms required to secure advance EIC payments from CONTRACTOR.

### **ARTICLE 37 – AMERICANS WITH DISABILITIES ACT**

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

## **ARTICLE 38 – CONTRACTOR RESPONSIBILITY ORDINANCE**

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

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

after any government agency or court of competent jurisdiction has initiated an investigation or has found that the subcontractor has violated Section 10.40.3(a) of the Contractor Responsibility Ordinance in performance of the subcontract.

### **ARTICLE 39 – LOS ANGELES BUSINESS INCLUSION PROGRAM**

CONTRACTOR agrees and obligates itself to utilize the services of Minority, Women, Small, Emerging, Disabled Veterans and Other Business Enterprise (MBE/WBE/SBE/EBE/DVBE/OBE) firms on a level so designated in its proposal, if any. CONTRACTOR certifies that it has complied with Mayoral Executive Directive 14 regarding the Outreach Program for Personal Services Contracts. CONTRACTOR shall not change any of these designated SUBCONTRACTORS) nor shall CONTRACTOR reduce their level of effort, without prior written approval of the CITY, provided that such approval shall not be unreasonably withheld. CONTRACTOR agrees and obligates itself to submit a signed MBE/WBE/SBE/EBE/DVBE/OBE Utilization Profile, provided herein as Exhibit B, for each invoice as described in Article 10, listing current MBE/WBE/SBE/EBE/DVBE/OBE amounts invoiced as part of the invoicing procedures.

### **ARTICLE 40 – EQUAL BENEFITS ORDINANCE**

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

- A. During the performance of the CONTRACT, the CONTRACTOR certifies and represents that the CONTRACTOR will comply with the EBO.

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

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

“During the performance of a Contract with the City of Los Angeles, the Contractor will provide equal benefits to its employees with spouses and its employees with domestic partners. Additional information about the City of Los Angeles' Equal Benefits Ordinance may be obtained from the Department of Public Works, Office of Contract Compliance at (213) 847-2625.



#### **ARTICLE 41 – SLAVERY DISCLOSURE ORDINANCE**

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

#### **ARTICLE 42 – CONTRACTOR PERFORMANCE EVALUATION ORDINANCE**

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

### **ARTICLE 43 – MUNICIPAL LOBBYING ORDINANCE**

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

### **ARTICLE 44 – FIRST SOURCE HIRING ORDINANCE**

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

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

CONTRACTOR further pledges that it will, during the term of the CONTRACT, shall a) At least seven (7) business days prior to making an announcement of a specific employment opportunity, provide notifications of that employment opportunity to the Community Development Department (CDD), which will refer individuals for interview; b) Interview qualified individuals referred by CDD; and c) Prior to filling any employment

opportunity, the CONTRACTOR shall inform the DAA of the names of the Referral Resources used, the names of the individuals they referred, the names of the referred individuals who the CONTRACTOR interviewed and the reasons why referred individuals were not hired. Any subcontract entered into by the CONTRACTOR relating to this AGREEMENT, to the extent allowed hereunder, shall be subject to the provisions of FSHO, and shall incorporate the FSHO.

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

Where under the provisions of Section 10.44.13 of the Los Angeles Administrative Code the Designated Administrative Agency has determined that the CONTRACTOR intentionally violated or used hiring practices for the purpose of avoiding the article, the determination must be documented in the Awarding Authority's Contractor Evaluation, required under Los Angeles Administrative Code Section 10.39 et seq., and must be documented in each of the CONTRACTOR'S subsequent Contractor Responsibility Questionnaires submitted under Los Angeles Administrative Code Section 10.40 et seq. This measure does not limit the CITY'S authority to act under this article. Under the provisions of Section 10.44.8 of the Los Angeles Administrative Code, the Awarding Authority shall, under appropriate circumstances, terminate this CONTRACT and otherwise pursue legal remedies that may be available if the Designated Administrative Agency determines that the subject CONTRACTOR has violated provisions of the FSHO.

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

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

**Notice Regarding Los Angeles Campaign Contribution and Fundraising Restrictions**

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

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

**ARTICLE 46 – IRAN CONTRACTING ACT OF 2010**

In accordance with California Public Contract Code Sections 2200-2208, all bidders submitting proposals for, entering into, or renewing contracts with the City of Los Angeles 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.

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

**CITY OF LOS ANGELES**

By: \_\_\_\_\_

Title: Commissioner, Board of Public Works

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: Commissioner, Board of Public Works

Date: \_\_\_\_\_

**S. GRONER ASSOCIATES**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**APPROVED AS TO FORM**

**MICHAEL N. FEUER, City Attorney**

By: \_\_\_\_\_

John A. Carvalho

Title: Deputy City Attorney

Date: \_\_\_\_\_

**ATTEST:**

**HOLLY WOLCOTT, Interim City Clerk**

By: \_\_\_\_\_

Title: Deputy City Clerk

Date: \_\_\_\_\_