

TRANSMITTAL

0150-08352-0002

TO
The Council

DATE
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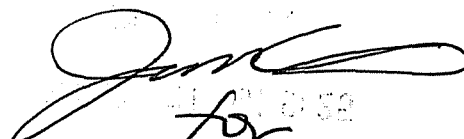
COUNCIL FILE NO.

FROM
The Mayor

COUNCIL DISTRICT

Amendment to Contracts for As-Needed Consultant Services for the Bureau of Sanitation's Automation Master Plan

Approved and forwarded for your consideration.
See the City Administrative Officer report attached.


for
MAYOR

MAS:MGR:06130044t

CAO 649-d

Report From

OFFICE OF THE CITY ADMINISTRATIVE OFFICER

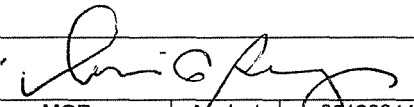
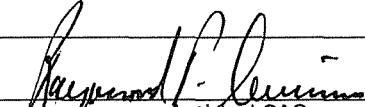
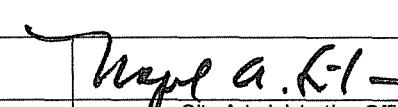
Analysis of Proposed Contract

(\$25,000 or Greater and Longer than Three Months)

To: The Mayor	Date: 11-09-12	C.D. No. All	CAO File No.: 0150-08352-0002
Contracting Department/Bureau: Bureau of Sanitation		Contact: Luz De Leon	
Reference: Report from the Bureau of Sanitation and Contract Administration dated September 5, 2012; Referred for report on October 5, 2012.			
Purpose of Contract: As-needed consultant services for the Bureau's Automation Master Plan.			
Type of Contract: () New contract (X) Amendment		Contract Term Dates: Original Term: July 1, 2007 – December 31, 2012 Three year extension: January 1, 2013 – December 31, 2015	
Contract/Amendment Amount: \$ 6,000,000			
Proposed amount \$ 6,000,000 + Prior award(s) \$ 14,000,000 = Total \$ 20,000,000			
Source of funds: Sewer Operations and Maintenance Fund (Fund 760), Capital Funds (Fund 761), and Solid Waste Resource Funds (Fund 508)			
Name of Contractor: 11 companies to perform on-call services – See attached list.			
Address: See attached list.			
	Yes	No	N/A*
1. Council has approved the purpose	X		
2. Appropriated funds are available	X		
3. Charter Section 1022 findings completed	X		
4. Proposals have been requested	X		
5. Risk Management review completed	X		
6. Standard Provisions for City Contracts included	X		
7. Workforce that resides in City: See Attachment A			
8. Contractor has complied with:		Yes	No
a. Equal Employmt. Oppty./Affirm. Action		X	
b. Good Faith Effort Outreach**		X	
c. Equal Benefits Ordinance		X	
d. Contractor Responsibility Ordinance		X	
e. Slavery Disclosure Ordinance		X	
f. Bidder Certification CEC Form 50		X	
*N/A = not applicable ** Contracts over \$100,000			

COMMENTS

The Bureau of Sanitation (Bureau) requests authority to execute an amendment to 11 contracts for as-needed consultant services for the Bureau's Automation Master Plan (AMP), an essential component of the Bureau's Strategic Planning Process, to extend contract terms and increase the cost ceiling. This on-call support enables the Bureau to choose from firms that have expertise in specific tasks for the development, modification, and upgrade of computer automated systems that control wastewater treatment processes and support for other sanitation infrastructure. The scope of projects within the AMP includes Software Engineering, System Integration, Local and Wide Area Network and Server Design, Automation and/or Construction Management, and Database and Training Services. The existing contracts between the City and contractors are scheduled to expire on December 31, 2012. A list of the contractors is provided as Attachment A to this report. The Bureau states that one of the consultants, Enterprise Automation (Enterprise), has elected not to extend their contract with the City (C-113342). Due to the intermittent nature of the services required under these contracts as well as the number of consultants established under the rotating list, the Bureau states that Enterprise's decision not to renew their contract will not have a negative impact on their work. The proposed amendment will add three years to the original contract term of July 1, 2007 through December 31, 2012, extending the contracts through December 31, 2015, as well as increase the cost ceiling by \$6 million, revising the cost ceiling amount from \$14 million to \$20 million.

		
MGR	Analyst	Assistant CAO
06130044		City Administrative Officer

On March 28, 2008, Council authorized agreements with 12 qualified firms pursuant to a request for proposals process (C.F. 05-2456). The Council approved a cost ceiling of \$7 million over the five year term of the contracts. Due to insufficient funding to cover the full range of AMP wastewater priorities developed within its Strategic Plan, in January 2010 the Bureau requested to increase the cost ceiling amount for the contracts by \$7 million, for a revised total cost ceiling of \$14 million. Council approved the Bureau's request for a cost ceiling increase on September 21, 2010.

The Bureau is currently in the process of requesting the Board of Public Works (Board) to authorize distribution of a Request for Qualifications (RFQ) to be used to establish new contracts for as-needed consultant services. However, it is not expected that the process will be completed before the current contracts expire. Additionally, on November 29, 2011, the Council approved a \$97.5 million contract (with a 10 percent contingency) with Honeywell to replace the control systems in the Bureau's Treatment Plants and Collection System (C.F. 11-1844). The Request for Proposals and the resulting contract for this work were developed with the technical expertise of engineers from the on-call contracts for Automation Services. The Bureau intends to continue to use expertise and resources from its on-call contracts for Automation Services to provide engineering and construction management services through the construction phase of this project. In order to maintain availability of a rotating list for this type of work so that projects identified in the Strategic Plans are not delayed, the Bureau is now requesting to amend 11 of the 12 contracts for as-needed consultant services in order to allow the Bureau to complete the RFQ process. The RFQ is anticipated to be released in the first quarter of 2013. Costs comprising the proposed ceiling revision are included in Attachment B.

Effective October 29, 2011, CH2M Hill, Inc. re-assigned Contract Number C-113313 to CH2M Hill Engineers, Inc. (CHE). CHE has assumed all the rights and benefits under the contract. However, the liabilities and obligations under the contract have remained with CH2M Hill, Inc. thereby resulting in no change in the degree of protection in accordance with the terms of the Contract. A copy of the request to re-assign the contract is provided as Transmittal 3 of the Board report dated September 5, 2012.

On February 25, 2011, Camp Dresser & McKee Inc. (CDM) (C-113340) and Wilbur Smith Associates integrated their employees, systems, and operations into a single firm. Upon approval of their shareholders to amend the firm's Articles of Organization on December 9, 2011, the legal name of the company has changed to CDM Smith, Inc. The proposed amendment has been changed to reflect the name change. A copy of the request to update the company's name is provided as Transmittal 4 of the Board report dated September 5, 2012.

Funding is provided by various special funds and programs depending on the project and task order. Wastewater task orders will correspond to operations and maintenance projects or the Wastewater Capital Improvement Program and will be charged accordingly to the Sewer Construction and Maintenance (SCM) Fund. The SCM, in particular, has \$3.3 million in funds budgeted annually for various information and control systems purposes. Work done to support Solid Resources operations will be charged to the Solid Waste Resources Revenue Fund, Citywide Recycling Trust Fund or other applicable special funds. The funding source(s) appropriate to each task order are identified when the individual projects are awarded, which is subject to Board of Public Works approval. Additional Council approval may be required where funds have not been approved for this purpose.

Charter 1022 and Other Contracting Provisions

The consultants have complied with all applicable City contracting requirements. On February 13, 2012, the Personnel Department has determined that City employees do not have the expertise to perform the work being proposed for contracting. While it was found that there are some City employees who can perform some of the work, Personnel states that the combination of expertise that is required to perform all of the work cannot be found in City classifications. A copy of Personnel's determination is provided as Attachment C to this report.

RECOMMENDATION

That the Mayor and Council approve the proposed amendments to the 11 contracts listed in Attachment A of this report to add three years, beginning January 1, 2013 through December 31, 2015, and increase the cost ceiling by \$6 million, for a total revised cost ceiling amount of \$20 million, for as needed consultant services for the Bureau of Sanitation's Automation Master Plan, in conformance with the amendments attached to the Board of Public Works report dated September 5, 2012 and subject to the review of the City Attorney as to form.

FISCAL IMPACT STATEMENT

There is no General Fund impact. The cost ceiling for as-needed consultant services is increased from \$14 million to \$20 million over the eight-year amended contract term ending December 31, 2015. The funding sources appropriate to each task order are identified when the individual projects are awarded, which is subject to Board of Public Works approval. Additional Council approval may be required where funds have not been approved for this purpose. In compliance with City Financial Policies, no work is awarded without prior funding approval.

Attachments

- Attachment A – Automation Master Plan List of Contractors
- Attachment B – Task Order Solicitation Plan
- Attachment C – Personnel Department 1022 Findings

Automation Master Plan Proposed Contractors

Contract No.	Contractor	Address	No. of Employees	Workforce Residing in City of L.A.
C-113312	Nth Generation Computing, Inc.	17055 Camino San Bernardo San Diego, CA 92127	51	0%
C-113313	CH2M Hill Engineers, Inc. (Formerly CH2M Hill, Inc.)	1000 Wilshire Blvd., 21st Floor Los Angeles, CA 90017	43	33%
C-113314	Philip A. Naecker, PANCSE	1010 E. Union, Suite 201 Pasadena, CA 91106	4	0%
C-113315	Inflection Point Solutions	8500 W. 110th St., Suite 550 Overland Park, KS 66210	12	0%
C-113316	Red Oak Consulting	44 S. Broadway, 15th Floor, White Plains, NY 10602 (Formerly 104 Corporate Park Drive, White Plains)	5,433	2%
C-113317	MWH Americas, Inc.	301 N. Lake Ave., Suite 600 Pasadena, CA 91101	254	15%
C-113318	Brown and Caldwell	11111 Santa Monica Bl. #760 Los Angeles, CA 90025	1,358	1%
C-113338	Tetra Tech	3475 East Foothill Blvd., Suite 300 Pasadena, CA 91107	7,987	1%
C-113339	Black & Veatch	8400 Ward Parkway Kansas City, MO 64114	8,000	1%
C-113340	CDM Smith, Inc. (Formerly Camp Dresser and McKee, Inc.)	One Cambridge Place, 50 Hampshire St. Cambridge, MA 02139	5,014	1%
C-113341	DCSE, Inc.	95 Argonaut, Suite 260 Aliso Viejo, CA 92656	11	0%

Planned Project Name	Task Orders Issued	Proposed Task Orders	Total Estimated Costs	Description	Funding
Wastewater Information System Analytical Result Database (WISARD) Replacement/Upgrade	\$ 778,990		\$ 778,990	This system performs all EPA and State required regulatory reporting for treatment plants. The project transitions the system from outdated hardware and software to a new supportable platform.	SCM
Wastewater Control Systems Replacement Project (Phase 1)	\$ 3,369,593		\$ 3,369,593	Modernization of distributed control systems at the City's wastewater treatment and reclamation plants. Initial funding was deferred to support other Strategic Plan priorities such as WISARD.	SCM
Wastewater Control Systems Security Audit		\$ 200,000	\$ 200,000	Vulnerability testing on the control systems for LA Glendale, DC Tillman, and Terminal Island plants. These tests were already performed for Hyperion. This work is part of the ongoing security work needed to protect the bureau's critical cyber assets.	SCM
LIMS consulting services related to RFP preparation and contract development.	\$ 247,354		\$ 247,354	Technical assistance in Request for Proposals and contract selection process for procurement of LIMS systems.	
Laboratory Information Management System (LIMS)/WISARD/Pretreatment Information Management System (PIMS) interface systems		\$ 250,000	\$ 250,000	Integration of the Laboratory Information Management System with the upgraded WISARD and PIMS systems. It will replace an older less reliable system that provides this function.	SCM
Recycling Data Management Systems Improvements	\$ 324,500		\$ 324,500	Implementation of key enhancements needed by the Citywide Recycling Division.	SWRF
Industrial Waste Billing System	\$ 92,328		\$ 92,328	Remaining tasks for completion of the system.	SCM
Implementation of Business Object	\$ 74,965		\$ 74,965	Upgrade of unsupported reporting system used for most of the large systems in the Bureau.	SCM/Solids
Collection Information System (CIS) Upgrade		\$ 403,000	\$ 403,000	Upgrade of outdated CIS used in solid resources operations for improved tip fees management and implementation of clean air requirements on fleet vehicles.	Solids
Thin Client Pilot		\$ 100,000	\$ 100,000	Pilot test technology aimed at significant cost savings for PC support if fully implemented. The Bureau will consult with ITA in implementation of this proposed task order.	SCM/Solids
GIS Master Plan Implementation		\$ 200,000	\$ 200,000	Strategic plan implementation for more cost effective GIS solutions. This project specifically targets improvements needed in the Bureau use of GIS technology.	SCM/Solids
Cyber Security Remediation work (based on findings of audits) and Active Directory Implementation		\$ 600,000	\$ 600,000	Security improvements to the networks that support the Wastewater Program and Control Systems.	SCM
Oracle Technical Support	\$ 12,500		\$ 12,500	Technical assistance and advice related to an audit by Oracle Corporation. This Audit involved very complex Oracle licensing issues and could potentially cost the Bureau close to a million dollars if we were found out of compliance. This company had experience working with other firms that were being Audited by Oracle.	SCM
Oracle Audit Technical Support for Planning Department	\$ 12,500		\$ 12,500	Technical assistance to Planning Department relative to an oracle audit for its license usage. This audit involved very complex Oracle licensing issues and could potentially cost Planning over \$2 million if it was determined to be out of compliance. This company had experience working with other firms that were being audited by Oracle. Planning paid for this task order from its own funds.	General (Planning Dept)
Systems Integration Technical Support	\$ 90,000		\$ 90,000	To provide technical assistance and advice across a broad set of subjects related to application integration, with an emphasis on the technical review of new systems to determine their level of compliance with the Bureau's Application Integration Framework.	SCM
Quality Assurance Oversight for REMS Implementation	\$ 79,525		\$ 79,525	Provide Quality Assurance oversight in the development and implementation work of the Private Waste Hauler, Construction & Demolition, and Portal Modules for Recycling Data Management System (RDMS).	CRTF
Intermittent Computer Service Support	\$ 1,304,102	\$ 600,000	\$ 1,904,102	Supply technical staff to provide as needed PC and server support to the Bureau of Sanitation. This provides contract staff to perform ongoing desktop support work since the Bureau has been unable to obtain City employees to perform this function.	SCM/SWRF
Server Infrastructure Upgrade	\$ 1,572,788		\$ 1,572,788	Replace outdated servers, storage systems, tape libraries, and backup system. Implement new Backup System, Blade Systems, and Storage Systems.	Sewer Capital Fund/SCM

Planned Project Name	Task Orders Issued	Proposed Task Orders	Total Estimated Costs	Description	Funding
Industrial Waste Billing System/Financial Management System Interface	\$ 96,850		\$ 96,850	The Bureau of Sanitation utilizes a Pretreatment Information Management System (PIMS) to support the Industrial Waste Pretreatment Program and Illicit Discharge Elimination Program. PIMS is currently undergoing an enhancement to integrate accounts receivable billing feature, Industrial Waste Billing, into the system. The City implemented the new Financial Management System (FMS), a City-wide financial management system last July 2011. The City is now extending FMS to implement City-wide centralized and accurate, non-tax accounts receivable reporting in order to allow the Office of Finance to centrally track and analyze receivables with an aim to increase the value of the City's collections. PIMS/IWB system is designated for an Accounts Receivable interface to the FMS data warehouse.	SCM
Data Storage Infrastructure Upgrade Plan	\$ 738,800		\$ 738,800	Enable the Bureau of Sanitation (Bureau) to purchase and implement storage devices and technology to support day to day operation. The Bureau is running out of storage space to support its applications and servers. New storage devices are needed to accommodate increased in workload, growth and performance needed for production data and backup data. These new storage devices are also needed to replace old existing equipment which had very limited storage capacity and could not support new requirements. The Bureau was able to consolidate systems and removed older equipment thus enable to maximize limited space for Data Center and reduce power and heat load saving the Bureau from spending more money upgrading Data Center facility. This project also assist the Bureau in using limited resources more efficiently and effectively.	Sewer Capital Fund/SCM
Solid Resources Database Support	\$ 476,000		\$ 476,000	To provide with the development and management of a SQL Server based Solid Resources (SR) database needed to maintain accurate customer Solid Resources Fee (SRF)-related information and to detect and correct DWP's billing errors.	SCM/SWRF
Wastewater Control Systems Replacement Project (Phase 2)		\$ 6,000,000	\$ 6,000,000	The Los Angeles Wastewater Integrated Network System (LAWINS) Project is an \$89M Design/Build/Maintain Contract that was awarded to Honeywell International to replace the LABOS Legacy Control Systems hardware, software, power and field infrastructure. Managing a complex commercial and technical project like this requires a sustained level of resources that are uniquely skilled in the delivery of these types of projects. Control System projects are a blend of computing science, electrical/network engineering, process engineering, plant operations and demand a unique construction management and commercial approach. These skill sets are NOT available in the City work force; nor are there multiple consulting firms who are available that have delivered a project of this complexity. The LABOS has formed a Project Management Office (PMO) comprised of City personnel and specialized consultants to manage the delivery of this project. The PMO is the organization that is currently managing all aspects of this project delivery. Over the life of this project, Honeywell will have nearly 1,000 engineering submittals for review and approval, an estimated 700 Requests for Information for City's response, and will be cutting over from the "legacy controls" to the Honeywell platform for each treatment plant as well as the collection system. These cutovers require that nearly 500,000 wires be moved from the old to the new control systems. The PMO will review all engineering submittals, answer all requests for information, manage and coordinate over 5,000 activities in the construction schedule, manage CIP projects as they impact the new control systems, witness Operational Readiness Tests, manage the verification, field testing and commissioning of the work, and ensure that the Work is in technical and commercial compliance with the Contract. We are endeavoring to retain this world-class consulting team that not only has the above-mentioned skill sets, but are also highly skilled in the Honeywell equipment and systems architecture. The LABOS plan is to have the Consulting Team in full force for a period of 2 to 3 years and to train ICSD staff in the delivery of this project. In year 3, the Consulting team will begin ramping down leaving a skilled project management team. Only a key team of specialists will be retained beyond year 3.	
Strategic Plan projects for FY12/13, FY13/14 & FY 14/15		\$ 2,200,000	\$ 2,200,000	Implementation of additional Strategic Plan projects and improvements and/or contingencies	SCM/SWRF/CRTF

TOTAL \$ 9,270,795 \$ 10,553,000 \$ 19,823,795

PERSONNEL DEPARTMENT CONTRACT REVIEW REPORT

Requesting Department: PW/Bureau of Sanitation – Consultant Services for the Automation Master Plan (AMP)

2. Contacts:

Department: Jamie Parker Phone No. (213) 485-2204 Fax No. (213) 485-2967
 CAO: Emilio Rodriguez Phone No. (213) 473-7548 Fax No. (213) 473-7517

3. Work to be performed:

The Bureau is seeking an amendment for twelve contracts (see below) which provide consultant services for the Bureau's Automation Master Plan to enhance current wastewater technology, improve reliability and performance of wastewater operations, and reduce operating costs. The contractor uses software engineering such as automation and control system design and implementation; Programmable Logic Controller (PLC) programming; Programmable Logic Controller integration; and SCADA and remote monitoring applications. The Contracts are used on an "as-needed" basis to continuously develop, modify and upgrade computer automated systems that control the wastewater treatment processes, to design and install customized software and train City employees to operate and maintain the system.

4. Is this a contract renewal? Yes ☒ No ☐

5. Proposed length of contract: Three years Proposed Start Date: January 2013

6. Proposed cost of contract (if known): Unknown.

7. Name of contractors and contract numbers:

Contractor	Contract No.
<u>Black & Veatch</u>	<u>113339</u>
<u>Brown & Caldwell</u>	<u>113318</u>
<u>Camp, Dresser & Mckee, Inc.</u>	<u>113340</u>
<u>CH2M Hill, Inc.</u>	<u>113313</u>
<u>DCSE</u>	<u>113341</u>
<u>Enterprise Automation</u>	<u>113342</u>
<u>Inflection Point Solutions</u>	<u>113315</u>
<u>MWH Americas, Inc.</u>	<u>113317</u>
<u>Nth Generation Computing</u>	<u>113312</u>
<u>Philip A. Naecker (PANSCE)</u>	<u>113314</u>
<u>Red Oak Consulting</u>	<u>113316</u>
<u>Tetra Tech</u>	<u>113338</u>

8. Unique or special qualifications required to perform the work:

Contractors have engineering and computer systems background as well as extensive knowledge of wastewater treatment systems and solid waste collection and disposal; wide area wireless networking is also required.

9. Are there City employees that can perform the work being proposed for contracting?

Yes ☐ No ☒

PERSONNEL DEPARTMENT CONTRACT REVIEW REPORT

PW Bureau of Sanitation - Consultant Services for the Automation Master Plan (AMP)

If yes,

- a) Which class(es) and Department(s): N/A
- b) Is there sufficient Department staff available to perform the work? Yes ☐ No ☒
- c) Is there a current eligible list for the class(es)? N/A
- d) Estimated time to fill position(s) through CSC process?
- e) Can the requesting department continue to employ staff hired for the project after project completion? Yes ☐ No ☒
- f) Are there City employees currently performing the work? Yes ☐ No ☒

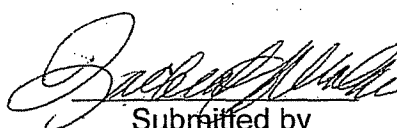
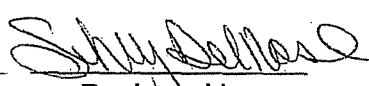
10. Findings

- ☒ City employees DO NOT have the expertise to perform the work.
- ☐ City employees DO have the expertise to perform the work.

Check if applicable (explanation attached) and send to CAO for further analysis

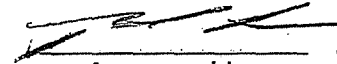
- ☐ Project of limited duration would have to layoff staff at end of project
- ☐ Time constraints require immediate staffing of project
- ☐ Work assignment exceeds staffing availability

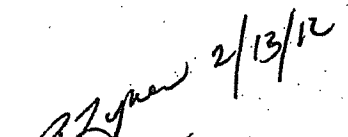
Discussion: Staff has determined that there are City employees who can perform some of the work being contracted, such as Database Architect, Systems Programmer, Programmer Analyst, and Senior Systems Analyst. However, the combination of expertise that is required to perform all of the work being contracted cannot be found in City classifications.

Submitted by
Racheal Walker
Sr. Personnel Analyst I

Reviewed by
Shelly Del Rosario
Sr. Personnel Analyst II


Approved by
Raul Lemus
Chief Personnel Analyst


Date
2/13/12

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EXECUTIVE OFFICER

<http://www.lacity.org/BPW>

September 5, 2012

#1 BOS/BCA

Mayor Antonio R. Villaraigosa
Room No. 305
City Hall
Attn: Mandy Morales


Subject: AUTHORITY TO EXECUTE AMENDMENT NO. 1 WITH 11 QUALIFYING FIRMS
TO PROVIDE AS-NEEDED CONSULTANT SERVICES FOR THE
IMPLEMENTATION OF THE AUTOMATION MASTER PLAN

As recommended in the accompanying report of the Directors of the Bureaus of Sanitation and Contract Administration, which this Board has adopted, the Board of Public Works requests approval and forwarding to the City Council for approval and authorization to execute Amendment No. 1 with the 11 firms that qualified to provide as-needed professional services for Software Engineering System Integration, Local and Wide Area Network and Server Design, Automation and/or Construction Management, and Related Services including Database and Training. These services are required to assist the Bureau in implementing its Automation Master Plan.

FISCAL IMPACT

All work performed through these Personal Services Contracts will be funded from the Bureau of Sanitation's Special Funds. There will be no impact to the General Fund.

Respectfully submitted,


Arleen P. Taylor, Executive Officer
Board of Public Works

APT:mp

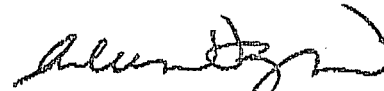
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CITY ADMINISTRATIVE OFFICER



DEPARTMENT OF PUBLIC WORKS

BUREAU OF SANITATION
BUREAU OF CONTRACT ADMINISTRATION
JOINT BOARD REPORT NO. 1
September 5, 2012

ADOPTED BY THE BOARD
PUBLIC WORKS OF THE CITY
of Los Angeles California
AND REFERRED TO THE MAYOR
SEP - 5 2012


Executive Officer

CD: All

AUTHORITY TO EXECUTE AMENDMENT NO. 1 WITH QUALIFYING FIRMS TO
PROVIDE AS-NEEDED CONSULTANT SERVICES FOR THE IMPLEMENTATION OF
THE AUTOMATION MASTER PLAN

RECOMMENDATIONS:

Authorize the Director of the Bureau of Sanitation (Bureau) to:

1. Approve and forward this report with transmittals to the Mayor with the request that the Board of Public Works be authorized to execute Amendment No. 1 with the eleven (11) firms that qualified to provide as-needed professional services for Software Engineering, System Integration, Local and Wide Area Network and Server Design, Automation and/or Construction Management, and Related Services including Database and Training. These services are required to assist the Bureau in implementing its Automation Master Plan.
2. Also forward this report with transmittals to the City Council to approve the three (3) year time extension for a total contract term of eight (8) years and cost ceiling increase of \$6 million.
3. Upon the Mayor's and City Council's authorization, the President or two (2) members of the Board of Public Works (Board) will execute the contract amendment; and
4. Return the executed Contract Amendment No. 1 to the Bureau for further processing (contact the Board Report Section at (213) 485-4246 for pick up).

TRANSMITTALS

1. Copy of the Bureau of Sanitation and Bureau of Contract Administration Joint Board Report No. 1, adopted August 20, 2007, authorizing the execution of contracts with twelve (12) firms to provide as-needed consultant services for the implementation of the Automation Master Plan.
2. Copies of the proposed Contract Amendments between the City of Los Angeles and the eleven (11) Qualifying Firms.

BUREAU OF SANITATION
BUREAU OF CONTRACT ADMINISTRATION
JOINT BOARD REPORT NO. 1
September 5, 2012

Page 2

3. Copy of the letter of consent to assign contract no. C-113313 from CH2M Hill, Inc. to CH2M Hill Engineers, Inc. effective October 29, 2011.
4. Copy of the letter dated April 10, 2012 on the name change from Camp Dresser & McKee Inc. to CDM Smith Inc. effective December 9, 2011.
5. Copy of the Bureau of Sanitation Board Report No. 1, adopted January 6, 2010, authorizing to increase the cost estimate for automation projects with qualifying firms providing consultant services for the implementation of the Automation Master Plan.
6. Copy of the approved MBE/WBE/OBE Subcontractor Outreach Program waiver from the Mayor's Office of Economic Development, dated June 20, 2006, for Service Areas A (Software Engineering) and D (Automation Project and/or Construction Management Services).
7. Copy of the Name Change Certificate of Qualification of D R Consultants & Designers, Inc. executed on December 20, 2011.

FISCAL IMPACT STATEMENT

All work performed through these Personal Services Contracts will be funded from the Bureau of Sanitation's Special Funds. There will be no impact to the General Fund.

DISCUSSION

Background

The Bureau strives to continually identify new and innovative opportunities to improve the efficiency of treatment plant operations and solid waste handling. This has been accomplished via the very successful "Strategic Planning" process. This plan lays out a vision for automation within the Bureau and identifies automation improvements in each wastewater and solids handling facility including specific benefits that would be derived from the recommended projects. Each year the state of automation and technology within the Bureau is evaluated and assessed and new projects are identified and budgeted for the coming fiscal year. The Automation Master Plan Executive Committee, composed of Bureau of Sanitation and Engineering Executives and Division Managers, actively keeps the plan and the list of associated projects up to date as part of the Bureau's Strategic Planning Process.

Many of these projects will require staffing resources that are not available within the City and will require contracting for additional professional services.

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City staff is engaged in developing and implementing smaller scale projects that can be incorporated into their current work schedule. They are also responsible for maintaining and servicing existing systems that may require monitoring and adjustment to meet treatment plant process objectives. These personnel are not able to absorb the additional work necessary to accommodate the larger projects outlined in the Bureau Strategic Plan and still maintain existing systems. The Bureau has relied on contract labor to be able to focus appropriate staffing levels on these projects and to employ project management techniques to complete these projects in a timely manner to the benefit of the Bureau.

On August 20, 2007, the Board authorized the Bureau to execute contracts with twelve (12) firms to provide as-needed consultant services for the implementation of the Automation Master Plan (Transmittal No. 1). These contracts will expire on December 31, 2012 (see table below). The Bureau is in the process of requesting the Board to authorize distribution of a Request for Qualifications (RFQ) to be used to establish new contracts for these services, but this process is not expected to be completed before the current contracts expire. In order to maintain availability of a rotating list for this type of work so that the Bureau does not delay critical projects identified in the Strategic Plans, the Bureau is requesting that the Board authorize the Bureau to extend the current contracts for an additional three (3) years and to increase the cost ceiling by \$6 million (Transmittal No. 2). An extension will allow the Bureau to complete the RFQ process and execute new contracts to provide uninterrupted availability of the support required for these critical Bureau projects. However, Enterprise Automation has elected to let the on-call contract (C-113342) lapse and not to negotiate a renewal.

Effective October 29, 2011 CH2M Hill has re-assigned the Contract C-113313 from CH2M Hill, Inc. to CH2M Hill Engineers, Inc. (CHE). CHE has assumed all the rights and benefits under the Contract. However, the liabilities and obligations under the Contract have remained with CH2M Hill, Inc. thereby resulting in no change in the degree of protection in accordance with the terms of the Contract (Transmittal No. 3).

On February 25, 2011 Camp Dresser & McKee Inc. (CDM) and Wilbur Smith Associates integrated their employees, systems and operations into a single firm. Upon the approval of their shareholders to amend the firm's Articles of Organization, on December 9, 2011, the legal name of the company Camp Dresser & McKee Inc. has changed to CDM Smith, Inc. (Transmittal No. 4).

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On-call Contracts

Name of Consultant	Contract No.
Black & Veatch	113339
Brown & Caldwell	113318
CDM Smith, Inc. (formerly Camp, Dresser & McKee, Inc.)	113340
CH2M Hill Engineers, Inc. (formerly CH2M Hill, Inc.)	113313
DCSE, Inc.	113341
*Enterprise Automation	113342
Inflection Point Solutions	113315
MWH Americas, Inc.	113317
Nth Generation Computing, Inc.	113312
Philip A. Naecker (PANCSE)	113314
Red Oak Consulting	113316
Tetra Tech	113338

* Contract will not be extended

Moreover, on March 28, 2008, these personal service contracts were executed with an estimated total dollar value of \$7 million to be spent over the five-year term of the agreements. However, on January 6, 2010, the Bureau requested to increase the cost ceiling amount from \$7 million to \$14 million for contracts associated with the Bureau's Automation Master Plan on-call consultant support (Transmittal No. 5). The Bureau's request was approved by the City Council on September 21, 2010.

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On November 29, 2011, the City Council approved a \$97,500,885 (with 10% contingency) contract with Honeywell to replace the control systems in the Bureau's Treatment Plants and Collection System. The Request for Proposals (RFP) and the resulting contract for this work were developed with technical expertise of engineers from the Bureau's on-call contracts for Automation Services. The engineering and construction work being performed under one of the contracts will be extensive and very complex. It is the intention of the Bureau to continue to use expertise and resources from its on-call contracts for Automation Services to provide engineering and construction management services through the construction phase of this project. It is important to the successful execution of this project that continuity is maintained and construction management staff is provided with the specific expertise in this type of project.

The details of these services were not known when the cost estimate for the Bureau's on-call contracts were developed and approved by the Board and the City Council. Now that these details have been developed, the Bureau is requesting to increase the cost ceiling amount by \$6 million to cover the engineering and construction management services on this project.

To date, Table 1 below shows the total project costs on various automation projects related to treatment plant operations and solid resources.

Table 1 – Record of Project Task Orders Issued

Project Task Order No.	Project Name	Service Area	Project Task Order Amount	Consultant
A2-08-1	Computer Service Support	Related Services	\$1,304,102.00	DCSE, Inc.
A2-08-2	Los Angeles Wastewater Control System Replacement Project (LAWINS)	Automation Project and/or Construction Management Service	\$3,369,592.85	CH2M Hill Engineers, Inc.
A2-08-3	Recycling Data Management System (RDMS)	Related Services	\$324,500.00	DCSE, Inc.
A2-08-4	Laboratory Information Management System	Software Engineering	\$247,353.50	CH2M Hill Engineers, Inc.
	Quality Assurance Oversight for Solid Resources Citywide Recycling Data	Related	\$79,525.00	Inflection Point Solutions

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A2-08-6	Management System (RDMS) Implementation	Services		
A2-08-7	Systems Integration Technical Support	System Integration	\$90,000.00	Red Oak Consulting
A2-09-01	Technical support for Oracle	Local and Wide Area Network and Server Design	\$12,500.00	Nth Generation Computing, Inc.
A2-09-03	Oracle Audit Technical Support for Planning Dept.	Local and Wide Area Network and Server Design	\$12,500.00	Nth Generation Computing, Inc.
A2-09-04	Server Infrastructure Upgrade	Local and Wide Area Network and Server Design	\$1,572,788.00	Nth Generation Computing, Inc.
A2-09-05	Industrial Waste Billing System Completion	System Integration	\$92,328.00	Inflection Point Solutions
A2-09-06	Implementation of Business Objects	Related Services	\$74,965.00	DCSE, Inc.
A2-09-07	WISARD Migration Project	Related Services	\$778,990.00	Inflection Point Solutions
A2-11-02	Data Storage Infrastructure Upgrade Plan	Local and Wide Area Network and Server Design	\$738,800.00	Nth Generation Computing, Inc.
A2-11-03	IWB/FMS Interface	System Integration	\$96,850.00	Inflection Point Solutions
A2-11-04	Solid Resources Database Support	Related Services	\$360,000.00	DCSE, Inc.
TOTAL AWARDED AS OF JUNE 2012			\$9,154,794.35	

Notification of Intent to Contract

A "Notification of Intent to Contract" form was filed with the CAO's Clearinghouse for Personal Services Contracting on June 21, 2011.

Charter Section 1022

On February 15, 2012, the Personnel Department determined that City employees do not have the expertise to perform some of the work being contracted and the expertise that is required to perform all of the work being contracted cannot be found in City classifications.

City Policies and Requirements

The eleven (11) firms have complied with the standard City compliance requirements including:

- Business Tax Registration Certificate
- Los Angeles Residence Information
- Affidavit of Non-collusion
- Affirmative Action Plan/Non-Discrimination/Equal Employment Practices
- Child Support Obligation Ordinance
- Equal Benefits Ordinance
- Living Wage Ordinance
- Service Contractor Worker Retention Ordinance
- Americans with Disabilities Act
- Slavery Disclosure Ordinance
- Municipal Lobbying Ordinance
- Insurance Requirements (except Professional Liability Insurance)
- First Source Hiring Ordinance
- City of LA Contract History
- Contract Bidder Campaign Contribution and Fundraising Restrictions

Professional Liability Insurance

After consulting with Office of the City Administrative Officer, Risk Management, and with the City Attorney, the eleven (11) consultants have been allowed to not provide proof of Professional Liability Insurance unless and until they are awarded tasks under these contracts. This will result in little risk to the City and will help defray and lower costs for the smaller consulting firms.

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Headquarters Address and Workforce Information

Consultant	Address	No. of Employees	Workforce Residing in City of L.A.
Black and Veatch	8400 Ward Parkway, Kansas City, MO 64114	8000	0.20%
Brown and Caldwell	11111 Santa Monica Blvd. #760, Los Angeles, CA 90025	1358	0.07%
CDM Smith, Inc.	One Cambridge Place, 50 Hampshire Street, Cambridge, MA 02139	5014	0.20%
CH2M Hill Engineers, Inc.	1000 Wilshire Blvd., 21 st Floor, Los Angeles, CA 90017	43	33%
DCSE, Inc.	95 Argonaut, Suite 260, Aliso Viejo, CA 92656	11	0%
Inflection Point Solutions	8500 W. 110 th Suite 550, Overland Park, KS 66210	12	0%
MWH Americas, Inc.	310 N. Lake Ave., Suite 600, Pasadena, CA 91101	254	15%
Nth Generation Computing, Inc.	17055 Camino San Bernardo, San Diego, CA 92127	51	0%
Philip A. Naecker, PANCSE	1010 E. Union, Suite 201, Pasadena, CA 91106	4	0%
Red Oak Consulting	44 S. Broadway, 15 th Floor - Box 751, White Plains, NY 10602	5433	1.58%
Tetra Tech	3475 East Foothill Blvd., Suite 300, Pasadena, CA 91107	7987	0.61%

MBE/WBE/OBE Subcontractor Outreach Program

The Task Orders that are in the two (2) service areas titled "Software Engineering" (Service Area A) and "Automation Project and/or Construction Management Services" (Service Area D) are exempted from the MBE/WBE/OBE Subcontractor Outreach Program requirement as granted by the Mayor's Office of Economic Development (Transmittal No. 6). The MBE/WBE/OBE Subcontractor Outreach Program is a requirement for the remaining three (3) service areas: Systems Integration (Service Area B), Local and Wide Area Network and Server Design (Service Area C), and Related Services, including Database and Training (Service Area E). For these service areas, consultants shall continue to utilize the services of Minority,

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Women and Other Business Enterprise (MBE/WBE/OBE) firms for Task Orders greater than \$100,000. For these Task Orders, the anticipated MBE and WBE participation levels are 10 percent (10%) and 2 percent (2%), respectively. At such time that the on-call list is utilized for a Task Order with an estimated value over \$100,000, the consultant will adhere to the requirements of the MBE/WBE/OBE Subcontractor Outreach Program. Task Orders valued at less than \$100,000 are exempt from the MBE/WBE/OBE Subcontractor Outreach Program.

The following tables show the MBE/WBE/OBE subcontractor achieved participation and pledged participation based on the Task Orders awarded as of August 14, 2012:

DCSE Inc.

Table 1: Achieved Subconsultant Participation

Subconsultant	Gender/ Ethnicity	MBE/ WBE/ OBE	% of Contract Amount Invoiced	Amt. Invoiced Task Order (s) Exempt (\$)	Amt. Invoiced Task Order(s) Not Exempt (\$)
Stivers Communications	F/HA	MBE	9.73%	-	165,538.00
The Revere Group		OBE	1.44%	24,525.00	-
Total MBE Participation			9.73%	-	165,538.00
Total WBE Participation			0.00%	0.00	0.00
Total OBE Participation			1.44%	24,525.00	0.00
Total MBE/WBE/OBE Participation			11.17%		190,063.00
Total Invoiced Amount					1,701,096.00

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Table 2: Pledged MBE/WBE/OBE Participation

Subconsultant	Gender/ Ethnicity	MBE/ WBE/ OBE	% of Total Task Order(s) Pledged	Amt. Pledged Task Order(s) Exempt(\$)	Amt. Pledged Task Order(s) Not Exempt (\$)
Stivers Communications	F/HA	MBE	12.72 %	-	262,450.00
The Revere Group		OBE	2.38%	49,050.00	-
Total MBE Participation			12.72%	0.00	262,450.00
Total WBE Participation			0.00%	0.00	0.00
Total OBE Participation			2.38%	49,050.00	0.00
Total MBE/WBE/OBE Participation			15.10%		311,500.00
Task Orders Total					2,063,567.00

Nth Generation Computing, Inc.

Table 1: Achieved Subconsultant Participation

Subconsultant	Gender/ Ethnicity	MBE/ WBE/ OBE	% of Contract Amount Invoiced	Amt. Invoiced Task Order (s) Exempt (\$)	Amt. Invoiced Task Order (s) Not Exempt (\$)
Garnier Group & Associates, LLC	M/AA	MBE	11.18%	-	192,503.00
F5 Networks, Inc.		OBE	7.52%	-	129,596.75
Idhasoft Inc.		OBE	1.16%	20,000.00	-
Total MBE Participation			11.18%	0.00	192,503.00
Total WBE			0.00%	0.00	

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Total OBE Participation			8.69%	20,000.00	129,596.75
Total MBE/WBE/OBE			19.86%		342,099.75
Total Amount Invoiced					1,722,384.20

Garnier Group & Associates, LLC was added to assist in the server infrastructure upgrade of the Bureau while F5 Networks, Inc. is the sole source of the ARX Series products which includes hardware, operating software and services used in the Storage Infrastructure Upgrade Project. These companies were incorporated into the list of subconsultants under Service Area C of Nth Generation Computing, Inc. as a result of the Good Faith Effort outreach. These firms have the expertise and potential to partner with Nth Generation Computing, Inc. on future Local and Wide Area Network projects.

However, Idhasoft, Inc. was added without the performance of an outreach. Due to the urgency of the services, Bureau executives directed the prime to add Idhasoft. Idhasoft also has the necessary expertise that no other subconsultant has, specifically related to Oracle licensing and maintenance renewals. Hence, Nth Generation Computing, Inc. partnered with Idhasoft to provide Technical Support for the Oracle audit project.

Table 2: Pledged MBE/WBE/OBE Participation

Subconsultant	Gender/ Ethnicity	MBE/ WBE/ OBE	% of Total Task Order(s) Pledged	Amt. Pledged Task Order(s) Exempt(\$)	Amt. Pledged Task Order(s) Not Exempt (\$)
Garnier Group & Associates, LLC.		MBE	8.24%	-	192,503.00
F5 Networks, Inc.		OBE	5.55%	-	129,596.75
Idhasoft Inc.		OBE	.86%	20,000.00	-
Total MBE Participation			8.24%	0.00	192,503.00
Total WBE Participation			0.00%	0.00	0.00
Total OBE Participation			6.40%	20,000.00	129,596.75
Total MBE/WBE/OBE Participation			14.64%		342,099.75

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Task Orders Total					2,336,588.00
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Inflection Point Solutions

Table 1: Achieved Subconsultant Participation

Subconsultant	Gender/ Ethnicity	MBE/ WBE/ OBE	% of Contract Amount Invoiced	Amt. Invoiced Task Order (s) Exempt (\$)	Amt. Invoiced Task Order (s) Not Exempt (\$)
CS3 Computing Services Support Solutions, Inc.	F/AA	MBE	1.54%	-	10,500.00
Westin Engineering, Inc		OBE	6.64%	45,381.60	-
Total MBE Participation			1.54%	0.00	10,500.00
Total WBE Participation			0.00%	0.00	0.00
Total OBE Participation			6.64%	45,381.60	0.00
Total MBE/WBE/OBE Participation			8.17%		55,881.60
Total Invoiced Amount					683,771.72

Table 2: Pledged MBE/WBE/OBE Participation

Subconsultant	Gender/ Ethnicity	MBE/WBE/ OBE	% of Total Task Order(s) Pledged	Amt. Pledged Task Order(s) Exempt(\$)	Amt. Pledged Task Order(s) Not Exempt (\$)
CS3 Computing Services Support Solutions, Inc.	F/AA	MBE	5.73%	-	60,000.00
ISC Technology, Inc.	F/C	WBE	1.20%	-	12,600.00

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Westin Engineering, Inc.		OBE	4.33%	45,381.60	-
Total MBE Participation			5.73%	0.00	60,000.00
Total WBE Participation			1.20%	0.00	12,600.00
Total OBE Participation			4.33%	45,381.60	0.00
Total MBE/WBE/OBE Participation			11.26%		117,981.60
Task Orders Total					1,047,693.00

Red Oak Consulting

Table 1: Achieved Subconsultant Participation

Subconsultant	Gender/ Ethnicity	MBE/ WBE/ OBE	% of Contract Amt. Invoiced	Amt. Invoiced Task Order (s) Exempt (\$)
Inflection Point Solutions		OBE	90.57%	81,163.41
Total MBE Participation			0.00%	0.00
Total WBE Participation			0.00%	0.00
Total OBE Participation			90.57%	81,163.41
Total MBE/WBE/OBE Participation			90.57%	81,163.41
Total Invoiced Amount				89,609.41

Inflections Point Solutions was added to Red Oak Consulting's list of subconsultants with no additional outreach under Bureau management instruction in order to assist in providing technical support to the Bureau's application integration framework. At that time, Inflection Point Solutions was already performing the same type of project with the Bureau and had the necessary expertise and experience that no other subconsultants had.

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Table 2: Pledged MBE/WBE/OBE Participation

Subconsultant	Gender/ Ethnicity	MBE/WBE/ OBE	% of Total Task Order(s) Pledged	Amt. Pledged Task Order(s) Exempt(\$)
Inflection Point Solutions		OBE	90.18%	81,163.41
Total MBE Participation			0.00%	0.00
Total WBE Participation			0.00%	0.00
Total OBE Participation			90.18%	81,163.41
Total MBE/WBE/OBE Participation			90.18%	81,163.41
Task Order Total				90,000.00

CH2M Hill Engineers, Inc.

Table 1: Achieved Subconsultant Participation

Subconsultant	Gender/ Ethnicity	MBE/ WBE/ OBE	% of Contract Amt. Invoice	Amt. Invoiced Task Order (s) Exempt (\$)
Morikawa Associates, Inc	M/APA	MBE	1.72%	38,750.00
Integrated Engineering Management (IEM)	F/C	WBE	4.13%	93,199.80
Fernald*	F/C	WBE	0.11%	2,403.75
Fernald*		OBE	6.27%	141,387.50
Astrix Software Technology		OBE	5.18%	116,758.32
G2G		OBE	0.23%	5,265.00
Mangan, Inc.		OBE	0.28%	6,278.00
MWH Americas, Inc.		OBE	14.57%	328,400.34
HDR Engineering		OBE	2.37%	53,392.71
Total MBE Participation			1.72%	38,750.00
Total WBE Participation			4.24%	95,603.55
Total OBE Participation			28.89%	651,481.87
Total MBE/WBE/OBE Participation			34.85%	785,835.42
Total Invoiced Amount				2,254,720.72

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*This subconsultant was certified as a WBE on May 24, 2011; therefore, participation percentages were credited accordingly.

On November 23, 2011 Dean Ryan Consultants & Designers, Inc., (one of the subconsultants of CH2M Hill Engineers, Inc.) filed a name change in the State of California to D R Consultants & Designers, Inc. (Transmittal No. 7).

Table 2: Pledged MBE/WBE/OBE Participation

Subconsultant	Gender/ Ethnicity	MBE/WBE/ OBE	% of Total Task Order(s) Pledged	Amt. Pledged Task Order (s) Exempt (\$)
Morikawa Associates, Inc.	M/APA	MBE	4.95%	178,905.00
EW Moon, Inc.	M/AA	MBE	4.66%	168,520.00
Integrated Engineering Management (IEM)	F/C	WBE	6.91%	249,950.00
A Page-A-Way	F/AA	WBE	1.27%	45,850.00
Fernald	F/C	WBE	0.07%	2,403.50
Fernald		OBE	3.91%	141,387.50
Astrix Software Technology		OBE	5.42%	195,860.00
G2G		OBE	0.22%	8,100.00
Mangan, Inc.		OBE	0.17%	6,278.00
MWH Americas, Inc.		OBE	11.65%	421,350.00
HDR Engineering		OBE	1.61%	58,406.00
Airtel Staffing, Inc.		OBE	0.61%	22,100.00
Bullock & Associates, Inc.		OBE	1.24%	45,000.00
Total MBE Participation			9.61%	347,425.00
Total WBE Participation			8.24%	298,203.50
Total OBE Participation			24.84%	898,481.50
Total MBE/WBE/OBE Participation			42.69%	1,544,110.00
Task Orders Total				3,616,946.35

Contractor Responsibility Ordinance

All consultants participating in this program are subject to compliance with the requirements specified in the City of Los Angeles's Contractor Responsibility Ordinance #173677, [Article 14, Chapter 1, Division 10, L.A.C.C.]. Failure to comply with requirements specified in this ordinance will render the bidder's contract subject to termination pursuant to the conditions expressed therein.

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Contractor Performance Evaluation

In accordance with Article 13, Chapter 1, Division 10 of the City Los Angeles Administrative Code, the appropriate City personnel responsible for the quality control of these personal services contracts shall submit Contractor Performance Evaluation Reports to the Department of Public Works, Bureau of Contract Administration upon completion of these contracts.

City Attorney Review

The proposed Amendments have been approved as to form by the Office of the City Attorney.

Contract Administrator

The Department of Public Works, Bureau of Sanitation, Information and Control Systems Division will administer these contracts.

STATUS OF FINANCING


The combined new cost estimates for the automation projects is now projected to be \$20,000,000. Due to the variety of funding sources that may be used, Project Specific Funding Information will be provided in the awarding board reports for each Automation Project task order.

The contracts contain a "Financial Liability Clause" which states that "the City's liability under this contract shall only be to the extent of the present City appropriation to fund the contract. However, if the City shall appropriate funds for any succeeding years, the City's liability shall be extended to the extent of such appropriation, subject to the terms and conditions of the contract."

Respectfully submitted,


ENRIQUE C. ZALDIVAR, Director
Bureau of Sanitation

COMPLIANCE REVIEW PERFORMED
AND APPROVED BY:


HANNAH CHOI, Program Manager
Office of Contract Compliance
Bureau of Contract Administration


JOHN L. REAMER, Director
Bureau of Contract Administration

Prepared by:
Robert Irvin, ICSD
(213) 485-2238

DEPARTMENT OF PUBLIC WORKS

BUREAU OF SANITATION

BUREAU OF CONTRACT ADMINISTRATION

JOINT BOARD REPORT NO. 1

AUGUST 20, 2007

ADOPTED BY THE BOARD OF
PUBLIC WORKS OF THE CITY
of Los Angeles, California
AND REFERRED TO THE MAYOR
AUG 20 2007

James H. [Signature]
Secretary

CD: All

AUTHORITY TO EXECUTE PERSONAL SERVICES CONTRACT WITH
QUALIFYING FIRMS TO PROVIDE AS-NEEDED CONSULTANT SERVICES FOR
THE IMPLEMENTATION OF THE AUTOMATION MASTER PLAN

RECOMMENDATIONS

1. Approve and forward this report with transmittals to the Mayor with the request that the Board of Public Works be authorized to execute personal services contracts with the 12 firms that qualified to provide as-needed professional services for Software Engineering, System Integration, Local and Wide Area Network and Server Design, Automation and/or Construction Management, Database and Training Services. These services are required to assist the Bureau of Sanitation in implementing the Automation Program for the Bureau of Sanitation.
2. Also forward this report with transmittals to the City Council to approve the personal services contracts for five years.
3. Upon the Mayor's and City Council authorization, the President or two members of the Board of Public Works will execute the contracts; and
4. Return the executed contracts to the Bureau of Sanitation for further processing (contact the Board Report Section at 5-4232 for pick up).

FISCAL IMPACT STATEMENT

There will be no financial impact to the General Fund due in awarding these contracts. These contracts will be fully financed by the Bureau's Special Funds and the Wastewater Capital Program.

TRANSMITTALS

1. Bureau of Sanitation Board Report No. 1, adopted August 11, 2006, (Board Report to release a request for qualifications to provide the Bureau of Sanitation on-call services for Sanitation Automation projects and negotiate a contract with the qualifying firms).
2. Copy of Selection Evaluation Criteria.
3. Copies of the 36 proposals for on-call consultant services, submitted by the 13 Firms, are available in the Board Office.

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4. Copies of the proposed contracts between the City of Los Angeles and the 12 Qualifying Firms. Originals will be delivered to the Board Office when the Board Report Section (5-4232) is notified that the contract is ready for execution.

DISCUSSION

Background

The Bureau of Sanitation (Bureau) has had in place an Automation Master Plan (AMP) since December, 2001. This plan lays out a vision for automation and identifies automation improvements in each wastewater facility including specific benefits that would be derived from the recommended projects. The Automation Master Plan Executive Committee, composed of Sanitation and Engineering Executives and Division Managers, actively keeps the plan and the list of associated projects up to date as part of the Bureau's Strategic Planning Process.

Many of these projects will require staffing resources that are not available within the City and will require contracting for additional professional services.

City staff is engaged in developing and implementing smaller scale projects that can be incorporated into their current work schedule. They are also responsible for maintaining and servicing existing systems that may require monitoring and adjustment to meet treatment plant process objectives. These personnel are not able to absorb the additional work necessary to accommodate the larger projects outlined in the Automation Strategic Plan and still maintain existing systems.

The Bureau has relied on contract labor to be able to focus appropriate staffing levels on these projects and to employ project management techniques to complete these projects in a timely manner to the benefit of the Bureau.

The rotating list for Automation Projects was established on December 17, 2002, as a mechanism for delivery of projects that were identified in the Bureau of Sanitation's Automation Master Plan. The contracts on this rotating list have proven to be an invaluable resource in helping the Bureau implement its Automation Program.

The contracts on the current rotating list will expire on December 31, 2007. In order to maintain the availability of a rotating list for this type of work so the Bureau does not delay critical projects identified in the Automation Plans.

On August 11, 2006, your board authorized (Transmittal #1) the Bureau of Sanitation to advertise and distribute a Request for Qualification (RFQ) to provide as-needed development and support services for automation and technology and to evaluate, select, and negotiate a contract with the qualified firms. We are returning to the Board with recommendations to

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award and execute personal services contracts with the qualified firms.

Proposal/Evaluation Process

The RFQ was mailed to over 200 firms. The deadline for submittal of proposals was September 25, 2006.

Thirteen firms submitted 36 proposals for various service areas as follows:

Service Areas	Number of Proposals
Software Engineering	9
System Integration	9
Local and Wide Area Network and Server Design	6
Automation and/or Construction Management	5
Related services including Database and Training	<u>7</u>
Total number of proposals	36

Name of Firm	Number of Service Areas Proposed
Black & Veatch	4
Brown and Caldwell	2
Camp, Dresser and McKee, Inc.	1
CH2M Hill, Inc.	5
DCSE	1
Emerson Process management	5
Enterprise Automation	2
Inflection Point Solutions	3
MWH America Inc.	5
Nth Generation Computing Inc.	1
Phillip A. Naecker CSE	1
Red Oak Consulting	3
Tetra Tech	<u>3</u>
Total number of proposals	36

A committee made up of staff from the Bureau of Sanitation's Information and Control Systems Division and Hyperion Plant Management evaluated the proposals.

The proposals were rated on pre-established criteria (Transmittal No. 2):

Technical Qualifications and Competence	30%
Record of Past Performance	30%
Approach to Work	20%
Cost Control	20%

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All 13 firms have qualified to be on the rotating list. The following table identifies the number of service areas that each firm has proposed for and the number of service areas that each firm has received a passing grade:

Name of Firm	Number of Service Areas Proposed	Number of Service Areas that Received Passing Grade
Black & Veatch	4	4
Brown and Caldwell	2	1
Camp, Dresser and McKee, Inc.	1	1
CH2M Hill, Inc.	5	5
DCSE	1	1
Emerson Process Management	5	4
Enterprise Automation	2	2
Inflection Point Solutions	3	3
MWH America Inc.	5	5
Nth Generation Computing Inc.	1	1
Philip A. Naecker CSE	1	1
Red Oak Consulting	3	2
Tetra Tech	3	3
Total	36	33

Since one of the 13 firms (Emerson Process Management) has not accepted the Department's standard contractual language, henceforth, only 12 contracts are submitted for the Board's approval.

Two rotating lists will be established for each service area, one for projects greater than \$100,000 that require MBE/WBE participation and one for projects with a value less than \$100,000. The two service areas titled "Software Engineering" and "Automation Project and/or Construction Management Services" will have only one list because of a MBE/WBE waiver that was granted by the Mayor's Office for these two service areas.

Estimated Cost and Term of Agreement

The estimated cost of this agreement will be \$7,000,000. Only project task orders that have available and approved funding will be able to use these contracts. The term of resulting contracts shall be in effect for five (5) years, ending on December 31, 2012.

Notice of Intent

A "Notification of Intent to Contract" form was filed with the CAO's Clearinghouse for Personal Services Contracting on March 2, 2006.

Compliance with Charter Section 1022

The Personnel Department has determined that contracting is in the best interest of the City and approved moving forward with this RFQ on June 9, 2006.

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Compliance with Standard City Requirements

Selected firms have complied with all City of Los Angeles requirements including:

- Business Tax Registration Certificate
- Non Discrimination/Equal Employment Practices/Affirmative Action
- Insurance Compliance Guidelines
- Child Support Obligation Ordinance
- Living Wage Ordinance
- Service Contractor Worker Retention Ordinance
- Equal Benefits Ordinance
- Americans with Disabilities Act
- Slavery Disclosure Ordinance
- Los Angeles Residence Information
- Affidavit of Non-Collusion
- Standard Provisions for City Contracting Requirements

Attachments and forms pertaining to these requirements are included in the contracts.

MBE/WBE/OBE Subcontractor Outreach Program

The Task Orders that are in the two service areas titled "Software Engineering" (Service Area A) and "Automation Project and/or Construction Management Services" (Service Area D) are exempt from the MBE/WBE/OBE requirements. This exemption has been granted by the Mayor's Office of Economic Development.

The MBE/WBE/OBE Subcontractor Program is applicable to the remaining three service areas, Systems Integrated (Service Area B), Local and Wide Area Network and Server Design (Service Area C), Related Services, including Database and Training (Service Area E). For these remaining service areas, consultants are to utilize the services of Minority/Women and Other Business Enterprise (MBE/WBE/OBE) firms for Task Orders greater than \$100,000. For these Task Orders, the anticipated MBE and WBE participation levels are 10 percent and 2 percent, respectively. At such time that the on-call list is utilized for a Task Order with an estimated value over \$100,000, the contractor will need to adhere to the requirements of the MBE/WBE/OBE Subcontractor Outreach Program.

The MBE/WBE/OBE subconsultants information for qualified firms is as follows:

Gender/Ethnicity Codes:

AA = African American	HA = Hispanic American
SAA = Subcontinent Asian American	APA = Asian Pacific American
C = Caucasian	NA = Native American
M = Male	F = Female

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Black & Veatch for Service Areas A, B, C and D:

SUBCONTRACTORS	GENDER/ETHNICITY	MBE/WBE/OBE
Automated Switching & Controls, Inc (ACSI)	F/AA	M/WBE
Kelar Corporation	F/C	WBE
Lee & Ro, Inc.	M/APA	MBE
MARRS Services, Inc.	F/SAA	M/WBE
Berg Power Engineering, Inc		OBE
Elcon Associates, Inc.		OBE

Brown and Caldwell for Service Areas A and B (under \$100,000)

SUBCONTRACTOR	GENDER/ETHNICITY	MBE/WBE/OBE
E2 Consulting Engineers, Inc.	M/SAA	MBE

Camp, Dresser, and McKee, Inc. for Service Area C:

SUBCONTRACTORS	GENDER/ETHNICITY	MBE/WBE/OBE
Carter Industrial Automation, Inc	M/AA	MBE
CS3 Computing Services Support Solutions, Inc	F/AA	M/WBE
E2 Consulting Engineers, Inc	M/SAA	MBE
FPL & Associates, Inc	M/APA	MBE
3Di, Inc.	M/SAA	MBE
Trinus Corporation	M/SAA	MBE

CH2M Hill, Inc. for Service Area A:

SUBCONTRACTOR	GENDER/ETHNICITY	MBE/WBE/OBE
Mangan, Inc.		OBE

CH2M Hill, Inc. for Service Area D:

SUBCONTRACTOR	GENDER/ETHNICITY	MBE/WBE/OBE
E2 Consulting Engineers, Inc.	M/SAA	MBE

CH2M Hill, Inc. for Service Area B:

SUBCONTRACTORS	GENDER/ETHNICITY	MBE/WBE/OBE
Concord Document Services	M/AA	MBE
E2 Consulting Engineers, Inc	M/SAA	MBE
E. W. Moon, Inc.	M/AA	MBE
Ingenious Information Technology, Inc.	F/SAA	M/WBE
Astrix Software Technology		OBE
Cybertech Systems, Inc		OBE

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CH2M Hill, Inc. for Service Area C:

SUBCONTRACTORS	GENDER/ETHNICITY	MBE/WBE/OBE
Concord Document Services	M/AA	MBE
Dean Ryan Consultants & Designers, Inc	F/HA	M/WBE
E. W. Moon, Inc.	M/AA	MBE
Ingenious Information Technology, Inc.	F/SAA	M/WBE
Kelar Corporation	F/C	WBE
Sustaining Resources	F/HA	M/WBE
Security Design Integrators		OBE

CH2M Hill, Inc. for Service Area E:

SUBCONTRACTORS	GENDER/ETHNICITY	MBE/WBE/OBE
A Page-Away	F/AA	M/WBE
Dean Ryan Consultants & Designers, Inc.	F/HA	M/WBE
E2 Consulting Engineers, Inc.	M/SAA	MBE
E. W. Moon, Inc.	M/AA	MBE
Ingenious Information Technology, Inc.	F/SAA	M/WBE
Integrated Water Resources	M/HA	M/BE
Sustaining Resources	F/HA	M/WBE
Airetel Staffing, Inc.		OBE
Cybertech Systems, Inc.		OBE
HDR Engineering		OBE
ProDoc/Copyright Repographics		OBE

DCSE, Inc. for Service Area E:

SUBCONTRACTORS	GENDER/ETHNICITY	MBE/WBE/OBE
Applied Geodectics, Inc	F/C	WBE
MARRS Services, Inc.	F/SAA	M/WBE
Stivers Communications	F/HA	M/WBE

Emerson Process Management for Service Areas A and D

SUBCONTRACTOR	GENDER/ETHNICITY	MBE/WBE/OBE
E. W. Moon, Inc.	M/AA	MBE

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Emerson Process Management for Service Areas B:

SUBCONTRACTORS	GENDER/ETHNICITY	MBE/WBE/OBE
CS3 Computing Services Support Solutions, Inc	F/AA	M/WBE
Lee & Ro, Inc	M/APA	MBE
Morikawa Associates, Inc, dba Fiber Integrated, Inc	M/APA	MBE
MARRS Services, Inc.	F/SAA	M/WBE
Sustaining Resources	F/AA	M/WBE

Emerson Process Management for Service Areas C:

SUBCONTRACTORS	GENDER/ETHNICITY	MBE/WBE/OBE
Morikawa Associates, Inc, dba Fiber Integrated, Inc	M/APA	MBE
MARRS Services, Inc	F/SAA	M/WBE

Emerson Process Management for Service Areas E:

SUBCONTRACTORS	GENDER/ETHNICITY	MBE/WBE/OBE
CS3 Computing Services Support Solutions, Inc	F/AA	M/WBE
Lee & Ro, Inc	M/APA	MBE
Morikawa Associates, Inc, dba Fiber Integrated, Inc	M/APA	MBE
MARRS Services, Inc.	F/SAA	M/WBE
Trinus Corporation	M/SAA	MBE

Enterprise Automation for Service Area B (under \$100,000):

SUBCONTRACTORS	GENDER/ETHNICITY	MBE/WBE/OBE
Bernard L. Gaus		OBE
Goul Systems Group, Inc		OBE

Inflection Points Solutions for Service Areas B and E:

SUBCONTRACTORS	GENDER/ETHNICITY	MBE/WBE/OBE
CS3 Computing Services Support Solutions, Inc	F/AA	M/WBE
ISC Technology, Inc.	F/C	WBE
Philip Naecker, Consulting Software Engineers		OBE
Sync Technologies		OBE

MWH Americas, Inc. for Service Area B:

SUBCONTRACTORS	GENDER/ETHNICITY	MBE/WBE/OBE
Automated Switching & Controls, Inc	F/AA	M/WBE
Cadstar Enterprises, Inc	F/HA	M/WBE
Carter Industrial Automation, Inc	M/AA	MBE

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IBRA Automation Systems, Inc	M/APA	MBE
Lee & Ro, Inc.	M/APA	MBE
Morikawa Associates, Inc, dba Fiber Integrated, Inc	M/APA	MBE
MARRS Services, Inc.	F/SAA	M/WBE
G2G		OBE
Macro Automatics		OBE

MWH Americas, Inc. for Service Area C:

SUBCONTRACTORS	GENDER/ETHNICITY	MBE/WBE/OBE
Automated Switching & Controls, Inc	F/AA	M/WBE
E2 Consulting Engineers, Inc	M/SAA	MBE
Lee & Ro, Inc.	M/APA	MBE
Morikawa Associates, Inc. dba Fiber Integrated, Inc	M/APA	MBE
MARRS Services, Inc.	F/SAA	M/WBE
G2G		OBE
Macro Automatics		OBE

MWH Americas, Inc. for Service Area E:

SUBCONTRACTORS	GENDER/ETHNICITY	MBE/WBE/OBE
Automated Switching & Controls, Inc	F/AA	M/WBE
CS3 Computing Services Support Solutions, Inc	F/AA	M/WBE
Lee & Ro, Inc.	M/APA	MBE
Morikawa Associates, Inc. dba Fiber Integrated, Inc	M/APA	MBE
3Di, Inc.	M/SAA	MBE
G2G		OBE
Macro Automatics		OBE

Nth Generation Computing for Service Area C:

SUBCONTRACTORS	GENDER/ETHNICITY	MBE/WBE/OBE
ExpertTech Solutions	M/SAA	MBE
Facility Programmatics, Inc	F/AA	M/WBE
IBRA Automation Systems, Inc.	M/APA	MBE

Red Oak Consulting, a Division of Malcolm Pirnie for Service Area A, B (under \$100,000) and E (under \$100,000):

SUBCONTRACTORS	GENDER/ETHNICITY	MBE/WBE/OBE
E2 Consulting Engineers, Inc.	M/SAA	MBE
MARRS Services, Inc.	F/SAA	M/WBE

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Tetra Tech for Service Areas B and C:

SUBCONTRACTORS	GENDER/ETHNICITY	MBE/WBE/OBE
Abratique and Associates, Inc.	M/APA	MBE
Aegir Systems, Inc.	F/AA	M/WBE
Automated Switching & Controls, Inc.	F/AA	M/WBE
Carter Industrial Automation, Inc.	M/AA	MBE
Dean Ryan Consultants & Designers, Inc.	F/HA	M/WBE
Electrical Systems Ltd	F/C	WBE
E2 Consulting Engineers, Inc.	M/SAA	MBE
E. W. Moon, Inc.	M/AA	MBE
JM Fiber Optics, Inc.	M/HA	MBE
MARRS Services, Inc.	F/SAA	M/WBE
ProjectLine Technical Services, Inc.	F/APA	M/WBE
Records Conversion Services, Inc.	F/APA	M/WBE
Trinus Corporation	M/SAA	MBE
Utility Systems Science & Software, Inc.	M/HA	MBE
3Di, Inc.	M/SAA	MBE
DCSE, Inc.		OBE
SEIS Group		OBE

The Office of Contract Compliance has verified the certification status of all subconsultants.

Contractor Responsibility Ordinance

All contractors participating in this program are subject to compliance with the requirements specified in the City of Los Angeles' Contractor Responsibility Ordinance # 173677, [Article 14, Chapter 1, Division 10, L.A.A.C.]. Failure to comply with all requirements specified in this Ordinance will render the contract subject to termination pursuant to the conditions expressed therein.

Contractor Performance Evaluation

In accordance with Article 13, Chapter 1, Division 10 of the City Los Angeles Administrative Code, the project manager and the City Inspector responsible for the quality control of this personal services contract shall submit Contractor Performance Evaluation Reports to the Department of Public Works, Bureau of Contract Administration upon the completion of this contract.

Contract Administration

Responsibility for administration of this contract will be with the Information & Control Systems Division, Bureau of Sanitation.

City Attorney Review

The City Attorney has reviewed these contracts and has approved them as to form.

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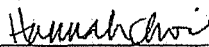
STATUS OF FINANCING

The cost estimates for the automation projects are estimated at \$7,000,000. Funds for wastewater projects in FY 2007-08 in the amount of \$342,000 are available in Fund 760, Department 50, Account C282, Object 304, titled "Contractual Services". Additional funds may be provided in the Wastewater Capital Improvement Program budget. Should the Bureau have a future need for Solid Resources or Stormwater-related automation projects, funds from those appropriate accounts will be identified. The final determination of the funding sources will be done on a project-by-project basis by the Director of Sanitation or her authorized designee.

These contracts include a "Financial Liability Clause" which states that "the City's liability under this contract shall only be to the extent of the present City appropriation to fund the contract. However, if the City shall appropriate funds for any succeeding years, the City's liability shall be extended to the extent of such appropriation, subject to the terms and conditions of the contract."

(RBI RPT VA WFB)

COMPLIANCE REVIEW PERFORMED
AND APPROVED BY:

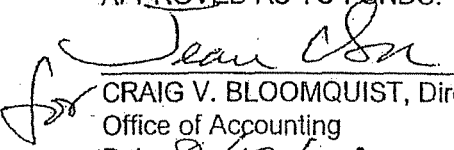

HANNAH CHOI, Program Manager
Office of Contract Compliance
Bureau of Contract Administration

Respectfully submitted,


RITA LAROBINSON, Director
Bureau of Sanitation


JOHN L. REAMER, JR., Director
Bureau of Contract Administration

APPROVED AS TO FUNDS:


CRAIG V. BLOOMQUIST, Director
Office of Accounting
Date 8/10/07

Prepared by
Robert Irvin, ICSD
(213) 485-2238

**CH2MHILL**

CH2M HILL

SUBJECT: Request for consent to assign **ON-CALL PERSONAL SERVICES AGREEMENT**
(Contract No. C-113313) (the "Contract") from CH2M HILL, Inc to CH2M HILL
Engineers, Inc.

Dear Mr. Robert Irvin:

I am pleased to inform you that CH2M HILL has decided to restructure our approach to delivering U.S. Federal and Non-Federal work. Today, the firm conducts business in both U.S. Federal and Non-Federal (commercial) markets, and until now, a significant portion of our Non-Federal business has been housed in the same entities that were set up to satisfy the heavily regulated U.S. Federal market. This change will create a stronger client focus and more efficient delivery approach in both Federal and Non-Federal markets.

With this in mind, CH2M HILL's leadership has decided to move our commercial work out of U.S. Federal entities and into Non-Federal (commercial) entities. This will help us: (1) increase our customer focus in both Non-Federal and U.S. Federal markets, (2) release our Non-Federal business from regulatory requirements that apply to our Federal business only, and (3) enhance our compliance position with the U.S. Federal Government. Primary benefits to our Non-Federal (commercial) clients resulting from this change include:

- CH2M HILL's focus on commercial clients will be enhanced, with resources dedicated solely to the efficient, value-added delivery of commercial work. We recognize the differences between Federal and commercial clients and will target our delivery to exactly match the needs of these two very different and important clients.
- Our commercial clients will still have the full benefit of best practices and state-of-the-art technologies developed in our Federal entities because cross-entity sharing and collaboration will remain a core CH2M HILL attribute.

Effective October 29, 2011, CH2M HILL requests the assignment of the Contract from CH2M HILL, Inc. (INC) to CH2M HILL Engineers, Inc. (CHE). CHE will assume all of the rights and benefits under the Contract, but the liabilities and obligations under the Contract would remain with INC, thereby resulting in no change to your degree of protection in accordance with the terms of the Contract.

CHE will ensure the following upon the effective date of the assignment:

- There will be no change in personnel assigned to your project.
- There will be no interruption in continuity of service.
- All contractual obligations will continue to be delivered and satisfied.

CHE is a Non-Federal legal entity within CH2M HILL that has all necessary resources to successfully complete your project and has the full backing of the CH2M HILL enterprise. CHE has all necessary licenses to perform the work under the Contract. There will be no change in insurance (or bonding capacity) for your project; applicable documents will be reissued to reflect the change in legal entity.

CH2M HILL highly values our established relationship with the Bureau of Sanitation and can assure you with full confidence that our level of service will not be impacted by this change, and we will achieve successful completion of your project.

Pursuant to and in accordance with the Contract, this letter constitutes CH2M HILL's request that the Bureau of Sanitation consent to and approve of assignment of the Contract from INC (or CCI) to CHE, effective October 29, 2011.

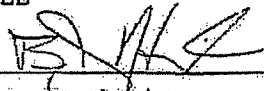
Please provide your consent to and approval of Contract assignment to CHE by executing the consent block below and returning this letter to CH2M HILL in the enclosed postage-paid envelope.

If necessary, please include any new supplier information form that you may require from CHE.

If you have any questions about this request or if you need any additional information, please do not hesitate to contact me.


Sincerely,

CH2M HILL

By: 
Name: TODD J. HUNZIKER
Title: CALIFORNIA PROJECT DELIVERY MGR.
Phone: 530-229-3400
Fax: 530-339-3400
email: TODD.HUNZIKER@CH2M.COM

The City of Los Angeles, Bureau of Sanitation hereby consents to and approves of assignment of the contract from CH2M HILL, Inc. to CH2M HILL Engineers, Inc., effective October 29, 2011.

The City of Los Angeles, Bureau of Sanitation

By: 
Name: ROBERT IRVIN
Title: DIRECTOR OF SYSTEMS
Phone: (213) 485 2238
Fax: (213) 485 2967
email: robert.irvin@lacity.org

**Request for Taxpayer
Identification Number and Certification**

Give form to the
requester. Do not
send to the IRS.

Print or type.
See Specific instructions on page 2.

Name (as shown on your income tax return)

CH2M HILL ENGINEERS, INC.

Business name, if different from above

Check appropriate box: ☐ Individual/
Sole proprietor ☒ Corporation ☐ Partnership ☐ Other ▶

☐ Exempt from backup
withholding

Address (number, street, and apt. or suite no.)

P.O. BOX 201869

City, state, and ZIP code

DALLAS, TX 75320-1869

Requester's name and address (optional)

List account number(s) here (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note: If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number

or

Employer identification number

3 2 0 1 0 0 0 2 7

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. person (including a U.S. resident alien).

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. (See the instructions on page 4.)

**Sign
Here**

Signature of
U.S. person ▶

Breck J. Pace

Date ▶ *10/27/2011*

Purpose of Form

A person who is required to file an information return with the IRS, must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

U.S. person. Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding,
- or
3. Claim exemption from backup withholding if you are a U.S. exempt payee.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

For federal tax purposes you are considered a person if you are:

- An individual who is a citizen or resident of the United States,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States, or

- Any estate (other than a foreign estate) or trust. See Regulations sections 301.7701-6(a) and 7(a) for additional information.

Foreign person. If you are a foreign person, do not use Form W-9. Instead, use the appropriate Form W-8 (see Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities).

Nonresident alien who becomes a resident alien.

Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the recipient has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items:

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.



CITY OF LOS ANGELES
OFFICE OF FINANCE
P.O. BOX 53200
LOS ANGELES CA 90053-0200

12 100-014964 1005 1

CH2M HILL ENGINEERS, INC.
ROBERT L LATHEN
9191 S JAMAICA ST
ENGLEWOOD CO 80112-5946

1000 WILSHIRE BOULEVARD FLOOR #21
LOS ANGELES, CA 90017-2457

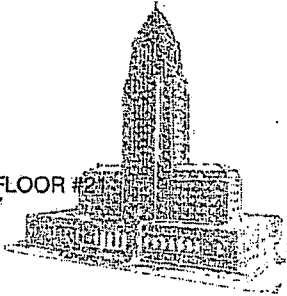
THIS CERTIFICATE MUST BE POSTED AT PLACE OF BUSINESS

CITY OF LOS ANGELES TAX REGISTRATION CERTIFICATE				
THIS CERTIFICATE IS GOOD UNTIL SUSPENDED OR CANCELLED				
BUSINESS TAX				
ACCOUNT NO.	FUND/CLASS	DESCRIPTION	STARTED	STATUS
0002421368-0001-2	L049	Professions/Occupations	09/01/2008	Active

ISSUED: 5/10/2010

CH2M HILL ENGINEERS, INC.
ROBERT L LATHEN
1000 WILSHIRE BOULEVARD FLOOR #21
LOS ANGELES, CA 90017-2457
9191 S JAMAICA STREET
ENGLEWOOD, CO 80112-5946

ISSUED BY:
Christine St. Christou
DIRECTOR OF FINANCE



JT #1 Bos BCA 9/5/2012 (4)

TRANSMITTAL 4



523 West 6th Street, Suite 400
Los Angeles, California 90014
tel: 213 457-2200
fax: 213 627-8295

April 10, 2012

Mr. Robert Irvin
Bureau of Sanitation
Department of Public Works
City of Los Angeles
1149 South Broadway, 9th Floor
Los Angeles, CA 90015

Subject: Company Name Change

Dear Mr. Irvin:

On February 25, 2011, Camp Dresser & McKee Inc. (CDM) and Wilbur Smith Associates combined to expand our global, full-service capabilities in water, environment, transportation, energy and facilities. Over the course of 2011, we have worked to integrate our employees, systems and operations into a single firm dedicated to the continued delivery of exceptional client service and technical excellence.

In December 2011, based on the approval of our shareholders to amend the firm's Articles of Organization, we have officially changed the legal name of the company from Camp Dresser & McKee Inc. to CDM Smith Inc. This name change became effective on December 9, 2011.

This letter is to request your help in updating your contractual files and accounting records to reflect the new name of the company. Your assistance is very much appreciated in making these necessary changes.

As always, our unwavering focus remains on providing our clients with exceptional service and creating innovative, sustainable solutions that improve environmental value, quality of life and economic prosperity. If you have any questions regarding this matter, please contact me at 213-457-2200.

Very truly yours,

Hampik Dekermenjian
Senior Vice President
CDM Smith Inc.



DEPARTMENT OF PUBLIC WORKS
BOARD REPORT NO. 1
BUREAU OF SANITATION
January 6, 2010

ADOPTED BY THE BOARD
PUBLIC WORKS OF THE CITY
of Los Angeles California
AND REFERRED TO THE MAYOR
JAN - 6 2010

CD: ALL


Secretary

AUTHORITY TO INCREASE THE COST ESTIMATE FOR AUTOMATION
PROJECTS WITH QUALIFYING FIRMS PROVIDING CONSULTANT SERVICES
FOR THE IMPLEMENTATION OF THE AUTOMATION MASTER PLAN

RECOMMENDATIONS

1. Approve and forward this report with the transmittals to the Mayor and to the City Council with the request that the Board of Public Works be authorized to increase the estimated spending for automation projects with firms that qualified to provide as-needed professional services for Software Engineering, System Integration, Local and Wide Area Network and Server Design, Automation and/or Construction Management, Database and Training Services.
2. Upon the Mayor's authorization, the President or two members of the Board of Public Works will authorize the cost estimate increase.

TRANSMITTAL

1. Copy of Joint Board Report No. 1 dated August 20, 2007 authorizing the Board of Public Works to execute personal services contract with qualifying firms to provide as-needed consultant services for the implementation of the automation master plan.

FISCAL IMPACT STATEMENT

All work performed through these Personal Services Contracts will be funded from the Bureau Of Sanitation's Special Funds. There will be no impact to the General Fund.

DISCUSSION

Background

The first rotating list for Automation Projects was established on December 17, 2002, as a mechanism for delivery of projects that were identified in the Bureau of Sanitation's Automation Master Plan, completed in December 2001. The contracts on this rotating list have proven to be an invaluable resource in helping the Bureau implement the Automation Master Plan and other critical cost saving Automation projects. To keep the planning process up-to-date, the Bureau of Sanitation developed a new Bureau-wide Strategic Plan covering all aspects of the Bureau's operation. As part of this strategic planning effort an entire section was devoted to the Automation Master Plan. The Bureau-wide Strategic Automation Master Plan section outlines the projects and issues which still rely on the availability of the rotating list for the development of automation projects.

BUREAU OF SANITATION
BOARD REPORT NO.1
January 6, 2010

PAGE 2

On August 20, 2007, the Board of Public Works authorized (Transmittal No. 1) the execution of personal services contracts with 12 firms that qualified to provide as-needed professional services for Software Engineering, System Integration, Local and Wide Area Network and Server Design, Automation and/or Construction Management, Database and Training Services. These array of services are required to assist the Bureau in implementing the Automation Program.

The personal service contracts were executed on March 28, 2008 with an estimated total dollar value of \$7 million to be spent over the five-year term of the agreements. However, due to first year encumbrances of approximately \$5.7 million on various automation projects related to treatment plant operations and solid resources, approximately \$1.3 million remain for the term of the contracts. See Table 1 below.

Table 1 - Record of Project Task Orders Issued

Project Task Order No.	Project Name	Service Area	Project Task Order Amount	Consultant's Name
A2-08-1	Computer Service Support	Related Services	\$ 1,234,176.00	DCSE, Inc.
A2-08-2	Los Angeles Wastewater Control System Replacement Project (LAWINS)	Automation Project and/or Construction Management Service	\$ 2,021,265.05	CH2M Hill
A2-08-3	Recycling Data Management System (RDMS)	Related Services	\$ 324,500.00	DCSE, Inc.
A2-08-4	Laboratory Information Management System	Software Engineering	\$ 247,353.50	CH2M Hill
A2-08-6	Quality Assurance Oversight for the REMS Implementation	Related Services	\$ 79,525.00	Inflection Point Solutions (IPS)
A2-08-7	Systems Integration Technical Support	System Integration	\$ 90,000.00	Red Oak Consulting
A2-09-01	Technical Support for Oracle	Local and Wide Area Network and Server Design	\$12,500.00	Red Oak Consulting
A2-09-03	Oracle Audit Technical Support for Planning Dept.	Local and Wide Area Network and Server Design	\$13,000.00	Nth Generation Computing
Total			\$ 5,722,319.55	

The remaining balance of the approved cost estimate is not sufficient to cover the upcoming automation projects, such as the Collection Information System Redesign, the Control System Replacement and the Wisard Regulatory Compliance System Replacement. In order to deliver future automation projects within the prescribed time frame it has become apparent that the Bureau will need to increase the use of the professional services of the on-call consultants. Therefore, the Bureau is requesting that the approved budget for use of on-call consultants be increased by \$7, 000,000.

City Policies and Requirements

The twelve firms have complied with the standard City compliance forms including Affirmative Action Plan/Non-Discrimination/Equal Employment Practices; Certificate of Compliance with Child Support Obligation, Equal Benefits Ordinance; Living Wage Ordinance, Service Contractor Worker Retention Ordinance; Americans with Disabilities Act; Pledge of Compliance with Contractor Responsibility Ordinance; Slavery Disclosure Ordinance; Municipal Lobbying Ordinance; and Evidence of Insurance. The Task Orders that are in the two service areas titled "Software Engineering" (Service Area A) and "Automation Project and/or Construction Management Services" (Service Area D) are exempted from the MBE/WBE/OBE requirements as granted by the Mayor's Office of Economic Development. The MBE/WBE/OBE Subcontractor Program is applicable to the remaining three service areas, Systems Integrated (Service Area B), Local and Wide Area Network and Server Design (Service Area C), Related Services, including Database and Training (Service Area E). For these remaining service areas, consultants are willing to utilize the services of Minority/Women and Other Business Enterprise (MBE/WBE/OBE) firms for Task Orders greater than \$100,000. For these Task Orders, the anticipated MBE and WBE participation levels are 10 percent and 2 percent, respectively. At such time that the on-call list is utilized for a Task Order with an estimated value over \$100,000, the contractor will need to adhere to the requirements of the MBE/WBE/OBE Subcontractor Outreach Program.

Contractor Performance Evaluation

In accordance with Article 13, Chapter 1, Division 10 of the City of Los Angeles Administrative Code, the appropriate City personnel responsible for the quality control of this sole source agreement shall submit Contractor Performance Evaluation Reports to the Bureau of Contract Administration (Department of Public Works) upon completion of this contract.

STATUS OF FINANCING

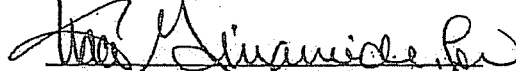
The combined new cost estimates for the automation projects is now projected to be \$14,000,000. Due to the variety of funding sources that may be used, Project Specific Funding Information will be provided in the awarding board reports for each Automation Project. The contract contains a "Financial Liability Clause" which states that "the City's liability under this contract shall only be to the extent of the present City appropriation to fund the contract. However, if the City shall appropriate funds for any succeeding years, the City's liability shall be extended to the extent of such appropriation, subject to the terms and conditions of the contract."

BUREAU OF SANITATION
BOARD REPORT NO.1
January 6, 2010


PAGE 4

Report reviewed by:
BOS (FMD)

Respectfully submitted,


ENRIQUE C. ZALDIVAR, Director
Bureau of Sanitation

APPROVED AS TO FUNDS:


LYNDON SALVADOR, Director
Office of Accounting

Date: 12/29/09

Prepared by:
Robert Irvin, ICSD
(213) 485-2238

INTER DEPARTMENTAL CORRESPONDENCE

TRANSMITTAL 6

DATE: June 12, 2006

TO: LA MBOC, MAYOR'S OFFICE OF ECONOMIC DEVELOPMENT
ATTN: DAVID MORAFROM: Robert Irvin Phone: 213-485-2238 Fax: 213-485-2967
Dept/Div: Public Works, Sanitation, Information & Control Systems Divisic E-mail: Robert.Irvin@lacity.org

SUBJECT: MBE/WBE/OBE RECOMMENDATION FOR GOOD FAITH EFFORT CONTRACT NO. _____

In compliance with Executive Directive No. 2001-26, City of Los Angeles Minority, Women and Other Business Enterprise (MBE/WBE/OBE) Program, please fill out the following:

1. Title of Project: On-call Services for Sanitation Automation Projects (Scope of Services-Sections A & D only, RFQ Page 14)
2. This project will be advertised as an: RFB RFP X RFQ Other: _____
3. Type of Contract: Procurement X Personal Services Construction
4. Projected total amount of the contract: 7 Millions Estimated duration of project: 5 years
5. Significant Dates:
Estimated date of pre-bid or job walk meeting: August-06
Estimated date that bids or proposals are due: September-06
6. Recommendations:
MBE/WBE/OBE encouragement: Yes

Justify why encouragement:

X Technical Requirement X Lack of available subcontractors
 Lack of available subcontract sub-supply opportunities One product single point of distribution

Other: _____

7. MBE/WBE/OBE Good Faith Effort required:

Level of participation is as follows: ?? %MBE ? %WBE %OBE8. Is this a X New Contract Renewal Other9. Name of previous contractor: Rotating list Length of previous contract 5 years Value of previous
4.7 Millions

TO:

ATTN:

Robert Irvin

FROM: LA MBOC, MAYOR'S OFFICE OF ECONOMIC DEVELOPMENT

SUBJECT: RESPONSE TO ABOVE REQUEST

✓ Recommendation approved Available Subs AK Initials
Recommendation disapproved Available Opportunities Initials

Dept. will promote opportunities to M/WBE firms
for possible participation as prime consultants.

Other/Comment: _____

By:

Amey H. Richardson Date: 6/20/06Tel. No.: 213/978-1494

**State of California
Secretary of State**

**NAME CHANGE
CERTIFICATE OF QUALIFICATION**

C1679783

I, DEBRA BOWEN, Secretary of State of the State of California, hereby certify that on the 23rd day of November, 2011, there was filed in this office an Amended Statement and Designation by Foreign Corporation whereby the corporate name of **DEAN RYAN CONSULTANTS & DESIGNERS, INC.**, a corporation organized and existing under the laws of Delaware, was changed to **D R CONSULTANTS & DESIGNERS, INC.** This corporation complied with the requirements of California law in effect on that date for the purpose of qualifying to transact intrastate business in the State of California and as of said date has been and is qualified and authorized to transact intrastate business in the State of California, subject however, to any licensing requirements otherwise imposed by the laws of this State.

IN WITNESS WHEREOF, I execute
this certificate and affix the Great Seal
of the State of California this day of
December 20, 2011.



Debra Bowen

DEBRA BOWEN
Secretary of State



I hereby certify that the foregoing
transcript of 2 page(s)
is a full, true and correct copy of the
original record in the custody of the
California Secretary of State's office.

DEC 20 2011 *DB*

Date: _____

Debra Bowen
DEBRA BOWEN, Secretary of State

THIS CERTIFICATE MUST BE POSTED AT PLACE OF BUSINESS

CITY OF LOS ANGELES TAX REGISTRATION CERTIFICATE

THIS CERTIFICATE IS GOOD UNTIL SUSPENDED OR CANCELLED

BUSINESS TAX

ISSUED: 6/23/2012

ACCOUNT NO.	FUND/CLASS	DESCRIPTION	STARTED	STATUS
0000641677-0001-1	L048	Miscellaneous Services	01/01/2009	Active

ISSUED TO

D R CONSULTANTS & DESIGNERS, INC.

725 S FIGUEROA STREET SUITE #332
LOS ANGELES, CA 90017-5434

725 S FIGUEROA STREET SUITE #332
LOS ANGELES, CA 90017-5434



ISSUED BY:

Antoinette D. Christaule

DIRECTOR OF FINANCE

NOTIFY THE OFFICE OF FINANCE IN WRITING OF ANY CHANGE IN OWNERSHIP OR ADDRESS
FORM 2000 (rev. 6/01) IMPORTANT - READ REVERSE SIDE

P.O. BOX 53200, LOS ANGELES CA 90053-0200

THIS CERTIFICATE MUST BE POSTED AT PLACE OF BUSINESS

CITY OF LOS ANGELES TAX REGISTRATION CERTIFICATE

THIS CERTIFICATE IS GOOD UNTIL SUSPENDED OR CANCELLED

BUSINESS TAX

ISSUED: 6/23/2012

ACCOUNT NO.	FUND/CLASS	DESCRIPTION	STARTED	STATUS
0000641677-0001-1	L049	Professions/Occupations	01/01/2007	Active

ISSUED TO

D R CONSULTANTS & DESIGNERS, INC.

725 S FIGUEROA STREET SUITE #332
LOS ANGELES, CA 90017-5434

725 S FIGUEROA STREET SUITE #332
LOS ANGELES, CA 90017-5434



ISSUED BY:

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FORM 2000 (rev. 6/01) IMPORTANT - READ REVERSE SIDE

P.O. BOX 53200, LOS ANGELES CA 90053-0200

CONTRACT NO. C- 113312

AMENDMENT NO. 1

TO

ON-CALL PERSONAL SERVICES AGREEMENT

BETWEEN

THE CITY OF LOS ANGELES

AND

NTH GENERATION COMPUTING

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**FIRST AMENDMENT TO
PERSONAL SERVICES CONTRACT NO. 113312
THE CITY OF LOS ANGELES
AND
NTH GENERATION COMPUTING
FOR
ON-CALL PERSONAL SERVICES FOR SANITATION AUTOMATION PROJECTS
A G R E E M E N T**

THIS AMENDMENT, made and entered into by and between the Bureau of Sanitation, Department of Public Works, a Municipal Corporation acting by order of and through its Board of Public Works, hereinafter called the "CITY", and " NTH GENERATION COMPUTING " hereinafter referred to as the "CONSULTANT" modifying the original agreement executed on March 28, 2008 entitled "On-Call Personal Services between the City of Los Angeles and Nth Generation Computing, hereinafter "AGREEMENT."

W I T N E S S E T H

WHEREAS, the Bureau of Sanitation (BUREAU) developed an Automation Master Plan and A Strategic Plan which identify and recommend numerous opportunities for using technology to improve the Sanitation business, operations, and service functions while supporting the achievement of financial budget reduction goals; and

WHEREAS, the BUREAU desires to implement the recommended automation projects in an expeditious manner; and

WHEREAS, many of these projects will require the use of staffing resources which are not available within the CITY, and therefore the BUREAU has identified the need for

Consultants to assist CITY staff on an "as-needed" basis; and

WHEREAS, the services to be provided by the Consultants may be in any of the five (5) SERVICE AREAS: 1) Software Engineering, 2) Systems Integration, 3) Local and Wide Area Network and Server Design, 4) Project Automation and/or Construction Management Services, and 5) Related Services including database development, data modeling, value engineering, database design, database to database interface, and training services on an "as-needed" basis; and

WHEREAS, the BUREAU developed a Request For Qualifications (RFQ) covering the desired SERVICE AREAS and distributed it to over one hundred fifty firms providing on-call services based upon needs outlined in the Automation Master Plan and Strategic Plan; and

WHEREAS, thirteen (13) firms submitted thirty-six (36) responses to the RFQ by September 25, 2006; and

WHEREAS, thirteen (13) firms were selected as the most qualified firms by the CITY staff based on the evaluation criteria set forth in the RFQ and as presented in Statements of Qualifications; and

WHEREAS, the Board of Public Works on August 20, 2007 authorized the execution of personal services contracts with 12 firms that qualified to provide as-needed professional services for Software Engineering, System Integration, Local and Wide Area Network and Server Design, Project Automation and/or Construction Management, Database and Training Services; and

WHEREAS, each of the selected Consultants has demonstrated qualifications to perform the required services; and

WHEREAS, the services of the Consultants are of an expert and technical nature and are temporary and occasional in character; and

WHEREAS, the CITY desires to retain the use of these pre-qualified Consultants to bid on a specific Statement of Work to provide the additional services required to assist the CITY in improving the level of automation in the wastewater collection and treatment systems. These improvements will include control systems consolidation and upgrades, systems integration, network upgrades, increased standardization, improved power/energy management and improved data management and access systems; and

WHEREAS, the AGREEMENT is executory and does not guarantee consultants will actually be awarded work thereunder; and the BUREAU reserves the right to solicit additional Consultants to be added to the existing list of Consultants ; and

WHEREAS, the BUREAU is in the process of releasing a new Request for Qualifications (RFQ); and

WHEREAS, since awarding new contracts is a time-consuming process and service areas covered by this AGREEMENT are very critical to the BUREAU'S operation , the AGREEMENT is hereby amended to extend the contract term by an additional three(3) years from January 1, 2013 to December 31, 2015; and

WHEREAS, the Bureau is requesting to increase the cost ceiling amount by \$6 million to replace the control systems in the Bureau's Treatment Plants and Collection System for a revised total ceiling of \$20 million.

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

NO CHANGE IN THIS ARTICLE

ARTICLE 2 – DEFINITIONS

NO CHANGE IN THIS ARTICLE

ARTICLE 3 – PROJECT DESCRIPTION

NO CHANGE IN THIS ARTICLE

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

NO CHANGE IN THIS ARTICLE

ARTICLE 5 – KEY CONSULTANT PERSONNEL

ADD SUB ARTICLES 5.3 AND 5.4 TO READ AS FOLLOWS:

5.3 Unless otherwise provided or approved by the CITY, CONSULTANT shall use its own employees to perform the services described in this AGREEMENT. The CITY shall have the right to review and approve any personnel who are assigned to work under this AGREEMENT. CONSULTANT agrees to remove personnel from

performing work under this AGREEMENT if requested to do so by the CITY:

- 5.4 CONSULTANT shall not use subconsultants to assist in performance of this AGREEMENT without the prior written approval of the CITY. If the CITY permits the use of subconsultants, CONSULTANT shall remain responsible for performing all aspects of this AGREEMENT. The CITY has the right to approve CONSULTANT'S subconsultants, and the CITY reserves the right to request replacement of subconsultants. The CITY does not have any obligation to pay CONSULTANT'S subconsultants, and nothing herein creates any privity between the CITY and the subconsultants.

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

NO CHANGE IN THIS ARTICLE

ARTICLE 7– TERM OF AGREEMENT AND TIME OF EFFECTIVENESS

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

Unless otherwise provided, this Amendment No. 1 shall extend the term of this AGREEMENT from January 1, 2013 until December 31, 2015 unless terminated as provided under Article 8 or extended by an amendment to this AGREEMENT and signed by all parties.

ARTICLE 8 – TERMINATION

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

- 8.1 This AGREEMENT may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this

AGREEMENT through no fault of the terminating party, provided that no termination may be effected unless the other party is given (1) not less than ten (10) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination.

8.2 This AGREEMENT may be terminated in whole or in part in writing by the CITY for its convenience, provided that the CONSULTANT is given (1) not less than thirty (30) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination. Upon receipt of said written notice, CONSULTANT shall immediately take action not to incur any additional obligations, cost or expense, except as may be reasonable necessary to terminate its activities.

8.3 This AGREEMENT may be immediately terminated in writing by the CITY if (1) a federal or state proceeding for relief of debtors is undertaken by or against CONSULTANT or if CONSULTANT makes an assignment for the benefit of creditors or (2) CONSULTANT engages in any dishonest conduct related to the performance or administration of this AGREEMENT or violates the CITY'S lobbying policies.

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

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

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

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

8.7 If, after the termination for failure of the CONSULTANT to fulfill contractual obligations, it is determined that the CONSULTANT had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of the CITY. In such event, adjustment of the AGREEMENT price shall be made as provided in Article 8.4 of this

article.

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

ARTICLE 9 – SUB-CONTRACT APPROVAL

NO CHANGE IN THIS ARTICLE

ARTICLE 10 – COMPENSATION, INVOICING, AND PAYMENT

ADD SUB-ARTICLE 10.4 TO READ AS FOLLOWS:

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

NO CHANGE IN THIS ARTICLE

ARTICLE 12 – INDEMNIFICATION AND INSURANCE

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

12.1 INDEMNIFICATION

Except for the active negligence or willful misconduct of CITY, or any of its Boards, Officers, Agents, Employees, Assigns and Successor in Interest, CONSULTANT undertakes and agrees to defend, indemnify and hold harmless CITY and any of its

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

12.2 INSURANCE

During the term of this AGREEMENT and without limiting the CONSULTANT'S indemnification of the CITY, the CONSULTANT shall provide and maintain at its own expense during the term of this AGREEMENT a program of insurance having the coverage and limits customarily carried and actually arranged by CONSULTANT but not less than the amounts and types listed on the Insurance Requirements Sheet (Form Gen 146/IR), in EXHIBIT D 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 D, and which can also be found at the Board of Public Work's website <http://bpw.lacity.org/Secretariat/Insurance.html>, in the form Instructions and Information on Complying with CITY Insurance Requirements, rev

10/09, and shall otherwise be in a form acceptable to the City Administrative Officer, Risk Management. The CONSULTANT shall comply with all Insurance Contractual Requirements shown on EXHIBIT D hereto. EXHIBIT D is hereby incorporated by reference and made a part of this AGREEMENT.

- 12.3 CONSULTANT may elect to wait until awarded a task order before providing proof of Professional Liability Insurance as required in Section 12.2. However, the Task Order will not be signed and work may not proceed until all the requirements of Section 12.2, including proof of Professional Liability Insurance are met.

ARTICLE 13 – INDEPENDENT CONTRACTORS

NO CHANGE IN THIS ARTICLE

ARTICLE 14 – WARRANTY AND RESPONSIBILITY OF CONSULTANT

NO CHANGE IN THIS ARTICLE

ARTICLE 15 – OWNERSHIP OF DATA

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

Unless otherwise provided for herein, all Work Products originated and prepared by CONSULTANT or its subconsultants, of any tier under this AGREEMENT 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 AGREEMENT including, without limitation, documents, material, data, reports, manuals, specifications, artwork, drawings, sketches, computer programs and databases, schematics, photographs, video and

audiovisual recordings, sound recordings, marks, logos, graphic designs, notes, websites, domain names, inventions, processes, formulas matters and combinations thereof, and all forms of intellectual property. CONSULTANT hereby assigns, and agrees to assign, all goodwill, copyright, trademark, patent, trade secret and all other intellectual property rights worldwide in any Works Products originated and prepared by CONSULTANT under this AGREEMENT. CONSULTANT further agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights provided herein.

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

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

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

ARTICLE 16 – NONDISCRIMINATION AND AFFIRMATIVE ACTION

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

16.1 NON-DISCRIMINATION

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

16.2 EQUAL EMPLOYMENT PRACTICES

Unless otherwise exempt, this AGREEMENT 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 AGREEMENT, CONSULTANT agrees and

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

1. This provision applies to work or service performed or materials manufactured or assembled in the United States.

2. Nothing in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.

3. CONSULTANT agrees to post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.

B. CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of CONSULTANT, state that all qualified applicants will received consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.

C. As part of the CITY'S supplier registration process, and/or at the request of the awarding authority, or the Board of Public Works, Office of Contract Compliance, CONSULTANT shall certify in the specified format that he or she has not discriminated in the performance of CITY contracts against any employee or applicant for employment on the basis or because of race, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status or medical condition.

D. CONSULTANT shall permit access to and may be required to provide certified copies of all of his or her records pertaining to employment and to employment practices by the awarding authority or the Office of Contract Compliance for the purpose of

investigation to ascertain compliance with the Equal Employment Practices provisions of CITY contracts. On their or either of their request, CONSULTANT shall provide evidence that he or she has or will comply therewith.

E. The failure of any CONSULTANT to comply with the Equal Employment Practices provisions of this AGREEMENT may be deemed to be a material breach of CITY contracts. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made or penalties assessed except upon a full and fair hearing after notice and an opportunity to be heard have been given to CONSULTANT.

F. Upon a finding duly made that CONSULTANT has failed to comply with the Equal Employment Practices provisions of the CITY AGREEMENT, the AGREEMENT 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 that the CONSULTANT is an irresponsible bidder or proposer pursuant to the provision of Section 371 of the Charter of the City of Los Angeles. In the event of such a determination, CONSULTANT shall be disqualified from being awarded a contract with the CITY for a period of two (2) years, or until CONSULTANT shall establish and carry out a program in conformance with the provisions hereof.

G. Notwithstanding any other provision of this AGREEMENT, 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 AGREEMENT shall be construed in any manner so as to require or permit any act which is prohibited by law.

J. At the time a supplier registers to do business with the CITY, or when an individual bid or proposal is submitted, CONSULTANT shall agree to adhere to the Equal Employment Practices specified herein during the performance or conduct of CITY Contracts.

K. Equal Employment Practices shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:

1. Hiring practices;
2. Apprenticeships where such approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;
3. Training and promotional opportunities; and
4. Reasonable accommodations for persons with disabilities.

L. Any subcontract entered into by CONSULTANT to the extent allowed hereunder, shall include a like provision for work to be performed under this AGREEMENT. Failure of CONSULTANT to comply with this requirement or to obtain the compliance of its subconsultants with all such obligations shall subject CONSULTANT to the imposition of any and all sanctions allowed by law, including but not limited to termination of the CONSULTANT'S AGREEMENT with the CITY.

16.3 AFFIRMATIVE ACTION PROGRAM

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

A. During the performance of a CITY contract, CONSULTANT certifies and represents that CONSULTANT and each subconsultant hereunder will adhere to an affirmative action program to ensure that in its employment practices, persons are employed and employees are treated equally and without regard to or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.

1. This provision applies to work or services performed or materials manufactured or assembled in the United States.

2. Nothing, in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.

3. CONSULTANT shall post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.

B. CONSULTANT will in all solicitations or advertisements for employees placed by or on behalf of CONSULTANT state that all qualified applicants will receive consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.

C. As part of the CITY'S supplier registration process, and/or at the request of the awarding authority or the Office of Contract Compliance, CONSULTANT shall certify on an electronic or hard copy form to be supplied, that CONSULTANT has not discriminated in the performance of CITY contracts against any employee or applicant for employment on the basis or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.

D. CONSULTANT shall permit access to and may be required to provide certified copies of all of its records pertaining to employment and to its employment practices by

the awarding authority or the Office of Contract Compliance, for the purpose of investigation to ascertain compliance with the Affirmative Action Program provisions of CITY contracts, and on their or either of their request to provide evidence that it has or will comply therewith.

E. The failure of any CONSULTANT to comply with the Affirmative Action Program provisions of CITY contracts may be deemed to be a material breach of contract. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made except upon a full and fair hearing after notice and an opportunity to be heard has been given to CONSULTANT.

F. Upon a finding duly made that CONSULTANT has breached the Affirmative Action Program provisions of a CITY contract, the contract may be forthwith cancelled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the CITY. In addition thereto, such breach may be the basis for a determination by the awarding authority or the Board of Public Works that the said CONSULTANT is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Los Angeles City Charter. In the event of such determination, such CONSULTANT shall be disqualified from being awarded a contract with the CITY for a period of two years, or until he or she shall establish and carry out a program in conformance with the provisions hereof.

G. In the event of a finding by the Fair Employment and Housing Commission of the State of California, or the Board of Public Works of the City of Los Angeles, or any court of competent jurisdiction, that CONSULTANT has been guilty of willful violation of the California Fair Employment and Housing Act, or the Affirmative Action Program

provisions of a City contract, there may be deducted from the amount payable to CONSULTANT by the CITY under the contract, a penalty of ten dollars (\$10.00) for each person for each calendar day on which such person was discriminated against in violation of the provisions of a CITY contract.

H. Notwithstanding any other provisions of a CITY contract, the CITY shall have any and all other remedies at law or in equity for any breach hereof.

I. Intentionally blank.

J. Nothing contained in CITY contracts shall be construed in any manner so as to require or permit any act which is prohibited by law.

K. CONSULTANT shall submit an Affirmative Action Plan which shall meet the requirements of this chapter at the time it submits its bid or proposal or at the time it registers to do business with the CITY. The plan shall be subject to approval by the Office of Contract Compliance prior to award of the AGREEMENT. The awarding authority may also require contractors and suppliers to take part in a pre-registration, pre-bid, pre-proposal, or pre-award conference in order to develop, improve or implement a qualifying Affirmative Action Plan. Affirmative Action Programs developed pursuant to this section shall be effective for a period of twelve months from the date of approval by the Office of Contract Compliance. In case of prior submission of a plan, CONSULTANT may submit documentation that it has an Affirmative Action Plan approved by the Office of Contract Compliance within the previous twelve months. If the approval is 30 days or less from expiration, CONSULTANT must submit a new Plan to the Office of Contract Compliance and that Plan must be approved before the AGREEMENT is awarded.

1. Every contract of \$5,000 or more which may provide construction, demolition, renovation, conservation or major maintenance of any kind shall in addition comply with the requirements of Section 10.13 of the Los Angeles Administrative Code.
 2. CONSULTANT may establish and adopt as its own Affirmative Action Plan, by affixing his or her signature thereto, an Affirmative Action Plan prepared and furnished by the Office of Contract Compliance, or it may prepare and submit its own Plan for approval.
- L. The Office of Contract Compliance shall annually supply the awarding authorities of the CITY with a list of contractors and suppliers who have developed Affirmative Action Programs. For each contractor and supplier the Office of Contract Compliance shall state the date the approval expires. The Office of Contract Compliance shall not withdraw its approval for any Affirmative Action Plan or change the Affirmative Action Plan after the date of contract award for the entire contract term without the mutual agreement of the awarding authority and CONSULTANT.
- M. The Affirmative Action Plan required to be submitted hereunder and the pre-registration, pre-bid, pre-proposal or pre-award conference which may be required by the Board of Public Works, Office of Contract Compliance or the awarding authority shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:
1. Apprenticeship where approved programs are functioning and other on-the-job training for non-apprenticeable occupations;
 2. Classroom preparation for the job when not apprenticeable;
 3. Pre-apprenticeship education and preparation;
 4. Upgrading, training and opportunities;

5. Encouraging the use of contractors, subcontractors and suppliers of all racial and ethnic groups, provided, however, that any contract subject to this ordinance shall require the contractor, subcontractor or supplier to provide not less than the prevailing wage, working conditions and practices generally observed in private industries in the contractor's, subcontractor's or supplier's geographical area for such work;

6. The entry of qualified women, minority and all other journeymen into the industry; and

7. The provision of needed supplies or job conditions to permit person 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 Affirmation 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 consultants 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 are applicable to the contractor. Failure of the CONSULTANT to comply with this requirement or to obtain the compliance of its subcontractors with all such obligations shall subject the CONSULTANT to the imposition of any and all sanctions allowed by law, including but not limited to termination of the CONSULTANT'S AGREEMENT with the CITY.

ARTICLE 17 – MINORITY, WOMEN AND OTHER BUSINESS ENTERPRISE

OUTREACH PROGRAM

NO CHANGE IN THIS ARTICLE

ARTICLE 18 – SUCCESSORS AND ASSIGNS

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

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 32.

ARTICLE 19 –CONTACT PERSONS –PROPER ADDRESSES –NOTIFICATION

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

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: Robert B. Irvin, Director of Systems

Address: 1149 S. Broadway Ave, Ste 900

Los Angeles, California, 90015

CONSULTANT:

Contact Persons: Julie Leon and Joyce Russell

Address: 17055 Camino San Bernardo

San Diego, CA 92127

E-mail: Julie.Leon@nth.com

E-mail: Joyce.Russell@nth.com

ARTICLE 20 – FORCE MAJEURE

NO CHANGE IN THIS ARTICLE

ARTICLE 21 – SEVERABILITY

NO CHANGE IN THIS ARTICLE

ARTICLE 22 – DISPUTES

NO CHANGE IN THIS ARTICLE

ARTICLE 23 – ENTIRE AGREEMENT

NO CHANGE IN THIS ARTICLE

ARTICLE 24 – APPLICABLE LAW, INTERPRETATION AND ENFORCEMENT

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

Each party's performance hereunder shall comply with all applicable laws of the United States of America, the State of California, and the CITY including but not limited to laws regarding health and safety, labor and employment, wage and hours and licensing laws which affect employees.

This AGREEMENT and its performance shall be enforced and interpreted under the laws of the State of California. All causes of action arising directly or indirectly from the business relationship evidenced by this AGREEMENT must be filed in the appropriate state or federal court located in Los Angeles County, California, and each party agrees to be subject to the jurisdiction of the State of California regardless of their residence. CONSULTANT shall comply with new, amended, or revised laws, regulations, and/or procedures that apply to the performance of this AGREEMENT.

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

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

NO CHANGE IN THIS ARTICLE

ARTICLE 26 – BONDS

NO CHANGE IN THIS ARTICLE

ARTICLE 27 – CHILD SUPPORT ASSIGNMENT ORDERS

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

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

Pursuant to Section 10.10(b) of the Los Angeles Administrative Code, the failure of CONSULTANT to comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignment Orders or Notices of Assignment, or the failure of any Principal Owner(s) of CONSULTANT to comply with any Wage and Earnings Assignment Orders or Notices of Assignment applicable to them personally, shall constitute a default by the CONSULTANT under this AGREEMENT subjecting this AGREEMENT to termination if such default shall continue for more than ninety (90) days after notice of such default to CONSULTANT by the CITY.

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

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

ARTICLE 28 – SERVICE CONTRACTOR WORKER RETENTION ORDINANCE
AND LIVING WAGE ORDINANCE

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

- 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 F and incorporated herein by this reference, and the Service Contractor Worker Retention Ordinance (SCWRO), Section 10.3 et seq., of the Los Angeles Administrative code, as amended from time to time.

These Ordinances require the following:

1. The CONSULTANT assures payment of a minimum initial wage rate to employees as defined in the LWO and as may be adjusted each July 1 and

provision of benefits of compensated and uncompensated days off and health benefits, as defined in the LWO.

2. The CONSULTANT further pledges that it will comply with federal law proscribing retaliation for union organizing and will not retaliate for activities related to the LWO. CONSULTANT shall require each of its subconsultants within the meaning of the LWO to pledge to comply with the terms of federal law proscribing retaliation for union organizing. CONSULTANT shall receive and retain on file the executed pledges from each such subconsultant within ninety (90) days of the execution of the Subcontract. CONSULTANT'S evidence of executed pledges from each such subconsultant shall fully discharge the obligation of the CONSULTANT to comply with the provision in the LWO contained in Section 10.37.6(c) concerning compliance with such federal law.
3. The CONSULTANT, whether an employer, as defined in the LWO, or any other person employing individuals, shall not discharge, reduce in compensation, or otherwise discriminate against any employee for complaining to the CITY with regard to the employer's compliance or anticipated compliance with the LWO, for opposing any practice proscribed by the LWO, for participating in proceedings related to the LWO, for seeking to enforce his or her rights under the LWO by any lawful means, or otherwise asserting rights under the LWO. CONSULTANT shall post the Notice of Prohibition Against Retaliation provided by the CITY
4. Any Subcontract entered into by the CONSULTANT relating to this AGREEMENT, to the extent allowed hereunder, shall be subject to the provisions of LWO and the SCWRO, and shall incorporate the LWO and the SCWRO.

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

CONSULTANT shall also make available to employees the forms informing them about the EIC and forms required to secure advance EIC payments from CONSULTANT.

ARTICLE 29 –AMERICANS WITH DISABILITIES ACT

NO CHANGE IN THIS ARTICLE

ARTICLE 30 –EOUAL BENEFITS ORDINANCE

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

Unless otherwise exempt, this AGREEMENT 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 AGREEMENT, the CONSULTANT certified and represents that the CONSULTANT will comply with the EBO.
- B. The failure of the CONSULTANT to comply with the EBO will be deemed to be a material breach of this AGREEMENT by the CITY.
- C. If the CONSULTANT fails to comply with the EBO, the CITY may cancel, terminate or suspend this AGREEMENT, in whole or in part, and all monies due or to become due under this AGREEMENT may be retained by the CITY. The CITY may also pursue any and all other remedies at law or in equity for any breach.
- D. Failure to comply with the EBO may be used as evidence against CONSULTANT in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40et seq., Contractor Responsibility Ordinance.

- E. If the CITY'S Designated Administrative Agency determined that a CONSULTANT has set up or used its contracting entity for the purpose of evading the intent of the EBO, the CITY may terminate the AGREEMENT. Violation of this provision may be used as evidence against CONSULTANT in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40 et seq., Contractor Responsibility Ordinance.

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

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

ARTICLE 31 –WAIVER

NO CHANGE IN THIS ARTICLE

ARTICLE 32 – PROHIBITION AGAINST ASSIGNMENT OR DELEGATION

NO CHANGES IN THIS ARTICLE

ARTICLE 33 – PERMITS

NO CHANGES IN THIS ARTICLE

ARTICLE 34 – CLAIMS FOR LABOR AND MATERIALS

NO CHANGES IN THIS ARTICLE

ARTICLE 35 – DISCOUNTS

NO CHANGES IN THIS ARTICLE

ARTICLE 36 – CONTRACTOR PERFORMANCE EVALUATION

NO CHANGES IN THIS ARTICLE

ARTICLE 37 – CONTRACTOR RESPONSIBILITY ORDINANCE

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

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

In accordance with the provisions of the Contractor Responsibility Ordinance, by signing this AGREEMENT, CONSULTANT pledges, under penalty of perjury, to comply with all applicable Federal, state and local laws in the performance of this AGREEMENT, including but not limited to, laws regarding health and safety, labor and employment, wages and hours, and licensing laws which affect employees. CONSULTANT further agrees to: (1) notify the CITY within thirty (30)

calendar days after receiving notification that any government agency has initiated an investigation which may result in a finding that CONSULTANT is not in compliance with all applicable federal, state and local laws in performance of this AGREEMENT; (2) notify the CITY within thirty (30) calendar days of all findings by a government agency or court of competent jurisdiction that CONSULTANT has violated the provisions of Section 10.40.3(a) of the Contractor Responsibility Ordinance; (3) unless exempt, ensure that its subconsultants, as defined in the Contractor Responsibility Ordinance, submit a Pledge of Compliance to the CITY; and (4) unless exempt, ensure that its subconsultants, 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 38 – BREACH

NO CHANGES IN THIS ARTICLE

ARTICLE 39 – SLAVERY DISCLOSURE ORDINANCE

NO CHANGES IN THIS ARTICLE

(DELETE) ARTICLE 40 – CHILD CARE POLICY STATEMENT

DELETE THIS ARTICLE AND REPLACE WITH THE FOLLOWING

ARTICLE 40 – FIRST SOURCE HIRING ORDINANCE

Unless approved for an exemption, contractors under contracts primarily for the furnishing of services to or for the CITY, the value of which is in excess of \$25,000 and a contract term of at least three (3) months, and certain recipients of CITY Loans or Grants, shall comply with the provisions of Los Angeles Administrative Code Sections 10.44 et seq., First Source Hiring Ordinance (FSHO). Bidders/Proposers shall refer to Exhibit K attached, "First Source Hiring Ordinance" for further information regarding the requirements of the Ordinance.

The Anticipated Job Opportunities Form (FSHO-1) and Subcontractor Information Form (FSHO-2) contained in the Exhibits attached shall only be required of the Bidder/Proposer that is selected for award of a Contract.

(ADD) ARTICLE 41 – INTELLECTUAL PROPERTY INDEMNIFICATION

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

AGREEMENT; or (2) as a result of the CITY'S actual or intended use of any Work Product furnished by CONSULTANT, or its subconsultants of any tier, under the AGREEMENT. Rights and remedies available to the CITY under this provision are cumulative of those provided for elsewhere in this AGREEMENT 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 AGREEMENT.

(ADD) ARTICLE 42 – INTELLECTUAL PROPERTY WARRANTY

The CONSULTANT represents and warrants that its performance of all obligations under this AGREEMENT 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.

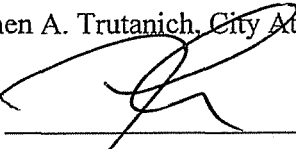
(ADD) ARTICLE 43 – MUNICIPAL LOBBYING ORDINANCE

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

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

APPROVED AS TO FORM:

Carmen A. Trutanich, City Attorney

By: 
John Carvalho

Title: Deputy City Attorney

Date: 8/2/12

CITY OF LOS ANGELES

By: _____

Title: President, Board of Public Works

Date: _____

ATTEST

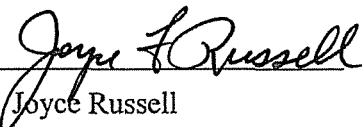
June Lagmay, City Clerk

By: _____

Title: Deputy City Clerk

Date: _____

NTH GENERATION COMPUTING

By: 
Joyce Russell

Title: SVP Finance & Operations

Date: 04/17/12

CONTRACT NO. C- 113313

AMENDMENT NO. 1
TO
ON-CALL PERSONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF LOS ANGELES
AND
CH2M HILL ENGINEERS, INC.

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**FIRST AMENDMENT TO
PERSONAL SERVICES CONTRACT NO. 113313
THE CITY OF LOS ANGELES
AND**

CH2M HILL ENGINEERS, INC.

FOR

**ON-CALL PERSONAL SERVICES FOR SANITATION AUTOMATION PROJECTS
A G R E E M E N T**

THIS AMENDMENT, made and entered into by and between the Bureau of Sanitation, Department of Public Works, a Municipal Corporation acting by order of and through its Board of Public Works, hereinafter called the "CITY", and " CH2M HILL ENGINEERS, INC. (formerly CH2M Hill, Inc.)" hereinafter referred to as the "CONSULTANT" modifying the original agreement executed on March 28, 2008 entitled "On-Call Personal Services between the City of Los Angeles and CH2M Hill Engineers, Inc., hereinafter "AGREEMENT."

W I T N E S S E T H

WHEREAS, the Bureau of Sanitation (BUREAU) developed an Automation Master Plan and A Strategic Plan which identify and recommend numerous opportunities for using technology to improve the Sanitation business, operations, and service functions while supporting the achievement of financial budget reduction goals; and

WHEREAS, the BUREAU desires to implement the recommended automation projects in an expeditious manner; and

WHEREAS, many of these projects will require the use of staffing resources which are not available within the CITY, and therefore the BUREAU has identified the need for

Consultants to assist CITY staff on an "as-needed" basis; and

WHEREAS, the services to be provided by the Consultants may be in any of the five (5) SERVICE AREAS: 1) Software Engineering, 2) Systems Integration, 3) Local and Wide Area Network and Server Design, 4) Project Automation and/or Construction Management Services, and 5) Related Services including database development, data modeling, value engineering, database design, database to database interface, and training services on an "as-needed" basis; and

WHEREAS, the BUREAU developed a Request For Qualifications (RFQ) covering the desired SERVICE AREAS and distributed it to over one hundred fifty firms providing on-call services based upon needs outlined in the Automation Master Plan and Strategic Plan; and

WHEREAS, thirteen (13) firms submitted thirty-six (36) responses to the RFQ by September 25, 2006; and

WHEREAS, thirteen (13) firms were selected as the most qualified firms by the CITY staff based on the evaluation criteria set forth in the RFQ and as presented in Statements of Qualifications; and

WHEREAS, the Board of Public Works on August 20, 2007 authorized the execution of personal services contracts with 12 firms that qualified to provide as-needed professional services for Software Engineering, System Integration, Local and Wide Area Network and Server Design, Project Automation and/or Construction Management, Database and Training Services; and

WHEREAS, each of the selected Consultants has demonstrated qualifications to perform the required services; and

WHEREAS, the services of the Consultants are of an expert and technical nature and are temporary and occasional in character; and

WHEREAS, the CITY desires to retain the use of these pre-qualified Consultants to bid on a specific Statement of Work to provide the additional services required to assist the CITY in improving the level of automation in the wastewater collection and treatment systems. These improvements will include control systems consolidation and upgrades, systems integration, network upgrades, increased standardization, improved power/energy management and improved data management and access systems; and

WHEREAS, the AGREEMENT is executory and does not guarantee consultants will actually be awarded work thereunder; and the BUREAU reserves the right to solicit additional Consultants to be added to the existing list of Consultants ; and

WHEREAS, the BUREAU is in the process of releasing a new Request for Qualifications (RFQ); and

WHEREAS, since awarding new contracts is a time-consuming process and service areas covered by this AGREEMENT are very critical to the BUREAU'S operation , the AGREEMENT is hereby amended to extend the contract term by an additional three(3) years from January 1, 2013 to December 31, 2015; and

WHEREAS, the Bureau is requesting to increase the cost ceiling amount by \$6 million to replace the control systems in the Bureau's Treatment Plants and Collection System for a revised total ceiling of \$20 million.

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

NO CHANGE IN THIS ARTICLE

ARTICLE 2 – DEFINITIONS

NO CHANGE IN THIS ARTICLE

ARTICLE 3 – PROJECT DESCRIPTION

NO CHANGE IN THIS ARTICLE

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

NO CHANGE IN THIS ARTICLE

ARTICLE 5 – KEY CONSULTANT PERSONNEL

ADD SUB ARTICLES 5.3 AND 5.4 TO READ AS FOLLOWS:

5.3 Unless otherwise provided or approved by the CITY, CONSULTANT shall use its own employees to perform the services described in this AGREEMENT. The CITY shall have the right to review and approve any personnel who are assigned to work under this AGREEMENT. CONSULTANT agrees to remove personnel from

performing work under this AGREEMENT if requested to do so by the CITY.

- 5.4 CONSULTANT shall not use subconsultants to assist in performance of this AGREEMENT without the prior written approval of the CITY. If the CITY permits the use of subconsultants, CONSULTANT shall remain responsible for performing all aspects of this AGREEMENT. The CITY has the right to approve CONSULTANT'S subconsultants, and the CITY reserves the right to request replacement of subconsultants. The CITY does not have any obligation to pay CONSULTANT'S subconsultants, and nothing herein creates any privity between the CITY and the subconsultants.

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

NO CHANGE IN THIS ARTICLE

ARTICLE 7– TERM OF AGREEMENT AND TIME OF EFFECTIVENESS

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

Unless otherwise provided, this Amendment No. 1 shall extend the term of this AGREEMENT from January 1, 2013 until December 31, 2015 unless terminated as provided under Article 8 or extended by an amendment to this AGREEMENT and signed by all parties.

ARTICLE 8 – TERMINATION

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

- 8.1 This AGREEMENT may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this

AGREEMENT through no fault of the terminating party, provided that no termination may be effected unless the other party is given (1) not less than ten (10) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination.

8.2 This AGREEMENT may be terminated in whole or in part in writing by the CITY for its convenience, provided that the CONSULTANT is given (1) not less than thirty (30) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination. Upon receipt of said written notice, CONSULTANT shall immediately take action not to incur any additional obligations, cost or expense, except as may be reasonable necessary to terminate its activities.

8.3 This AGREEMENT may be immediately terminated in writing by the CITY if (1) a federal or state proceeding for relief of debtors is undertaken by or against CONSULTANT or if CONSULTANT makes an assignment for the benefit of creditors or (2) CONSULTANT engages in any dishonest conduct related to the performance or administration of this AGREEMENT or violates the CITY'S lobbying policies.

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

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

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

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

8.7 If, after the termination for failure of the CONSULTANT to fulfill contractual obligations, it is determined that the CONSULTANT had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of the CITY. In such event, adjustment of the AGREEMENT price shall be made as provided in Article 8.4 of this

article.

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

ARTICLE 9 – SUB-CONTRACT APPROVAL

NO CHANGE IN THIS ARTICLE

ARTICLE 10 – COMPENSATION, INVOICING, AND PAYMENT

ADD SUB-ARTICLE 10.4 TO READ AS FOLLOWS:

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

NO CHANGE IN THIS ARTICLE

ARTICLE 12 – INDEMNIFICATION AND INSURANCE

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

12.1 INDEMNIFICATION

Except to the extent of the active negligence or willful misconduct of CITY, or any of its Boards, Officers, Agents, Employees, Assigns and Successor in Interest, CONSULTANT undertakes and agrees to defend, indemnify and hold harmless CITY and any of its

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

12.2 INSURANCE

During the term of this AGREEMENT and without limiting the CONSULTANT'S indemnification of the CITY, the CONSULTANT shall provide and maintain at its own expense during the term of this AGREEMENT a program of insurance having the coverage and limits customarily carried and actually arranged by CONSULTANT but not less than the amounts and types listed on the Insurance Requirements Sheet (Form Gen 146/IR), in EXHIBIT D 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 D, and which can also be found at the Board of Public Work's website <http://bpw.lacity.org/Secretariat/Insurance.html>, in the form Instructions and Information on Complying with CITY Insurance Requirements, rev

10/09, and shall otherwise be in a form acceptable to the City Administrative Officer, Risk Management. The CONSULTANT shall comply with all Insurance Contractual Requirements shown on EXHIBIT D hereto. EXHIBIT D is hereby incorporated by reference and made a part of this AGREEMENT.

12.3 CONSULTANT may elect to wait until awarded a task order before providing proof of Professional Liability Insurance as required in Section 12.2. However, the Task Order will not be signed and work may not proceed until all the requirements of Section 12.2, including proof of Professional Liability Insurance are met.

ARTICLE 13 – INDEPENDENT CONTRACTORS

NO CHANGE IN THIS ARTICLE

ARTICLE 14 – WARRANTY AND RESPONSIBILITY OF CONSULTANT

NO CHANGE IN THIS ARTICLE

ARTICLE 15 – OWNERSHIP OF DATA

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

Unless otherwise provided for herein, all Work Products originated and prepared by CONSULTANT or its subconsultants, of any tier under this AGREEMENT 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 AGREEMENT including, without limitation, documents, material, data, reports, manuals, specifications, artwork, drawings, sketches, computer programs and databases, schematics, photographs, video and

audiovisual recordings, sound recordings, marks, logos, graphic designs, notes, websites, domain names, inventions, processes, formulas matters and combinations thereof, and all forms of intellectual property. CONSULTANT hereby assigns, and agrees to assign, all goodwill, copyright, trademark, patent, trade secret and all other intellectual property rights worldwide in any Works Products originated and prepared by CONSULTANT under this AGREEMENT. CONSULTANT further agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights provided herein.

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

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

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

ARTICLE 16 – NONDISCRIMINATION AND AFFIRMATIVE ACTION

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

16.1 NON-DISCRIMINATION

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

16.2 EQUAL EMPLOYMENT PRACTICES

Unless otherwise exempt, this AGREEMENT 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 AGREEMENT, CONSULTANT agrees and

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

1. This provision applies to work or service performed or materials manufactured or assembled in the United States.

2. Nothing in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.

3. CONSULTANT agrees to post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.

B. CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of CONSULTANT, state that all qualified applicants will received consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.

C. As part of the CITY'S supplier registration process, and/or at the request of the awarding authority, or the Board of Public Works, Office of Contract Compliance, CONSULTANT shall certify in the specified format that he or she has not discriminated in the performance of CITY contracts against any employee or applicant for employment on the basis or because of race, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status or medical condition.

D. CONSULTANT shall permit access to and may be required to provide certified copies of all of his or her records pertaining to employment and to employment practices by the awarding authority or the Office of Contract Compliance for the purpose of

investigation to ascertain compliance with the Equal Employment Practices provisions of CITY contracts. On their or either of their request, CONSULTANT shall provide evidence that he or she has or will comply therewith.

E. The failure of any CONSULTANT to comply with the Equal Employment Practices provisions of this AGREEMENT may be deemed to be a material breach of CITY contracts. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made or penalties assessed except upon a full and fair hearing after notice and an opportunity to be heard have been given to CONSULTANT.

F. Upon a finding duly made that CONSULTANT has failed to comply with the Equal Employment Practices provisions of the CITY AGREEMENT, the AGREEMENT 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 that the CONSULTANT is an irresponsible bidder or proposer pursuant to the provision of Section 371 of the Charter of the City of Los Angeles. In the event of such a determination, CONSULTANT shall be disqualified from being awarded a contract with the CITY for a period of two (2) years, or until CONSULTANT shall establish and carry out a program in conformance with the provisions hereof.

G. Notwithstanding any other provision of this AGREEMENT, 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 AGREEMENT shall be construed in any manner so as to require or permit any act which is prohibited by law.

J. At the time a supplier registers to do business with the CITY, or when an individual bid or proposal is submitted, CONSULTANT shall agree to adhere to the Equal Employment Practices specified herein during the performance or conduct of CITY Contracts.

K. Equal Employment Practices shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:

1. Hiring practices;
2. Apprenticeships where such approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;
3. Training and promotional opportunities; and
4. Reasonable accommodations for persons with disabilities.

L. Any subcontract entered into by CONSULTANT to the extent allowed hereunder, shall include a like provision for work to be performed under this AGREEMENT.

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

16.3 AFFIRMATIVE ACTION PROGRAM

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

A. During the performance of a CITY contract, CONSULTANT certifies and represents that CONSULTANT and each subconsultant hereunder will adhere to an affirmative action program to ensure that in its employment practices, persons are employed and employees are treated equally and without regard to or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.

1. This provision applies to work or services performed or materials manufactured or assembled in the United States.

2. Nothing, in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.

3. CONSULTANT shall post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.

B. CONSULTANT will in all solicitations or advertisements for employees placed by or on behalf of CONSULTANT state that all qualified applicants will receive consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.

C. As part of the CITY'S supplier registration process, and/or at the request of the awarding authority or the Office of Contract Compliance, CONSULTANT shall certify on an electronic or hard copy form to be supplied, that CONSULTANT has not discriminated in the performance of CITY contracts against any employee or applicant for employment on the basis or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.

D. CONSULTANT shall permit access to and may be required to provide certified copies of all of its records pertaining to employment and to its employment practices by

the awarding authority or the Office of Contract Compliance, for the purpose of investigation to ascertain compliance with the Affirmative Action Program provisions of CITY contracts, and on their or either of their request to provide evidence that it has or will comply therewith.

E. The failure of any CONSULTANT to comply with the Affirmative Action Program provisions of CITY contracts may be deemed to be a material breach of contract. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made except upon a full and fair hearing after notice and an opportunity to be heard has been given to CONSULTANT.

F. Upon a finding duly made that CONSULTANT has breached the Affirmative Action Program provisions of a CITY contract, the contract may be forthwith cancelled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the CITY. In addition thereto, such breach may be the basis for a determination by the awarding authority or the Board of Public Works that the said CONSULTANT is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Los Angeles City Charter. In the event of such determination, such CONSULTANT shall be disqualified from being awarded a contract with the CITY for a period of two years, or until he or she shall establish and carry out a program in conformance with the provisions hereof.

G. In the event of a finding by the Fair Employment and Housing Commission of the State of California, or the Board of Public Works of the City of Los Angeles, or any court of competent jurisdiction, that CONSULTANT has been guilty of willful violation of the California Fair Employment and Housing Act, or the Affirmative Action Program

provisions of a City contract, there may be deducted from the amount payable to CONSULTANT by the CITY under the contract, a penalty of ten dollars (\$10.00) for each person for each calendar day on which such person was discriminated against in violation of the provisions of a CITY contract.

H. Notwithstanding any other provisions of a CITY contract, the CITY shall have any and all other remedies at law or in equity for any breach hereof.

I. Intentionally blank.

J. Nothing contained in CITY contracts shall be construed in any manner so as to require or permit any act which is prohibited by law.

K. CONSULTANT shall submit an Affirmative Action Plan which shall meet the requirements of this chapter at the time it submits its bid or proposal or at the time it registers to do business with the CITY. The plan shall be subject to approval by the Office of Contract Compliance prior to award of the AGREEMENT. The awarding authority may also require contractors and suppliers to take part in a pre-registration, pre-bid, pre-proposal, or pre-award conference in order to develop, improve or implement a qualifying Affirmative Action Plan. Affirmative Action Programs developed pursuant to this section shall be effective for a period of twelve months from the date of approval by the Office of Contract Compliance. In case of prior submission of a plan, CONSULTANT may submit documentation that it has an Affirmative Action Plan approved by the Office of Contract Compliance within the previous twelve months. If the approval is 30 days or less from expiration, CONSULTANT must submit a new Plan to the Office of Contract Compliance and that Plan must be approved before the AGREEMENT is awarded.

1. Every contract of \$5,000 or more which may provide construction, demolition, renovation, conservation or major maintenance of any kind shall in addition comply with the requirements of Section 10.13 of the Los Angeles Administrative Code.

2. CONSULTANT may establish and adopt as its own Affirmative Action Plan, by affixing his or her signature thereto, an Affirmative Action Plan prepared and furnished by the Office of Contract Compliance, or it may prepare and submit its own Plan for approval.

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

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

1. Apprenticeship where approved programs are functioning and other on-the-job training for non-apprenticeable occupations;
2. Classroom preparation for the job when not apprenticeable;
3. Pre-apprenticeship education and preparation;
4. Upgrading, training and opportunities;

5. Encouraging the use of contractors, subcontractors and suppliers of all racial and ethnic groups, provided, however, that any contract subject to this ordinance shall require the contractor, subcontractor or supplier to provide not less than the prevailing wage, working conditions and practices generally observed in private industries in the contractor's, subcontractor's or supplier's geographical area for such work;

6. The entry of qualified women, minority and all other journeymen into the industry; and

7. The provision of needed supplies or job conditions to permit person 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 Affirmation 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 consultants 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 are applicable to the contractor. Failure of the CONSULTANT to comply with this requirement or to obtain the compliance of its subcontractors with all such obligations shall subject the CONSULTANT to the imposition of any and all sanctions allowed by law, including but not limited to termination of the CONSULTANT'S AGREEMENT with the CITY.

ARTICLE 17 – MINORITY, WOMEN AND OTHER BUSINESS ENTERPRISE

OUTREACH PROGRAM

NO CHANGE IN THIS ARTICLE

ARTICLE 18 – SUCCESSORS AND ASSIGNS

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

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 32.

ARTICLE 19 –CONTACT PERSONS –PROPER ADDRESSES –NOTIFICATION

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

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: Robert B. Irvin, Director of Systems

Address: 1149 S. Broadway Ave, Ste 900

Los Angeles, California, 90015

CONSULTANT:

Contact Person: Pete Perciavalle, Vice President

Address: 1000 Wilshire Blvd., 21st Floor

Los Angeles, CA 90014

E-mail: pete.perciavalle@ch2m.com

ARTICLE 20 – FORCE MAJEURE

NO CHANGE IN THIS ARTICLE

ARTICLE 21 – SEVERABILITY

NO CHANGE IN THIS ARTICLE

ARTICLE 22 – DISPUTES

NO CHANGE IN THIS ARTICLE

ARTICLE 23 – ENTIRE AGREEMENT

NO CHANGE IN THIS ARTICLE

ARTICLE 24 – APPLICABLE LAW, INTERPRETATION AND ENFORCEMENT

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

Each party's performance hereunder shall comply with all applicable laws of the United States of America, the State of California, and the CITY including but not limited to laws regarding health and safety, labor and employment, wage and hours and licensing laws which affect employees.

This AGREEMENT and its performance shall be enforced and interpreted under the laws of the State of California. All causes of action arising directly or indirectly from the business relationship evidenced by this AGREEMENT must be filed in the appropriate state or federal court located in Los Angeles County, California, and each party agrees to be subject to the jurisdiction of the State of California regardless of their residence. CONSULTANT shall comply with new, amended, or revised laws, regulations, and/or procedures that apply to the performance of this AGREEMENT.

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

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

NO CHANGE IN THIS ARTICLE

ARTICLE 26 – BONDS

NO CHANGE IN THIS ARTICLE

ARTICLE 27 – CHILD SUPPORT ASSIGNMENT ORDERS

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

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

Pursuant to Section 10.10(b) of the Los Angeles Administrative Code, the failure of CONSULTANT to comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignment Orders or Notices of Assignment, or the failure of any Principal Owner(s) of CONSULTANT to comply with any Wage and Earnings Assignment Orders or Notices of Assignment applicable to them personally, shall constitute a default by the CONSULTANT under this AGREEMENT subjecting this AGREEMENT to termination if such default shall continue for more than ninety (90) days after notice of such default to CONSULTANT by the CITY.

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

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

ARTICLE 28 – SERVICE CONTRACTOR WORKER RETENTION ORDINANCE
AND LIVING WAGE ORDINANCE

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

- 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 F and incorporated herein by this reference, and the Service Contractor Worker Retention Ordinance (SCWRO), Section 10.3 et seq., of the Los Angeles Administrative code, as amended from time to time.

These Ordinances require the following:

1. The CONSULTANT assures payment of a minimum initial wage rate to employees as defined in the LWO and as may be adjusted each July 1 and

provision of benefits of compensated and uncompensated days off and health benefits, as defined in the LWO.

2. The CONSULTANT further pledges that it will comply with federal law proscribing retaliation for union organizing and will not retaliate for activities related to the LWO. CONSULTANT shall require each of its subconsultants within the meaning of the LWO to pledge to comply with the terms of federal law proscribing retaliation for union organizing. CONSULTANT shall receive and retain on file the executed pledges from each such subconsultant within ninety (90) days of the execution of the Subcontract. CONSULTANT'S evidence of executed pledges from each such subconsultant shall fully discharge the obligation of the CONSULTANT to comply with the provision in the LWO contained in Section 10.37.6(c) concerning compliance with such federal law.
3. The CONSULTANT, whether an employer, as defined in the LWO, or any other person employing individuals, shall not discharge, reduce in compensation, or otherwise discriminate against any employee for complaining to the CITY with regard to the employer's compliance or anticipated compliance with the LWO, for opposing any practice proscribed by the LWO, for participating in proceedings related to the LWO, for seeking to enforce his or her rights under the LWO by any lawful means, or otherwise asserting rights under the LWO. CONSULTANT shall post the Notice of Prohibition Against Retaliation provided by the CITY
4. Any Subcontract entered into by the CONSULTANT relating to this AGREEMENT, to the extent allowed hereunder, shall be subject to the provisions of LWO and the SCWRO, and shall incorporate the LWO and the SCWRO.

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

CONSULTANT shall also make available to employees the forms informing them about the EIC and forms required to secure advance EIC payments from CONSULTANT.

ARTICLE 29 –AMERICANS WITH DISABILITIES ACT

NO CHANGE IN THIS ARTICLE

ARTICLE 30 –EQUAL BENEFITS ORDINANCE

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

Unless otherwise exempt, this AGREEMENT 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 AGREEMENT, the CONSULTANT certifies and represents that the CONSULTANT will comply with the EBO.
- B. The failure of the CONSULTANT to comply with the EBO will be deemed to be a material breach of this AGREEMENT by the CITY.
- C. If the CONSULTANT fails to comply with the EBO, the CITY may cancel, terminate or suspend this AGREEMENT, in whole or in part, and all monies due or to become due under this AGREEMENT may be retained by the CITY. The CITY may also pursue any and all other remedies at law or in equity for any breach.
- D. Failure to comply with the EBO may be used as evidence against CONSULTANT in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40et seq., Contractor Responsibility Ordinance.

- E. If the CITY'S Designated Administrative Agency determined that a CONSULTANT has set up or used its contracting entity for the purpose of evading the intent of the EBO, the CITY may terminate the AGREEMENT. Violation of this provision may be used as evidence against CONSULTANT in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40 et seq., Contractor Responsibility Ordinance.

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

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

ARTICLE 31 -WAIVER

NO CHANGE IN THIS ARTICLE

ARTICLE 32 - PROHIBITION AGAINST ASSIGNMENT OR DELEGATION

NO CHANGES IN THIS ARTICLE

ARTICLE 33 - PERMITS

NO CHANGES IN THIS ARTICLE

ARTICLE 34 – CLAIMS FOR LABOR AND MATERIALS

NO CHANGES IN THIS ARTICLE

ARTICLE 35 – DISCOUNTS

NO CHANGES IN THIS ARTICLE

ARTICLE 36 – CONTRACTOR PERFORMANCE EVALUATION

NO CHANGES IN THIS ARTICLE

ARTICLE 37 – CONTRACTOR RESPONSIBILITY ORDINANCE

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

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

In accordance with the provisions of the Contractor Responsibility Ordinance, by signing this AGREEMENT, CONSULTANT pledges, under penalty of perjury, to comply with all applicable Federal, state and local laws in the performance of this AGREEMENT, including but not limited to, laws regarding health and safety, labor and employment, wages and hours, and licensing laws which affect employees. CONSULTANT further agrees to: (1) notify the CITY within thirty (30)

calendar days after receiving notification that any government agency has initiated an investigation which may result in a finding that CONSULTANT is not in compliance with all applicable federal, state and local laws in performance of this AGREEMENT; (2) notify the CITY within thirty (30) calendar days of all findings by a government agency or court of competent jurisdiction that CONSULTANT has violated the provisions of Section 10.40.3(a) of the Contractor Responsibility Ordinance; (3) unless exempt, ensure that its subconsultants, as defined in the Contractor Responsibility Ordinance, submit a Pledge of Compliance to the CITY; and (4) unless exempt, ensure that its subconsultants, 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 38 – BREACH

NO CHANGES IN THIS ARTICLE

ARTICLE 39 – SLAVERY DISCLOSURE ORDINANCE

NO CHANGES IN THIS ARTICLE

(DELETE) ARTICLE 40 – CHILD CARE POLICY STATEMENT

DELETE THIS ARTICLE AND REPLACE WITH THE FOLLOWING

ARTICLE 40 – FIRST SOURCE HIRING ORDINANCE

Unless approved for an exemption, contractors under contracts primarily for the furnishing of services to or for the CITY, the value of which is in excess of \$25,000 and a contract term of at least three (3) months, and certain recipients of CITY Loans or Grants, shall comply with the provisions of Los Angeles Administrative Code Sections 10.44 et seq., First Source Hiring Ordinance (FSHO). Bidders/Proposers shall refer to Exhibit K attached, "First Source Hiring Ordinance" for further information regarding the requirements of the Ordinance.

The Anticipated Job Opportunities Form (FSHO-1) and Subcontractor Information Form (FSHO-2) contained in the Exhibits attached shall only be required of the Bidder/Proposer that is selected for award of a Contract.

(ADD) ARTICLE 41 – INTELLECTUAL PROPERTY INDEMNIFICATION

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

application, equipment, device, instrumentation, software, hardware, or firmware used by CONSULTANT, or its subconsultants of any tier, in performing the work under this AGREEMENT; or (2) as a result of the CITY'S actual or intended use of any Work Product furnished by CONSULTANT, or its subconsultants of any tier, under the AGREEMENT. Rights and remedies available to the CITY under this provision are cumulative of those provided for elsewhere in this AGREEMENT 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 AGREEMENT.

(ADD) ARTICLE 42 – INTELLECTUAL PROPERTY WARRANTY

The CONSULTANT represents and warrants that its performance of all obligations under this AGREEMENT 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.

(ADD) ARTICLE 43 – MUNICIPAL LOBBYING ORDINANCE

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

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

APPROVED AS TO FORM:


Carmen A. Trutanich, City Attorney

By: 
John Carvalho

Title: Deputy City Attorney

Date: 8/2/12

CH2M HILL ENGINEERS, INC.

By: 
Pete Perinelli

Title: Vice President

Date: 5/4/12

CITY OF LOS ANGELES

By: _____

Title: President, Board of Public Works

Date: _____

ATTEST

June Lagmay, City Clerk

By: _____

Title: Deputy City Clerk

Date: _____

CONTRACT NO. C- 113314

AMENDMENT NO. 1

TO

ON-CALL PERSONAL SERVICES AGREEMENT

BETWEEN

THE CITY OF LOS ANGELES

AND

PHILIP A. NAECKER, CSE

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**FIRST AMENDMENT TO
PERSONAL SERVICES CONTRACT NO. 113314
THE CITY OF LOS ANGELES
AND
PHILIP A. NAECKER
FOR
ON-CALL PERSONAL SERVICES FOR SANITATION AUTOMATION PROJECTS
A G R E E M E N T**

THIS AMENDMENT, made and entered into by and between the Bureau of Sanitation, Department of Public Works, a Municipal Corporation acting by order of and through its Board of Public Works, hereinafter called the "CITY", and " PHILIP A. NAECKER" hereinafter referred to as the "CONSULTANT" modifying the original agreement executed on March 28, 2008 entitled "On-Call Personal Services between the City of Los Angeles and Philip A. Naecker, hereinafter "AGREEMENT."

W I T N E S S E T H

WHEREAS, the Bureau of Sanitation (BUREAU) developed an Automation Master Plan and A Strategic Plan which identify and recommend numerous opportunities for using technology to improve the Sanitation business, operations, and service functions while supporting the achievement of financial budget reduction goals; and

WHEREAS, the BUREAU desires to implement the recommended automation projects in an expeditious manner; and

WHEREAS, many of these projects will require the use of staffing resources which are not available within the CITY, and therefore the BUREAU has identified the need for

Consultants to assist CITY staff on an "as-needed" basis; and

WHEREAS, the services to be provided by the Consultants may be in any of the five (5) SERVICE AREAS: 1) Software Engineering, 2) Systems Integration, 3) Local and Wide Area Network and Server Design, 4) Project Automation and/or Construction Management Services, and 5) Related Services including database development, data modeling, value engineering, database design, database to database interface, and training services on an "as-needed" basis; and

WHEREAS, the BUREAU developed a Request For Qualifications (RFQ) covering the desired SERVICE AREAS and distributed it to over one hundred fifty firms providing on-call services based upon needs outlined in the Automation Master Plan and Strategic Plan; and

WHEREAS, thirteen (13) firms submitted thirty-six (36) responses to the RFQ by September 25, 2006; and

WHEREAS, thirteen (13) firms were selected as the most qualified firms by the CITY staff based on the evaluation criteria set forth in the RFQ and as presented in Statements of Qualifications; and

WHEREAS, the Board of Public Works on August 20, 2007 authorized the execution of personal services contracts with 12 firms that qualified to provide as-needed professional services for Software Engineering, System Integration, Local and Wide Area Network and Server Design, Project Automation and/or Construction Management, Database and Training Services; and

WHEREAS, each of the selected Consultants has demonstrated qualifications to perform the required services; and

WHEREAS, the services of the Consultants are of an expert and technical nature and are temporary and occasional in character; and

WHEREAS, the CITY desires to retain the use of these pre-qualified Consultants to bid on a specific Statement of Work to provide the additional services required to assist the CITY in improving the level of automation in the wastewater collection and treatment systems. These improvements will include control systems consolidation and upgrades, systems integration, network upgrades, increased standardization, improved power/energy management and improved data management and access systems; and

WHEREAS, the AGREEMENT is executory and does not guarantee consultants will actually be awarded work thereunder; and the BUREAU reserves the right to solicit additional Consultants to be added to the existing list of Consultants ; and

WHEREAS, the BUREAU is in the process of releasing a new Request for Qualifications (RFQ); and

WHEREAS, since awarding new contracts is a time-consuming process and service areas covered by this AGREEMENT are very critical to the BUREAU'S operation , the AGREEMENT is hereby amended to extend the contract term by an additional three(3) years from January 1, 2013 to December 31, 2015; and

WHEREAS, the Bureau is requesting to increase the cost ceiling amount by \$6 million to replace the control systems in the Bureau's Treatment Plants and Collection System for a revised total ceiling of \$20 million.

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

NO CHANGE IN THIS ARTICLE

ARTICLE 2 – DEFINITIONS

NO CHANGE IN THIS ARTICLE

ARTICLE 3 – PROJECT DESCRIPTION

NO CHANGE IN THIS ARTICLE

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

NO CHANGE IN THIS ARTICLE

ARTICLE 5 – KEY CONSULTANT PERSONNEL

ADD SUB ARTICLES 5.3 AND 5.4 TO READ AS FOLLOWS:

5.3 Unless otherwise provided or approved by the CITY, CONSULTANT shall use its own employees to perform the services described in this AGREEMENT. The CITY shall have the right to review and approve any personnel who are assigned to work under this AGREEMENT. CONSULTANT agrees to remove personnel from

performing work under this AGREEMENT if requested to do so by the CITY.

- 5.4 CONSULTANT shall not use subconsultants to assist in performance of this AGREEMENT without the prior written approval of the CITY. If the CITY permits the use of subconsultants, CONSULTANT shall remain responsible for performing all aspects of this AGREEMENT. The CITY has the right to approve CONSULTANT'S subconsultants, and the CITY reserves the right to request replacement of subconsultants. The CITY does not have any obligation to pay CONSULTANT'S subconsultants, and nothing herein creates any privity between the CITY and the subconsultants.

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

NO CHANGE IN THIS ARTICLE

ARTICLE 7– TERM OF AGREEMENT AND TIME OF EFFECTIVENESS

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

Unless otherwise provided, this Amendment No. 1 shall extend the term of this AGREEMENT from January 1, 2013 until December 31, 2015 unless terminated as provided under Article 8 or extended by an amendment to this AGREEMENT and signed by all parties.

ARTICLE 8 – TERMINATION

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

- 8.1 This AGREEMENT may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this

AGREEMENT through no fault of the terminating party, provided that no termination may be effected unless the other party is given (1) not less than ten (10) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination.

8.2 This AGREEMENT may be terminated in whole or in part in writing by the CITY for its convenience, provided that the CONSULTANT is given (1) not less than thirty (30) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination. Upon receipt of said written notice, CONSULTANT shall immediately take action not to incur any additional obligations, cost or expense, except as may be reasonable necessary to terminate its activities.

8.3 This AGREEMENT may be immediately terminated in writing by the CITY if (1) a federal or state proceeding for relief of debtors is undertaken by or against CONSULTANT or if CONSULTANT makes an assignment for the benefit of creditors or (2) CONSULTANT engages in any dishonest conduct related to the performance or administration of this AGREEMENT or violates the CITY'S lobbying policies.

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

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

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

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

8.7 If, after the termination for failure of the CONSULTANT to fulfill contractual obligations, it is determined that the CONSULTANT had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of the CITY. In such event, adjustment of the AGREEMENT price shall be made as provided in Article 8.4 of this

article.

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

ARTICLE 9 – SUB-CONTRACT APPROVAL

NO CHANGE IN THIS ARTICLE

ARTICLE 10 – COMPENSATION, INVOICING, AND PAYMENT

ADD SUB-ARTICLE 10.4 TO READ AS FOLLOWS:

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

NO CHANGE IN THIS ARTICLE

ARTICLE 12 – INDEMNIFICATION AND INSURANCE

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

12.1 INDEMNIFICATION

Except for the active negligence or willful misconduct of CITY, or any of its Boards, Officers, Agents, Employees, Assigns and Successor in Interest, CONSULTANT undertakes and agrees to defend, indemnify and hold harmless CITY and any of its

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

12.2 INSURANCE

During the term of this AGREEMENT and without limiting the CONSULTANT'S indemnification of the CITY, the CONSULTANT shall provide and maintain at its own expense during the term of this AGREEMENT a program of insurance having the coverage and limits customarily carried and actually arranged by CONSULTANT but not less than the amounts and types listed on the Insurance Requirements Sheet (Form Gen 146/IR), in EXHIBIT D 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 D, and which can also be found at the Board of Public Work's website <http://bpw.lacity.org/Secretariat/Insurance.html>, in the form Instructions and Information on Complying with CITY Insurance Requirements, rev

10/09, and shall otherwise be in a form acceptable to the City Administrative Officer, Risk Management. The CONSULTANT shall comply with all Insurance Contractual Requirements shown on EXHIBIT D hereto. EXHIBIT D is hereby incorporated by reference and made a part of this AGREEMENT.

12.3 CONSULTANT may elect to wait until awarded a task order before providing proof of Professional Liability Insurance as required in Section 12.2. However, the Task Order will not be signed and work may not proceed until all the requirements of Section 12.2, including proof of Professional Liability Insurance are met.

ARTICLE 13 – INDEPENDENT CONTRACTORS

NO CHANGE IN THIS ARTICLE

ARTICLE 14 – WARRANTY AND RESPONSIBILITY OF CONSULTANT

NO CHANGE IN THIS ARTICLE

ARTICLE 15 – OWNERSHIP OF DATA

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

Unless otherwise provided for herein, all Work Products originated and prepared by CONSULTANT or its subconsultants, of any tier under this AGREEMENT 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 AGREEMENT including, without limitation, documents, material, data, reports, manuals, specifications, artwork, drawings, sketches, computer programs and databases, schematics, photographs, video and

audiovisual recordings, sound recordings, marks, logos, graphic designs, notes, websites, domain names, inventions, processes, formulas matters and combinations thereof, and all forms of intellectual property. CONSULTANT hereby assigns, and agrees to assign, all goodwill, copyright, trademark, patent, trade secret and all other intellectual property rights worldwide in any Works Products originated and prepared by CONSULTANT under this AGREEMENT. CONSULTANT further agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights provided herein.

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

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

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

ARTICLE 16 – NONDISCRIMINATION AND AFFIRMATIVE ACTION

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

16.1 NON-DISCRIMINATION

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

16.2 EQUAL EMPLOYMENT PRACTICES

Unless otherwise exempt, this AGREEMENT 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 AGREEMENT, CONSULTANT agrees and

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

1. This provision applies to work or service performed or materials manufactured or assembled in the United States.

2. Nothing in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.

3. CONSULTANT agrees to post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.

B. CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of CONSULTANT, state that all qualified applicants will received consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.

C. As part of the CITY'S supplier registration process, and/or at the request of the awarding authority, or the Board of Public Works, Office of Contract Compliance, CONSULTANT shall certify in the specified format that he or she has not discriminated in the performance of CITY contracts against any employee or applicant for employment on the basis or because of race, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status or medical condition.

D. CONSULTANT shall permit access to and may be required to provide certified copies of all of his or her records pertaining to employment and to employment practices by the awarding authority or the Office of Contract Compliance for the purpose of

investigation to ascertain compliance with the Equal Employment Practices provisions of CITY contracts. On their or either of their request, CONSULTANT shall provide evidence that he or she has or will comply therewith.

E. The failure of any CONSULTANT to comply with the Equal Employment Practices provisions of this AGREEMENT may be deemed to be a material breach of CITY contracts. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made or penalties assessed except upon a full and fair hearing after notice and an opportunity to be heard have been given to CONSULTANT.

F. Upon a finding duly made that CONSULTANT has failed to comply with the Equal Employment Practices provisions of the CITY AGREEMENT, the AGREEMENT 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 that the CONSULTANT is an irresponsible bidder or proposer pursuant to the provision of Section 371 of the Charter of the City of Los Angeles. In the event of such a determination, CONSULTANT shall be disqualified from being awarded a contract with the CITY for a period of two (2) years, or until CONSULTANT shall establish and carry out a program in conformance with the provisions hereof.

G. Notwithstanding any other provision of this AGREEMENT, 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 AGREEMENT shall be construed in any manner so as to require or permit any act which is prohibited by law.

J. At the time a supplier registers to do business with the CITY, or when an individual bid or proposal is submitted, CONSULTANT shall agree to adhere to the Equal Employment Practices specified herein during the performance or conduct of CITY Contracts.

K. Equal Employment Practices shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:

1. Hiring practices;
2. Apprenticeships where such approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;
3. Training and promotional opportunities; and
4. Reasonable accommodations for persons with disabilities.

L. Any subcontract entered into by CONSULTANT to the extent allowed hereunder, shall include a like provision for work to be performed under this AGREEMENT.

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

16.3 AFFIRMATIVE ACTION PROGRAM

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

A. During the performance of a CITY contract, CONSULTANT certifies and represents that CONSULTANT and each subconsultant hereunder will adhere to an affirmative action program to ensure that in its employment practices, persons are employed and employees are treated equally and without regard to or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.

1. This provision applies to work or services performed or materials manufactured or assembled in the United States.

2. Nothing, in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.

3. CONSULTANT shall post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.

B. CONSULTANT will in all solicitations or advertisements for employees placed by or on behalf of CONSULTANT state that all qualified applicants will receive consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.

C. As part of the CITY'S supplier registration process, and/or at the request of the awarding authority or the Office of Contract Compliance, CONSULTANT shall certify on an electronic or hard copy form to be supplied, that CONSULTANT has not discriminated in the performance of CITY contracts against any employee or applicant for employment on the basis or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.

D. CONSULTANT shall permit access to and may be required to provide certified copies of all of its records pertaining to employment and to its employment practices by

the awarding authority or the Office of Contract Compliance, for the purpose of investigation to ascertain compliance with the Affirmative Action Program provisions of CITY contracts, and on their or either of their request to provide evidence that it has or will comply therewith.

E. The failure of any CONSULTANT to comply with the Affirmative Action Program provisions of CITY contracts may be deemed to be a material breach of contract. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made except upon a full and fair hearing after notice and an opportunity to be heard has been given to CONSULTANT.

F. Upon a finding duly made that CONSULTANT has breached the Affirmative Action Program provisions of a CITY contract, the contract may be forthwith cancelled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the CITY. In addition thereto, such breach may be the basis for a determination by the awarding authority or the Board of Public Works that the said CONSULTANT is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Los Angeles City Charter. In the event of such determination, such CONSULTANT shall be disqualified from being awarded a contract with the CITY for a period of two years, or until he or she shall establish and carry out a program in conformance with the provisions hereof.

G. In the event of a finding by the Fair Employment and Housing Commission of the State of California, or the Board of Public Works of the City of Los Angeles, or any court of competent jurisdiction, that CONSULTANT has been guilty of willful violation of the California Fair Employment and Housing Act, or the Affirmative Action Program

provisions of a City contract, there may be deducted from the amount payable to CONSULTANT by the CITY under the contract, a penalty of ten dollars (\$10.00) for each person for each calendar day on which such person was discriminated against in violation of the provisions of a CITY contract.

H. Notwithstanding any other provisions of a CITY contract, the CITY shall have any and all other remedies at law or in equity for any breach hereof.

I. Intentionally blank.

J. Nothing contained in CITY contracts shall be construed in any manner so as to require or permit any act which is prohibited by law.

K. CONSULTANT shall submit an Affirmative Action Plan which shall meet the requirements of this chapter at the time it submits its bid or proposal or at the time it registers to do business with the CITY. The plan shall be subject to approval by the Office of Contract Compliance prior to award of the AGREEMENT. The awarding authority may also require contractors and suppliers to take part in a pre-registration, pre-bid, pre-proposal, or pre-award conference in order to develop, improve or implement a qualifying Affirmative Action Plan. Affirmative Action Programs developed pursuant to this section shall be effective for a period of twelve months from the date of approval by the Office of Contract Compliance. In case of prior submission of a plan, CONSULTANT may submit documentation that it has an Affirmative Action Plan approved by the Office of Contract Compliance within the previous twelve months. If the approval is 30 days or less from expiration, CONSULTANT must submit a new Plan to the Office of Contract Compliance and that Plan must be approved before the AGREEMENT is awarded.

1. Every contract of \$5,000 or more which may provide construction, demolition, renovation, conservation or major maintenance of any kind shall in addition comply with the requirements of Section 10.13 of the Los Angeles Administrative Code.

2. CONSULTANT may establish and adopt as its own Affirmative Action Plan, by affixing his or her signature thereto, an Affirmative Action Plan prepared and furnished by the Office of Contract Compliance, or it may prepare and submit its own Plan for approval.

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

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

1. Apprenticeship where approved programs are functioning and other on-the-job training for non-apprenticeable occupations;
2. Classroom preparation for the job when not apprenticeable;
3. Pre-apprenticeship education and preparation;
4. Upgrading, training and opportunities;

5. Encouraging the use of contractors, subcontractors and suppliers of all racial and ethnic groups, provided, however, that any contract subject to this ordinance shall require the contractor, subcontractor or supplier to provide not less than the prevailing wage, working conditions and practices generally observed in private industries in the contractor's, subcontractor's or supplier's geographical area for such work;

6. The entry of qualified women, minority and all other journeymen into the industry; and

7. The provision of needed supplies or job conditions to permit person 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 Affirmation 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 consultants 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 are applicable to the contractor. Failure of the CONSULTANT to comply with this requirement or to obtain the compliance of its subcontractors with all such obligations shall subject the CONSULTANT to the imposition of any and all sanctions allowed by law, including but not limited to termination of the CONSULTANT'S AGREEMENT with the CITY.

**ARTICLE 17 – MINORITY, WOMEN AND OTHER BUSINESS ENTERPRISE
OUTREACH PROGRAM**

NO CHANGE IN THIS ARTICLE

ARTICLE 18 – SUCCESSORS AND ASSIGNS

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

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 32.

ARTICLE 19 –CONTACT PERSONS –PROPER ADDRESSES –NOTIFICATION

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

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: Robert B. Irvin, Director of Systems

Address: 1149 S. Broadway Ave, Ste 900

Los Angeles, California, 90015

CONSULTANT:

Contact Person: Philip A. Naecker

Address: 1010 E. Union Street, Suite 201

Pasadena, CA 91106

E-mail: pan@naecker.com

ARTICLE 20 – FORCE MAJEURE

NO CHANGE IN THIS ARTICLE

ARTICLE 21 – SEVERABILITY

NO CHANGE IN THIS ARTICLE

ARTICLE 22 – DISPUTES

NO CHANGE IN THIS ARTICLE

ARTICLE 23 – ENTIRE AGREEMENT

NO CHANGE IN THIS ARTICLE

ARTICLE 24 – APPLICABLE LAW, INTERPRETATION AND ENFORCEMENT

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

Each party's performance hereunder shall comply with all applicable laws of the United States of America, the State of California, and the CITY including but not limited to laws regarding health and safety, labor and employment, wage and hours and licensing laws which affect employees.

This AGREEMENT and its performance shall be enforced and interpreted under the laws of the State of California. All causes of action arising directly or indirectly from the business relationship evidenced by this AGREEMENT must be filed in the appropriate state or federal court located in Los Angeles County, California, and each party agrees to be subject to the jurisdiction of the State of California regardless of their residence. CONSULTANT shall comply with new, amended, or revised laws, regulations, and/or procedures that apply to the performance of this AGREEMENT.

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

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

NO CHANGE IN THIS ARTICLE

ARTICLE 26 – BONDS

NO CHANGE IN THIS ARTICLE

ARTICLE 27 – CHILD SUPPORT ASSIGNMENT ORDERS

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

This AGREEMENT is subject to the Child Support Assignment Orders Ordinance, Section 10.10 of the Los Angeles Administrative Code, as amended from time to time. Pursuant to the Child Support Assignment Orders Ordinance, CONSULTANT will fully comply with all applicable State and Federal employment reporting requirements for CONSULTANT'S employees.

CONSULTANT shall also certify (1) that the Principal Owner(s) of CONSULTANT are in compliance with any Wage and Earnings Assignment Orders and Notices of Assignment applicable to them personally (2) that CONSULTANT will fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment in accordance with Section 5230, et seq. of the California Family Code; and (3) that CONSULTANT will maintain such compliance throughout the term of this AGREEMENT.

Pursuant to Section 10.10(b) of the Los Angeles Administrative Code, the failure of CONSULTANT to comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignment Orders or Notices of Assignment, or the failure of any Principal Owner(s) of CONSULTANT to comply with any Wage and Earnings Assignment Orders or Notices of Assignment applicable to them personally, shall constitute a default by the CONSULTANT under this AGREEMENT subjecting this AGREEMENT to termination if such default shall continue for more than ninety (90) days after notice of such default to CONSULTANT by the CITY.

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

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

ARTICLE 28 – SERVICE CONTRACTOR WORKER RETENTION ORDINANCE
AND LIVING WAGE ORDINANCE

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

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 F and incorporated herein by this reference, and the Service Contractor Worker Retention Ordinance (SCWRO), Section 10.3 et seq., of the Los Angeles Administrative code, as amended from time to time. These Ordinances require the following:

1. The CONSULTANT assures payment of a minimum initial wage rate to employees as defined in the LWO and as may be adjusted each July 1 and

provision of benefits of compensated and uncompensated days off and health benefits, as defined in the LWO.

2. The CONSULTANT further pledges that it will comply with federal law proscribing retaliation for union organizing and will not retaliate for activities related to the LWO. CONSULTANT shall require each of its subconsultants within the meaning of the LWO to pledge to comply with the terms of federal law proscribing retaliation for union organizing. CONSULTANT shall receive and retain on file the executed pledges from each such subconsultant within ninety (90) days of the execution of the Subcontract. CONSULTANT'S evidence of executed pledges from each such subconsultant shall fully discharge the obligation of the CONSULTANT to comply with the provision in the LWO contained in Section 10.37.6(c) concerning compliance with such federal law.
3. The CONSULTANT, whether an employer, as defined in the LWO, or any other person employing individuals, shall not discharge, reduce in compensation, or otherwise discriminate against any employee for complaining to the CITY with regard to the employer's compliance or anticipated compliance with the LWO, for opposing any practice proscribed by the LWO, for participating in proceedings related to the LWO, for seeking to enforce his or her rights under the LWO by any lawful means, or otherwise asserting rights under the LWO. CONSULTANT shall post the Notice of Prohibition Against Retaliation provided by the CITY
4. Any Subcontract entered into by the CONSULTANT relating to this AGREEMENT, to the extent allowed hereunder, shall be subject to the provisions of LWO and the SCWRO, and shall incorporate the LWO and the SCWRO.

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

CONSULTANT shall also make available to employees the forms informing them about the EIC and forms required to secure advance EIC payments from CONSULTANT.

ARTICLE 29 –AMERICANS WITH DISABILITIES ACT

NO CHANGE IN THIS ARTICLE

ARTICLE 30 –EOUAL BENEFITS ORDINANCE

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

Unless otherwise exempt, this AGREEMENT 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 AGREEMENT, the CONSULTANT certified and represents that the CONSULTANT will comply with the EBO.
- B. The failure of the CONSULTANT to comply with the EBO will be deemed to be a material breach of this AGREEMENT by the CITY.
- C. If the CONSULTANT fails to comply with the EBO, the CITY may cancel, terminate or suspend this AGREEMENT, in whole or in part, and all monies due or to become due under this AGREEMENT may be retained by the CITY. The CITY may also pursue any and all other remedies at law or in equity for any breach.
- D. Failure to comply with the EBO may be used as evidence against CONSULTANT in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40et seq., Contractor Responsibility Ordinance.

- E. If the CITY'S Designated Administrative Agency determined that a CONSULTANT has set up or used its contracting entity for the purpose of evading the intent of the EBO, the CITY may terminate the AGREEMENT. Violation of this provision may be used as evidence against CONSULTANT in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40 et seq., Contractor Responsibility Ordinance.

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

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

ARTICLE 31 –WAIVER

NO CHANGE IN THIS ARTICLE

ARTICLE 32 – PROHIBITION AGAINST ASSIGNMENT OR DELEGATION

NO CHANGES IN THIS ARTICLE

ARTICLE 33 – PERMITS

NO CHANGES IN THIS ARTICLE

ARTICLE 34 – CLAIMS FOR LABOR AND MATERIALS

NO CHANGES IN THIS ARTICLE

ARTICLE 35 – DISCOUNTS

NO CHANGES IN THIS ARTICLE

ARTICLE 36 – CONTRACTOR PERFORMANCE EVALUATION

NO CHANGES IN THIS ARTICLE

ARTICLE 37 – CONTRACTOR RESPONSIBILITY ORDINANCE

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

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

In accordance with the provisions of the Contractor Responsibility Ordinance, by signing this AGREEMENT, CONSULTANT pledges, under penalty of perjury, to comply with all applicable Federal, state and local laws in the performance of this AGREEMENT, including but not limited to, laws regarding health and safety, labor and employment, wages and hours, and licensing laws which affect employees. CONSULTANT further agrees to: (1) notify the CITY within thirty (30)

calendar days after receiving notification that any government agency has initiated an investigation which may result in a finding that CONSULTANT is not in compliance with all applicable federal, state and local laws in performance of this AGREEMENT; (2) notify the CITY within thirty (30) calendar days of all findings by a government agency or court of competent jurisdiction that CONSULTANT has violated the provisions of Section 10.40.3(a) of the Contractor Responsibility Ordinance; (3) unless exempt, ensure that its subconsultants, as defined in the Contractor Responsibility Ordinance, submit a Pledge of Compliance to the CITY; and (4) unless exempt, ensure that its subconsultants, 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 38 – BREACH

NO CHANGES IN THIS ARTICLE

ARTICLE 39 – SLAVERY DISCLOSURE ORDINANCE

NO CHANGES IN THIS ARTICLE

(DELETE) ARTICLE 40 – CHILD CARE POLICY STATEMENT

DELETE THIS ARTICLE AND REPLACE WITH THE FOLLOWING

ARTICLE 40 – FIRST SOURCE HIRING ORDINANCE

Unless approved for an exemption, contractors under contracts primarily for the furnishing of services to or for the CITY, the value of which is in excess of \$25,000 and a contract term of at least three (3) months, and certain recipients of CITY Loans or Grants, shall comply with the provisions of Los Angeles Administrative Code Sections 10.44 et seq., First Source Hiring Ordinance (FSHO). Bidders/Proposers shall refer to Exhibit K attached, "First Source Hiring Ordinance" for further information regarding the requirements of the Ordinance.

The Anticipated Job Opportunities Form (FSHO-1) and Subcontractor Information Form (FSHO-2) contained in the Exhibits attached shall only be required of the Bidder/Proposer that is selected for award of a Contract.

(ADD) ARTICLE 41 – INTELLECTUAL PROPERTY INDEMNIFICATION

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

application, equipment, device, instrumentation, software, hardware, or firmware used by CONSULTANT, or its subconsultants of any tier, in performing the work under this AGREEMENT; or (2) as a result of the CITY'S actual or intended use of any Work Product furnished by CONSULTANT, or its subconsultants of any tier, under the AGREEMENT. Rights and remedies available to the CITY under this provision are cumulative of those provided for elsewhere in this AGREEMENT 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 AGREEMENT.

(ADD) ARTICLE 42 – INTELLECTUAL PROPERTY WARRANTY

The CONSULTANT represents and warrants that its performance of all obligations under this AGREEMENT 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.

(ADD) ARTICLE 43 – MUNICIPAL LOBBYING ORDINANCE

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

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

APPROVED AS TO FORM:

Carmen A. Trutanich, City Attorney

By: _____

John Carvalho

Title: Deputy City Attorney

Date: _____

8/2/12

CITY OF LOS ANGELES

By: _____

Title: President, Board of Public Works

Date: _____

ATTEST

June Lagmay, City Clerk

By: _____

Title: Deputy City Clerk

Date: _____

PHILIP A. NAECKER

By: _____

P. Naecker

Title: _____

OWNER

Date: _____

5/25/2012

CONTRACT NO. C- 113315

AMENDMENT NO. 1

TO

ON-CALL PERSONAL SERVICES AGREEMENT

BETWEEN

THE CITY OF LOS ANGELES

AND

INFLECTION POINT SOLUTIONS

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**FIRST AMENDMENT TO
PERSONAL SERVICES CONTRACT NO. 113315
THE CITY OF LOS ANGELES
AND
INFLECTION POINT SOLUTIONS
FOR
ON-CALL PERSONAL SERVICES FOR SANITATION AUTOMATION PROJECTS
A G R E E M E N T**

THIS AMENDMENT, made and entered into by and between the Bureau of Sanitation, Department of Public Works, a Municipal Corporation acting by order of and through its Board of Public Works, hereinafter called the "CITY", and " INFLECTION POINT SOLUTIONS " hereinafter referred to as the "CONSULTANT" modifying the original agreement executed on March 28, 2008 entitled "On-Call Personal Services between the City of Los Angeles and Inflection Point Solutions, hereinafter "AGREEMENT."

W I T N E S S E T H

WHEREAS, the Bureau of Sanitation (BUREAU) developed an Automation Master Plan and A Strategic Plan which identify and recommend numerous opportunities for using technology to improve the Sanitation business, operations, and service functions while supporting the achievement of financial budget reduction goals; and

WHEREAS, the BUREAU desires to implement the recommended automation projects in an expeditious manner; and

WHEREAS, many of these projects will require the use of staffing resources which are not available within the CITY, and therefore the BUREAU has identified the need for

Consultants to assist CITY staff on an "as-needed" basis; and

WHEREAS, the services to be provided by the Consultants may be in any of the five (5) SERVICE AREAS: 1) Software Engineering, 2) Systems Integration, 3) Local and Wide Area Network and Server Design, 4) Project Automation and/or Construction Management Services, and 5) Related Services including database development, data modeling, value engineering, database design, database to database interface, and training services on an "as-needed" basis; and

WHEREAS, the BUREAU developed a Request For Qualifications (RFQ) covering the desired SERVICE AREAS and distributed it to over one hundred fifty firms providing on-call services based upon needs outlined in the Automation Master Plan and Strategic Plan; and

WHEREAS, thirteen (13) firms submitted thirty-six (36) responses to the RFQ by September 25, 2006; and

WHEREAS, thirteen (13) firms were selected as the most qualified firms by the CITY staff based on the evaluation criteria set forth in the RFQ and as presented in Statements of Qualifications; and

WHEREAS, the Board of Public Works on August 20, 2007 authorized the execution of personal services contracts with 12 firms that qualified to provide as-needed professional services for Software Engineering, System Integration, Local and Wide Area Network and Server Design, Project Automation and/or Construction Management, Database and Training Services; and

WHEREAS, each of the selected Consultants has demonstrated qualifications to perform the required services; and

WHEREAS, the services of the Consultants are of an expert and technical nature and are temporary and occasional in character; and

WHEREAS, the CITY desires to retain the use of these pre-qualified Consultants to bid on a specific Statement of Work to provide the additional services required to assist the CITY in improving the level of automation in the wastewater collection and treatment systems. These improvements will include control systems consolidation and upgrades, systems integration, network upgrades, increased standardization, improved power/energy management and improved data management and access systems; and

WHEREAS, the AGREEMENT is executory and does not guarantee consultants will actually be awarded work thereunder; and the BUREAU reserves the right to solicit additional Consultants to be added to the existing list of Consultants ; and

WHEREAS, the BUREAU is in the process of releasing a new Request for Qualifications (RFQ); and

WHEREAS, since awarding new contracts is a time-consuming process and service areas covered by this AGREEMENT are very critical to the BUREAU'S operation , the AGREEMENT is hereby amended to extend the contract term by an additional three(3) years from January 1, 2013 to December 31, 2015; and

WHEREAS, the Bureau is requesting to increase the cost ceiling amount by \$6 million to replace the control systems in the Bureau's Treatment Plants and Collection System for a revised total ceiling of \$20 million.

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

NO CHANGE IN THIS ARTICLE

ARTICLE 2 – DEFINITIONS

NO CHANGE IN THIS ARTICLE

ARTICLE 3 – PROJECT DESCRIPTION

NO CHANGE IN THIS ARTICLE

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

NO CHANGE IN THIS ARTICLE

ARTICLE 5 – KEY CONSULTANT PERSONNEL

ADD SUB ARTICLES 5.3 AND 5.4 TO READ AS FOLLOWS:

5.3 Unless otherwise provided or approved by the CITY, CONSULTANT shall use its own employees to perform the services described in this AGREEMENT. The CITY shall have the right to review and approve any personnel who are assigned to work under this AGREEMENT. CONSULTANT agrees to remove personnel from

performing work under this AGREEMENT if requested to do so by the CITY.

- 5.4 CONSULTANT shall not use subconsultants to assist in performance of this AGREEMENT without the prior written approval of the CITY. If the CITY permits the use of subconsultants, CONSULTANT shall remain responsible for performing all aspects of this AGREEMENT. The CITY has the right to approve CONSULTANT'S subconsultants, and the CITY reserves the right to request replacement of subconsultants. The CITY does not have any obligation to pay CONSULTANT'S subconsultants, and nothing herein creates any privity between the CITY and the subconsultants.

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

NO CHANGE IN THIS ARTICLE

ARTICLE 7– TERM OF AGREEMENT AND TIME OF EFFECTIVENESS

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

Unless otherwise provided, this Amendment No. 1 shall extend the term of this AGREEMENT from January 1, 2013 until December 31, 2015 unless terminated as provided under Article 8 or extended by an amendment to this AGREEMENT and signed by all parties.

ARTICLE 8 – TERMINATION

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

- 8.1 This AGREEMENT may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this

AGREEMENT through no fault of the terminating party, provided that no termination may be effected unless the other party is given (1) not less than ten (10) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination.

8.2 This AGREEMENT may be terminated in whole or in part in writing by the CITY for its convenience, provided that the CONSULTANT is given (1) not less than thirty (30) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination. Upon receipt of said written notice, CONSULTANT shall immediately take action not to incur any additional obligations, cost or expense, except as may be reasonable necessary to terminate its activities.

8.3 This AGREEMENT may be immediately terminated in writing by the CITY if (1) a federal or state proceeding for relief of debtors is undertaken by or against CONSULTANT or if CONSULTANT makes an assignment for the benefit of creditors or (2) CONSULTANT engages in any dishonest conduct related to the performance or administration of this AGREEMENT or violates the CITY'S lobbying policies.

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

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

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

article.

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

ARTICLE 9 – SUB-CONTRACT APPROVAL

NO CHANGE IN THIS ARTICLE

ARTICLE 10 – COMPENSATION, INVOICING, AND PAYMENT

ADD SUB-ARTICLE 10.4 TO READ AS FOLLOWS:

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

NO CHANGE IN THIS ARTICLE

ARTICLE 12 – INDEMNIFICATION AND INSURANCE

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

12.1 INDEMNIFICATION

Except for the active negligence or willful misconduct of CITY, or any of its Boards, Officers, Agents, Employees, Assigns and Successor in Interest, CONSULTANT undertakes and agrees to defend, indemnify and hold harmless CITY and any of its

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

12.2 INSURANCE

During the term of this AGREEMENT and without limiting the CONSULTANT'S indemnification of the CITY, the CONSULTANT shall provide and maintain at its own expense during the term of this AGREEMENT a program of insurance having the coverage and limits customarily carried and actually arranged by CONSULTANT but not less than the amounts and types listed on the Insurance Requirements Sheet (Form Gen 146/IR), in EXHIBIT D 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 D, and which can also be found at the Board of Public Work's website <http://bpw.lacity.org/Secretariat/Insurance.html>, in the form Instructions and Information on Complying with CITY Insurance Requirements, rev

10/09, and shall otherwise be in a form acceptable to the City Administrative Officer, Risk Management. The CONSULTANT shall comply with all Insurance Contractual Requirements shown on EXHIBIT D hereto. EXHIBIT D is hereby incorporated by reference and made a part of this AGREEMENT.

12.3 CONSULTANT may elect to wait until awarded a task order before providing proof of Professional Liability Insurance as required in Section 12.2. However, the Task Order will not be signed and work may not proceed until all the requirements of Section 12.2, including proof of Professional Liability Insurance are met.

ARTICLE 13 – INDEPENDENT CONTRACTORS

NO CHANGE IN THIS ARTICLE

ARTICLE 14 – WARRANTY AND RESPONSIBILITY OF CONSULTANT

NO CHANGE IN THIS ARTICLE

ARTICLE 15 – OWNERSHIP OF DATA

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

Unless otherwise provided for herein, all Work Products originated and prepared by CONSULTANT or its subconsultants, of any tier under this AGREEMENT 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 AGREEMENT including, without limitation, documents, material, data, reports, manuals, specifications, artwork, drawings, sketches, computer programs and databases, schematics, photographs, video and

audiovisual recordings, sound recordings, marks, logos, graphic designs, notes, websites, domain names, inventions, processes, formulas matters and combinations thereof, and all forms of intellectual property. CONSULTANT hereby assigns, and agrees to assign, all goodwill, copyright, trademark, patent, trade secret and all other intellectual property rights worldwide in any Works Products originated and prepared by CONSULTANT under this AGREEMENT. CONSULTANT further agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights provided herein.

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

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

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

ARTICLE 16 – NONDISCRIMINATION AND AFFIRMATIVE ACTION

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

16.1 NON-DISCRIMINATION

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

16.2 EQUAL EMPLOYMENT PRACTICES

Unless otherwise exempt, this AGREEMENT 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 AGREEMENT, CONSULTANT agrees and

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

1. This provision applies to work or service performed or materials manufactured or assembled in the United States.

2. Nothing in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.

3. CONSULTANT agrees to post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.

B. CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of CONSULTANT, state that all qualified applicants will received consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.

C. As part of the CITY'S supplier registration process, and/or at the request of the awarding authority, or the Board of Public Works, Office of Contract Compliance, CONSULTANT shall certify in the specified format that he or she has not discriminated in the performance of CITY contracts against any employee or applicant for employment on the basis or because of race, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status or medical condition.

D. CONSULTANT shall permit access to and may be required to provide certified copies of all of his or her records pertaining to employment and to employment practices by the awarding authority or the Office of Contract Compliance for the purpose of

investigation to ascertain compliance with the Equal Employment Practices provisions of CITY contracts. On their or either of their request, CONSULTANT shall provide evidence that he or she has or will comply therewith.

E. The failure of any CONSULTANT to comply with the Equal Employment Practices provisions of this AGREEMENT may be deemed to be a material breach of CITY contracts. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made or penalties assessed except upon a full and fair hearing after notice and an opportunity to be heard have been given to CONSULTANT.

F. Upon a finding duly made that CONSULTANT has failed to comply with the Equal Employment Practices provisions of the CITY AGREEMENT, the AGREEMENT 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 that the CONSULTANT is an irresponsible bidder or proposer pursuant to the provision of Section 371 of the Charter of the City of Los Angeles. In the event of such a determination, CONSULTANT shall be disqualified from being awarded a contract with the CITY for a period of two (2) years, or until CONSULTANT shall establish and carry out a program in conformance with the provisions hereof.

G. Notwithstanding any other provision of this AGREEMENT, 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 AGREEMENT shall be construed in any manner so as to require or permit any act which is prohibited by law.

J. At the time a supplier registers to do business with the CITY, or when an individual bid or proposal is submitted, CONSULTANT shall agree to adhere to the Equal Employment Practices specified herein during the performance or conduct of CITY Contracts.

K. Equal Employment Practices shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:

1. Hiring practices;
2. Apprenticeships where such approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;
3. Training and promotional opportunities; and
4. Reasonable accommodations for persons with disabilities.

L. Any subcontract entered into by CONSULTANT to the extent allowed hereunder, shall include a like provision for work to be performed under this AGREEMENT.

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

16.3 AFFIRMATIVE ACTION PROGRAM

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

A. During the performance of a CITY contract, CONSULTANT certifies and represents that CONSULTANT and each subconsultant hereunder will adhere to an affirmative action program to ensure that in its employment practices, persons are employed and employees are treated equally and without regard to or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.

1. This provision applies to work or services performed or materials manufactured or assembled in the United States.

2. Nothing, in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.

3. CONSULTANT shall post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.

B. CONSULTANT will in all solicitations or advertisements for employees placed by or on behalf of CONSULTANT state that all qualified applicants will receive consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.

C. As part of the CITY'S supplier registration process, and/or at the request of the awarding authority or the Office of Contract Compliance, CONSULTANT shall certify on an electronic or hard copy form to be supplied, that CONSULTANT has not discriminated in the performance of CITY contracts against any employee or applicant for employment on the basis or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.

D. CONSULTANT shall permit access to and may be required to provide certified copies of all of its records pertaining to employment and to its employment practices by

the awarding authority or the Office of Contract Compliance, for the purpose of investigation to ascertain compliance with the Affirmative Action Program provisions of CITY contracts, and on their or either of their request to provide evidence that it has or will comply therewith.

E. The failure of any CONSULTANT to comply with the Affirmative Action Program provisions of CITY contracts may be deemed to be a material breach of contract. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made except upon a full and fair hearing after notice and an opportunity to be heard has been given to CONSULTANT.

F. Upon a finding duly made that CONSULTANT has breached the Affirmative Action Program provisions of a CITY contract, the contract may be forthwith cancelled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the CITY. In addition thereto, such breach may be the basis for a determination by the awarding authority or the Board of Public Works that the said CONSULTANT is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Los Angeles City Charter. In the event of such determination, such CONSULTANT shall be disqualified from being awarded a contract with the CITY for a period of two years, or until he or she shall establish and carry out a program in conformance with the provisions hereof.

G. In the event of a finding by the Fair Employment and Housing Commission of the State of California, or the Board of Public Works of the City of Los Angeles, or any court of competent jurisdiction, that CONSULTANT has been guilty of willful violation of the California Fair Employment and Housing Act, or the Affirmative Action Program

provisions of a City contract, there may be deducted from the amount payable to CONSULTANT by the CITY under the contract, a penalty of ten dollars (\$10.00) for each person for each calendar day on which such person was discriminated against in violation of the provisions of a CITY contract.

H. Notwithstanding any other provisions of a CITY contract, the CITY shall have any and all other remedies at law or in equity for any breach hereof.

I. Intentionally blank.

J. Nothing contained in CITY contracts shall be construed in any manner so as to require or permit any act which is prohibited by law.

K. CONSULTANT shall submit an Affirmative Action Plan which shall meet the requirements of this chapter at the time it submits its bid or proposal or at the time it registers to do business with the CITY. The plan shall be subject to approval by the Office of Contract Compliance prior to award of the AGREEMENT. The awarding authority may also require contractors and suppliers to take part in a pre-registration, pre-bid, pre-proposal, or pre-award conference in order to develop, improve or implement a qualifying Affirmative Action Plan. Affirmative Action Programs developed pursuant to this section shall be effective for a period of twelve months from the date of approval by the Office of Contract Compliance. In case of prior submission of a plan, CONSULTANT may submit documentation that it has an Affirmative Action Plan approved by the Office of Contract Compliance within the previous twelve months. If the approval is 30 days or less from expiration, CONSULTANT must submit a new Plan to the Office of Contract Compliance and that Plan must be approved before the AGREEMENT is awarded.

1. Every contract of \$5,000 or more which may provide construction, demolition, renovation, conservation or major maintenance of any kind shall in addition comply with the requirements of Section 10.13 of the Los Angeles Administrative Code.

2. CONSULTANT may establish and adopt as its own Affirmative Action Plan, by affixing his or her signature thereto, an Affirmative Action Plan prepared and furnished by the Office of Contract Compliance, or it may prepare and submit its own Plan for approval.

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

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

1. Apprenticeship where approved programs are functioning and other on-the-job training for non-apprenticeable occupations;
2. Classroom preparation for the job when not apprenticeable;
3. Pre-apprenticeship education and preparation;
4. Upgrading, training and opportunities;

5. Encouraging the use of contractors, subcontractors and suppliers of all racial and ethnic groups, provided, however, that any contract subject to this ordinance shall require the contractor, subcontractor or supplier to provide not less than the prevailing wage, working conditions and practices generally observed in private industries in the contractor's, subcontractor's or supplier's geographical area for such work;

6. The entry of qualified women, minority and all other journeymen into the industry; and

7. The provision of needed supplies or job conditions to permit person 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 Affirmation 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 consultants 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 are applicable to the contractor. Failure of the CONSULTANT to comply with this requirement or to obtain the compliance of its subcontractors with all such obligations shall subject the CONSULTANT to the imposition of any and all sanctions allowed by law, including but not limited to termination of the CONSULTANT'S AGREEMENT with the CITY.

ARTICLE 17 – MINORITY, WOMEN AND OTHER BUSINESS ENTERPRISE

OUTREACH PROGRAM

NO CHANGE IN THIS ARTICLE

ARTICLE 18 – SUCCESSORS AND ASSIGNS

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

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 32.

ARTICLE 19 –CONTACT PERSONS –PROPER ADDRESSES –NOTIFICATION

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

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: Robert B. Irvin, Director of Systems

Address: 1149 S. Broadway Ave, Ste 900

Los Angeles, California, 90015

CONSULTANT:

Contact Person: Corey T. Williams

Address: 8500 W. 110th Street, Suite 550

Overland Park, KS 66210

E-mail: cwilliams@ipsdelivers.com

ARTICLE 20 – FORCE MAJEURE

NO CHANGE IN THIS ARTICLE

ARTICLE 21 – SEVERABILITY

NO CHANGE IN THIS ARTICLE

ARTICLE 22 – DISPUTES

NO CHANGE IN THIS ARTICLE

ARTICLE 23 – ENTIRE AGREEMENT

NO CHANGE IN THIS ARTICLE

ARTICLE 24 – APPLICABLE LAW, INTERPRETATION AND ENFORCEMENT

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

Each party's performance hereunder shall comply with all applicable laws of the United States of America, the State of California, and the CITY including but not limited to laws regarding health and safety, labor and employment, wage and hours and licensing laws which affect employees.

This AGREEMENT and its performance shall be enforced and interpreted under the laws of the State of California. All causes of action arising directly or indirectly from the business relationship evidenced by this AGREEMENT must be filed in the appropriate state or federal court located in Los Angeles County, California, and each party agrees to be subject to the jurisdiction of the State of California regardless of their residence. CONSULTANT shall comply with new, amended; or revised laws, regulations, and/or procedures that apply to the performance of this AGREEMENT.

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

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

NO CHANGE IN THIS ARTICLE

ARTICLE 26 – BONDS

NO CHANGE IN THIS ARTICLE

ARTICLE 27 – CHILD SUPPORT ASSIGNMENT ORDERS

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

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

Pursuant to Section 10.10(b) of the Los Angeles Administrative Code, the failure of CONSULTANT to comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignment Orders or Notices of Assignment, or the failure of any Principal Owner(s) of CONSULTANT to comply with any Wage and Earnings Assignment Orders or Notices of Assignment applicable to them personally, shall constitute a default by the CONSULTANT under this AGREEMENT subjecting this AGREEMENT to termination if such default shall continue for more than ninety (90) days after notice of such default to CONSULTANT by the CITY.

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

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

ARTICLE 28 – SERVICE CONTRACTOR WORKER RETENTION ORDINANCE
AND LIVING WAGE ORDINANCE

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

- 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 F and incorporated herein by this reference, and the Service Contractor Worker Retention Ordinance (SCWRO), Section 10.3 et seq., of the Los Angeles Administrative code, as amended from time to time.

These Ordinances require the following:

1. The CONSULTANT assures payment of a minimum initial wage rate to employees as defined in the LWO and as may be adjusted each July 1 and

provision of benefits of compensated and uncompensated days off and health benefits, as defined in the LWO.

2. The CONSULTANT further pledges that it will comply with federal law proscribing retaliation for union organizing and will not retaliate for activities related to the LWO. CONSULTANT shall require each of its subconsultants within the meaning of the LWO to pledge to comply with the terms of federal law proscribing retaliation for union organizing. CONSULTANT shall receive and retain on file the executed pledges from each such subconsultant within ninety (90) days of the execution of the Subcontract. CONSULTANT'S evidence of executed pledges from each such subconsultant shall fully discharge the obligation of the CONSULTANT to comply with the provision in the LWO contained in Section 10.37.6(c) concerning compliance with such federal law.
3. The CONSULTANT, whether an employer, as defined in the LWO, or any other person employing individuals, shall not discharge, reduce in compensation, or otherwise discriminate against any employee for complaining to the CITY with regard to the employer's compliance or anticipated compliance with the LWO, for opposing any practice proscribed by the LWO, for participating in proceedings related to the LWO, for seeking to enforce his or her rights under the LWO by any lawful means, or otherwise asserting rights under the LWO. CONSULTANT shall post the Notice of Prohibition Against Retaliation provided by the CITY
4. Any Subcontract entered into by the CONSULTANT relating to this AGREEMENT, to the extent allowed hereunder, shall be subject to the provisions of LWO and the SCWRO, and shall incorporate the LWO and the SCWRO.

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

CONSULTANT shall also make available to employees the forms informing them about the EIC and forms required to secure advance EIC payments from CONSULTANT.

ARTICLE 29 -AMERICANS WITH DISABILITIES ACT

NO CHANGE IN THIS ARTICLE

ARTICLE 30 -EOUAL BENEFITS ORDINANCE

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

Unless otherwise exempt, this AGREEMENT 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 AGREEMENT, the CONSULTANT certified and represents that the CONSULTANT will comply with the EBO.
- B. The failure of the CONSULTANT to comply with the EBO will be deemed to be a material breach of this AGREEMENT by the CITY.
- C. If the CONSULTANT fails to comply with the EBO, the CITY may cancel, terminate or suspend this AGREEMENT, in whole or in part, and all monies due or to become due under this AGREEMENT may be retained by the CITY. The CITY may also pursue any and all other remedies at law or in equity for any breach.
- D. Failure to comply with the EBO may be used as evidence against CONSULTANT in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40et seq., Contractor Responsibility Ordinance.

- E. If the CITY'S Designated Administrative Agency determined that a CONSULTANT has set up or used its contracting entity for the purpose of evading the intent of the EBO, the CITY may terminate the AGREEMENT. Violation of this provision may be used as evidence against CONSULTANT in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40 et seq., Contractor Responsibility Ordinance.

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

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

ARTICLE 31 -WAIVER

NO CHANGE IN THIS ARTICLE

ARTICLE 32 - PROHIBITION AGAINST ASSIGNMENT OR DELEGATION

NO CHANGES IN THIS ARTICLE

ARTICLE 33 - PERMITS

NO CHANGES IN THIS ARTICLE

ARTICLE 34 – CLAIMS FOR LABOR AND MATERIALS

NO CHANGES IN THIS ARTICLE

ARTICLE 35 – DISCOUNTS

NO CHANGES IN THIS ARTICLE

ARTICLE 36 – CONTRACTOR PERFORMANCE EVALUATION

NO CHANGES IN THIS ARTICLE

ARTICLE 37 – CONTRACTOR RESPONSIBILITY ORDINANCE

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

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

In accordance with the provisions of the Contractor Responsibility Ordinance, by signing this AGREEMENT, CONSULTANT pledges, under penalty of perjury, to comply with all applicable Federal, state and local laws in the performance of this AGREEMENT, including but not limited to, laws regarding health and safety, labor and employment, wages and hours, and licensing laws which affect employees. CONSULTANT further agrees to: (1) notify the CITY within thirty (30)

calendar days after receiving notification that any government agency has initiated an investigation which may result in a finding that CONSULTANT is not in compliance with all applicable federal, state and local laws in performance of this AGREEMENT; (2) notify the CITY within thirty (30) calendar days of all findings by a government agency or court of competent jurisdiction that CONSULTANT has violated the provisions of Section 10.40.3(a) of the Contractor Responsibility Ordinance; (3) unless exempt, ensure that its subconsultants, as defined in the Contractor Responsibility Ordinance, submit a Pledge of Compliance to the CITY; and (4) unless exempt, ensure that its subconsultants, 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 38 – BREACH

NO CHANGES IN THIS ARTICLE

ARTICLE 39 – SLAVERY DISCLOSURE ORDINANCE

NO CHANGES IN THIS ARTICLE

(DELETE) ARTICLE 40 – CHILD CARE POLICY STATEMENT

DELETE THIS ARTICLE AND REPLACE WITH THE FOLLOWING

ARTICLE 40 – FIRST SOURCE HIRING ORDINANCE

Unless approved for an exemption, contractors under contracts primarily for the furnishing of services to or for the CITY, the value of which is in excess of \$25,000 and a contract term of at least three (3) months, and certain recipients of CITY Loans or Grants, shall comply with the provisions of Los Angeles Administrative Code Sections 10.44 et seq., First Source Hiring Ordinance (FSHO). Bidders/Proposers shall refer to Exhibit K attached, "First Source Hiring Ordinance" for further information regarding the requirements of the Ordinance.

The Anticipated Job Opportunities Form (FSHO-1) and Subcontractor Information Form (FSHO-2) contained in the Exhibits attached shall only be required of the Bidder/Proposer that is selected for award of a Contract.

(ADD) ARTICLE 41 – INTELLECTUAL PROPERTY INDEMNIFICATION

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

application, equipment, device, instrumentation, software, hardware, or firmware used by CONSULTANT, or its subconsultants of any tier, in performing the work under this AGREEMENT; or (2) as a result of the CITY'S actual or intended use of any Work Product furnished by CONSULTANT, or its subconsultants of any tier, under the AGREEMENT. Rights and remedies available to the CITY under this provision are cumulative of those provided for elsewhere in this AGREEMENT 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 AGREEMENT.

(ADD) ARTICLE 42 – INTELLECTUAL PROPERTY WARRANTY

The CONSULTANT represents and warrants that its performance of all obligations under this AGREEMENT 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.

(ADD) ARTICLE 43 – MUNICIPAL LOBBYING ORDINANCE

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

application, equipment, device, instrumentation, software, hardware, or firmware used by CONSULTANT, or its subconsultants of any tier, in performing the work under this AGREEMENT; or (2) as a result of the CITY'S actual or intended use of any Work Product furnished by CONSULTANT, or its subconsultants of any tier, under the AGREEMENT. Rights and remedies available to the CITY under this provision are cumulative of those provided for elsewhere in this AGREEMENT 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 AGREEMENT.

(ADD) ARTICLE 42 – INTELLECTUAL PROPERTY WARRANTY

The CONSULTANT represents and warrants that its performance of all obligations under this AGREEMENT 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.

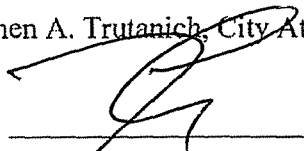
(ADD) ARTICLE 43 – MUNICIPAL LOBBYING ORDINANCE

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

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

APPROVED AS TO FORM:

Carmen A. Trutanich, City Attorney

By: 
John Carvalho

Title: Deputy City Attorney

Date: 4/2/12

CITY OF LOS ANGELES

By: _____

Title: President, Board of Public Works

Date: _____

ATTEST

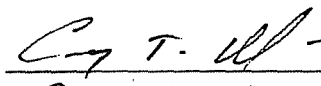
June Lagmay, City Clerk

By: _____

Title: Deputy City Clerk

Date: _____

INFLECTION POINT SOLUTIONS

By: 
Corey T. Williams

Title: Vice President

Date: 4/13/12

CONTRACT NO. C- 113316

AMENDMENT NO. 1
TO
ON-CALL PERSONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF LOS ANGELES
AND
RED OAK CONSULTING

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**FIRST AMENDMENT TO
PERSONAL SERVICES CONTRACT NO. 113316
THE CITY OF LOS ANGELES
AND
RED OAK CONSULTING
FOR
ON-CALL PERSONAL SERVICES FOR SANITATION AUTOMATION PROJECTS
A G R E E M E N T**

THIS AMENDMENT, made and entered into by and between the Bureau of Sanitation, Department of Public Works, a Municipal Corporation acting by order of and through its Board of Public Works, hereinafter called the "CITY", and " RED OAK CONSULTING " hereinafter referred to as the "CONSULTANT" modifying the original agreement executed on March 28, 2008 entitled "On-Call Personal Services between the City of Los Angeles and Red Oak Consulting, hereinafter "AGREEMENT."

W I T N E S S E T H

WHEREAS, the Bureau of Sanitation (BUREAU) developed an Automation Master Plan and A Strategic Plan which identify and recommend numerous opportunities for using technology to improve the Sanitation business, operations, and service functions while supporting the achievement of financial budget reduction goals; and

WHEREAS, the BUREAU desires to implement the recommended automation projects in an expeditious manner; and

WHEREAS, many of these projects will require the use of staffing resources which are not available within the CITY, and therefore the BUREAU has identified the need for

Consultants to assist CITY staff on an "as-needed" basis; and

WHEREAS, the services to be provided by the Consultants may be in any of the five (5) SERVICE AREAS: 1) Software Engineering, 2) Systems Integration, 3) Local and Wide Area Network and Server Design, 4) Project Automation and/or Construction Management Services, and 5) Related Services including database development, data modeling, value engineering, database design, database to database interface, and training services on an "as-needed" basis; and

WHEREAS, the BUREAU developed a Request For Qualifications (RFQ) covering the desired SERVICE AREAS and distributed it to over one hundred fifty firms providing on-call services based upon needs outlined in the Automation Master Plan and Strategic Plan; and

WHEREAS, thirteen (13) firms submitted thirty-six (36) responses to the RFQ by September 25, 2006; and

WHEREAS, thirteen (13) firms were selected as the most qualified firms by the CITY staff based on the evaluation criteria set forth in the RFQ and as presented in Statements of Qualifications; and

WHEREAS, the Board of Public Works on August 20, 2007 authorized the execution of personal services contracts with 12 firms that qualified to provide as-needed professional services for Software Engineering, System Integration, Local and Wide Area Network and Server Design, Project Automation and/or Construction Management, Database and Training Services; and

WHEREAS, each of the selected Consultants has demonstrated qualifications to perform the required services; and

WHEREAS, the services of the Consultants are of an expert and technical nature and are temporary and occasional in character; and

WHEREAS, the CITY desires to retain the use of these pre-qualified Consultants to bid on a specific Statement of Work to provide the additional services required to assist the CITY in improving the level of automation in the wastewater collection and treatment systems. These improvements will include control systems consolidation and upgrades, systems integration, network upgrades, increased standardization, improved power/energy management and improved data management and access systems; and

WHEREAS, the AGREEMENT is executory and does not guarantee consultants will actually be awarded work thereunder; and the BUREAU reserves the right to solicit additional Consultants to be added to the existing list of Consultants ; and

WHEREAS, the BUREAU is in the process of releasing a new Request for Qualifications (RFQ); and

WHEREAS, since awarding new contracts is a time-consuming process and service areas covered by this AGREEMENT are very critical to the BUREAU'S operation , the AGREEMENT is hereby amended to extend the contract term by an additional three(3) years from January 1, 2013 to December 31, 2015; and

WHEREAS, the Bureau is requesting to increase the cost ceiling amount by \$6 million to replace the control systems in the Bureau's Treatment Plants and Collection System for a revised total ceiling of \$20 million.

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

NO CHANGE IN THIS ARTICLE

ARTICLE 2 – DEFINITIONS

NO CHANGE IN THIS ARTICLE

ARTICLE 3 – PROJECT DESCRIPTION

NO CHANGE IN THIS ARTICLE

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

NO CHANGE IN THIS ARTICLE

ARTICLE 5 – KEY CONSULTANT PERSONNEL

ADD SUB ARTICLES 5.3 AND 5.4 TO READ AS FOLLOWS:

5.3 Unless otherwise provided or approved by the CITY, CONSULTANT shall use its own employees to perform the services described in this AGREEMENT. The CITY shall have the right to review and approve any personnel who are assigned to work under this AGREEMENT. CONSULTANT agrees to remove personnel from

performing work under this AGREEMENT if requested to do so by the CITY.

- 5.4 CONSULTANT shall not use subconsultants to assist in performance of this AGREEMENT without the prior written approval of the CITY. If the CITY permits the use of subconsultants, CONSULTANT shall remain responsible for performing all aspects of this AGREEMENT. The CITY has the right to approve CONSULTANT'S subconsultants, and the CITY reserves the right to request replacement of subconsultants. The CITY does not have any obligation to pay CONSULTANT'S subconsultants, and nothing herein creates any privity between the CITY and the subconsultants.

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

NO CHANGE IN THIS ARTICLE

ARTICLE 7– TERM OF AGREEMENT AND TIME OF EFFECTIVENESS

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

Unless otherwise provided, this Amendment No. 1 shall extend the term of this AGREEMENT from January 1, 2013 until December 31, 2015 unless terminated as provided under Article 8 or extended by an amendment to this AGREEMENT and signed by all parties.

ARTICLE 8 – TERMINATION

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

- 8.1 This AGREEMENT may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this

AGREEMENT through no fault of the terminating party, provided that no termination may be effected unless the other party is given (1) not less than ten (10) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination.

8.2 This AGREEMENT may be terminated in whole or in part in writing by the CITY for its convenience, provided that the CONSULTANT is given (1) not less than thirty (30) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination. Upon receipt of said written notice, CONSULTANT shall immediately take action not to incur any additional obligations, cost or expense, except as may be reasonable necessary to terminate its activities.

8.3 This AGREEMENT may be immediately terminated in writing by the CITY if (1) a federal or state proceeding for relief of debtors is undertaken by or against CONSULTANT or if CONSULTANT makes an assignment for the benefit of creditors or (2) CONSULTANT engages in any dishonest conduct related to the performance or administration of this AGREEMENT or violates the CITY'S lobbying policies.

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

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

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

article.

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

ARTICLE 9 – SUB-CONTRACT APPROVAL

NO CHANGE IN THIS ARTICLE

ARTICLE 10 – COMPENSATION, INVOICING, AND PAYMENT

ADD SUB-ARTICLE 10.4 TO READ AS FOLLOWS:

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

NO CHANGE IN THIS ARTICLE

ARTICLE 12 – INDEMNIFICATION AND INSURANCE

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

12.1 INDEMNIFICATION

Except for the active negligence or willful misconduct of CITY, or any of its Boards, Officers, Agents, Employees, Assigns and Successor in Interest, CONSULTANT undertakes and agrees to defend, indemnify and hold harmless CITY and any of its

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

12.2 INSURANCE

During the term of this AGREEMENT and without limiting the CONSULTANT'S indemnification of the CITY, the CONSULTANT shall provide and maintain at its own expense during the term of this AGREEMENT a program of insurance having the coverage and limits customarily carried and actually arranged by CONSULTANT but not less than the amounts and types listed on the Insurance Requirements Sheet (Form Gen 146/IR), in EXHIBIT D 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 D, and which can also be found at the Board of Public Work's website <http://bpw.lacity.org/Secretariat/Insurance.html>, in the form Instructions and Information on Complying with CITY Insurance Requirements, rev

10/09, and shall otherwise be in a form acceptable to the City Administrative Officer, Risk Management. The CONSULTANT shall comply with all Insurance Contractual Requirements shown on EXHIBIT D hereto. EXHIBIT D is hereby incorporated by reference and made a part of this AGREEMENT.

12.3 CONSULTANT may elect to wait until awarded a task order before providing proof of Professional Liability Insurance as required in Section 12.2. However, the Task Order will not be signed and work may not proceed until all the requirements of Section 12.2, including proof of Professional Liability Insurance are met.

ARTICLE 13 – INDEPENDENT CONTRACTORS

NO CHANGE IN THIS ARTICLE

ARTICLE 14 – WARRANTY AND RESPONSIBILITY OF CONSULTANT

NO CHANGE IN THIS ARTICLE

ARTICLE 15 – OWNERSHIP OF DATA

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

Unless otherwise provided for herein, all Work Products originated and prepared by CONSULTANT or its subconsultants, of any tier under this AGREEMENT 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 AGREEMENT including, without limitation, documents, material, data, reports, manuals, specifications, artwork, drawings, sketches, computer programs and databases, schematics, photographs, video and

audiovisual recordings, sound recordings, marks, logos, graphic designs, notes, websites, domain names, inventions, processes, formulas matters and combinations thereof, and all forms of intellectual property. CONSULTANT hereby assigns, and agrees to assign, all goodwill, copyright, trademark, patent, trade secret and all other intellectual property rights worldwide in any Works Products originated and prepared by CONSULTANT under this AGREEMENT. CONSULTANT further agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights provided herein.

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

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

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

ARTICLE 16 – NONDISCRIMINATION AND AFFIRMATIVE ACTION

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

16.1 NON-DISCRIMINATION

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

16.2 EQUAL EMPLOYMENT PRACTICES

Unless otherwise exempt, this AGREEMENT 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 AGREEMENT, CONSULTANT agrees and

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

1. This provision applies to work or service performed or materials manufactured or assembled in the United States.

2. Nothing in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.

3. CONSULTANT agrees to post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.

B. CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of CONSULTANT, state that all qualified applicants will received consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.

C. As part of the CITY'S supplier registration process, and/or at the request of the awarding authority, or the Board of Public Works, Office of Contract Compliance, CONSULTANT shall certify in the specified format that he or she has not discriminated in the performance of CITY contracts against any employee or applicant for employment on the basis or because of race, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status or medical condition.

D. CONSULTANT shall permit access to and may be required to provide certified copies of all of his or her records pertaining to employment and to employment practices by the awarding authority or the Office of Contract Compliance for the purpose of

investigation to ascertain compliance with the Equal Employment Practices provisions of CITY contracts. On their or either of their request, CONSULTANT shall provide evidence that he or she has or will comply therewith.

E. The failure of any CONSULTANT to comply with the Equal Employment Practices provisions of this AGREEMENT may be deemed to be a material breach of CITY contracts. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made or penalties assessed except upon a full and fair hearing after notice and an opportunity to be heard have been given to CONSULTANT.

F. Upon a finding duly made that CONSULTANT has failed to comply with the Equal Employment Practices provisions of the CITY AGREEMENT, the AGREEMENT 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 that the CONSULTANT is an irresponsible bidder or proposer pursuant to the provision of Section 371 of the Charter of the City of Los Angeles. In the event of such a determination, CONSULTANT shall be disqualified from being awarded a contract with the CITY for a period of two (2) years, or until CONSULTANT shall establish and carry out a program in conformance with the provisions hereof.

G. Notwithstanding any other provision of this AGREEMENT, 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 AGREEMENT shall be construed in any manner so as to require or permit any act which is prohibited by law.

J. At the time a supplier registers to do business with the CITY, or when an individual bid or proposal is submitted, CONSULTANT shall agree to adhere to the Equal Employment Practices specified herein during the performance or conduct of CITY Contracts.

K. Equal Employment Practices shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:

1. Hiring practices;
2. Apprenticeships where such approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;
3. Training and promotional opportunities; and
4. Reasonable accommodations for persons with disabilities.

L. Any subcontract entered into by CONSULTANT to the extent allowed hereunder, shall include a like provision for work to be performed under this AGREEMENT.

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

16.3 AFFIRMATIVE ACTION PROGRAM

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

A. During the performance of a CITY contract, CONSULTANT certifies and represents that CONSULTANT and each subconsultant hereunder will adhere to an affirmative action program to ensure that in its employment practices, persons are employed and employees are treated equally and without regard to or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.

1. This provision applies to work or services performed or materials manufactured or assembled in the United States.

2. Nothing, in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.

3. CONSULTANT shall post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.

B. CONSULTANT will in all solicitations or advertisements for employees placed by or on behalf of CONSULTANT state that all qualified applicants will receive consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.

C. As part of the CITY'S supplier registration process, and/or at the request of the awarding authority or the Office of Contract Compliance, CONSULTANT shall certify on an electronic or hard copy form to be supplied, that CONSULTANT has not discriminated in the performance of CITY contracts against any employee or applicant for employment on the basis or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.

D. CONSULTANT shall permit access to and may be required to provide certified copies of all of its records pertaining to employment and to its employment practices by

the awarding authority or the Office of Contract Compliance, for the purpose of investigation to ascertain compliance with the Affirmative Action Program provisions of CITY contracts, and on their or either of their request to provide evidence that it has or will comply therewith.

E. The failure of any CONSULTANT to comply with the Affirmative Action Program provisions of CITY contracts may be deemed to be a material breach of contract. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made except upon a full and fair hearing after notice and an opportunity to be heard has been given to CONSULTANT.

F. Upon a finding duly made that CONSULTANT has breached the Affirmative Action Program provisions of a CITY contract, the contract may be forthwith cancelled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the CITY. In addition thereto, such breach may be the basis for a determination by the awarding authority or the Board of Public Works that the said CONSULTANT is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Los Angeles City Charter. In the event of such determination, such CONSULTANT shall be disqualified from being awarded a contract with the CITY for a period of two years, or until he or she shall establish and carry out a program in conformance with the provisions hereof.

G. In the event of a finding by the Fair Employment and Housing Commission of the State of California, or the Board of Public Works of the City of Los Angeles, or any court of competent jurisdiction, that CONSULTANT has been guilty of willful violation of the California Fair Employment and Housing Act, or the Affirmative Action Program

provisions of a City contract, there may be deducted from the amount payable to CONSULTANT by the CITY under the contract, a penalty of ten dollars (\$10.00) for each person for each calendar day on which such person was discriminated against in violation of the provisions of a CITY contract.

H. Notwithstanding any other provisions of a CITY contract, the CITY shall have any and all other remedies at law or in equity for any breach hereof.

I. Intentionally blank.

J. Nothing contained in CITY contracts shall be construed in any manner so as to require or permit any act which is prohibited by law.

K. CONSULTANT shall submit an Affirmative Action Plan which shall meet the requirements of this chapter at the time it submits its bid or proposal or at the time it registers to do business with the CITY. The plan shall be subject to approval by the Office of Contract Compliance prior to award of the AGREEMENT. The awarding authority may also require contractors and suppliers to take part in a pre-registration, pre-bid, pre-proposal, or pre-award conference in order to develop, improve or implement a qualifying Affirmative Action Plan. Affirmative Action Programs developed pursuant to this section shall be effective for a period of twelve months from the date of approval by the Office of Contract Compliance. In case of prior submission of a plan, CONSULTANT may submit documentation that it has an Affirmative Action Plan approved by the Office of Contract Compliance within the previous twelve months. If the approval is 30 days or less from expiration, CONSULTANT must submit a new Plan to the Office of Contract Compliance and that Plan must be approved before the AGREEMENT is awarded.

1. Every contract of \$5,000 or more which may provide construction, demolition, renovation, conservation or major maintenance of any kind shall in addition comply with the requirements of Section 10.13 of the Los Angeles Administrative Code.

2. CONSULTANT may establish and adopt as its own Affirmative Action Plan, by affixing his or her signature thereto, an Affirmative Action Plan prepared and furnished by the Office of Contract Compliance, or it may prepare and submit its own Plan for approval.

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

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

1. Apprenticeship where approved programs are functioning and other on-the-job training for non-apprenticeable occupations;
2. Classroom preparation for the job when not apprenticeable;
3. Pre-apprenticeship education and preparation;
4. Upgrading, training and opportunities;

5. Encouraging the use of contractors, subcontractors and suppliers of all racial and ethnic groups, provided, however, that any contract subject to this ordinance shall require the contractor, subcontractor or supplier to provide not less than the prevailing wage, working conditions and practices generally observed in private industries in the contractor's, subcontractor's or supplier's geographical area for such work;

6. The entry of qualified women, minority and all other journeymen into the industry; and

7. The provision of needed supplies or job conditions to permit person 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 Affirmation 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 consultants 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 are applicable to the contractor. Failure of the CONSULTANT to comply with this requirement or to obtain the compliance of its subcontractors with all such obligations shall subject the CONSULTANT to the imposition of any and all sanctions allowed by law, including but not limited to termination of the CONSULTANT'S AGREEMENT with the CITY.

**ARTICLE 17 – MINORITY, WOMEN AND OTHER BUSINESS ENTERPRISE
OUTREACH PROGRAM**

NO CHANGE IN THIS ARTICLE

ARTICLE 18 – SUCCESSORS AND ASSIGNS

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

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 32.

ARTICLE 19 –CONTACT PERSONS –PROPER ADDRESSES –NOTIFICATION

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

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: Robert B. Irvin, Director of Systems

Address: 1149 S. Broadway Ave, Ste 900

Los Angeles, California, 90015

CONSULTANT:

Contact Person: Chuck Wolf

Address: 725 So. Figueroa Street, #1540

Los Angeles, CA 90017

E-mail: cwolfe@pirnie.com

ARTICLE 20 – FORCE MAJEURE

NO CHANGE IN THIS ARTICLE

ARTICLE 21 – SEVERABILITY

NO CHANGE IN THIS ARTICLE

ARTICLE 22 – DISPUTES

NO CHANGE IN THIS ARTICLE

ARTICLE 23 – ENTIRE AGREEMENT

NO CHANGE IN THIS ARTICLE

ARTICLE 24 – APPLICABLE LAW, INTERPRETATION AND ENFORCEMENT

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

Each party's performance hereunder shall comply with all applicable laws of the United States of America, the State of California, and the CITY including but not limited to laws regarding health and safety, labor and employment, wage and hours and licensing laws which affect employees.

This AGREEMENT and its performance shall be enforced and interpreted under the laws of the State of California. All causes of action arising directly or indirectly from the business relationship evidenced by this AGREEMENT must be filed in the appropriate state or federal court located in Los Angeles County, California, and each party agrees to be subject to the jurisdiction of the State of California regardless of their residence. CONSULTANT shall comply with new, amended, or revised laws, regulations, and/or procedures that apply to the performance of this AGREEMENT.

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

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

NO CHANGE IN THIS ARTICLE

ARTICLE 26 – BONDS

NO CHANGE IN THIS ARTICLE

ARTICLE 27 – CHILD SUPPORT ASSIGNMENT ORDERS

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

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

Pursuant to Section 10.10(b) of the Los Angeles Administrative Code, the failure of CONSULTANT to comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignment Orders or Notices of Assignment, or the failure of any Principal Owner(s) of CONSULTANT to comply with any Wage and Earnings Assignment Orders or Notices of Assignment applicable to them personally, shall constitute a default by the CONSULTANT under this AGREEMENT subjecting this AGREEMENT to termination if such default shall continue for more than ninety (90) days after notice of such default to CONSULTANT by the CITY.

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

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

ARTICLE 28 – SERVICE CONTRACTOR WORKER RETENTION ORDINANCE
AND LIVING WAGE ORDINANCE

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

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 F and incorporated herein by this reference, and the Service Contractor Worker Retention Ordinance (SCWRO), Section 10.3 et seq., of the Los Angeles Administrative code, as amended from time to time. These Ordinances require the following:

1. The CONSULTANT assures payment of a minimum initial wage rate to employees as defined in the LWO and as may be adjusted each July 1 and

provision of benefits of compensated and uncompensated days off and health benefits, as defined in the LWO.

2. The CONSULTANT further pledges that it will comply with federal law proscribing retaliation for union organizing and will not retaliate for activities related to the LWO. CONSULTANT shall require each of its subconsultants within the meaning of the LWO to pledge to comply with the terms of federal law proscribing retaliation for union organizing. CONSULTANT shall receive and retain on file the executed pledges from each such subconsultant within ninety (90) days of the execution of the Subcontract. CONSULTANT'S evidence of executed pledges from each such subconsultant shall fully discharge the obligation of the CONSULTANT to comply with the provision in the LWO contained in Section 10.37.6(c) concerning compliance with such federal law.
3. The CONSULTANT, whether an employer, as defined in the LWO, or any other person employing individuals, shall not discharge, reduce in compensation, or otherwise discriminate against any employee for complaining to the CITY with regard to the employer's compliance or anticipated compliance with the LWO, for opposing any practice proscribed by the LWO, for participating in proceedings related to the LWO, for seeking to enforce his or her rights under the LWO by any lawful means, or otherwise asserting rights under the LWO. CONSULTANT shall post the Notice of Prohibition Against Retaliation provided by the CITY
4. Any Subcontract entered into by the CONSULTANT relating to this AGREEMENT, to the extent allowed hereunder, shall be subject to the provisions of LWO and the SCWRO, and shall incorporate the LWO and the SCWRO.

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

CONSULTANT shall also make available to employees the forms informing them about the EIC and forms required to secure advance EIC payments from CONSULTANT.

ARTICLE 29 –AMERICANS WITH DISABILITIES ACT

NO CHANGE IN THIS ARTICLE

ARTICLE 30 –EOUAL BENEFITS ORDINANCE

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

Unless otherwise exempt, this AGREEMENT 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 AGREEMENT, the CONSULTANT certified and represents that the CONSULTANT will comply with the EBO.
- B. The failure of the CONSULTANT to comply with the EBO will be deemed to be a material breach of this AGREEMENT by the CITY.
- C. If the CONSULTANT fails to comply with the EBO, the CITY may cancel, terminate or suspend this AGREEMENT, in whole or in part, and all monies due or to become due under this AGREEMENT 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 CONSTULTANT in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40et seq., Contractor Responsibility Ordinance.

- E. If the CITY'S Designated Administrative Agency determined that a CONSULTANT has set up or used its contracting entity for the purpose of evading the intent of the EBO, the CITY may terminate the AGREEMENT. Violation of this provision may be used as evidence against CONSULTANT in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40 et seq., Contractor Responsibility Ordinance.

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

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

ARTICLE 31 -WAIVER

NO CHANGE IN THIS ARTICLE

ARTICLE 32 - PROHIBITION AGAINST ASSIGNMENT OR DELEGATION

NO CHANGES IN THIS ARTICLE

ARTICLE 33 - PERMITS

NO CHANGES IN THIS ARTICLE

ARTICLE 34 – CLAIMS FOR LABOR AND MATERIALS

NO CHANGES IN THIS ARTICLE

ARTICLE 35 – DISCOUNTS

NO CHANGES IN THIS ARTICLE

ARTICLE 36 – CONTRACTOR PERFORMANCE EVALUATION

NO CHANGES IN THIS ARTICLE

ARTICLE 37 – CONTRACTOR RESPONSIBILITY ORDINANCE

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

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

In accordance with the provisions of the Contractor Responsibility Ordinance, by signing this AGREEMENT, CONSULTANT pledges, under penalty of perjury, to comply with all applicable Federal, state and local laws in the performance of this AGREEMENT, including but not limited to, laws regarding health and safety, labor and employment, wages and hours, and licensing laws which affect employees. CONSULTANT further agrees to: (1) notify the CITY within thirty (30)

calendar days after receiving notification that any government agency has initiated an investigation which may result in a finding that CONSULTANT is not in compliance with all applicable federal, state and local laws in performance of this AGREEMENT; (2) notify the CITY within thirty (30) calendar days of all findings by a government agency or court of competent jurisdiction that CONSULTANT has violated the provisions of Section 10.40.3(a) of the Contractor Responsibility Ordinance; (3) unless exempt, ensure that its subconsultants, as defined in the Contractor Responsibility Ordinance, submit a Pledge of Compliance to the CITY; and (4) unless exempt, ensure that its subconsultants, 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 38 – BREACH

NO CHANGES IN THIS ARTICLE

ARTICLE 39 – SLAVERY DISCLOSURE ORDINANCE

NO CHANGES IN THIS ARTICLE

(DELETE) ARTICLE 40 – CHILD CARE POLICY STATEMENT

DELETE THIS ARTICLE AND REPLACE WITH THE FOLLOWING

ARTICLE 40 – FIRST SOURCE HIRING ORDINANCE

Unless approved for an exemption, contractors under contracts primarily for the furnishing of services to or for the CITY, the value of which is in excess of \$25,000 and a contract term of at least three (3) months, and certain recipients of CITY Loans or Grants, shall comply with the provisions of Los Angeles Administrative Code Sections 10.44 et seq., First Source Hiring Ordinance (FSHO). Bidders/Proposers shall refer to Exhibit K attached, "First Source Hiring Ordinance" for further information regarding the requirements of the Ordinance.

The Anticipated Job Opportunities Form (FSHO-1) and Subcontractor Information Form (FSHO-2) contained in the Exhibits attached shall only be required of the Bidder/Proposer that is selected for award of a Contract.

(ADD) ARTICLE 41 – INTELLECTUAL PROPERTY INDEMNIFICATION

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

application, equipment, device, instrumentation, software, hardware, or firmware used by CONSULTANT, or its subconsultants of any tier, in performing the work under this AGREEMENT; or (2) as a result of the CITY'S actual or intended use of any Work Product furnished by CONSULTANT, or its subconsultants of any tier, under the AGREEMENT. Rights and remedies available to the CITY under this provision are cumulative of those provided for elsewhere in this AGREEMENT 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 AGREEMENT.

(ADD) ARTICLE 42 – INTELLECTUAL PROPERTY WARRANTY

The CONSULTANT represents and warrants that its performance of all obligations under this AGREEMENT 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.

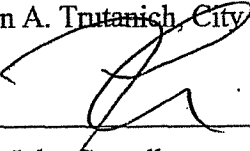
(ADD) ARTICLE 43 – MUNICIPAL LOBBYING ORDINANCE

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

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

APPROVED AS TO FORM:

Carmen A. Trutanich, City Attorney

By: 
John Carvalho

Title: Deputy City Attorney

Date: 4/2/12

CITY OF LOS ANGELES

By: _____

Title: President, Board of Public Works

Date: _____

ATTEST


June Lagmay, City Clerk

By: _____

Title: Deputy City Clerk

Date: _____

RED OAK CONSULTING

By: 
CHARLES W. WOLF

Title: Vice President

Date: 4-13-2012

CONTRACT NO. C- 113317

AMENDMENT NO. 1
TO
ON-CALL PERSONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF LOS ANGELES
AND
MWH AMERICAS, INC.

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EXHIBIT L	MUNICIPAL LOBBYING ORDINANCE (CEC FORM50)

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**FIRST AMENDMENT TO
PERSONAL SERVICES CONTRACT NO. 113317
THE CITY OF LOS ANGELES
AND
MWH AMERICAS, INC.
FOR
ON-CALL PERSONAL SERVICES FOR SANITATION AUTOMATION PROJECTS
A G R E E M E N T**

THIS AMENDMENT, made and entered into by and between the Bureau of Sanitation, Department of Public Works, a Municipal Corporation acting by order of and through its Board of Public Works, hereinafter called the "CITY", and " MWH AMERICAS, INC. " hereinafter referred to as the "CONSULTANT" modifying the original agreement executed on March 28, 2008 entitled "On-Call Personal Services between the City of Los Angeles and MWH Americas, Inc., hereinafter "AGREEMENT."

W I T N E S S E T H

WHEREAS, the Bureau of Sanitation (BUREAU) developed an Automation Master Plan and A Strategic Plan which identify and recommend numerous opportunities for using technology to improve the Sanitation business, operations, and service functions while supporting the achievement of financial budget reduction goals; and

WHEREAS, the BUREAU desires to implement the recommended automation projects in an expeditious manner; and

WHEREAS, many of these projects will require the use of staffing resources which are not available within the CITY, and therefore the BUREAU has identified the need for

Consultants to assist CITY staff on an "as-needed" basis; and

WHEREAS, the services to be provided by the Consultants may be in any of the five (5) SERVICE AREAS: 1) Software Engineering, 2) Systems Integration, 3) Local and Wide Area Network and Server Design, 4) Project Automation and/or Construction Management Services, and 5) Related Services including database development, data modeling, value engineering, database design, database to database interface, and training services on an "as-needed" basis; and

WHEREAS, the BUREAU developed a Request For Qualifications (RFQ) covering the desired SERVICE AREAS and distributed it to over one hundred fifty firms providing on-call services based upon needs outlined in the Automation Master Plan and Strategic Plan; and

WHEREAS, thirteen (13) firms submitted thirty-six (36) responses to the RFQ by September 25, 2006; and

WHEREAS, thirteen (13) firms were selected as the most qualified firms by the CITY staff based on the evaluation criteria set forth in the RFQ and as presented in Statements of Qualifications; and

WHEREAS, the Board of Public Works on August 20, 2007 authorized the execution of personal services contracts with 12 firms that qualified to provide as-needed professional services for Software Engineering, System Integration, Local and Wide Area Network and Server Design, Project Automation and/or Construction Management, Database and Training Services; and

WHEREAS, each of the selected Consultants has demonstrated qualifications to perform the required services; and

WHEREAS, the services of the Consultants are of an expert and technical nature and are temporary and occasional in character; and

WHEREAS, the CITY desires to retain the use of these pre-qualified Consultants to bid on a specific Statement of Work to provide the additional services required to assist the CITY in improving the level of automation in the wastewater collection and treatment systems. These improvements will include control systems consolidation and upgrades, systems integration, network upgrades, increased standardization, improved power/energy management and improved data management and access systems; and

WHEREAS, the AGREEMENT is executory and does not guarantee consultants will actually be awarded work thereunder; and the BUREAU reserves the right to solicit additional Consultants to be added to the existing list of Consultants ; and

WHEREAS, the BUREAU is in the process of releasing a new Request for Qualifications (RFQ); and

WHEREAS, since awarding new contracts is a time-consuming process and service areas covered by this AGREEMENT are very critical to the BUREAU'S operation , the AGREEMENT is hereby amended to extend the contract term by an additional three(3) years from January 1, 2013 to December 31, 2015; and

WHEREAS, the Bureau is requesting to increase the cost ceiling amount by \$6 million to replace the control systems in the Bureau's Treatment Plants and Collection System for a revised total ceiling of \$20 million.

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

NO CHANGE IN THIS ARTICLE

ARTICLE 2 – DEFINITIONS

NO CHANGE IN THIS ARTICLE

ARTICLE 3 – PROJECT DESCRIPTION

NO CHANGE IN THIS ARTICLE

ARTICLE 4 – RESPONSIBILITIES OF AND TASKS TO BE PERFORMED

BY THE CONSULTANT

NO CHANGE IN THIS ARTICLE

ARTICLE 5 – KEY CONSULTANT PERSONNEL

ADD SUB ARTICLES 5.3 AND 5.4 TO READ AS FOLLOWS:

5.3 Unless otherwise provided or approved by the CITY, CONSULTANT shall use its own employees to perform the services described in this AGREEMENT. The CITY shall have the right to review and approve any personnel who are assigned to work under this AGREEMENT. CONSULTANT agrees to remove personnel from

performing work under this AGREEMENT if requested to do so by the CITY.

- 5.4 CONSULTANT shall not use subconsultants to assist in performance of this AGREEMENT without the prior written approval of the CITY. If the CITY permits the use of subconsultants, CONSULTANT shall remain responsible for performing all aspects of this AGREEMENT. The CITY has the right to approve CONSULTANT'S subconsultants, and the CITY reserves the right to request replacement of subconsultants. The CITY does not have any obligation to pay CONSULTANT'S subconsultants, and nothing herein creates any privity between the CITY and the subconsultants.

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

NO CHANGE IN THIS ARTICLE

ARTICLE 7– TERM OF AGREEMENT AND TIME OF EFFECTIVENESS

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

Unless otherwise provided, this Amendment No. 1 shall extend the term of this AGREEMENT from January 1, 2013 until December 31, 2015 unless terminated as provided under Article 8 or extended by an amendment to this AGREEMENT and signed by all parties.

ARTICLE 8 – TERMINATION

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

- 8.1 This AGREEMENT may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this

AGREEMENT through no fault of the terminating party, provided that no termination may be effected unless the other party is given (1) not less than ten (10) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination.

8.2 This AGREEMENT may be terminated in whole or in part in writing by the CITY for its convenience, provided that the CONSULTANT is given (1) not less than thirty (30) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination. Upon receipt of said written notice, CONSULTANT shall immediately take action not to incur any additional obligations, cost or expense, except as may be reasonable necessary to terminate its activities.

8.3 This AGREEMENT may be immediately terminated in writing by the CITY if (1) a federal or state proceeding for relief of debtors is undertaken by or against CONSULTANT or if CONSULTANT makes an assignment for the benefit of creditors or (2) CONSULTANT engages in any dishonest conduct related to the performance or administration of this AGREEMENT or violates the CITY'S lobbying policies.

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

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

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

article.

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

ARTICLE 9 – SUB-CONTRACT APPROVAL

NO CHANGE IN THIS ARTICLE

ARTICLE 10 – COMPENSATION, INVOICING, AND PAYMENT

ADD SUB-ARTICLE 10.4 TO READ AS FOLLOWS:

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

NO CHANGE IN THIS ARTICLE

ARTICLE 12 – INDEMNIFICATION AND INSURANCE

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

12.1 INDEMNIFICATION

Except for the active negligence or willful misconduct of CITY, or any of its Boards, Officers, Agents, Employees, Assigns and Successor in Interest, CONSULTANT undertakes and agrees to defend, indemnify and hold harmless CITY and any of its

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

12.2 INSURANCE

During the term of this AGREEMENT and without limiting the CONSULTANT'S indemnification of the CITY, the CONSULTANT shall provide and maintain at its own expense during the term of this AGREEMENT a program of insurance having the coverage and limits customarily carried and actually arranged by CONSULTANT but not less than the amounts and types listed on the Insurance Requirements Sheet (Form Gen 146/IR), in EXHIBIT D 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 D, and which can also be found at the Board of Public Work's website <http://bpw.lacity.org/Secretariat/Insurance.html>, in the form Instructions and Information on Complying with CITY Insurance Requirements, rev

10/09, and shall otherwise be in a form acceptable to the City Administrative Officer, Risk Management. The CONSULTANT shall comply with all Insurance Contractual Requirements shown on EXHIBIT D hereto. EXHIBIT D is hereby incorporated by reference and made a part of this AGREEMENT.

12.3 CONSULTANT may elect to wait until awarded a task order before providing proof of Professional Liability Insurance as required in Section 12.2. However, the Task Order will not be signed and work may not proceed until all the requirements of Section 12.2, including proof of Professional Liability Insurance are met.

ARTICLE 13 – INDEPENDENT CONTRACTORS

NO CHANGE IN THIS ARTICLE

ARTICLE 14 – WARRANTY AND RESPONSIBILITY OF CONSULTANT

NO CHANGE IN THIS ARTICLE

ARTICLE 15 – OWNERSHIP OF DATA

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

Unless otherwise provided for herein, all Work Products originated and prepared by CONSULTANT or its subconsultants, of any tier under this AGREEMENT 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 AGREEMENT including, without limitation, documents, material, data, reports, manuals, specifications, artwork, drawings, sketches, computer programs and databases, schematics, photographs, video and

audiovisual recordings, sound recordings, marks, logos, graphic designs, notes, websites, domain names, inventions, processes, formulas matters and combinations thereof, and all forms of intellectual property. CONSULTANT hereby assigns, and agrees to assign, all goodwill, copyright, trademark, patent, trade secret and all other intellectual property rights worldwide in any Works Products originated and prepared by CONSULTANT under this AGREEMENT. CONSULTANT further agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights provided herein.

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

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

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

ARTICLE 16 – NONDISCRIMINATION AND AFFIRMATIVE ACTION

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

16.1 NON-DISCRIMINATION

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

16.2 EQUAL EMPLOYMENT PRACTICES

Unless otherwise exempt, this AGREEMENT 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 AGREEMENT, CONSULTANT agrees and

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

1. This provision applies to work or service performed or materials manufactured or assembled in the United States.

2. Nothing in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.

3. CONSULTANT agrees to post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.

B. CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of CONSULTANT, state that all qualified applicants will received consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.

C. As part of the CITY'S supplier registration process, and/or at the request of the awarding authority, or the Board of Public Works, Office of Contract Compliance, CONSULTANT shall certify in the specified format that he or she has not discriminated in the performance of CITY contracts against any employee or applicant for employment on the basis or because of race, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status or medical condition.

D. CONSULTANT shall permit access to and may be required to provide certified copies of all of his or her records pertaining to employment and to employment practices by the awarding authority or the Office of Contract Compliance for the purpose of

investigation to ascertain compliance with the Equal Employment Practices provisions of CITY contracts. On their or either of their request, CONSULTANT shall provide evidence that he or she has or will comply therewith.

E. The failure of any CONSULTANT to comply with the Equal Employment Practices provisions of this AGREEMENT may be deemed to be a material breach of CITY contracts. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made or penalties assessed except upon a full and fair hearing after notice and an opportunity to be heard have been given to CONSULTANT.

F. Upon a finding duly made that CONSULTANT has failed to comply with the Equal Employment Practices provisions of the CITY AGREEMENT, the AGREEMENT 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 that the CONSULTANT is an irresponsible bidder or proposer pursuant to the provision of Section 371 of the Charter of the City of Los Angeles. In the event of such a determination, CONSULTANT shall be disqualified from being awarded a contract with the CITY for a period of two (2) years, or until CONSULTANT shall establish and carry out a program in conformance with the provisions hereof.

G. Notwithstanding any other provision of this AGREEMENT, 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 AGREEMENT shall be construed in any manner so as to require or permit any act which is prohibited by law.

J. At the time a supplier registers to do business with the CITY, or when an individual bid or proposal is submitted, CONSULTANT shall agree to adhere to the Equal Employment Practices specified herein during the performance or conduct of CITY Contracts.

K. Equal Employment Practices shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:

1. Hiring practices;
2. Apprenticeships where such approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;
3. Training and promotional opportunities; and
4. Reasonable accommodations for persons with disabilities.

L. Any subcontract entered into by CONSULTANT to the extent allowed hereunder, shall include a like provision for work to be performed under this AGREEMENT.

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

16.3 AFFIRMATIVE ACTION PROGRAM

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

A. During the performance of a CITY contract, CONSULTANT certifies and represents that CONSULTANT and each subconsultant hereunder will adhere to an affirmative action program to ensure that in its employment practices, persons are employed and employees are treated equally and without regard to or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.

1. This provision applies to work or services performed or materials manufactured or assembled in the United States.

2. Nothing, in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.

3. CONSULTANT shall post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.

B. CONSULTANT will in all solicitations or advertisements for employees placed by or on behalf of CONSULTANT state that all qualified applicants will receive consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.

C. As part of the CITY'S supplier registration process, and/or at the request of the awarding authority or the Office of Contract Compliance, CONSULTANT shall certify on an electronic or hard copy form to be supplied, that CONSULTANT has not discriminated in the performance of CITY contracts against any employee or applicant for employment on the basis or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.

D. CONSULTANT shall permit access to and may be required to provide certified copies of all of its records pertaining to employment and to its employment practices by

the awarding authority or the Office of Contract Compliance, for the purpose of investigation to ascertain compliance with the Affirmative Action Program provisions of CITY contracts, and on their or either of their request to provide evidence that it has or will comply therewith.

E. The failure of any CONSULTANT to comply with the Affirmative Action Program provisions of CITY contracts may be deemed to be a material breach of contract. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made except upon a full and fair hearing after notice and an opportunity to be heard has been given to CONSULTANT.

F. Upon a finding duly made that CONSULTANT has breached the Affirmative Action Program provisions of a CITY contract, the contract may be forthwith cancelled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the CITY. In addition thereto, such breach may be the basis for a determination by the awarding authority or the Board of Public Works that the said CONSULTANT is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Los Angeles City Charter. In the event of such determination, such CONSULTANT shall be disqualified from being awarded a contract with the CITY for a period of two years, or until he or she shall establish and carry out a program in conformance with the provisions hereof.

G. In the event of a finding by the Fair Employment and Housing Commission of the State of California, or the Board of Public Works of the City of Los Angeles, or any court of competent jurisdiction, that CONSULTANT has been guilty of willful violation of the California Fair Employment and Housing Act, or the Affirmative Action Program

provisions of a City contract, there may be deducted from the amount payable to CONSULTANT by the CITY under the contract, a penalty of ten dollars (\$10.00) for each person for each calendar day on which such person was discriminated against in violation of the provisions of a CITY contract.

H. Notwithstanding any other provisions of a CITY contract, the CITY shall have any and all other remedies at law or in equity for any breach hereof.

I. Intentionally blank.

J. Nothing contained in CITY contracts shall be construed in any manner so as to require or permit any act which is prohibited by law.

K. CONSULTANT shall submit an Affirmative Action Plan which shall meet the requirements of this chapter at the time it submits its bid or proposal or at the time it registers to do business with the CITY. The plan shall be subject to approval by the Office of Contract Compliance prior to award of the AGREEMENT. The awarding authority may also require contractors and suppliers to take part in a pre-registration, pre-bid, pre-proposal, or pre-award conference in order to develop, improve or implement a qualifying Affirmative Action Plan. Affirmative Action Programs developed pursuant to this section shall be effective for a period of twelve months from the date of approval by the Office of Contract Compliance. In case of prior submission of a plan, CONSULTANT may submit documentation that it has an Affirmative Action Plan approved by the Office of Contract Compliance within the previous twelve months. If the approval is 30 days or less from expiration, CONSULTANT must submit a new Plan to the Office of Contract Compliance and that Plan must be approved before the AGREEMENT is awarded.

1. Every contract of \$5,000 or more which may provide construction, demolition, renovation, conservation or major maintenance of any kind shall in addition comply with the requirements of Section 10.13 of the Los Angeles Administrative Code.

2. CONSULTANT may establish and adopt as its own Affirmative Action Plan, by affixing his or her signature thereto, an Affirmative Action Plan prepared and furnished by the Office of Contract Compliance, or it may prepare and submit its own Plan for approval.

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

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

1. Apprenticeship where approved programs are functioning and other on-the-job training for non-apprenticeable occupations;
2. Classroom preparation for the job when not apprenticeable;
3. Pre-apprenticeship education and preparation;
4. Upgrading, training and opportunities;

5. Encouraging the use of contractors, subcontractors and suppliers of all racial and ethnic groups, provided, however, that any contract subject to this ordinance shall require the contractor, subcontractor or supplier to provide not less than the prevailing wage, working conditions and practices generally observed in private industries in the contractor's, subcontractor's or supplier's geographical area for such work;

6. The entry of qualified women, minority and all other journeymen into the industry; and

7. The provision of needed supplies or job conditions to permit person 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 Affirmation 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 consultants 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 are applicable to the contractor. Failure of the CONSULTANT to comply with this requirement or to obtain the compliance of its subcontractors with all such obligations shall subject the CONSULTANT to the imposition of any and all sanctions allowed by law, including but not limited to termination of the CONSULTANT'S AGREEMENT with the CITY.

**ARTICLE 17 – MINORITY, WOMEN AND OTHER BUSINESS ENTERPRISE
OUTREACH PROGRAM**

NO CHANGE IN THIS ARTICLE

ARTICLE 18 – SUCCESSORS AND ASSIGNS

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

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 32.

ARTICLE 19 –CONTACT PERSONS –PROPER ADDRESSES –NOTIFICATION

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

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: Robert B. Irvin, Director of Systems

Address: 1149 S. Broadway Ave, Ste 900

Los Angeles, California, 90015

CONSULTANT:

Contact Person: Richard D. Plecker, PE
Southwest Regional Manager

Address: 618 Michillinda Ave., Suite 200

Arcadia, CA 91007

E-mail: Richard.D.Plecker@us.mwhglobal.com

Telephone No. : (626) 568-6258

ARTICLE 20 – FORCE MAJEURE

NO CHANGE IN THIS ARTICLE

ARTICLE 21 – SEVERABILITY

NO CHANGE IN THIS ARTICLE

ARTICLE 22 – DISPUTES

NO CHANGE IN THIS ARTICLE

ARTICLE 23 – ENTIRE AGREEMENT

NO CHANGE IN THIS ARTICLE

ARTICLE 24 – APPLICABLE LAW, INTERPRETATION AND ENFORCEMENT

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

Each party's performance hereunder shall comply with all applicable laws of the United States of America, the State of California, and the CITY including but not limited to laws regarding health and safety, labor and employment, wage and hours and licensing laws which affect employees.

This AGREEMENT and its performance shall be enforced and interpreted under the laws of the State of California. All causes of action arising directly or indirectly from the business relationship evidenced by this AGREEMENT must be filed in the appropriate state or federal court located in Los Angeles County, California, and each party agrees to be subject to the jurisdiction of the State of California regardless of their residence. CONSULTANT shall comply with new, amended, or revised laws, regulations, and/or procedures that apply to the performance of this AGREEMENT.

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

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

NO CHANGE IN THIS ARTICLE

ARTICLE 26 – BONDS

NO CHANGE IN THIS ARTICLE

ARTICLE 27 – CHILD SUPPORT ASSIGNMENT ORDERS

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

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

Pursuant to Section 10.10(b) of the Los Angeles Administrative Code, the failure of CONSULTANT to comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignment Orders or Notices of Assignment, or the failure of any Principal Owner(s) of CONSULTANT to comply with any Wage and Earnings Assignment Orders or Notices of Assignment applicable to them personally, shall constitute a default by the CONSULTANT under this AGREEMENT subjecting this AGREEMENT to termination if such default shall continue for more than ninety (90) days after notice of such default to CONSULTANT by the CITY.

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

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

ARTICLE 28 – SERVICE CONTRACTOR WORKER RETENTION ORDINANCE
AND LIVING WAGE ORDINANCE

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

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 F and incorporated herein by this reference, and the Service Contractor Worker Retention Ordinance (SCWRO), Section 10.3 et seq., of the Los Angeles Administrative code, as amended from time to time. These Ordinances require the following:

1. The CONSULTANT assures payment of a minimum initial wage rate to employees as defined in the LWO and as may be adjusted each July 1 and

provision of benefits of compensated and uncompensated days off and health benefits, as defined in the LWO.

2. The CONSULTANT further pledges that it will comply with federal law proscribing retaliation for union organizing and will not retaliate for activities related to the LWO. CONSULTANT shall require each of its subconsultants within the meaning of the LWO to pledge to comply with the terms of federal law proscribing retaliation for union organizing. CONSULTANT shall receive and retain on file the executed pledges from each such subconsultant within ninety (90) days of the execution of the Subcontract. CONSULTANT'S evidence of executed pledges from each such subconsultant shall fully discharge the obligation of the CONSULTANT to comply with the provision in the LWO contained in Section 10.37.6(c) concerning compliance with such federal law.
3. The CONSULTANT, whether an employer, as defined in the LWO, or any other person employing individuals, shall not discharge, reduce in compensation, or otherwise discriminate against any employee for complaining to the CITY with regard to the employer's compliance or anticipated compliance with the LWO, for opposing any practice proscribed by the LWO, for participating in proceedings related to the LWO, for seeking to enforce his or her rights under the LWO by any lawful means, or otherwise asserting rights under the LWO. CONSULTANT shall post the Notice of Prohibition Against Retaliation provided by the CITY
4. Any Subcontract entered into by the CONSULTANT relating to this AGREEMENT, to the extent allowed hereunder, shall be subject to the provisions of LWO and the SCWRO, and shall incorporate the LWO and the SCWRO.

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

CONSULTANT shall also make available to employees the forms informing them about the EIC and forms required to secure advance EIC payments from CONSULTANT.

ARTICLE 29 –AMERICANS WITH DISABILITIES ACT

NO CHANGE IN THIS ARTICLE

ARTICLE 30 –EQUAL BENEFITS ORDINANCE

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

Unless otherwise exempt, this AGREEMENT 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 AGREEMENT, the CONSULTANT certified and represents that the CONSULTANT will comply with the EBO.
- B. The failure of the CONSULTANT to comply with the EBO will be deemed to be a material breach of this AGREEMENT by the CITY.
- C. If the CONSULTANT fails to comply with the EBO, the CITY may cancel, terminate or suspend this AGREEMENT, in whole or in part, and all monies due or to become due under this AGREEMENT may be retained by the CITY. The CITY may also pursue any and all other remedies at law or in equity for any breach.
- D. Failure to comply with the EBO may be used as evidence against CONSULTANT in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40et seq., Contractor Responsibility Ordinance.

- E. If the CITY'S Designated Administrative Agency determined that a CONSULTANT has set up or used its contracting entity for the purpose of evading the intent of the EBO, the CITY may terminate the AGREEMENT. Violation of this provision may be used as evidence against CONSULTANT in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40 et seq., Contractor Responsibility Ordinance.

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

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

ARTICLE 31 –WAIVER

NO CHANGE IN THIS ARTICLE

ARTICLE 32 – PROHIBITION AGAINST ASSIGNMENT OR DELEGATION

NO CHANGES IN THIS ARTICLE

ARTICLE 33 – PERMITS

NO CHANGES IN THIS ARTICLE

ARTICLE 34 – CLAIMS FOR LABOR AND MATERIALS

NO CHANGES IN THIS ARTICLE

ARTICLE 35 – DISCOUNTS

NO CHANGES IN THIS ARTICLE

ARTICLE 36 – CONTRACTOR PERFORMANCE EVALUATION

NO CHANGES IN THIS ARTICLE

ARTICLE 37 – CONTRACTOR RESPONSIBILITY ORDINANCE

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

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

In accordance with the provisions of the Contractor Responsibility Ordinance, by signing this AGREEMENT, CONSULTANT pledges, under penalty of perjury, to comply with all applicable Federal, state and local laws in the performance of this AGREEMENT, including but not limited to, laws regarding health and safety, labor and employment, wages and hours, and licensing laws which affect employees. CONSULTANT further agrees to: (1) notify the CITY within thirty (30)

calendar days after receiving notification that any government agency has initiated an investigation which may result in a finding that CONSULTANT is not in compliance with all applicable federal, state and local laws in performance of this AGREEMENT; (2) notify the CITY within thirty (30) calendar days of all findings by a government agency or court of competent jurisdiction that CONSULTANT has violated the provisions of Section 10.40.3(a) of the Contractor Responsibility Ordinance; (3) unless exempt, ensure that its subconsultants, as defined in the Contractor Responsibility Ordinance, submit a Pledge of Compliance to the CITY; and (4) unless exempt, ensure that its subconsultants, 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 38 – BREACH

NO CHANGES IN THIS ARTICLE

ARTICLE 39 – SLAVERY DISCLOSURE ORDINANCE

NO CHANGES IN THIS ARTICLE

(DELETE) ARTICLE 40 – CHILD CARE POLICY STATEMENT

DELETE THIS ARTICLE AND REPLACE WITH THE FOLLOWING

ARTICLE 40 – FIRST SOURCE HIRING ORDINANCE

Unless approved for an exemption, contractors under contracts primarily for the furnishing of services to or for the CITY, the value of which is in excess of \$25,000 and a contract term of at least three (3) months, and certain recipients of CITY Loans or Grants, shall comply with the provisions of Los Angeles Administrative Code Sections 10.44 et seq., First Source Hiring Ordinance (FSHO). Bidders/Proposers shall refer to Exhibit K attached, "First Source Hiring Ordinance" for further information regarding the requirements of the Ordinance.

The Anticipated Job Opportunities Form (FSHO-1) and Subcontractor Information Form (FSHO-2) contained in the Exhibits attached shall only be required of the Bidder/Proposer that is selected for award of a Contract.

(ADD) ARTICLE 41 – INTELLECTUAL PROPERTY INDEMNIFICATION

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

application, equipment, device, instrumentation, software, hardware, or firmware used by CONSULTANT, or its subconsultants of any tier, in performing the work under this AGREEMENT; or (2) as a result of the CITY'S actual or intended use of any Work Product furnished by CONSULTANT, or its subconsultants of any tier, under the AGREEMENT. Rights and remedies available to the CITY under this provision are cumulative of those provided for elsewhere in this AGREEMENT 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 AGREEMENT.

(ADD) ARTICLE 42 – INTELLECTUAL PROPERTY WARRANTY

The CONSULTANT represents and warrants that its performance of all obligations under this AGREEMENT 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.

(ADD) ARTICLE 43 – MUNICIPAL LOBBYING ORDINANCE

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

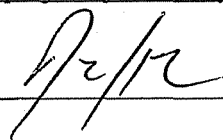
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year written below.

APPROVED AS TO FORM:

Carmen A. Trutanich, City Attorney

By: 
John Carvalho

Title: Deputy City Attorney

Date: 

CITY OF LOS ANGELES

By: _____

Title: President, Board of Public Works

Date: _____

ATTEST

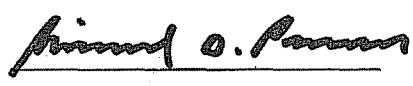
June Lagmay, City Clerk

By: _____

Title: Deputy City Clerk

Date: _____

MWH AMERICAS, INC.

By: 
Richard D. Plecker, PE

Title: Southwest Regional Manager

Date: 4/10/12

JT# / BOSBCA 9/5/2012

CONTRACT NO. C- 113318

AMENDMENT NO. 1
TO
ON-CALL PERSONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF LOS ANGELES
AND
BROWN & CALDWELL

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EXHIBIT L	MUNICIPAL LOBBYING ORDINANCE (CEC FORM50)

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**FIRST AMENDMENT TO
PERSONAL SERVICES CONTRACT NO. 113318
THE CITY OF LOS ANGELES
AND
BROWN & CALDWELL
FOR
ON-CALL PERSONAL SERVICES FOR SANITATION AUTOMATION PROJECTS
A G R E E M E N T**

THIS AMENDMENT, made and entered into by and between the Bureau of Sanitation, Department of Public Works, a Municipal Corporation acting by order of and through its Board of Public Works, hereinafter called the "CITY", and " BROWN & CALDWELL" hereinafter referred to as the "CONSULTANT" modifying the original agreement executed on March 28, 2008 entitled "On-Call Personal Services between the City of Los Angeles and Brown & Caldwell, hereinafter "AGREEMENT."

W I T N E S S E T H

WHEREAS, the Bureau of Sanitation (BUREAU) developed an Automation Master Plan and A Strategic Plan which identify and recommend numerous opportunities for using technology to improve the Sanitation business, operations, and service functions while supporting the achievement of financial budget reduction goals; and

WHEREAS, the BUREAU desires to implement the recommended automation projects in an expeditious manner; and

WHEREAS, many of these projects will require the use of staffing resources which are not available within the CITY, and therefore the BUREAU has identified the need for

Consultants to assist CITY staff on an "as-needed" basis; and

WHEREAS, the services to be provided by the Consultants may be in any of the five (5) SERVICE AREAS: 1) Software Engineering, 2) Systems Integration, 3) Local and Wide Area Network and Server Design, 4) Project Automation and/or Construction Management Services, and 5) Related Services including database development, data modeling, value engineering, database design, database to database interface, and training services on an "as-needed" basis; and

WHEREAS, the BUREAU developed a Request For Qualifications (RFQ) covering the desired SERVICE AREAS and distributed it to over one hundred fifty firms providing on-call services based upon needs outlined in the Automation Master Plan and Strategic Plan; and

WHEREAS, thirteen (13) firms submitted thirty-six (36) responses to the RFQ by September 25, 2006; and

WHEREAS, thirteen (13) firms were selected as the most qualified firms by the CITY staff based on the evaluation criteria set forth in the RFQ and as presented in Statements of Qualifications; and

WHEREAS, the Board of Public Works on August 20, 2007 authorized the execution of personal services contracts with 12 firms that qualified to provide as-needed professional services for Software Engineering, System Integration, Local and Wide Area Network and Server Design, Project Automation and/or Construction Management, Database and Training Services; and

WHEREAS, each of the selected Consultants has demonstrated qualifications to perform the required services; and

WHEREAS, the services of the Consultants are of an expert and technical nature and are temporary and occasional in character; and

WHEREAS, the CITY desires to retain the use of these pre-qualified Consultants to bid on a specific Statement of Work to provide the additional services required to assist the CITY in improving the level of automation in the wastewater collection and treatment systems. These improvements will include control systems consolidation and upgrades, systems integration, network upgrades, increased standardization, improved power/energy management and improved data management and access systems; and

WHEREAS, the AGREEMENT is executory and does not guarantee consultants will actually be awarded work thereunder; and the BUREAU reserves the right to solicit additional Consultants to be added to the existing list of Consultants ; and

WHEREAS, the BUREAU is in the process of releasing a new Request for Qualifications (RFQ); and

WHEREAS, since awarding new contracts is a time-consuming process and service areas covered by this AGREEMENT are very critical to the BUREAU'S operation , the AGREEMENT is hereby amended to extend the contract term by an additional three(3) years from January 1, 2013 to December 31, 2015; and

WHEREAS, the Bureau is requesting to increase the cost ceiling amount by \$6 million to replace the control systems in the Bureau's Treatment Plants and Collection System for a revised total ceiling of \$20 million.

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

NO CHANGE IN THIS ARTICLE

ARTICLE 2 – DEFINITIONS

NO CHANGE IN THIS ARTICLE

ARTICLE 3 – PROJECT DESCRIPTION

NO CHANGE IN THIS ARTICLE

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

NO CHANGE IN THIS ARTICLE

ARTICLE 5 – KEY CONSULTANT PERSONNEL

ADD SUB ARTICLES 5.3 AND 5.4 TO READ AS FOLLOWS:

5.3 Unless otherwise provided or approved by the CITY, CONSULTANT shall use its own employees to perform the services described in this AGREEMENT. The CITY shall have the right to review and approve any personnel who are assigned to work under this AGREEMENT. CONSULTANT agrees to remove personnel from

performing work under this AGREEMENT if requested to do so by the CITY.

- 5.4 CONSULTANT shall not use subconsultants to assist in performance of this AGREEMENT without the prior written approval of the CITY. If the CITY permits the use of subconsultants, CONSULTANT shall remain responsible for performing all aspects of this AGREEMENT. The CITY has the right to approve CONSULTANT'S subconsultants, and the CITY reserves the right to request replacement of subconsultants. The CITY does not have any obligation to pay CONSULTANT'S subconsultants, and nothing herein creates any privity between the CITY and the subconsultants.

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

NO CHANGE IN THIS ARTICLE

ARTICLE 7– TERM OF AGREEMENT AND TIME OF EFFECTIVENESS

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

Unless otherwise provided, this Amendment No. 1 shall extend the term of this AGREEMENT from January 1, 2013 until December 31, 2015 unless terminated as provided under Article 8 or extended by an amendment to this AGREEMENT and signed by all parties.

ARTICLE 8 – TERMINATION

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

- 8.1 This AGREEMENT may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this

AGREEMENT through no fault of the terminating party, provided that no termination may be effected unless the other party is given (1) not less than ten (10) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination.

8.2 This AGREEMENT may be terminated in whole or in part in writing by the CITY for its convenience, provided that the CONSULTANT is given (1) not less than thirty (30) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination. Upon receipt of said written notice, CONSULTANT shall immediately take action not to incur any additional obligations, cost or expense, except as may be reasonable necessary to terminate its activities.

8.3 This AGREEMENT may be immediately terminated in writing by the CITY if (1) a federal or state proceeding for relief of debtors is undertaken by or against CONSULTANT or if CONSULTANT makes an assignment for the benefit of creditors or (2) CONSULTANT engages in any dishonest conduct related to the performance or administration of this AGREEMENT or violates the CITY'S lobbying policies.

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

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

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

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

8.7 If, after the termination for failure of the CONSULTANT to fulfill contractual obligations, it is determined that the CONSULTANT had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of the CITY. In such event, adjustment of the AGREEMENT price shall be made as provided in Article 8.4 of this

article.

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

ARTICLE 9 – SUB-CONTRACT APPROVAL

NO CHANGE IN THIS ARTICLE

ARTICLE 10 – COMPENSATION, INVOICING, AND PAYMENT

ADD SUB-ARTICLE 10.4 TO READ AS FOLLOWS:

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

NO CHANGE IN THIS ARTICLE

ARTICLE 12 – INDEMNIFICATION AND INSURANCE

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

12.1 INDEMNIFICATION

Except for the active negligence or willful misconduct of CITY, or any of its Boards, Officers, Agents, Employees, Assigns and Successor in Interest, CONSULTANT undertakes and agrees to defend, indemnify and hold harmless CITY and any of its

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

12.2 INSURANCE

During the term of this AGREEMENT and without limiting the CONSULTANT'S indemnification of the CITY, the CONSULTANT shall provide and maintain at its own expense during the term of this AGREEMENT a program of insurance having the coverage and limits customarily carried and actually arranged by CONSULTANT but not less than the amounts and types listed on the Insurance Requirements Sheet (Form Gen 146/IR), in EXHIBIT D 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 D, and which can also be found at the Board of Public Work's website <http://bpw.lacity.org/Secretariat/Insurance.html>, in the form Instructions and Information on Complying with CITY Insurance Requirements, rev

10/09, and shall otherwise be in a form acceptable to the City Administrative Officer, Risk Management. The CONSULTANT shall comply with all Insurance Contractual Requirements shown on EXHIBIT D hereto. EXHIBIT D is hereby incorporated by reference and made a part of this AGREEMENT.

12.3 CONSULTANT may elect to wait until awarded a task order before providing proof of Professional Liability Insurance as required in Section 12.2. However, the Task Order will not be signed and work may not proceed until all the requirements of Section 12.2, including proof of Professional Liability Insurance are met.

ARTICLE 13 – INDEPENDENT CONTRACTORS

NO CHANGE IN THIS ARTICLE

ARTICLE 14 – WARRANTY AND RESPONSIBILITY OF CONSULTANT

NO CHANGE IN THIS ARTICLE

ARTICLE 15 – OWNERSHIP OF DATA

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

Unless otherwise provided for herein, all Work Products originated and prepared by CONSULTANT or its subconsultants, of any tier under this AGREEMENT 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 AGREEMENT including, without limitation, documents, material, data, reports, manuals, specifications, artwork, drawings, sketches, computer programs and databases, schematics, photographs, video and

audiovisual recordings, sound recordings, marks, logos, graphic designs, notes, websites, domain names, inventions, processes, formulas matters and combinations thereof, and all forms of intellectual property. CONSULTANT hereby assigns, and agrees to assign, all goodwill, copyright, trademark, patent, trade secret and all other intellectual property rights worldwide in any Works Products originated and prepared by CONSULTANT under this AGREEMENT. CONSULTANT further agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights provided herein.

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

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

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

ARTICLE 16 – NONDISCRIMINATION AND AFFIRMATIVE ACTION

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

16.1 NON-DISCRIMINATION

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

16.2 EQUAL EMPLOYMENT PRACTICES

Unless otherwise exempt, this AGREEMENT 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 AGREEMENT, CONSULTANT agrees and

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

1. This provision applies to work or service performed or materials manufactured or assembled in the United States.

2. Nothing in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.

3. CONSULTANT agrees to post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.

B. CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of CONSULTANT, state that all qualified applicants will received consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.

C. As part of the CITY'S supplier registration process, and/or at the request of the awarding authority, or the Board of Public Works, Office of Contract Compliance, CONSULTANT shall certify in the specified format that he or she has not discriminated in the performance of CITY contracts against any employee or applicant for employment on the basis or because of race, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status or medical condition.

D. CONSULTANT shall permit access to and may be required to provide certified copies of all of his or her records pertaining to employment and to employment practices by the awarding authority or the Office of Contract Compliance for the purpose of

investigation to ascertain compliance with the Equal Employment Practices provisions of CITY contracts. On their or either of their request, CONSULTANT shall provide evidence that he or she has or will comply therewith.

E. The failure of any CONSULTANT to comply with the Equal Employment Practices provisions of this AGREEMENT may be deemed to be a material breach of CITY contracts. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made or penalties assessed except upon a full and fair hearing after notice and an opportunity to be heard have been given to CONSULTANT.

F. Upon a finding duly made that CONSULTANT has failed to comply with the Equal Employment Practices provisions of the CITY AGREEMENT, the AGREEMENT 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 that the CONSULTANT is an irresponsible bidder or proposer pursuant to the provision of Section 371 of the Charter of the City of Los Angeles. In the event of such a determination, CONSULTANT shall be disqualified from being awarded a contract with the CITY for a period of two (2) years, or until CONSULTANT shall establish and carry out a program in conformance with the provisions hereof.

G. Notwithstanding any other provision of this AGREEMENT, 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 AGREEMENT shall be construed in any manner so as to require or permit any act which is prohibited by law.

J. At the time a supplier registers to do business with the CITY, or when an individual bid or proposal is submitted, CONSULTANT shall agree to adhere to the Equal Employment Practices specified herein during the performance or conduct of CITY Contracts.

K. Equal Employment Practices shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:

1. Hiring practices;
2. Apprenticeships where such approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;
3. Training and promotional opportunities; and
4. Reasonable accommodations for persons with disabilities.

L. Any subcontract entered into by CONSULTANT to the extent allowed hereunder, shall include a like provision for work to be performed under this AGREEMENT.

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

16.3 AFFIRMATIVE ACTION PROGRAM

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

A. During the performance of a CITY contract, CONSULTANT certifies and represents that CONSULTANT and each subconsultant hereunder will adhere to an affirmative action program to ensure that in its employment practices, persons are employed and employees are treated equally and without regard to or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.

1. This provision applies to work or services performed or materials manufactured or assembled in the United States.

2. Nothing, in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.

3. CONSULTANT shall post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.

B. CONSULTANT will in all solicitations or advertisements for employees placed by or on behalf of CONSULTANT state that all qualified applicants will receive consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.

C. As part of the CITY'S supplier registration process, and/or at the request of the awarding authority or the Office of Contract Compliance, CONSULTANT shall certify on an electronic or hard copy form to be supplied, that CONSULTANT has not discriminated in the performance of CITY contracts against any employee or applicant for employment on the basis or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.

D. CONSULTANT shall permit access to and may be required to provide certified copies of all of its records pertaining to employment and to its employment practices by

the awarding authority or the Office of Contract Compliance, for the purpose of investigation to ascertain compliance with the Affirmative Action Program provisions of CITY contracts, and on their or either of their request to provide evidence that it has or will comply therewith.

E. The failure of any CONSULTANT to comply with the Affirmative Action Program provisions of CITY contracts may be deemed to be a material breach of contract. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made except upon a full and fair hearing after notice and an opportunity to be heard has been given to CONSULTANT.

F. Upon a finding duly made that CONSULTANT has breached the Affirmative Action Program provisions of a CITY contract, the contract may be forthwith cancelled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the CITY. In addition thereto, such breach may be the basis for a determination by the awarding authority or the Board of Public Works that the said CONSULTANT is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Los Angeles City Charter. In the event of such determination, such CONSULTANT shall be disqualified from being awarded a contract with the CITY for a period of two years, or until he or she shall establish and carry out a program in conformance with the provisions hereof.

G. In the event of a finding by the Fair Employment and Housing Commission of the State of California, or the Board of Public Works of the City of Los Angeles, or any court of competent jurisdiction, that CONSULTANT has been guilty of willful violation of the California Fair Employment and Housing Act, or the Affirmative Action Program

provisions of a City contract, there may be deducted from the amount payable to CONSULTANT by the CITY under the contract, a penalty of ten dollars (\$10.00) for each person for each calendar day on which such person was discriminated against in violation of the provisions of a CITY contract.

H. Notwithstanding any other provisions of a CITY contract, the CITY shall have any and all other remedies at law or in equity for any breach hereof.

I. Intentionally blank.

J. Nothing contained in CITY contracts shall be construed in any manner so as to require or permit any act which is prohibited by law.

K. CONSULTANT shall submit an Affirmative Action Plan which shall meet the requirements of this chapter at the time it submits its bid or proposal or at the time it registers to do business with the CITY. The plan shall be subject to approval by the Office of Contract Compliance prior to award of the AGREEMENT. The awarding authority may also require contractors and suppliers to take part in a pre-registration, pre-bid, pre-proposal, or pre-award conference in order to develop, improve or implement a qualifying Affirmative Action Plan. Affirmative Action Programs developed pursuant to this section shall be effective for a period of twelve months from the date of approval by the Office of Contract Compliance. In case of prior submission of a plan, CONSULTANT may submit documentation that it has an Affirmative Action Plan approved by the Office of Contract Compliance within the previous twelve months. If the approval is 30 days or less from expiration, CONSULTANT must submit a new Plan to the Office of Contract Compliance and that Plan must be approved before the AGREEMENT is awarded.

1. Every contract of \$5,000 or more which may provide construction, demolition, renovation, conservation or major maintenance of any kind shall in addition comply with the requirements of Section 10.13 of the Los Angeles Administrative Code.

2. CONSULTANT may establish and adopt as its own Affirmative Action Plan, by affixing his or her signature thereto, an Affirmative Action Plan prepared and furnished by the Office of Contract Compliance, or it may prepare and submit its own Plan for approval.

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

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

1. Apprenticeship where approved programs are functioning and other on-the-job training for non-apprenticeable occupations;
2. Classroom preparation for the job when not apprenticeable;
3. Pre-apprenticeship education and preparation;
4. Upgrading, training and opportunities;

5. Encouraging the use of contractors, subcontractors and suppliers of all racial and ethnic groups, provided, however, that any contract subject to this ordinance shall require the contractor, subcontractor or supplier to provide not less than the prevailing wage, working conditions and practices generally observed in private industries in the contractor's, subcontractor's or supplier's geographical area for such work;

6. The entry of qualified women, minority and all other journeymen into the industry; and

7. The provision of needed supplies or job conditions to permit person 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 Affirmation 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 consultants 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 are applicable to the contractor. Failure of the CONSULTANT to comply with this requirement or to obtain the compliance of its subcontractors with all such obligations shall subject the CONSULTANT to the imposition of any and all sanctions allowed by law, including but not limited to termination of the CONSULTANT'S AGREEMENT with the CITY.

ARTICLE 17 – MINORITY, WOMEN AND OTHER BUSINESS ENTERPRISE

OUTREACH PROGRAM

NO CHANGE IN THIS ARTICLE

ARTICLE 18 – SUCCESSORS AND ASSIGNS

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

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 32.

ARTICLE 19 –CONTACT PERSONS –PROPER ADDRESSES –NOTIFICATION

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

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: Robert B. Irvin, Director of Systems

Address: 1149 S. Broadway Ave, Ste 900

Los Angeles, California, 90015

CONSULTANT:

Contact Person: Marc Damikolas, PE

Address: 801 South Figueroa Street, Suite 950

Los Angeles, CA 90017

E-mail: mdamikolas@brwncl.com

ARTICLE 20 – FORCE MAJEURE

NO CHANGE IN THIS ARTICLE

ARTICLE 21 – SEVERABILITY

NO CHANGE IN THIS ARTICLE

ARTICLE 22 – DISPUTES

NO CHANGE IN THIS ARTICLE

ARTICLE 23 – ENTIRE AGREEMENT

NO CHANGE IN THIS ARTICLE

ARTICLE 24 – APPLICABLE LAW, INTERPRETATION AND ENFORCEMENT

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

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

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

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

NO CHANGE IN THIS ARTICLE

ARTICLE 26 – BONDS

NO CHANGE IN THIS ARTICLE

ARTICLE 27 – CHILD SUPPORT ASSIGNMENT ORDERS

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

This AGREEMENT is subject to the Child Support Assignment Orders Ordinance, Section 10.10 of the Los Angeles Administrative Code, as amended from time to time. Pursuant to the Child Support Assignment Orders Ordinance, CONSULTANT will fully comply with all applicable State and Federal employment reporting requirements for CONSULTANT'S employees.

CONSULTANT shall also certify (1) that the Principal Owner(s) of CONSULTANT are in compliance with any Wage and Earnings Assignment Orders and Notices of Assignment applicable to them personally (2) that CONSULTANT will fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment in accordance with Section 5230, et seq. of the California Family Code; and (3) that CONSULTANT will maintain such compliance throughout the term of this AGREEMENT.

Pursuant to Section 10.10(b) of the Los Angeles Administrative Code, the failure of CONSULTANT to comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignment Orders or Notices of Assignment, or the failure of any Principal Owner(s) of CONSULTANT to comply with any Wage and Earnings Assignment Orders or Notices of Assignment applicable to them personally, shall constitute a default by the CONSULTANT under this AGREEMENT subjecting this AGREEMENT to termination if such default shall continue for more than ninety (90) days after notice of such default to CONSULTANT by the CITY.

Any subcontract entered into by CONSULTANT, to the extent allowed hereunder, shall include a like provision for work to be performed under this AGREEMENT. Failure of CONSULTANT to obtain compliance of its subconsultants shall constitute a default by CONSULTANT under this AGREEMENT, subjecting this AGREEMENT to termination where such default shall

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

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

ARTICLE 28 – SERVICE CONTRACTOR WORKER RETENTION ORDINANCE
AND LIVING WAGE ORDINANCE

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

- 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 F and incorporated herein by this reference, and the Service Contractor Worker Retention Ordinance (SCWRO), Section 10.3 et seq., of the Los Angeles Administrative code, as amended from time to time.

These Ordinances require the following:

1. The CONSULTANT assures payment of a minimum initial wage rate to employees as defined in the LWO and as may be adjusted each July 1 and provision of benefits of compensated and uncompensated days off and health benefits, as defined in the LWO.
2. The CONSULTANT further pledges that it will comply with federal law proscribing retaliation for union organizing and will not retaliate for activities

related to the LWO. CONSULTANT shall require each of its subconsultants within the meaning of the LWO to pledge to comply with the terms of federal law proscribing retaliation for union organizing. CONSULTANT shall receive and retain on file the executed pledges from each such subconsultant within ninety (90) days of the execution of the Subcontract. CONSULTANT'S evidence of executed pledges from each such subconsultant shall fully discharge the obligation of the CONSULTANT to comply with the provision in the LWO contained in Section 10.37.6(c) concerning compliance with such federal law.

3. The CONSULTANT, whether an employer, as defined in the LWO, or any other person employing individuals, shall not discharge, reduce in compensation, or otherwise discriminate against any employee for complaining to the CITY with regard to the employer's compliance or anticipated compliance with the LWO, for opposing any practice proscribed by the LWO, for participating in proceedings related to the LWO, for seeking to enforce his or her rights under the LWO by any lawful means, or otherwise asserting rights under the LWO. CONSULTANT shall post the Notice of Prohibition Against Retaliation provided by the CITY
4. Any Subcontract entered into by the CONSULTANT relating to this AGREEMENT, to the extent allowed hereunder, shall be subject to the provisions of LWO and the SCWRO, and shall incorporate the LWO and the SCWRO.
5. The CONSULTANT shall comply with all rules, regulations and policies promulgated by the CITY'S Designated Administrative Agency, which may be amended from time to time.

- B. Under the provisions of Section 10.36.3(c) and Section 10.37.6(c) of the Los Angeles Administrative Code, the CITY shall have the authority, under appropriate

circumstances, to terminate this AGREEMENT and otherwise pursue legal remedies that may be available if the CITY determines that the subject CONSULTANT has violated provisions of the LWO and the SCWRO or both.

- C. Where under the LWO Section 10.37.6(d), the CITY'S Designated Administrative Agency has determined (a) that the CONSULTANT is in violation of the LWO in having failed to pay some or all of the living wage, and (b) that such violation has gone uncured, the CITY in such circumstances may impound monies otherwise due the CONSULTANT in accordance with the following procedures. Impoundment shall mean that from monies due the CONSULTANT, the CITY may deduct the amount determined to be due and owing by the CONSULTANT to its employees. Such monies shall be placed in the holding account referred to in LWO Section 10.37.6(d) (3) and disposed of under procedures there described through final and binding arbitration. Whether the CONSULTANT is to continue work following an impoundment shall remain in the sole discretion of the CITY. The CONSULTANT may not elect to discontinue work either because there has been an impoundment or because of the ultimate disposition of the impoundment by the arbitrator.
- D. The AGREEMENT shall inform employees making less than Twelve Dollars (\$12.00) per hour of their possible right to the federal Earned Income Credit (EIC). CONSULTANT shall also make available to employees the forms informing them about the EIC and forms required to secure advance EIC payments from CONSULTANT.

ARTICLE 29 –AMERICANS WITH DISABILITIES ACT

NO CHANGE IN THIS ARTICLE

ARTICLE 30 –EQUAL BENEFITS ORDINANCE

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

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

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

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

ARTICLE 31 – WAIVER

NO CHANGE IN THIS ARTICLE

ARTICLE 32 – PROHIBITION AGAINST ASSIGNMENT OR DELEGATION

NO CHANGES IN THIS ARTICLE

ARTICLE 33 – PERMITS

NO CHANGES IN THIS ARTICLE

ARTICLE 34 – CLAIMS FOR LABOR AND MATERIALS

NO CHANGES IN THIS ARTICLE

ARTICLE 35 – DISCOUNTS

NO CHANGES IN THIS ARTICLE

ARTICLE 36 – CONTRACTOR PERFORMANCE EVALUATION

NO CHANGES IN THIS ARTICLE

ARTICLE 37 – CONTRACTOR RESPONSIBILITY ORDINANCE

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

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

In accordance with the provisions of the Contractor Responsibility Ordinance, by signing this AGREEMENT, CONSULTANT pledges, under penalty of perjury, to comply with all applicable Federal, state and local laws in the performance of this AGREEMENT, including but not limited to, laws regarding health and safety, labor and employment, wages and hours, and licensing laws which affect employees. CONSULTANT further agrees to: (1) notify the CITY within thirty (30) calendar days after receiving notification that any government agency has initiated an investigation which may result in a finding that CONSULTANT is not in compliance with all applicable federal, state and local laws in performance of this AGREEMENT; (2) notify the CITY within thirty (30) calendar days of all findings by a government agency or court of competent jurisdiction that CONSULTANT has violated the provisions of Section 10.40.3(a) of the Contractor Responsibility Ordinance; (3) unless exempt, ensure that its subconsultants, as defined in the Contractor Responsibility Ordinance, submit a Pledge of Compliance to the CITY; and (4) unless exempt, ensure that its subconsultants, 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 38 – BREACH

NO CHANGES IN THIS ARTICLE

ARTICLE 39 – SLAVERY DISCLOSURE ORDINANCE

NO CHANGES IN THIS ARTICLE

(DELETE) ARTICLE 40 – CHILD CARE POLICY STATEMENT

DELETE THIS ARTICLE AND REPLACE WITH THE FOLLOWING

ARTICLE 40 – FIRST SOURCE HIRING ORDINANCE

Unless approved for an exemption, contractors under contracts primarily for the furnishing of services to or for the CITY, the value of which is in excess of \$25,000 and a contract term of at least three (3) months, and certain recipients of CITY Loans or Grants, shall comply with the provisions of Los Angeles Administrative Code Sections 10.44 et seq., First Source Hiring Ordinance (FSHO). Bidders/Proposers shall refer to Exhibit K attached, “First Source Hiring Ordinance” for further information regarding the requirements of the Ordinance.

The Anticipated Job Opportunities Form (FSHO-1) and Subcontractor Information Form (FSHO-2) contained in the Exhibits attached shall only be required of the Bidder/Proposer that is selected for award of a Contract.

(ADD) ARTICLE 41 – INTELLECTUAL PROPERTY INDEMNIFICATION

The CONSULTANT, at its own expense, undertakes and agrees to defend, indemnify, and hold harmless the CITY, and any of its Boards, Officers, Agents, Employees, Assigns, and Successors in Interest from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the CITY, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever arising out of the infringement, actual or alleged, direct or contributory, or any intellectual property rights, including, without limitation, patent, copyright, trademark, trade secret, right of publicity and proprietary information right (1) on or in any design, medium, matter, article, process, method, application, equipment, device, instrumentation, software, hardware, or firmware used by CONSULTANT, or its subconsultants of any tier, in performing the work under this AGREEMENT; or (2) as a result of the CITY'S actual or intended use of any Work Product furnished by CONSULTANT, or its subconsultants of any tier, under the AGREEMENT. Rights and remedies available to the CITY under this provision are cumulative of those provided for elsewhere in this AGREEMENT 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 AGREEMENT.

(ADD) ARTICLE 42 – INTELLECTUAL PROPERTY WARRANTY

The CONSULTANT represents and warrants that its performance of all obligations under this AGREEMENT 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.


(ADD) ARTICLE 43 – MUNICIPAL LOBBYING ORDINANCE

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

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

APPROVED AS TO FORM:

Carmen A. Trutanich, City Attorney

By: 
John Carvalho

Title: Deputy City Attorney

Date: 8/2/12

CITY OF LOS ANGELES

By: _____

Title: President, Board of Public Works

Date: _____

ATTEST

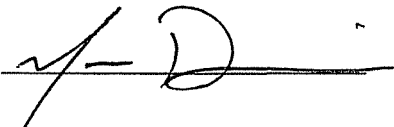
June Lagmay, City Clerk

By: _____

Title: Deputy City Clerk

Date: _____

BROWN & CALDWELL

By: 

Title: **MARC DAMIKOLAS, PE
VICE PRESIDENT**

Date: 4/16/12

JT #1 B05 BcA =
9/5/2012

CONTRACT NO. C-113338

AMENDMENT NO. 1
TO
ON-CALL PERSONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF LOS ANGELES
AND
TETRA TECH, INC.

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**FIRST AMENDMENT TO
PERSONAL SERVICES CONTRACT NO. 113338
THE CITY OF LOS ANGELES
AND
TETRA TECH
FOR
ON-CALL PERSONAL SERVICES FOR SANITATION AUTOMATION PROJECTS
A G R E E M E N T**

THIS AMENDMENT, made and entered into by and between the Bureau of Sanitation, Department of Public Works, a Municipal Corporation acting by order of and through its Board of Public Works, hereinafter called the "CITY", and "TETRA TECH, INC." hereinafter referred to as the "CONSULTANT" modifying the original agreement executed on March 28, 2008 entitled "On-Call Personal Services between the City of Los Angeles and Tetra Tech, Inc., hereinafter "AGREEMENT."

W I T N E S S E T H

WHEREAS, the Bureau of Sanitation (BUREAU) developed an Automation Master Plan and A Strategic Plan which identify and recommend numerous opportunities for using technology to improve the Sanitation business, operations, and service functions while supporting the achievement of financial budget reduction goals; and

WHEREAS, the BUREAU desires to implement the recommended automation projects in an expeditious manner; and

WHEREAS, many of these projects will require the use of staffing resources which are not available within the CITY, and therefore the BUREAU has identified the need for

Consultants to assist CITY staff on an "as-needed" basis; and

WHEREAS, the services to be provided by the Consultants may be in any of the five (5) SERVICE AREAS: 1) Software Engineering, 2) Systems Integration, 3) Local and Wide Area Network and Server Design, 4) Project Automation and/or Construction Management Services, and 5) Related Services including database development, data modeling, value engineering, database design, database to database interface, and training services on an "as-needed" basis; and

WHEREAS, the BUREAU developed a Request For Qualifications (RFQ) covering the desired SERVICE AREAS and distributed it to over one hundred fifty firms providing on-call services based upon needs outlined in the Automation Master Plan and Strategic Plan; and

WHEREAS, thirteen (13) firms submitted thirty-six (36) responses to the RFQ by September 25, 2006; and

WHEREAS, thirteen (13) firms were selected as the most qualified firms by the CITY staff based on the evaluation criteria set forth in the RFQ and as presented in Statements of Qualifications; and

WHEREAS, the Board of Public Works on August 20, 2007 authorized the execution of personal services contracts with 12 firms that qualified to provide as-needed professional services for Software Engineering, System Integration, Local and Wide Area Network and Server Design, Project Automation and/or Construction Management, Database and Training Services; and

WHEREAS, each of the selected Consultants has demonstrated qualifications to perform the required services; and

WHEREAS, the services of the Consultants are of an expert and technical nature and are temporary and occasional in character; and

WHEREAS, the CITY desires to retain the use of these pre-qualified Consultants to bid on a specific Statement of Work to provide the additional services required to assist the CITY in improving the level of automation in the wastewater collection and treatment systems. These improvements will include control systems consolidation and upgrades, systems integration, network upgrades, increased standardization, improved power/energy management and improved data management and access systems; and

WHEREAS, the AGREEMENT is executory and does not guarantee consultants will actually be awarded work thereunder; and the BUREAU reserves the right to solicit additional Consultants to be added to the existing list of Consultants ; and

WHEREAS, the BUREAU is in the process of releasing a new Request for Qualifications (RFQ); and

WHEREAS, since awarding new contracts is a time-consuming process and service areas covered by this AGREEMENT are very critical to the BUREAU'S operation , the AGREEMENT is hereby amended to extend the contract term by an additional three(3) years from January 1, 2013 to December 31, 2015; and

WHEREAS, the Bureau is requesting to increase the cost ceiling amount by \$6 million to replace the control systems in the Bureau's Treatment Plants and Collection System for a revised total ceiling of \$20 million.

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

NO CHANGE IN THIS ARTICLE

ARTICLE 2 – DEFINITIONS

NO CHANGE IN THIS ARTICLE

ARTICLE 3 – PROJECT DESCRIPTION

NO CHANGE IN THIS ARTICLE

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

NO CHANGE IN THIS ARTICLE

ARTICLE 5 – KEY CONSULTANT PERSONNEL

ADD SUB ARTICLES 5.3 AND 5.4 TO READ AS FOLLOWS:

5.3 Unless otherwise provided or approved by the CITY, CONSULTANT shall use its own employees to perform the services described in this AGREEMENT. The CITY shall have the right to review and approve any personnel who are assigned to work under this AGREEMENT. CONSULTANT agrees to remove personnel from

performing work under this AGREEMENT if requested to do so by the CITY.

- 5.4 CONSULTANT shall not use subconsultants to assist in performance of this AGREEMENT without the prior written approval of the CITY. If the CITY permits the use of subconsultants, CONSULTANT shall remain responsible for performing all aspects of this AGREEMENT. The CITY has the right to approve CONSULTANT'S subconsultants, and the CITY reserves the right to request replacement of subconsultants. The CITY does not have any obligation to pay CONSULTANT'S subconsultants, and nothing herein creates any privity between the CITY and the subconsultants.

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

NO CHANGE IN THIS ARTICLE

ARTICLE 7– TERM OF AGREEMENT AND TIME OF EFFECTIVENESS

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

Unless otherwise provided, this Amendment No. 1 shall extend the term of this AGREEMENT from January 1, 2013 until December 31, 2015 unless terminated as provided under Article 8 or extended by an amendment to this AGREEMENT and signed by all parties.

ARTICLE 8 – TERMINATION

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

- 8.1 This AGREEMENT may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this

AGREEMENT through no fault of the terminating party, provided that no termination may be effected unless the other party is given (1) not less than ten (10) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination.

8.2 This AGREEMENT may be terminated in whole or in part in writing by the CITY for its convenience, provided that the CONSULTANT is given (1) not less than thirty (30) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination. Upon receipt of said written notice, CONSULTANT shall immediately take action not to incur any additional obligations, cost or expense, except as may be reasonable necessary to terminate its activities.

8.3 This AGREEMENT may be immediately terminated in writing by the CITY if (1) a federal or state proceeding for relief of debtors is undertaken by or against CONSULTANT or if CONSULTANT makes an assignment for the benefit of creditors or (2) CONSULTANT engages in any dishonest conduct related to the performance or administration of this AGREEMENT or violates the CITY'S lobbying policies.

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

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

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

article.

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

ARTICLE 9 – SUB-CONTRACT APPROVAL

NO CHANGE IN THIS ARTICLE

ARTICLE 10 – COMPENSATION, INVOICING, AND PAYMENT

ADD SUB-ARTICLE 10.4 TO READ AS FOLLOWS:

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

NO CHANGE IN THIS ARTICLE

ARTICLE 12 – INDEMNIFICATION AND INSURANCE

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

12.1 INDEMNIFICATION

Except for the active negligence or willful misconduct of CITY, or any of its Boards, Officers, Agents, Employees, Assigns and Successor in Interest, CONSULTANT undertakes and agrees to defend, indemnify and hold harmless CITY and any of its

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

12.2 INSURANCE

During the term of this AGREEMENT and without limiting the CONSULTANT'S indemnification of the CITY, the CONSULTANT shall provide and maintain at its own expense during the term of this AGREEMENT a program of insurance having the coverage and limits customarily carried and actually arranged by CONSULTANT but not less than the amounts and types listed on the Insurance Requirements Sheet (Form Gen 146/IR), in EXHIBIT D 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 D, and which can also be found at the Board of Public Work's website <http://bpw.lacity.org/Secretariat/Insurance.html>, in the form Instructions and Information on Complying with CITY Insurance Requirements, rev

10/09, and shall otherwise be in a form acceptable to the City Administrative Officer, Risk Management. The CONSULTANT shall comply with all Insurance Contractual Requirements shown on EXHIBIT D hereto. EXHIBIT D is hereby incorporated by reference and made a part of this AGREEMENT.

12.3 CONSULTANT may elect to wait until awarded a task order before providing proof of Professional Liability Insurance as required in Section 12.2. However, the Task Order will not be signed and work may not proceed until all the requirements of Section 12.2, including proof of Professional Liability Insurance are met.

ARTICLE 13 – INDEPENDENT CONTRACTORS

NO CHANGE IN THIS ARTICLE

ARTICLE 14 – WARRANTY AND RESPONSIBILITY OF CONSULTANT

NO CHANGE IN THIS ARTICLE

ARTICLE 15 – OWNERSHIP OF DATA

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

Unless otherwise provided for herein, all Work Products originated and prepared by CONSULTANT or its subconsultants, of any tier under this AGREEMENT 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 AGREEMENT including, without limitation, documents, material, data, reports, manuals, specifications, artwork, drawings, sketches, computer programs and databases, schematics, photographs, video and

audiovisual recordings, sound recordings, marks, logos, graphic designs, notes, websites, domain names, inventions, processes, formulas matters and combinations thereof, and all forms of intellectual property. CONSULTANT hereby assigns, and agrees to assign, all goodwill, copyright, trademark, patent, trade secret and all other intellectual property rights worldwide in any Works Products originated and prepared by CONSULTANT under this AGREEMENT. CONSULTANT further agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights provided herein.

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

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

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

ARTICLE 16 – NONDISCRIMINATION AND AFFIRMATIVE ACTION

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

16.1 NON-DISCRIMINATION

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

16.2 EQUAL EMPLOYMENT PRACTICES

Unless otherwise exempt, this AGREEMENT 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 AGREEMENT, CONSULTANT agrees and

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

1. This provision applies to work or service performed or materials manufactured or assembled in the United States.

2. Nothing in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.

3. CONSULTANT agrees to post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.

B. CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of CONSULTANT, state that all qualified applicants will received consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.

C. As part of the CITY'S supplier registration process, and/or at the request of the awarding authority, or the Board of Public Works, Office of Contract Compliance, CONSULTANT shall certify in the specified format that he or she has not discriminated in the performance of CITY contracts against any employee or applicant for employment on the basis or because of race, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status or medical condition.

D. CONSULTANT shall permit access to and may be required to provide certified copies of all of his or her records pertaining to employment and to employment practices by the awarding authority or the Office of Contract Compliance for the purpose of

investigation to ascertain compliance with the Equal Employment Practices provisions of CITY contracts. On their or either of their request, CONSULTANT shall provide evidence that he or she has or will comply therewith.

E. The failure of any CONSULTANT to comply with the Equal Employment Practices provisions of this AGREEMENT may be deemed to be a material breach of CITY contracts. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made or penalties assessed except upon a full and fair hearing after notice and an opportunity to be heard have been given to CONSULTANT.

F. Upon a finding duly made that CONSULTANT has failed to comply with the Equal Employment Practices provisions of the CITY AGREEMENT, the AGREEMENT 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 that the CONSULTANT is an irresponsible bidder or proposer pursuant to the provision of Section 371 of the Charter of the City of Los Angeles. In the event of such a determination, CONSULTANT shall be disqualified from being awarded a contract with the CITY for a period of two (2) years, or until CONSULTANT shall establish and carry out a program in conformance with the provisions hereof.

G. Notwithstanding any other provision of this AGREEMENT, 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 AGREEMENT shall be construed in any manner so as to require or permit any act which is prohibited by law.

J. At the time a supplier registers to do business with the CITY, or when an individual bid or proposal is submitted, CONSULTANT shall agree to adhere to the Equal Employment Practices specified herein during the performance or conduct of CITY Contracts.

K. Equal Employment Practices shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:

1. Hiring practices;
2. Apprenticeships where such approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;
3. Training and promotional opportunities; and
4. Reasonable accommodations for persons with disabilities.

L. Any subcontract entered into by CONSULTANT to the extent allowed hereunder, shall include a like provision for work to be performed under this AGREEMENT.

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

16.3 AFFIRMATIVE ACTION PROGRAM

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

A. During the performance of a CITY contract, CONSULTANT certifies and represents that CONSULTANT and each subconsultant hereunder will adhere to an affirmative action program to ensure that in its employment practices, persons are employed and employees are treated equally and without regard to or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.

1. This provision applies to work or services performed or materials manufactured or assembled in the United States.

2. Nothing, in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.

3. CONSULTANT shall post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.

B. CONSULTANT will in all solicitations or advertisements for employees placed by or on behalf of CONSULTANT state that all qualified applicants will receive consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.

C. As part of the CITY'S supplier registration process, and/or at the request of the awarding authority or the Office of Contract Compliance, CONSULTANT shall certify on an electronic or hard copy form to be supplied, that CONSULTANT has not discriminated in the performance of CITY contracts against any employee or applicant for employment on the basis or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.

D. CONSULTANT shall permit access to and may be required to provide certified copies of all of its records pertaining to employment and to its employment practices by

the awarding authority or the Office of Contract Compliance, for the purpose of investigation to ascertain compliance with the Affirmative Action Program provisions of CITY contracts, and on their or either of their request to provide evidence that it has or will comply therewith.

E. The failure of any CONSULTANT to comply with the Affirmative Action Program provisions of CITY contracts may be deemed to be a material breach of contract. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made except upon a full and fair hearing after notice and an opportunity to be heard has been given to CONSULTANT.

F. Upon a finding duly made that CONSULTANT has breached the Affirmative Action Program provisions of a CITY contract, the contract may be forthwith cancelled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the CITY. In addition thereto, such breach may be the basis for a determination by the awarding authority or the Board of Public Works that the said CONSULTANT is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Los Angeles City Charter. In the event of such determination, such CONSULTANT shall be disqualified from being awarded a contract with the CITY for a period of two years, or until he or she shall establish and carry out a program in conformance with the provisions hereof.

G. In the event of a finding by the Fair Employment and Housing Commission of the State of California, or the Board of Public Works of the City of Los Angeles, or any court of competent jurisdiction, that CONSULTANT has been guilty of willful violation of the California Fair Employment and Housing Act, or the Affirmative Action Program

provisions of a City contract, there may be deducted from the amount payable to CONSULTANT by the CITY under the contract, a penalty of ten dollars (\$10.00) for each person for each calendar day on which such person was discriminated against in violation of the provisions of a CITY contract.

H. Notwithstanding any other provisions of a CITY contract, the CITY shall have any and all other remedies at law or in equity for any breach hereof.

I. Intentionally blank.

J. Nothing contained in CITY contracts shall be construed in any manner so as to require or permit any act which is prohibited by law.

K. CONSULTANT shall submit an Affirmative Action Plan which shall meet the requirements of this chapter at the time it submits its bid or proposal or at the time it registers to do business with the CITY. The plan shall be subject to approval by the Office of Contract Compliance prior to award of the AGREEMENT. The awarding authority may also require contractors and suppliers to take part in a pre-registration, pre-bid, pre-proposal, or pre-award conference in order to develop, improve or implement a qualifying Affirmative Action Plan. Affirmative Action Programs developed pursuant to this section shall be effective for a period of twelve months from the date of approval by the Office of Contract Compliance. In case of prior submission of a plan, CONSULTANT may submit documentation that it has an Affirmative Action Plan approved by the Office of Contract Compliance within the previous twelve months. If the approval is 30 days or less from expiration, CONSULTANT must submit a new Plan to the Office of Contract Compliance and that Plan must be approved before the AGREEMENT is awarded.

1. Every contract of \$5,000 or more which may provide construction, demolition, renovation, conservation or major maintenance of any kind shall in addition comply with the requirements of Section 10.13 of the Los Angeles Administrative Code.

2. CONSULTANT may establish and adopt as its own Affirmative Action Plan, by affixing his or her signature thereto, an Affirmative Action Plan prepared and furnished by the Office of Contract Compliance, or it may prepare and submit its own Plan for approval.

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

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

1. Apprenticeship where approved programs are functioning and other on-the-job training for non-apprenticeable occupations;
2. Classroom preparation for the job when not apprenticeable;
3. Pre-apprenticeship education and preparation;
4. Upgrading, training and opportunities;

5. Encouraging the use of contractors, subcontractors and suppliers of all racial and ethnic groups, provided, however, that any contract subject to this ordinance shall require the contractor, subcontractor or supplier to provide not less than the prevailing wage, working conditions and practices generally observed in private industries in the contractor's, subcontractor's or supplier's geographical area for such work;

6. The entry of qualified women, minority and all other journeymen into the industry; and

7. The provision of needed supplies or job conditions to permit person 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 Affirmation 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 consultants 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 are applicable to the contractor. Failure of the CONSULTANT to comply with this requirement or to obtain the compliance of its subcontractors with all such obligations shall subject the CONSULTANT to the imposition of any and all sanctions allowed by law, including but not limited to termination of the CONSULTANT'S AGREEMENT with the CITY.

ARTICLE 17 – MINORITY, WOMEN AND OTHER BUSINESS ENTERPRISE

OUTREACH PROGRAM

NO CHANGE IN THIS ARTICLE

ARTICLE 18 – SUCCESSORS AND ASSIGNS

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

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 32.

ARTICLE 19 –CONTACT PERSONS –PROPER ADDRESSES –NOTIFICATION

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

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: Robert B. Irvin, Director of Systems

Address: 1149 S. Broadway Ave, Ste 900

Los Angeles, California, 90015

CONSULTANT:

Contact Person: Scott Dellinger, P.E.

Address: 800 West 6th Street, Suite 380

Los Angeles, CA 90017

E-mail: scott.dellinger@tetrattech.com

ARTICLE 20 – FORCE MAJEURE

NO CHANGE IN THIS ARTICLE

ARTICLE 21 – SEVERABILITY

NO CHANGE IN THIS ARTICLE

ARTICLE 22 – DISPUTES

NO CHANGE IN THIS ARTICLE

ARTICLE 23 – ENTIRE AGREEMENT

NO CHANGE IN THIS ARTICLE

ARTICLE 24 – APPLICABLE LAW, INTERPRETATION AND ENFORCEMENT

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

Each party's performance hereunder shall comply with all applicable laws of the United States of America, the State of California, and the CITY including but not limited to laws regarding health and safety, labor and employment, wage and hours and licensing laws which affect employees.

This AGREEMENT and its performance shall be enforced and interpreted under the laws of the State of California. All causes of action arising directly or indirectly from the business relationship evidenced by this AGREEMENT must be filed in the appropriate state or federal court located in Los Angeles County, California, and each party agrees to be subject to the jurisdiction of the State of California regardless of their residence. CONSULTANT shall comply with new, amended, or revised laws, regulations, and/or procedures that apply to the performance of this AGREEMENT.

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

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

NO CHANGE IN THIS ARTICLE

ARTICLE 26 – BONDS

NO CHANGE IN THIS ARTICLE

ARTICLE 27 – CHILD SUPPORT ASSIGNMENT ORDERS

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

This AGREEMENT is subject to the Child Support Assignment Orders Ordinance, Section 10.10 of the Los Angeles Administrative Code, as amended from time to time. Pursuant to the Child Support Assignment Orders Ordinance, CONSULTANT will fully comply with all applicable State and Federal employment reporting requirements for CONSULTANT'S employees.

CONSULTANT shall also certify (1) that the Principal Owner(s) of CONSULTANT are in compliance with any Wage and Earnings Assignment Orders and Notices of Assignment applicable to them personally (2) that CONSULTANT will fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment in accordance with Section 5230, et seq. of the California Family Code; and (3) that CONSULTANT will maintain such compliance throughout the term of this AGREEMENT.

Pursuant to Section 10.10(b) of the Los Angeles Administrative Code, the failure of CONSULTANT to comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignment Orders or Notices of Assignment, or the failure of any Principal Owner(s) of CONSULTANT to comply with any Wage and Earnings Assignment Orders or Notices of Assignment applicable to them personally, shall constitute a default by the CONSULTANT under this AGREEMENT subjecting this AGREEMENT to termination if such default shall continue for more than ninety (90) days after notice of such default to CONSULTANT by the CITY.

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

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

ARTICLE 28 – SERVICE CONTRACTOR WORKER RETENTION ORDINANCE
AND LIVING WAGE ORDINANCE

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

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 F and incorporated herein by this reference, and the Service Contractor Worker Retention Ordinance (SCWRO), Section 10.3 et seq., of the Los Angeles Administrative code, as amended from time to time. These Ordinances require the following:

1. The CONSULTANT assures payment of a minimum initial wage rate to employees as defined in the LWO and as may be adjusted each July 1 and

provision of benefits of compensated and uncompensated days off and health benefits, as defined in the LWO.

2. The CONSULTANT further pledges that it will comply with federal law proscribing retaliation for union organizing and will not retaliate for activities related to the LWO. CONSULTANT shall require each of its subconsultants within the meaning of the LWO to pledge to comply with the terms of federal law proscribing retaliation for union organizing. CONSULTANT shall receive and retain on file the executed pledges from each such subconsultant within ninety (90) days of the execution of the Subcontract. CONSULTANT'S evidence of executed pledges from each such subconsultant shall fully discharge the obligation of the CONSULTANT to comply with the provision in the LWO contained in Section 10.37.6(c) concerning compliance with such federal law.
3. The CONSULTANT, whether an employer, as defined in the LWO, or any other person employing individuals, shall not discharge, reduce in compensation, or otherwise discriminate against any employee for complaining to the CITY with regard to the employer's compliance or anticipated compliance with the LWO, for opposing any practice proscribed by the LWO, for participating in proceedings related to the LWO, for seeking to enforce his or her rights under the LWO by any lawful means, or otherwise asserting rights under the LWO. CONSULTANT shall post the Notice of Prohibition Against Retaliation provided by the CITY
4. Any Subcontract entered into by the CONSULTANT relating to this AGREEMENT, to the extent allowed hereunder, shall be subject to the provisions of LWO and the SCWRO, and shall incorporate the LWO and the SCWRO.

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

CONSULTANT shall also make available to employees the forms informing them about the EIC and forms required to secure advance EIC payments from CONSULTANT.

ARTICLE 29 - AMERICANS WITH DISABILITIES ACT

NO CHANGE IN THIS ARTICLE

ARTICLE 30 - EQUAL BENEFITS ORDINANCE

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

Unless otherwise exempt, this AGREEMENT 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 AGREEMENT, the CONSULTANT certified and represents that the CONSULTANT will comply with the EBO.
- B. The failure of the CONSULTANT to comply with the EBO will be deemed to be a material breach of this AGREEMENT by the CITY.
- C. If the CONSULTANT fails to comply with the EBO, the CITY may cancel, terminate or suspend this AGREEMENT, in whole or in part, and all monies due or to become due under this AGREEMENT may be retained by the CITY. The CITY may also pursue any and all other remedies at law or in equity for any breach.
- D. Failure to comply with the EBO may be used as evidence against CONSULTANT in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40 et seq., Contractor Responsibility Ordinance.

- E. If the CITY'S Designated Administrative Agency determined that a CONSULTANT has set up or used its contracting entity for the purpose of evading the intent of the EBO, the CITY may terminate the AGREEMENT. Violation of this provision may be used as evidence against CONSULTANT in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40 et seq., Contractor Responsibility Ordinance.

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

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

ARTICLE 31 -WAIVER

NO CHANGE IN THIS ARTICLE

ARTICLE 32 - PROHIBITION AGAINST ASSIGNMENT OR DELEGATION

NO CHANGES IN THIS ARTICLE

ARTICLE 33 - PERMITS

NO CHANGES IN THIS ARTICLE

ARTICLE 34 – CLAIMS FOR LABOR AND MATERIALS

NO CHANGES IN THIS ARTICLE

ARTICLE 35 – DISCOUNTS

NO CHANGES IN THIS ARTICLE

ARTICLE 36 – CONTRACTOR PERFORMANCE EVALUATION

NO CHANGES IN THIS ARTICLE

ARTICLE 37 – CONTRACTOR RESPONSIBILITY ORDINANCE

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

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

In accordance with the provisions of the Contractor Responsibility Ordinance, by signing this AGREEMENT, CONSULTANT pledges, under penalty of perjury, to comply with all applicable Federal, state and local laws in the performance of this AGREEMENT, including but not limited to, laws regarding health and safety, labor and employment, wages and hours, and licensing laws which affect employees. CONSULTANT further agrees to: (1) notify the CITY within thirty (30)

calendar days after receiving notification that any government agency has initiated an investigation which may result in a finding that CONSULTANT is not in compliance with all applicable federal, state and local laws in performance of this AGREEMENT; (2) notify the CITY within thirty (30) calendar days of all findings by a government agency or court of competent jurisdiction that CONSULTANT has violated the provisions of Section 10.40.3(a) of the Contractor Responsibility Ordinance; (3) unless exempt, ensure that its subconsultants, as defined in the Contractor Responsibility Ordinance, submit a Pledge of Compliance to the CITY; and (4) unless exempt, ensure that its subconsultants, 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 38 – BREACH

NO CHANGES IN THIS ARTICLE

ARTICLE 39 – SLAVERY DISCLOSURE ORDINANCE

NO CHANGES IN THIS ARTICLE

(DELETE) ARTICLE 40 – CHILD CARE POLICY STATEMENT

DELETE THIS ARTICLE AND REPLACE WITH THE FOLLOWING

ARTICLE 40 – FIRST SOURCE HIRING ORDINANCE

Unless approved for an exemption, contractors under contracts primarily for the furnishing of services to or for the CITY, the value of which is in excess of \$25,000 and a contract term of at least three (3) months, and certain recipients of CITY Loans or Grants, shall comply with the provisions of Los Angeles Administrative Code Sections 10.44 et seq., First Source Hiring Ordinance (FSHO). Bidders/Proposers shall refer to Exhibit K attached, "First Source Hiring Ordinance" for further information regarding the requirements of the Ordinance.

The Anticipated Job Opportunities Form (FSHO-1) and Subcontractor Information Form (FSHO-2) contained in the Exhibits attached shall only be required of the Bidder/Proposer that is selected for award of a Contract.

(ADD) ARTICLE 41 – INTELLECTUAL PROPERTY INDEMNIFICATION

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

application, equipment, device, instrumentation, software, hardware, or firmware used by CONSULTANT, or its subconsultants of any tier, in performing the work under this AGREEMENT; or (2) as a result of the CITY'S actual or intended use of any Work Product furnished by CONSULTANT, or its subconsultants of any tier, under the AGREEMENT. Rights and remedies available to the CITY under this provision are cumulative of those provided for elsewhere in this AGREEMENT 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 AGREEMENT.

(ADD) ARTICLE 42 – INTELLECTUAL PROPERTY WARRANTY

The CONSULTANT represents and warrants that its performance of all obligations under this AGREEMENT 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.

(ADD) ARTICLE 43 – MUNICIPAL LOBBYING ORDINANCE

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

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

APPROVED AS TO FORM:

Carmen A. Trutanich, City Attorney

By: 
John Carvalho

Title: Deputy City Attorney

Date: 8/2/12

CITY OF LOS ANGELES

By: _____

Title: President, Board of Public Works

Date: _____

ATTEST

June Lagmay, City Clerk

By: _____

Title: Deputy City Clerk

Date: _____

TETRA TECH, INC.

By: 
Steve Tedesco

Title: Senior Vice President
Engineering & Architecture Services

Date: April 13, 2012

JT#1805 BCA 9/5/2012

CONTRACT NO. C- 113339

AMENDMENT NO. 1

TO

ON-CALL PERSONAL SERVICES AGREEMENT

BETWEEN

THE CITY OF LOS ANGELES

AND

BLACK & VEATCH

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**FIRST AMENDMENT TO
PERSONAL SERVICES CONTRACT NO. 113339
THE CITY OF LOS ANGELES
AND
BLACK & VEATCH
FOR
ON-CALL PERSONAL SERVICES FOR SANITATION AUTOMATION PROJECTS
A G R E E M E N T**

THIS AMENDMENT, made and entered into by and between the Bureau of Sanitation, Department of Public Works, a Municipal Corporation acting by order of and through its Board of Public Works, hereinafter called the "CITY", and "BLACK & VEATCH" hereinafter referred to as the "CONSULTANT" modifying the original agreement executed on March 28, 2008 entitled "On-Call Personal Services between the City of Los Angeles and Black & Veatch, hereinafter "AGREEMENT."

W I T N E S S E T H

WHEREAS, the Bureau of Sanitation (BUREAU) developed an Automation Master Plan and A Strategic Plan which identify and recommend numerous opportunities for using technology to improve the Sanitation business, operations, and service functions while supporting the achievement of financial budget reduction goals; and

WHEREAS, the BUREAU desires to implement the recommended automation projects in an expeditious manner; and

WHEREAS, many of these projects will require the use of staffing resources which are not available within the CITY, and therefore the BUREAU has identified the need for

Consultants to assist CITY staff on an "as-needed" basis; and

WHEREAS, the services to be provided by the Consultants may be in any of the five (5) SERVICE AREAS: 1) Software Engineering, 2) Systems Integration, 3) Local and Wide Area Network and Server Design, 4) Project Automation and/or Construction Management Services, and 5) Related Services including database development, data modeling, value engineering, database design, database to database interface, and training services on an "as-needed" basis; and

WHEREAS, the BUREAU developed a Request For Qualifications (RFQ) covering the desired SERVICE AREAS and distributed it to over one hundred fifty firms providing on-call services based upon needs outlined in the Automation Master Plan and Strategic Plan; and

WHEREAS, thirteen (13) firms submitted thirty-six (36) responses to the RFQ by September 25, 2006; and

WHEREAS, thirteen (13) firms were selected as the most qualified firms by the CITY staff based on the evaluation criteria set forth in the RFQ and as presented in Statements of Qualifications; and

WHEREAS, the Board of Public Works on August 20, 2007 authorized the execution of personal services contracts with 12 firms that qualified to provide as-needed professional services for Software Engineering, System Integration, Local and Wide Area Network and Server Design, Project Automation and/or Construction Management, Database and Training Services; and

WHEREAS, each of the selected Consultants has demonstrated qualifications to perform the required services; and

WHEREAS, the services of the Consultants are of an expert and technical nature and are temporary and occasional in character; and

WHEREAS, the CITY desires to retain the use of these pre-qualified Consultants to bid on a specific Statement of Work to provide the additional services required to assist the CITY in improving the level of automation in the wastewater collection and treatment systems. These improvements will include control systems consolidation and upgrades, systems integration, network upgrades, increased standardization, improved power/energy management and improved data management and access systems; and

WHEREAS, the AGREEMENT is executory and does not guarantee consultants will actually be awarded work thereunder; and the BUREAU reserves the right to solicit additional Consultants to be added to the existing list of Consultants ; and

WHEREAS, the BUREAU is in the process of releasing a new Request for Qualifications (RFQ); and

WHEREAS, since awarding new contracts is a time-consuming process and service areas covered by this AGREEMENT are very critical to the BUREAU'S operation , the AGREEMENT is hereby amended to extend the contract term by an additional three(3) years from January 1, 2013 to December 31, 2015; and

WHEREAS, the Bureau is requesting to increase the cost ceiling amount by \$6 million to replace the control systems in the Bureau's Treatment Plants and Collection System for a revised total ceiling of \$20 million.

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

NO CHANGE IN THIS ARTICLE

ARTICLE 2 – DEFINITIONS

NO CHANGE IN THIS ARTICLE

ARTICLE 3 – PROJECT DESCRIPTION

NO CHANGE IN THIS ARTICLE

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

NO CHANGE IN THIS ARTICLE

ARTICLE 5 – KEY CONSULTANT PERSONNEL

ADD SUB ARTICLES 5.3 AND 5.4 TO READ AS FOLLOWS:

5.3 Unless otherwise provided or approved by the CITY, CONSULTANT shall use its own employees to perform the services described in this AGREEMENT. The CITY shall have the right to review and approve any personnel who are assigned to work under this AGREEMENT. CONSULTANT agrees to remove personnel from

performing work under this AGREEMENT if requested to do so by the CITY.

- 5.4 CONSULTANT shall not use subconsultants to assist in performance of this AGREEMENT without the prior written approval of the CITY. If the CITY permits the use of subconsultants, CONSULTANT shall remain responsible for performing all aspects of this AGREEMENT. The CITY has the right to approve CONSULTANT'S subconsultants, and the CITY reserves the right to request replacement of subconsultants. The CITY does not have any obligation to pay CONSULTANT'S subconsultants, and nothing herein creates any privity between the CITY and the subconsultants.

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

NO CHANGE IN THIS ARTICLE

ARTICLE 7– TERM OF AGREEMENT AND TIME OF EFFECTIVENESS

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

Unless otherwise provided, this Amendment No. 1 shall extend the term of this AGREEMENT from January 1, 2013 until December 31, 2015 unless terminated as provided under Article 8 or extended by an amendment to this AGREEMENT and signed by all parties.

ARTICLE 8 – TERMINATION

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

- 8.1 This AGREEMENT may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this

AGREEMENT through no fault of the terminating party, provided that no termination may be effected unless the other party is given (1) not less than ten (10) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination.

8.2 This AGREEMENT may be terminated in whole or in part in writing by the CITY for its convenience, provided that the CONSULTANT is given (1) not less than thirty (30) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination. Upon receipt of said written notice, CONSULTANT shall immediately take action not to incur any additional obligations, cost or expense, except as may be reasonable necessary to terminate its activities.

8.3 This AGREEMENT may be immediately terminated in writing by the CITY if (1) a federal or state proceeding for relief of debtors is undertaken by or against CONSULTANT or if CONSULTANT makes an assignment for the benefit of creditors or (2) CONSULTANT engages in any dishonest conduct related to the performance or administration of this AGREEMENT or violates the CITY'S lobbying policies.

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

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

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

article.

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

ARTICLE 9 – SUB-CONTRACT APPROVAL

NO CHANGE IN THIS ARTICLE

ARTICLE 10 – COMPENSATION, INVOICING, AND PAYMENT

ADD SUB-ARTICLE 10.4 TO READ AS FOLLOWS:

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

NO CHANGE IN THIS ARTICLE

ARTICLE 12 – INDEMNIFICATION AND INSURANCE

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

12.1 INDEMNIFICATION

Except for the active negligence or willful misconduct of CITY, or any of its Boards, Officers, Agents, Employees, Assigns and Successor in Interest, CONSULTANT undertakes and agrees to defend, indemnify and hold harmless CITY and any of its

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

12.2 INSURANCE

During the term of this AGREEMENT and without limiting the CONSULTANT'S indemnification of the CITY, the CONSULTANT shall provide and maintain at its own expense during the term of this AGREEMENT a program of insurance having the coverage and limits customarily carried and actually arranged by CONSULTANT but not less than the amounts and types listed on the Insurance Requirements Sheet (Form Gen 146/IR), in EXHIBIT D 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 D, and which can also be found at the Board of Public Work's website <http://bpw.lacity.org/Secretariat/Insurance.html>, in the form Instructions and Information on Complying with CITY Insurance Requirements, rev

10/09, and shall otherwise be in a form acceptable to the City Administrative Officer, Risk Management. The CONSULTANT shall comply with all Insurance Contractual Requirements shown on EXHIBIT D hereto. EXHIBIT D is hereby incorporated by reference and made a part of this AGREEMENT.

12.3 CONSULTANT may elect to wait until awarded a task order before providing proof of Professional Liability Insurance as required in Section 12.2. However, the Task Order will not be signed and work may not proceed until all the requirements of Section 12.2, including proof of Professional Liability Insurance are met.

ARTICLE 13 – INDEPENDENT CONTRACTORS

NO CHANGE IN THIS ARTICLE

ARTICLE 14 – WARRANTY AND RESPONSIBILITY OF CONSULTANT

NO CHANGE IN THIS ARTICLE

ARTICLE 15 – OWNERSHIP OF DATA

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

Unless otherwise provided for herein, all Work Products originated and prepared by CONSULTANT or its subconsultants, of any tier under this AGREEMENT 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 AGREEMENT including, without limitation, documents, material, data, reports, manuals, specifications, artwork, drawings, sketches, computer programs and databases, schematics, photographs, video and

audiovisual recordings, sound recordings, marks, logos, graphic designs, notes, websites, domain names, inventions, processes, formulas matters and combinations thereof, and all forms of intellectual property. CONSULTANT hereby assigns, and agrees to assign, all goodwill, copyright, trademark, patent, trade secret and all other intellectual property rights worldwide in any Works Products originated and prepared by CONSULTANT under this AGREEMENT. CONSULTANT further agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights provided herein.

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

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

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

ARTICLE 16 – NONDISCRIMINATION AND AFFIRMATIVE ACTION

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

16.1 NON-DISCRIMINATION

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

16.2 EQUAL EMPLOYMENT PRACTICES

Unless otherwise exempt, this AGREEMENT 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 AGREEMENT, CONSULTANT agrees and

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

1. This provision applies to work or service performed or materials manufactured or assembled in the United States.

2. Nothing in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.

3. CONSULTANT agrees to post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.

B. CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of CONSULTANT, state that all qualified applicants will received consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.

C. As part of the CITY'S supplier registration process, and/or at the request of the awarding authority, or the Board of Public Works, Office of Contract Compliance, CONSULTANT shall certify in the specified format that he or she has not discriminated in the performance of CITY contracts against any employee or applicant for employment on the basis or because of race, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status or medical condition.

D. CONSULTANT shall permit access to and may be required to provide certified copies of all of his or her records pertaining to employment and to employment practices by the awarding authority or the Office of Contract Compliance for the purpose of

investigation to ascertain compliance with the Equal Employment Practices provisions of CITY contracts. On their or either of their request, CONSULTANT shall provide evidence that he or she has or will comply therewith.

E. The failure of any CONSULTANT to comply with the Equal Employment Practices provisions of this AGREEMENT may be deemed to be a material breach of CITY contracts. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made or penalties assessed except upon a full and fair hearing after notice and an opportunity to be heard have been given to CONSULTANT.

F. Upon a finding duly made that CONSULTANT has failed to comply with the Equal Employment Practices provisions of the CITY AGREEMENT, the AGREEMENT 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 that the CONSULTANT is an irresponsible bidder or proposer pursuant to the provision of Section 371 of the Charter of the City of Los Angeles. In the event of such a determination, CONSULTANT shall be disqualified from being awarded a contract with the CITY for a period of two (2) years, or until CONSULTANT shall establish and carry out a program in conformance with the provisions hereof.

G. Notwithstanding any other provision of this AGREEMENT, 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 AGREEMENT shall be construed in any manner so as to require or permit any act which is prohibited by law.

J. At the time a supplier registers to do business with the CITY, or when an individual bid or proposal is submitted, CONSULTANT shall agree to adhere to the Equal Employment Practices specified herein during the performance or conduct of CITY Contracts.

K. Equal Employment Practices shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:

1. Hiring practices;
2. Apprenticeships where such approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;
3. Training and promotional opportunities; and
4. Reasonable accommodations for persons with disabilities.

L. Any subcontract entered into by CONSULTANT to the extent allowed hereunder, shall include a like provision for work to be performed under this AGREEMENT.

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

16.3 AFFIRMATIVE ACTION PROGRAM

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

A. During the performance of a CITY contract, CONSULTANT certifies and represents that CONSULTANT and each subconsultant hereunder will adhere to an affirmative action program to ensure that in its employment practices, persons are employed and employees are treated equally and without regard to or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.

1. This provision applies to work or services performed or materials manufactured or assembled in the United States.

2. Nothing, in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.

3. CONSULTANT shall post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.

B. CONSULTANT will in all solicitations or advertisements for employees placed by or on behalf of CONSULTANT state that all qualified applicants will receive consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.

C. As part of the CITY'S supplier registration process, and/or at the request of the awarding authority or the Office of Contract Compliance, CONSULTANT shall certify on an electronic or hard copy form to be supplied, that CONSULTANT has not discriminated in the performance of CITY contracts against any employee or applicant for employment on the basis or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.

D. CONSULTANT shall permit access to and may be required to provide certified copies of all of its records pertaining to employment and to its employment practices by

the awarding authority or the Office of Contract Compliance, for the purpose of investigation to ascertain compliance with the Affirmative Action Program provisions of CITY contracts, and on their or either of their request to provide evidence that it has or will comply therewith.

E. The failure of any CONSULTANT to comply with the Affirmative Action Program provisions of CITY contracts may be deemed to be a material breach of contract. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made except upon a full and fair hearing after notice and an opportunity to be heard has been given to CONSULTANT.

F. Upon a finding duly made that CONSULTANT has breached the Affirmative Action Program provisions of a CITY contract, the contract may be forthwith cancelled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the CITY. In addition thereto, such breach may be the basis for a determination by the awarding authority or the Board of Public Works that the said CONSULTANT is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Los Angeles City Charter. In the event of such determination, such CONSULTANT shall be disqualified from being awarded a contract with the CITY for a period of two years, or until he or she shall establish and carry out a program in conformance with the provisions hereof.

G. In the event of a finding by the Fair Employment and Housing Commission of the State of California, or the Board of Public Works of the City of Los Angeles, or any court of competent jurisdiction, that CONSULTANT has been guilty of willful violation of the California Fair Employment and Housing Act, or the Affirmative Action Program

provisions of a City contract, there may be deducted from the amount payable to CONSULTANT by the CITY under the contract, a penalty of ten dollars (\$10.00) for each person for each calendar day on which such person was discriminated against in violation of the provisions of a CITY contract.

H. Notwithstanding any other provisions of a CITY contract, the CITY shall have any and all other remedies at law or in equity for any breach hereof.

I. Intentionally blank.

J. Nothing contained in CITY contracts shall be construed in any manner so as to require or permit any act which is prohibited by law.

K. CONSULTANT shall submit an Affirmative Action Plan which shall meet the requirements of this chapter at the time it submits its bid or proposal or at the time it registers to do business with the CITY. The plan shall be subject to approval by the Office of Contract Compliance prior to award of the AGREEMENT. The awarding authority may also require contractors and suppliers to take part in a pre-registration, pre-bid, pre-proposal, or pre-award conference in order to develop, improve or implement a qualifying Affirmative Action Plan. Affirmative Action Programs developed pursuant to this section shall be effective for a period of twelve months from the date of approval by the Office of Contract Compliance. In case of prior submission of a plan, CONSULTANT may submit documentation that it has an Affirmative Action Plan approved by the Office of Contract Compliance within the previous twelve months. If the approval is 30 days or less from expiration, CONSULTANT must submit a new Plan to the Office of Contract Compliance and that Plan must be approved before the AGREEMENT is awarded.

1. Every contract of \$5,000 or more which may provide construction, demolition, renovation, conservation or major maintenance of any kind shall in addition comply with the requirements of Section 10.13 of the Los Angeles Administrative Code.

2. CONSULTANT may establish and adopt as its own Affirmative Action Plan, by affixing his or her signature thereto, an Affirmative Action Plan prepared and furnished by the Office of Contract Compliance, or it may prepare and submit its own Plan for approval.

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

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

1. Apprenticeship where approved programs are functioning and other on-the-job training for non-apprenticeable occupations;
2. Classroom preparation for the job when not apprenticeable;
3. Pre-apprenticeship education and preparation;
4. Upgrading, training and opportunities;

5. Encouraging the use of contractors, subcontractors and suppliers of all racial and ethnic groups, provided, however, that any contract subject to this ordinance shall require the contractor, subcontractor or supplier to provide not less than the prevailing wage, working conditions and practices generally observed in private industries in the contractor's, subcontractor's or supplier's geographical area for such work;
 6. The entry of qualified women, minority and all other journeymen into the industry; and
 7. The provision of needed supplies or job conditions to permit person 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 Affirmation 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 consultants 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 are applicable to the contractor. Failure of the CONSULTANT to comply with this requirement or to obtain the compliance of its subcontractors with all such obligations shall subject the CONSULTANT to the imposition of any and all sanctions allowed by law, including but not limited to termination of the CONSULTANT'S AGREEMENT with the CITY.

**ARTICLE 17 – MINORITY, WOMEN AND OTHER BUSINESS ENTERPRISE
OUTREACH PROGRAM**

NO CHANGE IN THIS ARTICLE

ARTICLE 18 – SUCCESSORS AND ASSIGNS

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

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 32.

ARTICLE 19 –CONTACT PERSONS –PROPER ADDRESSES –NOTIFICATION

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

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: Robert B. Irvin, Director of Systems

Address: 1149 S. Broadway Ave, Ste 900

Los Angeles, California, 90015

CONSULTANT:

Contact Person: James H. Clark, P.E.

Address: 800 Wilshire Blvd., Suite 600

Los Angeles, CA 90017

E-mail: clarkjh@bv.com

ARTICLE 20 – FORCE MAJEURE

NO CHANGE IN THIS ARTICLE

ARTICLE 21 – SEVERABILITY

NO CHANGE IN THIS ARTICLE

ARTICLE 22 – DISPUTES

NO CHANGE IN THIS ARTICLE

ARTICLE 23 – ENTIRE AGREEMENT

NO CHANGE IN THIS ARTICLE

ARTICLE 24 – APPLICABLE LAW, INTERPRETATION AND ENFORCEMENT

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

Each party's performance hereunder shall comply with all applicable laws of the United States of America, the State of California, and the CITY including but not limited to laws regarding health and safety, labor and employment, wage and hours and licensing laws which affect employees.

This AGREEMENT and its performance shall be enforced and interpreted under the laws of the State of California. All causes of action arising directly or indirectly from the business relationship evidenced by this AGREEMENT must be filed in the appropriate state or federal court located in Los Angeles County, California, and each party agrees to be subject to the jurisdiction of the State of California regardless of their residence. CONSULTANT shall comply with new, amended, or revised laws, regulations, and/or procedures that apply to the performance of this AGREEMENT.

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

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

NO CHANGE IN THIS ARTICLE

ARTICLE 26 – BONDS

NO CHANGE IN THIS ARTICLE

ARTICLE 27 – CHILD SUPPORT ASSIGNMENT ORDERS

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

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

Pursuant to Section 10.10(b) of the Los Angeles Administrative Code, the failure of CONSULTANT to comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignment Orders or Notices of Assignment, or the failure of any Principal Owner(s) of CONSULTANT to comply with any Wage and Earnings Assignment Orders or Notices of Assignment applicable to them personally, shall constitute a default by the CONSULTANT under this AGREEMENT subjecting this AGREEMENT to termination if such default shall continue for more than ninety (90) days after notice of such default to CONSULTANT by the CITY.

Any subcontract entered into by CONSULTANT, to the extent allowed hereunder, shall include a like provision for work to be performed under this AGREEMENT. Failure of CONSULTANT to obtain compliance of its subconsultants shall constitute a default by CONSULTANT under this AGREEMENT, subjecting this AGREEMENT to termination where such default shall

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

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

ARTICLE 28 – SERVICE CONTRACTOR WORKER RETENTION ORDINANCE
AND LIVING WAGE ORDINANCE

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

- 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 F and incorporated herein by this reference, and the Service Contractor Worker Retention Ordinance (SCWRO), Section 10.3 et seq., of the Los Angeles Administrative code, as amended from time to time.

These Ordinances require the following:

1. The CONSULTANT assures payment of a minimum initial wage rate to employees as defined in the LWO and as may be adjusted each July 1 and provision of benefits of compensated and uncompensated days off and health benefits, as defined in the LWO.
2. The CONSULTANT further pledges that it will comply with federal law proscribing retaliation for union organizing and will not retaliate for activities

related to the LWO. CONSULTANT shall require each of its subconsultants within the meaning of the LWO to pledge to comply with the terms of federal law proscribing retaliation for union organizing. CONSULTANT shall receive and retain on file the executed pledges from each such subconsultant within ninety (90) days of the execution of the Subcontract. CONSULTANT'S evidence of executed pledges from each such subconsultant shall fully discharge the obligation of the CONSULTANT to comply with the provision in the LWO contained in Section 10.37.6(c) concerning compliance with such federal law.

3. The CONSULTANT, whether an employer, as defined in the LWO, or any other person employing individuals, shall not discharge, reduce in compensation, or otherwise discriminate against any employee for complaining to the CITY with regard to the employer's compliance or anticipated compliance with the LWO, for opposing any practice proscribed by the LWO, for participating in proceedings related to the LWO, for seeking to enforce his or her rights under the LWO by any lawful means, or otherwise asserting rights under the LWO. CONSULTANT shall post the Notice of Prohibition Against Retaliation provided by the CITY
4. Any Subcontract entered into by the CONSULTANT relating to this AGREEMENT, to the extent allowed hereunder, shall be subject to the provisions of LWO and the SCWRO, and shall incorporate the LWO and the SCWRO.
5. The CONSULTANT shall comply with all rules, regulations and policies promulgated by the CITY'S Designated Administrative Agency, which may be amended from time to time.

- B. Under the provisions of Section 10.36.3(c) and Section 10.37.6(c) of the Los Angeles Administrative Code, the CITY shall have the authority, under appropriate

circumstances, to terminate this AGREEMENT and otherwise pursue legal remedies that may be available if the CITY determines that the subject CONSULTANT has violated provisions of the LWO and the SCWRO or both.

- C. Where under the LWO Section 10.37.6(d), the CITY'S Designated Administrative Agency has determined (a) that the CONSULTANT is in violation of the LWO in having failed to pay some or all of the living wage, and (b) that such violation has gone uncured, the CITY in such circumstances may impound monies otherwise due the CONSULTANT in accordance with the following procedures. Impoundment shall mean that from monies due the CONSULTANT, the CITY may deduct the amount determined to be due and owing by the CONSULTANT to its employees. Such monies shall be placed in the holding account referred to in LWO Section 10.37.6(d) (3) and disposed of under procedures there described through final and binding arbitration. Whether the CONSULTANT is to continue work following an impoundment shall remain in the sole discretion of the CITY. The CONSULTANT may not elect to discontinue work either because there has been an impoundment or because of the ultimate disposition of the impoundment by the arbitrator.
- D. The AGREEMENT shall inform employees making less than Twelve Dollars (\$12.00) per hour of their possible right to the federal Earned Income Credit (EIC). CONSULTANT shall also make available to employees the forms informing them about the EIC and forms required to secure advance EIC payments from CONSULTANT.

ARTICLE 29 –AMERICANS WITH DISABILITIES ACT

NO CHANGE IN THIS ARTICLE

ARTICLE 30 –EQUAL BENEFITS ORDINANCE

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

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

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

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

ARTICLE 31 –WAIVER

NO CHANGE IN THIS ARTICLE

ARTICLE 32 – PROHIBITION AGAINST ASSIGNMENT OR DELEGATION

NO CHANGES IN THIS ARTICLE

ARTICLE 33 – PERMITS

NO CHANGES IN THIS ARTICLE

ARTICLE 34 – CLAIMS FOR LABOR AND MATERIALS

NO CHANGES IN THIS ARTICLE

ARTICLE 35 – DISCOUNTS

NO CHANGES IN THIS ARTICLE

ARTICLE 36 – CONTRACTOR PERFORMANCE EVALUATION

NO CHANGES IN THIS ARTICLE

ARTICLE 37 – CONTRACTOR RESPONSIBILITY ORDINANCE

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

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

In accordance with the provisions of the Contractor Responsibility Ordinance, by signing this AGREEMENT, CONSULTANT pledges, under penalty of perjury, to comply with all applicable Federal, state and local laws in the performance of this AGREEMENT, including but not limited to, laws regarding health and safety, labor and employment, wages and hours, and licensing laws which affect employees. CONSULTANT further agrees to: (1) notify the CITY within thirty (30) calendar days after receiving notification that any government agency has initiated an investigation which may result in a finding that CONSULTANT is not in compliance with all applicable federal, state and local laws in performance of this AGREEMENT; (2) notify the CITY within thirty (30) calendar days of all findings by a government agency or court of competent jurisdiction that CONSULTANT has violated the provisions of Section 10.40.3(a) of the Contractor Responsibility Ordinance; (3) unless exempt, ensure that its subconsultants, as defined in the Contractor Responsibility Ordinance, submit a Pledge of Compliance to the CITY; and (4) unless exempt, ensure that its subconsultants, 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 38 – BREACH

NO CHANGES IN THIS ARTICLE

ARTICLE 39 – SLAVERY DISCLOSURE ORDINANCE

NO CHANGES IN THIS ARTICLE

(DELETE) ARTICLE 40 – CHILD CARE POLICY STATEMENT

DELETE THIS ARTICLE AND REPLACE WITH THE FOLLOWING

ARTICLE 40 – FIRST SOURCE HIRING ORDINANCE

Unless approved for an exemption, contractors under contracts primarily for the furnishing of services to or for the CITY, the value of which is in excess of \$25,000 and a contract term of at least three (3) months, and certain recipients of CITY Loans or Grants, shall comply with the provisions of Los Angeles Administrative Code Sections 10.44 et seq., First Source Hiring Ordinance (FSHO). Bidders/Proposers shall refer to Exhibit K attached, “First Source Hiring Ordinance” for further information regarding the requirements of the Ordinance.

The Anticipated Job Opportunities Form (FSHO-1) and Subcontractor Information Form (FSHO-2) contained in the Exhibits attached shall only be required of the Bidder/Proposer that is selected for award of a Contract.

(ADD) ARTICLE 41 – INTELLECTUAL PROPERTY INDEMNIFICATION

The CONSULTANT, at its own expense, undertakes and agrees to defend, indemnify, and hold harmless the CITY, and any of its Boards, Officers, Agents, Employees, Assigns, and Successors in Interest from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the CITY, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever arising out of the infringement, actual or alleged, direct or contributory, or any intellectual property rights, including, without limitation, patent, copyright, trademark, trade secret, right of publicity and proprietary information right (1) on or in any design, medium, matter, article, process, method, application, equipment, device, instrumentation, software, hardware, or firmware used by CONSULTANT, or its subconsultants of any tier, in performing the work under this AGREEMENT; or (2) as a result of the CITY'S actual or intended use of any Work Product furnished by CONSULTANT, or its subconsultants of any tier, under the AGREEMENT. Rights and remedies available to the CITY under this provision are cumulative of those provided for elsewhere in this AGREEMENT 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 AGREEMENT.

(ADD) ARTICLE 42 – INTELLECTUAL PROPERTY WARRANTY

The CONSULTANT represents and warrants that its performance of all obligations under this AGREEMENT 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.

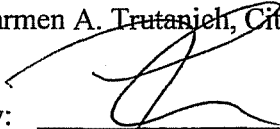
(ADD) ARTICLE 43 – MUNICIPAL LOBBYING ORDINANCE

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

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

APPROVED AS TO FORM:

Carmen A. Trutanich, City Attorney

By: 

John Carvalho

Title: Deputy City Attorney

Date: 8/2/12

BLACK & VEATCH

By: 

Title: Senior VP

Date: 4/10/12

CITY OF LOS ANGELES

By: _____

Title: President, Board of Public Works

Date: _____

ATTEST

June Lagmay, City Clerk

By: _____

Title: Deputy City Clerk

Date: _____

CONTRACT NO. C- 113340

AMENDMENT NO. 1
TO
ON-CALL PERSONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF LOS ANGELES
AND
CDM SMITH INC.

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**FIRST AMENDMENT TO
PERSONAL SERVICES CONTRACT NO. 113340
THE CITY OF LOS ANGELES
AND
CDM SMITH INC.
FOR
ON-CALL PERSONAL SERVICES FOR SANITATION AUTOMATION PROJECTS
A G R E E M E N T**

THIS AMENDMENT, made and entered into by and between the Bureau of Sanitation, Department of Public Works, a Municipal Corporation acting by order of and through its Board of Public Works, hereinafter called the "CITY", and " CDM SMITH INC. (formerly Camp, Dresser & Mckee, Inc.) " hereinafter referred to as the "CONSULTANT" modifying the original agreement executed on March 28, 2008 entitled "On-Call Personal Services between the City of Los Angeles and CDM Smith Inc., hereinafter "AGREEMENT."

W I T N E S S E T H

WHEREAS, the Bureau of Sanitation (BUREAU) developed an Automation Master Plan and A Strategic Plan which identify and recommend numerous opportunities for using technology to improve the Sanitation business, operations, and service functions while supporting the achievement of financial budget reduction goals; and

WHEREAS, the BUREAU desires to implement the recommended automation projects in an expeditious manner; and

WHEREAS, many of these projects will require the use of staffing resources which are not available within the CITY, and therefore the BUREAU has identified the need for

Consultants to assist CITY staff on an "as-needed" basis; and

WHEREAS, the services to be provided by the Consultants may be in any of the five (5) SERVICE AREAS: 1) Software Engineering, 2) Systems Integration, 3) Local and Wide Area Network and Server Design, 4) Project Automation and/or Construction Management Services, and 5) Related Services including database development, data modeling, value engineering, database design, database to database interface, and training services on an "as-needed" basis; and

WHEREAS, the BUREAU developed a Request For Qualifications (RFQ) covering the desired SERVICE AREAS and distributed it to over one hundred fifty firms providing on-call services based upon needs outlined in the Automation Master Plan and Strategic Plan; and

WHEREAS, thirteen (13) firms submitted thirty-six (36) responses to the RFQ by September 25, 2006; and

WHEREAS, thirteen (13) firms were selected as the most qualified firms by the CITY staff based on the evaluation criteria set forth in the RFQ and as presented in Statements of Qualifications; and

WHEREAS, the Board of Public Works on August 20, 2007 authorized the execution of personal services contracts with 12 firms that qualified to provide as-needed professional services for Software Engineering, System Integration, Local and Wide Area Network and Server Design, Project Automation and/or Construction Management, Database and Training Services; and

WHEREAS, each of the selected Consultants has demonstrated qualifications to perform the required services; and

WHEREAS, the services of the Consultants are of an expert and technical nature and are temporary and occasional in character; and

WHEREAS, the CITY desires to retain the use of these pre-qualified Consultants to bid on a specific Statement of Work to provide the additional services required to assist the CITY in improving the level of automation in the wastewater collection and treatment systems. These improvements will include control systems consolidation and upgrades, systems integration, network upgrades, increased standardization, improved power/energy management and improved data management and access systems; and

WHEREAS, the AGREEMENT is executory and does not guarantee consultants will actually be awarded work thereunder; and the BUREAU reserves the right to solicit additional Consultants to be added to the existing list of Consultants ; and

WHEREAS, the BUREAU is in the process of releasing a new Request for Qualifications (RFQ); and

WHEREAS, since awarding new contracts is a time-consuming process and service areas covered by this AGREEMENT are very critical to the BUREAU'S operation , the AGREEMENT is hereby amended to extend the contract term by an additional three(3) years from January 1, 2013 to December 31, 2015; and

WHEREAS, the Bureau is requesting to increase the cost ceiling amount by \$6 million to replace the control systems in the Bureau's Treatment Plants and Collection System for a revised total ceiling of \$20 million.

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

NO CHANGE IN THIS ARTICLE

ARTICLE 2 – DEFINITIONS

NO CHANGE IN THIS ARTICLE

ARTICLE 3 – PROJECT DESCRIPTION

NO CHANGE IN THIS ARTICLE

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

NO CHANGE IN THIS ARTICLE

ARTICLE 5 – KEY CONSULTANT PERSONNEL

ADD SUB ARTICLES 5.3 AND 5.4 TO READ AS FOLLOWS:

5.3 Unless otherwise provided or approved by the CITY, CONSULTANT shall use its own employees to perform the services described in this AGREEMENT. The CITY shall have the right to review and approve any personnel who are assigned to work under this AGREEMENT. CONSULTANT agrees to remove personnel from

performing work under this AGREEMENT if requested to do so by the CITY.

- 5.4 CONSULTANT shall not use subconsultants to assist in performance of this AGREEMENT without the prior written approval of the CITY. If the CITY permits the use of subconsultants, CONSULTANT shall remain responsible for performing all aspects of this AGREEMENT. The CITY has the right to approve CONSULTANT'S subconsultants, and the CITY reserves the right to request replacement of subconsultants. The CITY does not have any obligation to pay CONSULTANT'S subconsultants, and nothing herein creates any privity between the CITY and the subconsultants.

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

NO CHANGE IN THIS ARTICLE

ARTICLE 7– TERM OF AGREEMENT AND TIME OF EFFECTIVENESS

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

Unless otherwise provided, this Amendment No. 1 shall extend the term of this AGREEMENT from January 1, 2013 until December 31, 2015 unless terminated as provided under Article 8 or extended by an amendment to this AGREEMENT and signed by all parties.

ARTICLE 8 – TERMINATION

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

- 8.1 This AGREEMENT may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this

AGREEMENT through no fault of the terminating party, provided that no termination may be effected unless the other party is given (1) not less than ten (10) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination.

8.2 This AGREEMENT may be terminated in whole or in part in writing by the CITY for its convenience, provided that the CONSULTANT is given (1) not less than thirty (30) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination. Upon receipt of said written notice, CONSULTANT shall immediately take action not to incur any additional obligations, cost or expense, except as may be reasonable necessary to terminate its activities.

8.3 This AGREEMENT may be immediately terminated in writing by the CITY if (1) a federal or state proceeding for relief of debtors is undertaken by or against CONSULTANT or if CONSULTANT makes an assignment for the benefit of creditors or (2) CONSULTANT engages in any dishonest conduct related to the performance or administration of this AGREEMENT or violates the CITY'S lobbying policies.

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

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

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

article.

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

ARTICLE 9 – SUB-CONTRACT APPROVAL

NO CHANGE IN THIS ARTICLE

ARTICLE 10 – COMPENSATION, INVOICING, AND PAYMENT

ADD SUB-ARTICLE 10.4 TO READ AS FOLLOWS:

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

NO CHANGE IN THIS ARTICLE

ARTICLE 12 – INDEMNIFICATION AND INSURANCE

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

12.1 INDEMNIFICATION

Except for the active negligence or willful misconduct of CITY, or any of its Boards, Officers, Agents, Employees, Assigns and Successor in Interest, CONSULTANT undertakes and agrees to defend, indemnify and hold harmless CITY and any of its

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

12.2 INSURANCE

During the term of this AGREEMENT and without limiting the CONSULTANT'S indemnification of the CITY, the CONSULTANT shall provide and maintain at its own expense during the term of this AGREEMENT a program of insurance having the coverage and limits customarily carried and actually arranged by CONSULTANT but not less than the amounts and types listed on the Insurance Requirements Sheet (Form Gen 146/IR), in EXHIBIT D 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 D, and which can also be found at the Board of Public Work's website <http://bpw.lacity.org/Secretariat/Insurance.html>, in the form Instructions and Information on Complying with CITY Insurance Requirements, rev

10/09, and shall otherwise be in a form acceptable to the City Administrative Officer, Risk Management. The CONSULTANT shall comply with all Insurance Contractual Requirements shown on EXHIBIT D hereto. EXHIBIT D is hereby incorporated by reference and made a part of this AGREEMENT.

12.3 CONSULTANT may elect to wait until awarded a task order before providing proof of Professional Liability Insurance as required in Section 12.2. However, the Task Order will not be signed and work may not proceed until all the requirements of Section 12.2, including proof of Professional Liability Insurance are met.

ARTICLE 13 – INDEPENDENT CONTRACTORS

NO CHANGE IN THIS ARTICLE

ARTICLE 14 – WARRANTY AND RESPONSIBILITY OF CONSULTANT

NO CHANGE IN THIS ARTICLE

ARTICLE 15 – OWNERSHIP OF DATA

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

Unless otherwise provided for herein, all Work Products originated and prepared by CONSULTANT or its subconsultants, of any tier under this AGREEMENT 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 AGREEMENT including, without limitation, documents, material, data, reports, manuals, specifications, artwork, drawings, sketches, computer programs and databases, schematics, photographs, video and

audiovisual recordings, sound recordings, marks, logos, graphic designs, notes, websites, domain names, inventions, processes, formulas matters and combinations thereof, and all forms of intellectual property. CONSULTANT hereby assigns, and agrees to assign, all goodwill, copyright, trademark, patent, trade secret and all other intellectual property rights worldwide in any Works Products originated and prepared by CONSULTANT under this AGREEMENT. CONSULTANT further agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights provided herein.

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

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

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

ARTICLE 16 – NONDISCRIMINATION AND AFFIRMATIVE ACTION

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

16.1 NON-DISCRIMINATION

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

16.2 EQUAL EMPLOYMENT PRACTICES

Unless otherwise exempt, this AGREEMENT 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 AGREEMENT, CONSULTANT agrees and

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

1. This provision applies to work or service performed or materials manufactured or assembled in the United States.

2. Nothing in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.

3. CONSULTANT agrees to post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.

B. CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of CONSULTANT, state that all qualified applicants will received consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.

C. As part of the CITY'S supplier registration process, and/or at the request of the awarding authority, or the Board of Public Works, Office of Contract Compliance, CONSULTANT shall certify in the specified format that he or she has not discriminated in the performance of CITY contracts against any employee or applicant for employment on the basis or because of race, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status or medical condition.

D. CONSULTANT shall permit access to and may be required to provide certified copies of all of his or her records pertaining to employment and to employment practices by the awarding authority or the Office of Contract Compliance for the purpose of

investigation to ascertain compliance with the Equal Employment Practices provisions of CITY contracts. On their or either of their request, CONSULTANT shall provide evidence that he or she has or will comply therewith.

E. The failure of any CONSULTANT to comply with the Equal Employment Practices provisions of this AGREEMENT may be deemed to be a material breach of CITY contracts. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made or penalties assessed except upon a full and fair hearing after notice and an opportunity to be heard have been given to CONSULTANT.

F. Upon a finding duly made that CONSULTANT has failed to comply with the Equal Employment Practices provisions of the CITY AGREEMENT, the AGREEMENT 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 that the CONSULTANT is an irresponsible bidder or proposer pursuant to the provision of Section 371 of the Charter of the City of Los Angeles. In the event of such a determination, CONSULTANT shall be disqualified from being awarded a contract with the CITY for a period of two (2) years, or until CONSULTANT shall establish and carry out a program in conformance with the provisions hereof.

G. Notwithstanding any other provision of this AGREEMENT, 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 AGREEMENT shall be construed in any manner so as to require or permit any act which is prohibited by law.

J. At the time a supplier registers to do business with the CITY, or when an individual bid or proposal is submitted, CONSULTANT shall agree to adhere to the Equal Employment Practices specified herein during the performance or conduct of CITY Contracts.

K. Equal Employment Practices shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:

1. Hiring practices;
2. Apprenticeships where such approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;
3. Training and promotional opportunities; and
4. Reasonable accommodations for persons with disabilities.

L. Any subcontract entered into by CONSULTANT to the extent allowed hereunder, shall include a like provision for work to be performed under this AGREEMENT.

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

16.3 AFFIRMATIVE ACTION PROGRAM

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

A. During the performance of a CITY contract, CONSULTANT certifies and represents that CONSULTANT and each subconsultant hereunder will adhere to an affirmative action program to ensure that in its employment practices, persons are employed and employees are treated equally and without regard to or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.

1. This provision applies to work or services performed or materials manufactured or assembled in the United States.

2. Nothing, in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.

3. CONSULTANT shall post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.

B. CONSULTANT will in all solicitations or advertisements for employees placed by or on behalf of CONSULTANT state that all qualified applicants will receive consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.

C. As part of the CITY'S supplier registration process, and/or at the request of the awarding authority or the Office of Contract Compliance, CONSULTANT shall certify on an electronic or hard copy form to be supplied, that CONSULTANT has not discriminated in the performance of CITY contracts against any employee or applicant for employment on the basis or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.

D. CONSULTANT shall permit access to and may be required to provide certified copies of all of its records pertaining to employment and to its employment practices by

the awarding authority or the Office of Contract Compliance, for the purpose of investigation to ascertain compliance with the Affirmative Action Program provisions of CITY contracts, and on their or either of their request to provide evidence that it has or will comply therewith.

E. The failure of any CONSULTANT to comply with the Affirmative Action Program provisions of CITY contracts may be deemed to be a material breach of contract. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made except upon a full and fair hearing after notice and an opportunity to be heard has been given to CONSULTANT.

F. Upon a finding duly made that CONSULTANT has breached the Affirmative Action Program provisions of a CITY contract, the contract may be forthwith cancelled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the CITY. In addition thereto, such breach may be the basis for a determination by the awarding authority or the Board of Public Works that the said CONSULTANT is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Los Angeles City Charter. In the event of such determination, such CONSULTANT shall be disqualified from being awarded a contract with the CITY for a period of two years, or until he or she shall establish and carry out a program in conformance with the provisions hereof.

G. In the event of a finding by the Fair Employment and Housing Commission of the State of California, or the Board of Public Works of the City of Los Angeles, or any court of competent jurisdiction, that CONSULTANT has been guilty of willful violation of the California Fair Employment and Housing Act, or the Affirmative Action Program

provisions of a City contract, there may be deducted from the amount payable to CONSULTANT by the CITY under the contract, a penalty of ten dollars (\$10.00) for each person for each calendar day on which such person was discriminated against in violation of the provisions of a CITY contract.

H. Notwithstanding any other provisions of a CITY contract, the CITY shall have any and all other remedies at law or in equity for any breach hereof.

I. Intentionally blank.

J. Nothing contained in CITY contracts shall be construed in any manner so as to require or permit any act which is prohibited by law.

K. CONSULTANT shall submit an Affirmative Action Plan which shall meet the requirements of this chapter at the time it submits its bid or proposal or at the time it registers to do business with the CITY. The plan shall be subject to approval by the Office of Contract Compliance prior to award of the AGREEMENT. The awarding authority may also require contractors and suppliers to take part in a pre-registration, pre-bid, pre-proposal, or pre-award conference in order to develop, improve or implement a qualifying Affirmative Action Plan. Affirmative Action Programs developed pursuant to this section shall be effective for a period of twelve months from the date of approval by the Office of Contract Compliance. In case of prior submission of a plan, CONSULTANT may submit documentation that it has an Affirmative Action Plan approved by the Office of Contract Compliance within the previous twelve months. If the approval is 30 days or less from expiration, CONSULTANT must submit a new Plan to the Office of Contract Compliance and that Plan must be approved before the AGREEMENT is awarded.

1. Every contract of \$5,000 or more which may provide construction, demolition, renovation, conservation or major maintenance of any kind shall in addition comply with the requirements of Section 10.13 of the Los Angeles Administrative Code.

2. CONSULTANT may establish and adopt as its own Affirmative Action Plan, by affixing his or her signature thereto, an Affirmative Action Plan prepared and furnished by the Office of Contract Compliance, or it may prepare and submit its own Plan for approval.

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

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

1. Apprenticeship where approved programs are functioning and other on-the-job training for non-apprenticeable occupations;
2. Classroom preparation for the job when not apprenticeable;
3. Pre-apprenticeship education and preparation;
4. Upgrading, training and opportunities;

5. Encouraging the use of contractors, subcontractors and suppliers of all racial and ethnic groups, provided, however, that any contract subject to this ordinance shall require the contractor, subcontractor or supplier to provide not less than the prevailing wage, working conditions and practices generally observed in private industries in the contractor's, subcontractor's or supplier's geographical area for such work;

6. The entry of qualified women, minority and all other journeymen into the industry; and

7. The provision of needed supplies or job conditions to permit person 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 Affirmation 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 consultants 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 are applicable to the contractor. Failure of the CONSULTANT to comply with this requirement or to obtain the compliance of its subcontractors with all such obligations shall subject the CONSULTANT to the imposition of any and all sanctions allowed by law, including but not limited to termination of the CONSULTANT'S AGREEMENT with the CITY.

**ARTICLE 17 – MINORITY, WOMEN AND OTHER BUSINESS ENTERPRISE
OUTREACH PROGRAM**

NO CHANGE IN THIS ARTICLE

ARTICLE 18 – SUCCESSORS AND ASSIGNS

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

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 32.

ARTICLE 19 –CONTACT PERSONS –PROPER ADDRESSES –NOTIFICATION

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

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: Robert B. Irvin, Director of Systems

Address: 1149 S. Broadway Ave, Ste 900

Los Angeles, California, 90015

CONSULTANT:

Contact Person: Hampik Dekemenjian

Address: 523 West 6th Street, Suite 400

Los Angeles, CA 90014

E-mail: dekemenjian@cdm.com

ARTICLE 20 – FORCE MAJEURE

NO CHANGE IN THIS ARTICLE

ARTICLE 21 – SEVERABILITY

NO CHANGE IN THIS ARTICLE

ARTICLE 22 – DISPUTES

NO CHANGE IN THIS ARTICLE

ARTICLE 23 – ENTIRE AGREEMENT

NO CHANGE IN THIS ARTICLE

ARTICLE 24 – APPLICABLE LAW, INTERPRETATION AND ENFORCEMENT

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

Each party's performance hereunder shall comply with all applicable laws of the United States of America, the State of California, and the CITY including but not limited to laws regarding health and safety, labor and employment, wage and hours and licensing laws which affect employees.

This AGREEMENT and its performance shall be enforced and interpreted under the laws of the State of California. All causes of action arising directly or indirectly from the business relationship evidenced by this AGREEMENT must be filed in the appropriate state or federal court located in Los Angeles County, California, and each party agrees to be subject to the jurisdiction of the State of California regardless of their residence. CONSULTANT shall comply with new, amended, or revised laws, regulations, and/or procedures that apply to the performance of this AGREEMENT.

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

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

NO CHANGE IN THIS ARTICLE

ARTICLE 26 – BONDS

NO CHANGE IN THIS ARTICLE

ARTICLE 27 – CHILD SUPPORT ASSIGNMENT ORDERS

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

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

Pursuant to Section 10.10(b) of the Los Angeles Administrative Code, the failure of CONSULTANT to comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignment Orders or Notices of Assignment, or the failure of any Principal Owner(s) of CONSULTANT to comply with any Wage and Earnings Assignment Orders or Notices of Assignment applicable to them personally, shall constitute a default by the CONSULTANT under this AGREEMENT subjecting this AGREEMENT to termination if such default shall continue for more than ninety (90) days after notice of such default to CONSULTANT by the CITY.

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

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

ARTICLE 28 – SERVICE CONTRACTOR WORKER RETENTION ORDINANCE
AND LIVING WAGE ORDINANCE

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

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 F and incorporated herein by this reference, and the Service Contractor Worker Retention Ordinance (SCWRO), Section 10.3 et seq., of the Los Angeles Administrative code, as amended from time to time. These Ordinances require the following:

1. The CONSULTANT assures payment of a minimum initial wage rate to employees as defined in the LWO and as may be adjusted each July 1 and

provision of benefits of compensated and uncompensated days off and health benefits, as defined in the LWO.

2. The CONSULTANT further pledges that it will comply with federal law proscribing retaliation for union organizing and will not retaliate for activities related to the LWO. CONSULTANT shall require each of its subconsultants within the meaning of the LWO to pledge to comply with the terms of federal law proscribing retaliation for union organizing. CONSULTANT shall receive and retain on file the executed pledges from each such subconsultant within ninety (90) days of the execution of the Subcontract. CONSULTANT'S evidence of executed pledges from each such subconsultant shall fully discharge the obligation of the CONSULTANT to comply with the provision in the LWO contained in Section 10.37.6(c) concerning compliance with such federal law.
3. The CONSULTANT, whether an employer, as defined in the LWO, or any other person employing individuals, shall not discharge, reduce in compensation, or otherwise discriminate against any employee for complaining to the CITY with regard to the employer's compliance or anticipated compliance with the LWO, for opposing any practice proscribed by the LWO, for participating in proceedings related to the LWO, for seeking to enforce his or her rights under the LWO by any lawful means, or otherwise asserting rights under the LWO. CONSULTANT shall post the Notice of Prohibition Against Retaliation provided by the CITY
4. Any Subcontract entered into by the CONSULTANT relating to this AGREEMENT, to the extent allowed hereunder, shall be subject to the provisions of LWO and the SCWRO, and shall incorporate the LWO and the SCWRO.

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

CONSULTANT shall also make available to employees the forms informing them about the EIC and forms required to secure advance EIC payments from CONSULTANT.

ARTICLE 29 –AMERICANS WITH DISABILITIES ACT

NO CHANGE IN THIS ARTICLE

ARTICLE 30 –EOUAL BENEFITS ORDINANCE

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

Unless otherwise exempt, this AGREEMENT 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 AGREEMENT, the CONSULTANT certified and represents that the CONSULTANT will comply with the EBO.
- B. The failure of the CONSULTANT to comply with the EBO will be deemed to be a material breach of this AGREEMENT by the CITY.
- C. If the CONSULTANT fails to comply with the EBO, the CITY may cancel, terminate or suspend this AGREEMENT, in whole or in part, and all monies due or to become due under this AGREEMENT may be retained by the CITY. The CITY may also pursue any and all other remedies at law or in equity for any breach.
- D. Failure to comply with the EBO may be used as evidence against CONSULTANT in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40et seq., Contractor Responsibility Ordinance.

- E. If the CITY'S Designated Administrative Agency determined that a CONSULTANT has set up or used its contracting entity for the purpose of evading the intent of the EBO, the CITY may terminate the AGREEMENT. Violation of this provision may be used as evidence against CONSULTANT in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40 et seq., Contractor Responsibility Ordinance.

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

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

ARTICLE 31 -WAIVER

NO CHANGE IN THIS ARTICLE

ARTICLE 32 - PROHIBITION AGAINST ASSIGNMENT OR DELEGATION

NO CHANGES IN THIS ARTICLE

ARTICLE 33 - PERMITS

NO CHANGES IN THIS ARTICLE

ARTICLE 34 – CLAIMS FOR LABOR AND MATERIALS

NO CHANGES IN THIS ARTICLE

ARTICLE 35 – DISCOUNTS

NO CHANGES IN THIS ARTICLE

ARTICLE 36 – CONTRACTOR PERFORMANCE EVALUATION

NO CHANGES IN THIS ARTICLE

ARTICLE 37 – CONTRACTOR RESPONSIBILITY ORDINANCE

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

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

In accordance with the provisions of the Contractor Responsibility Ordinance, by signing this AGREEMENT, CONSULTANT pledges, under penalty of perjury, to comply with all applicable Federal, state and local laws in the performance of this AGREEMENT, including but not limited to, laws regarding health and safety, labor and employment, wages and hours, and licensing laws which affect employees. CONSULTANT further agrees to: (1) notify the CITY within thirty (30)

calendar days after receiving notification that any government agency has initiated an investigation which may result in a finding that CONSULTANT is not in compliance with all applicable federal, state and local laws in performance of this AGREEMENT; (2) notify the CITY within thirty (30) calendar days of all findings by a government agency or court of competent jurisdiction that CONSULTANT has violated the provisions of Section 10.40.3(a) of the Contractor Responsibility Ordinance; (3) unless exempt, ensure that its subconsultants, as defined in the Contractor Responsibility Ordinance, submit a Pledge of Compliance to the CITY; and (4) unless exempt, ensure that its subconsultants, 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 38 – BREACH

NO CHANGES IN THIS ARTICLE

ARTICLE 39 – SLAVERY DISCLOSURE ORDINANCE

NO CHANGES IN THIS ARTICLE

(DELETE) ARTICLE 40 – CHILD CARE POLICY STATEMENT

DELETE THIS ARTICLE AND REPLACE WITH THE FOLLOWING

ARTICLE 40 – FIRST SOURCE HIRING ORDINANCE

Unless approved for an exemption, contractors under contracts primarily for the furnishing of services to or for the CITY, the value of which is in excess of \$25,000 and a contract term of at least three (3) months, and certain recipients of CITY Loans or Grants, shall comply with the provisions of Los Angeles Administrative Code Sections 10.44 et seq., First Source Hiring Ordinance (FSHO). Bidders/Proposers shall refer to Exhibit K attached, "First Source Hiring Ordinance" for further information regarding the requirements of the Ordinance.

The Anticipated Job Opportunities Form (FSHO-1) and Subcontractor Information Form (FSHO-2) contained in the Exhibits attached shall only be required of the Bidder/Proposer that is selected for award of a Contract.

(ADD) ARTICLE 41 – INTELLECTUAL PROPERTY INDEMNIFICATION

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

application, equipment, device, instrumentation, software, hardware, or firmware used by CONSULTANT, or its subconsultants of any tier, in performing the work under this AGREEMENT; or (2) as a result of the CITY'S actual or intended use of any Work Product furnished by CONSULTANT, or its subconsultants of any tier, under the AGREEMENT. Rights and remedies available to the CITY under this provision are cumulative of those provided for elsewhere in this AGREEMENT 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 AGREEMENT.

(ADD) ARTICLE 42 – INTELLECTUAL PROPERTY WARRANTY

The CONSULTANT represents and warrants that its performance of all obligations under this AGREEMENT 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.

(ADD) ARTICLE 43 – MUNICIPAL LOBBYING ORDINANCE

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

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

APPROVED AS TO FORM:

Carmen A. Trutanich, City Attorney

By: 
John Carvalho

Title: Deputy City Attorney

Date: 8/2/12

CITY OF LOS ANGELES

By: _____

Title: President, Board of Public Works

Date: _____

ATTEST

June Lagmay, City Clerk

By: _____

Title: Deputy City Clerk

Date: _____

CDM SMITH INC.

By: 
HAMPIK DERERMENTIAN

Title: SR. VICE PRESIDENT

Date: 4/30/2012

CONTRACT NO. C- 113341

AMENDMENT NO. 1

TO

ON-CALL PERSONAL SERVICES AGREEMENT

BETWEEN

THE CITY OF LOS ANGELES

AND

DCSE

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**FIRST AMENDMENT TO
PERSONAL SERVICES CONTRACT NO. 113341
THE CITY OF LOS ANGELES
AND
DCSE
FOR
ON-CALL PERSONAL SERVICES FOR SANITATION AUTOMATION PROJECTS
A G R E E M E N T**

THIS AMENDMENT, made and entered into by and between the Bureau of Sanitation, Department of Public Works, a Municipal Corporation acting by order of and through its Board of Public Works, hereinafter called the "CITY", and " DCSE " hereinafter referred to as the "CONSULTANT" modifying the original agreement executed on March 28, 2008 entitled "On-Call Personal Services between the City of Los Angeles and DCSE, hereinafter "AGREEMENT."

W I T N E S S E T H

WHEREAS, the Bureau of Sanitation (BUREAU) developed an Automation Master Plan and A Strategic Plan which identify and recommend numerous opportunities for using technology to improve the Sanitation business, operations, and service functions while supporting the achievement of financial budget reduction goals; and

WHEREAS, the BUREAU desires to implement the recommended automation projects in an expeditious manner; and

WHEREAS, many of these projects will require the use of staffing resources which are not available within the CITY, and therefore the BUREAU has identified the need for

Consultants to assist CITY staff on an "as-needed" basis; and

WHEREAS, the services to be provided by the Consultants may be in any of the five (5) SERVICE AREAS: 1) Software Engineering, 2) Systems Integration, 3) Local and Wide Area Network and Server Design, 4) Project Automation and/or Construction Management Services, and 5) Related Services including database development, data modeling, value engineering, database design, database to database interface, and training services on an "as-needed" basis; and

WHEREAS, the BUREAU developed a Request For Qualifications (RFQ) covering the desired SERVICE AREAS and distributed it to over one hundred fifty firms providing on-call services based upon needs outlined in the Automation Master Plan and Strategic Plan; and

WHEREAS, thirteen (13) firms submitted thirty-six (36) responses to the RFQ by September 25, 2006; and

WHEREAS, thirteen (13) firms were selected as the most qualified firms by the CITY staff based on the evaluation criteria set forth in the RFQ and as presented in Statements of Qualifications; and

WHEREAS, the Board of Public Works on August 20, 2007 authorized the execution of personal services contracts with 12 firms that qualified to provide as-needed professional services for Software Engineering, System Integration, Local and Wide Area Network and Server Design, Project Automation and/or Construction Management, Database and Training Services; and

WHEREAS, each of the selected Consultants has demonstrated qualifications to perform the required services; and

WHEREAS, the services of the Consultants are of an expert and technical nature and are temporary and occasional in character; and

WHEREAS, the CITY desires to retain the use of these pre-qualified Consultants to bid on a specific Statement of Work to provide the additional services required to assist the CITY in improving the level of automation in the wastewater collection and treatment systems. These improvements will include control systems consolidation and upgrades, systems integration, network upgrades, increased standardization, improved power/energy management and improved data management and access systems; and

WHEREAS, the AGREEMENT is executory and does not guarantee consultants will actually be awarded work thereunder; and the BUREAU reserves the right to solicit additional Consultants to be added to the existing list of Consultants ; and

WHEREAS, the BUREAU is in the process of releasing a new Request for Qualifications (RFQ); and

WHEREAS, since awarding new contracts is a time-consuming process and service areas covered by this AGREEMENT are very critical to the BUREAU'S operation , the AGREEMENT is hereby amended to extend the contract term by an additional three(3) years from January 1, 2013 to December 31, 2015; and

WHEREAS, the Bureau is requesting to increase the cost ceiling amount by \$6 million to replace the control systems in the Bureau's Treatment Plants and Collection System for a revised total ceiling of \$20 million.

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

NO CHANGE IN THIS ARTICLE

ARTICLE 2 – DEFINITIONS

NO CHANGE IN THIS ARTICLE

ARTICLE 3 – PROJECT DESCRIPTION

NO CHANGE IN THIS ARTICLE

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

NO CHANGE IN THIS ARTICLE

ARTICLE 5 – KEY CONSULTANT PERSONNEL

ADD SUB ARTICLES 5.3 AND 5.4 TO READ AS FOLLOWS:

5.3 Unless otherwise provided or approved by the CITY, CONSULTANT shall use its own employees to perform the services described in this AGREEMENT. The CITY shall have the right to review and approve any personnel who are assigned to work under this AGREEMENT. CONSULTANT agrees to remove personnel from

performing work under this AGREEMENT if requested to do so by the CITY.

- 5.4 CONSULTANT shall not use subconsultants to assist in performance of this AGREEMENT without the prior written approval of the CITY. If the CITY permits the use of subconsultants, CONSULTANT shall remain responsible for performing all aspects of this AGREEMENT. The CITY has the right to approve CONSULTANT'S subconsultants, and the CITY reserves the right to request replacement of subconsultants. The CITY does not have any obligation to pay CONSULTANT'S subconsultants, and nothing herein creates any privity between the CITY and the subconsultants.

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

NO CHANGE IN THIS ARTICLE

ARTICLE 7– TERM OF AGREEMENT AND TIME OF EFFECTIVENESS

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

Unless otherwise provided, this Amendment No. 1 shall extend the term of this AGREEMENT from January 1, 2013 until December 31, 2015 unless terminated as provided under Article 8 or extended by an amendment to this AGREEMENT and signed by all parties.

ARTICLE 8 – TERMINATION

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

- 8.1 This AGREEMENT may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this

AGREEMENT through no fault of the terminating party, provided that no termination may be effected unless the other party is given (1) not less than ten (10) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination.

8.2 This AGREEMENT may be terminated in whole or in part in writing by the CITY for its convenience, provided that the CONSULTANT is given (1) not less than thirty (30) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination. Upon receipt of said written notice, CONSULTANT shall immediately take action not to incur any additional obligations, cost or expense, except as may be reasonable necessary to terminate its activities.

8.3 This AGREEMENT may be immediately terminated in writing by the CITY if (1) a federal or state proceeding for relief of debtors is undertaken by or against CONSULTANT or if CONSULTANT makes an assignment for the benefit of creditors or (2) CONSULTANT engages in any dishonest conduct related to the performance or administration of this AGREEMENT or violates the CITY'S lobbying policies.

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

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

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

article.

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

ARTICLE 9 – SUB-CONTRACT APPROVAL

NO CHANGE IN THIS ARTICLE

ARTICLE 10 – COMPENSATION, INVOICING, AND PAYMENT

ADD SUB-ARTICLE 10.4 TO READ AS FOLLOWS:

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

NO CHANGE IN THIS ARTICLE

ARTICLE 12 – INDEMNIFICATION AND INSURANCE

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

12.1 INDEMNIFICATION

Except for the active negligence or willful misconduct of CITY, or any of its Boards, Officers, Agents, Employees, Assigns and Successor in Interest, CONSULTANT undertakes and agrees to defend, indemnify and hold harmless CITY and any of its

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

12.2 INSURANCE

During the term of this AGREEMENT and without limiting the CONSULTANT'S indemnification of the CITY, the CONSULTANT shall provide and maintain at its own expense during the term of this AGREEMENT a program of insurance having the coverage and limits customarily carried and actually arranged by CONSULTANT but not less than the amounts and types listed on the Insurance Requirements Sheet (Form Gen 146/IR), in EXHIBIT D 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 D, and which can also be found at the Board of Public Work's website <http://bpw.lacity.org/Secretariat/Insurance.html>, in the form Instructions and Information on Complying with CITY Insurance Requirements, rev

10/09, and shall otherwise be in a form acceptable to the City Administrative Officer, Risk Management. The CONSULTANT shall comply with all Insurance Contractual Requirements shown on EXHIBIT D hereto. EXHIBIT D is hereby incorporated by reference and made a part of this AGREEMENT.

12.3 CONSULTANT may elect to wait until awarded a task order before providing proof of Professional Liability Insurance as required in Section 12.2. However, the Task Order will not be signed and work may not proceed until all the requirements of Section 12.2, including proof of Professional Liability Insurance are met.

ARTICLE 13 – INDEPENDENT CONTRACTORS

NO CHANGE IN THIS ARTICLE

ARTICLE 14 – WARRANTY AND RESPONSIBILITY OF CONSULTANT

NO CHANGE IN THIS ARTICLE

ARTICLE 15 – OWNERSHIP OF DATA

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

Unless otherwise provided for herein, all Work Products originated and prepared by CONSULTANT or its subconsultants, of any tier under this AGREEMENT 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 AGREEMENT including, without limitation, documents, material, data, reports, manuals, specifications, artwork, drawings, sketches, computer programs and databases, schematics, photographs, video and

audiovisual recordings, sound recordings, marks, logos, graphic designs, notes, websites, domain names, inventions, processes, formulas matters and combinations thereof, and all forms of intellectual property. CONSULTANT hereby assigns, and agrees to assign, all goodwill, copyright, trademark, patent, trade secret and all other intellectual property rights worldwide in any Works Products originated and prepared by CONSULTANT under this AGREEMENT. CONSULTANT further agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights provided herein.

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

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

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

ARTICLE 16 – NONDISCRIMINATION AND AFFIRMATIVE ACTION

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

16.1 NON-DISCRIMINATION

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

16.2 EQUAL EMPLOYMENT PRACTICES

Unless otherwise exempt, this AGREEMENT 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 AGREEMENT, CONSULTANT agrees and

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

1. This provision applies to work or service performed or materials manufactured or assembled in the United States.

2. Nothing in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.

3. CONSULTANT agrees to post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.

B. CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of CONSULTANT, state that all qualified applicants will received consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.

C. As part of the CITY'S supplier registration process, and/or at the request of the awarding authority, or the Board of Public Works, Office of Contract Compliance, CONSULTANT shall certify in the specified format that he or she has not discriminated in the performance of CITY contracts against any employee or applicant for employment on the basis or because of race, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status or medical condition.

D. CONSULTANT shall permit access to and may be required to provide certified copies of all of his or her records pertaining to employment and to employment practices by the awarding authority or the Office of Contract Compliance for the purpose of

investigation to ascertain compliance with the Equal Employment Practices provisions of CITY contracts. On their or either of their request, CONSULTANT shall provide evidence that he or she has or will comply therewith.

E. The failure of any CONSULTANT to comply with the Equal Employment Practices provisions of this AGREEMENT may be deemed to be a material breach of CITY contracts. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made or penalties assessed except upon a full and fair hearing after notice and an opportunity to be heard have been given to CONSULTANT.

F. Upon a finding duly made that CONSULTANT has failed to comply with the Equal Employment Practices provisions of the CITY AGREEMENT, the AGREEMENT 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 that the CONSULTANT is an irresponsible bidder or proposer pursuant to the provision of Section 371 of the Charter of the City of Los Angeles. In the event of such a determination, CONSULTANT shall be disqualified from being awarded a contract with the CITY for a period of two (2) years, or until CONSULTANT shall establish and carry out a program in conformance with the provisions hereof.

G. Notwithstanding any other provision of this AGREEMENT, 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 AGREEMENT shall be construed in any manner so as to require or permit any act which is prohibited by law.

J. At the time a supplier registers to do business with the CITY, or when an individual bid or proposal is submitted, CONSULTANT shall agree to adhere to the Equal Employment Practices specified herein during the performance or conduct of CITY Contracts.

K. Equal Employment Practices shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:

1. Hiring practices;
2. Apprenticeships where such approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;
3. Training and promotional opportunities; and
4. Reasonable accommodations for persons with disabilities.

L. Any subcontract entered into by CONSULTANT to the extent allowed hereunder, shall include a like provision for work to be performed under this AGREEMENT.

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

16.3 AFFIRMATIVE ACTION PROGRAM

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

A. During the performance of a CITY contract, CONSULTANT certifies and represents that CONSULTANT and each subconsultant hereunder will adhere to an affirmative action program to ensure that in its employment practices, persons are employed and employees are treated equally and without regard to or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.

1. This provision applies to work or services performed or materials manufactured or assembled in the United States.

2. Nothing, in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.

3. CONSULTANT shall post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.

B. CONSULTANT will in all solicitations or advertisements for employees placed by or on behalf of CONSULTANT state that all qualified applicants will receive consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.

C. As part of the CITY'S supplier registration process, and/or at the request of the awarding authority or the Office of Contract Compliance, CONSULTANT shall certify on an electronic or hard copy form to be supplied, that CONSULTANT has not discriminated in the performance of CITY contracts against any employee or applicant for employment on the basis or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.

D. CONSULTANT shall permit access to and may be required to provide certified copies of all of its records pertaining to employment and to its employment practices by

the awarding authority or the Office of Contract Compliance, for the purpose of investigation to ascertain compliance with the Affirmative Action Program provisions of CITY contracts, and on their or either of their request to provide evidence that it has or will comply therewith.

E. The failure of any CONSULTANT to comply with the Affirmative Action Program provisions of CITY contracts may be deemed to be a material breach of contract. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made except upon a full and fair hearing after notice and an opportunity to be heard has been given to CONSULTANT.

F. Upon a finding duly made that CONSULTANT has breached the Affirmative Action Program provisions of a CITY contract, the contract may be forthwith cancelled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the CITY. In addition thereto, such breach may be the basis for a determination by the awarding authority or the Board of Public Works that the said CONSULTANT is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Los Angeles City Charter. In the event of such determination, such CONSULTANT shall be disqualified from being awarded a contract with the CITY for a period of two years, or until he or she shall establish and carry out a program in conformance with the provisions hereof.

G. In the event of a finding by the Fair Employment and Housing Commission of the State of California, or the Board of Public Works of the City of Los Angeles, or any court of competent jurisdiction, that CONSULTANT has been guilty of willful violation of the California Fair Employment and Housing Act, or the Affirmative Action Program

provisions of a City contract, there may be deducted from the amount payable to CONSULTANT by the CITY under the contract, a penalty of ten dollars (\$10.00) for each person for each calendar day on which such person was discriminated against in violation of the provisions of a CITY contract.

H. Notwithstanding any other provisions of a CITY contract, the CITY shall have any and all other remedies at law or in equity for any breach hereof.

I. Intentionally blank.

J. Nothing contained in CITY contracts shall be construed in any manner so as to require or permit any act which is prohibited by law.

K. CONSULTANT shall submit an Affirmative Action Plan which shall meet the requirements of this chapter at the time it submits its bid or proposal or at the time it registers to do business with the CITY. The plan shall be subject to approval by the Office of Contract Compliance prior to award of the AGREEMENT. The awarding authority may also require contractors and suppliers to take part in a pre-registration, pre-bid, pre-proposal, or pre-award conference in order to develop, improve or implement a qualifying Affirmative Action Plan. Affirmative Action Programs developed pursuant to this section shall be effective for a period of twelve months from the date of approval by the Office of Contract Compliance. In case of prior submission of a plan, CONSULTANT may submit documentation that it has an Affirmative Action Plan approved by the Office of Contract Compliance within the previous twelve months. If the approval is 30 days or less from expiration, CONSULTANT must submit a new Plan to the Office of Contract Compliance and that Plan must be approved before the AGREEMENT is awarded.

1. Every contract of \$5,000 or more which may provide construction, demolition, renovation, conservation or major maintenance of any kind shall in addition comply with the requirements of Section 10.13 of the Los Angeles Administrative Code.

2. CONSULTANT may establish and adopt as its own Affirmative Action Plan, by affixing his or her signature thereto, an Affirmative Action Plan prepared and furnished by the Office of Contract Compliance, or it may prepare and submit its own Plan for approval.

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

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

1. Apprenticeship where approved programs are functioning and other on-the-job training for non-apprenticeable occupations;
2. Classroom preparation for the job when not apprenticeable;
3. Pre-apprenticeship education and preparation;
4. Upgrading, training and opportunities;

5. Encouraging the use of contractors, subcontractors and suppliers of all racial and ethnic groups, provided, however, that any contract subject to this ordinance shall require the contractor, subcontractor or supplier to provide not less than the prevailing wage, working conditions and practices generally observed in private industries in the contractor's, subcontractor's or supplier's geographical area for such work;

6. The entry of qualified women, minority and all other journeymen into the industry; and

7. The provision of needed supplies or job conditions to permit person 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 Affirmation 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 consultants 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 are applicable to the contractor. Failure of the CONSULTANT to comply with this requirement or to obtain the compliance of its subcontractors with all such obligations shall subject the CONSULTANT to the imposition of any and all sanctions allowed by law, including but not limited to termination of the CONSULTANT'S AGREEMENT with the CITY.

**ARTICLE 17 – MINORITY, WOMEN AND OTHER BUSINESS ENTERPRISE
OUTREACH PROGRAM**

NO CHANGE IN THIS ARTICLE

ARTICLE 18 – SUCCESSORS AND ASSIGNS

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

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 32.

ARTICLE 19 –CONTACT PERSONS –PROPER ADDRESSES –NOTIFICATION

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

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: Robert B. Irvin, Director of Systems

Address: 1149 S. Broadway Ave, Ste 900

Los Angeles, California, 90015

CONSULTANT:

Contact Person: Masoud S. Hoseyni

Address: 23382 Mill Creek Drive #100

Laguna Hills, CA 92653

E-mail: mhoseyni@dcse.com

ARTICLE 20 – FORCE MAJEURE

NO CHANGE IN THIS ARTICLE

ARTICLE 21 – SEVERABILITY

NO CHANGE IN THIS ARTICLE

ARTICLE 22 – DISPUTES

NO CHANGE IN THIS ARTICLE

ARTICLE 23 – ENTIRE AGREEMENT

NO CHANGE IN THIS ARTICLE

ARTICLE 24 – APPLICABLE LAW, INTERPRETATION AND ENFORCEMENT

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

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

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

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

NO CHANGE IN THIS ARTICLE

ARTICLE 26 – BONDS

NO CHANGE IN THIS ARTICLE

ARTICLE 27 – CHILD SUPPORT ASSIGNMENT ORDERS

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

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

Pursuant to Section 10.10(b) of the Los Angeles Administrative Code, the failure of CONSULTANT to comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignment Orders or Notices of Assignment, or the failure of any Principal Owner(s) of CONSULTANT to comply with any Wage and Earnings Assignment Orders or Notices of Assignment applicable to them personally, shall constitute a default by the CONSULTANT under this AGREEMENT subjecting this AGREEMENT to termination if such default shall continue for more than ninety (90) days after notice of such default to CONSULTANT by the CITY.

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

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

ARTICLE 28 – SERVICE CONTRACTOR WORKER RETENTION ORDINANCE
AND LIVING WAGE ORDINANCE

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

- 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 F and incorporated herein by this reference, and the Service Contractor Worker Retention Ordinance (SCWRO), Section 10.3 et seq., of the Los Angeles Administrative code, as amended from time to time.

These Ordinances require the following:

1. The CONSULTANT assures payment of a minimum initial wage rate to employees as defined in the LWO and as may be adjusted each July 1 and

provision of benefits of compensated and uncompensated days off and health benefits, as defined in the LWO.

2. The CONSULTANT further pledges that it will comply with federal law proscribing retaliation for union organizing and will not retaliate for activities related to the LWO. CONSULTANT shall require each of its subconsultants within the meaning of the LWO to pledge to comply with the terms of federal law proscribing retaliation for union organizing. CONSULTANT shall receive and retain on file the executed pledges from each such subconsultant within ninety (90) days of the execution of the Subcontract. CONSULTANT'S evidence of executed pledges from each such subconsultant shall fully discharge the obligation of the CONSULTANT to comply with the provision in the LWO contained in Section 10.37.6(c) concerning compliance with such federal law.
3. The CONSULTANT, whether an employer, as defined in the LWO, or any other person employing individuals, shall not discharge, reduce in compensation, or otherwise discriminate against any employee for complaining to the CITY with regard to the employer's compliance or anticipated compliance with the LWO, for opposing any practice proscribed by the LWO, for participating in proceedings related to the LWO, for seeking to enforce his or her rights under the LWO by any lawful means, or otherwise asserting rights under the LWO. CONSULTANT shall post the Notice of Prohibition Against Retaliation provided by the CITY
4. Any Subcontract entered into by the CONSULTANT relating to this AGREEMENT, to the extent allowed hereunder, shall be subject to the provisions of LWO and the SCWRO, and shall incorporate the LWO and the SCWRO.

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

CONSULTANT shall also make available to employees the forms informing them about the EIC and forms required to secure advance EIC payments from CONSULTANT.

ARTICLE 29 –AMERICANS WITH DISABILITIES ACT

NO CHANGE IN THIS ARTICLE

ARTICLE 30 –EOUAL BENEFITS ORDINANCE

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

Unless otherwise exempt, this AGREEMENT 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 AGREEMENT, the CONSULTANT certified and represents that the CONSULTANT will comply with the EBO.
- B. The failure of the CONSULTANT to comply with the EBO will be deemed to be a material breach of this AGREEMENT by the CITY.
- C. If the CONSULTANT fails to comply with the EBO, the CITY may cancel, terminate or suspend this AGREEMENT, in whole or in part, and all monies due or to become due under this AGREEMENT may be retained by the CITY. The CITY may also pursue any and all other remedies at law or in equity for any breach.
- D. Failure to comply with the EBO may be used as evidence against CONSULTANT in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40et seq., Contractor Responsibility Ordinance.

- E. If the CITY'S Designated Administrative Agency determined that a CONSULTANT has set up or used its contracting entity for the purpose of evading the intent of the EBO, the CITY may terminate the AGREEMENT. Violation of this provision may be used as evidence against CONSULTANT in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40 et seq., Contractor Responsibility Ordinance.

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

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

ARTICLE 31 –WAIVER

NO CHANGE IN THIS ARTICLE

ARTICLE 32 – PROHIBITION AGAINST ASSIGNMENT OR DELEGATION

NO CHANGES IN THIS ARTICLE

ARTICLE 33 – PERMITS

NO CHANGES IN THIS ARTICLE

ARTICLE 34 – CLAIMS FOR LABOR AND MATERIALS

NO CHANGES IN THIS ARTICLE

ARTICLE 35 – DISCOUNTS

NO CHANGES IN THIS ARTICLE

ARTICLE 36 – CONTRACTOR PERFORMANCE EVALUATION

NO CHANGES IN THIS ARTICLE

ARTICLE 37 – CONTRACTOR RESPONSIBILITY ORDINANCE

MODIFY THIS ARTICLE TO READ AS FOLLOWS:

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

In accordance with the provisions of the Contractor Responsibility Ordinance, by signing this AGREEMENT, CONSULTANT pledges, under penalty of perjury, to comply with all applicable Federal, state and local laws in the performance of this AGREEMENT, including but not limited to, laws regarding health and safety, labor and employment, wages and hours, and licensing laws which affect employees. CONSULTANT further agrees to: (1) notify the CITY within thirty (30)

calendar days after receiving notification that any government agency has initiated an investigation which may result in a finding that CONSULTANT is not in compliance with all applicable federal, state and local laws in performance of this AGREEMENT; (2) notify the CITY within thirty (30) calendar days of all findings by a government agency or court of competent jurisdiction that CONSULTANT has violated the provisions of Section 10.40.3(a) of the Contractor Responsibility Ordinance; (3) unless exempt, ensure that its subconsultants, as defined in the Contractor Responsibility Ordinance, submit a Pledge of Compliance to the CITY; and (4) unless exempt, ensure that its subconsultants, 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 38 – BREACH

NO CHANGES IN THIS ARTICLE

ARTICLE 39 – SLAVERY DISCLOSURE ORDINANCE

NO CHANGES IN THIS ARTICLE

(DELETE) ARTICLE 40 – CHILD CARE POLICY STATEMENT

DELETE THIS ARTICLE AND REPLACE WITH THE FOLLOWING

ARTICLE 40 – FIRST SOURCE HIRING ORDINANCE

Unless approved for an exemption, contractors under contracts primarily for the furnishing of services to or for the CITY, the value of which is in excess of \$25,000 and a contract term of at least three (3) months, and certain recipients of CITY Loans or Grants, shall comply with the provisions of Los Angeles Administrative Code Sections 10.44 et seq., First Source Hiring Ordinance (FSHO). Bidders/Proposers shall refer to Exhibit K attached, "First Source Hiring Ordinance" for further information regarding the requirements of the Ordinance.

The Anticipated Job Opportunities Form (FSHO-1) and Subcontractor Information Form (FSHO-2) contained in the Exhibits attached shall only be required of the Bidder/Proposer that is selected for award of a Contract.

(ADD) ARTICLE 41 – INTELLECTUAL PROPERTY INDEMNIFICATION

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

application, equipment, device, instrumentation, software, hardware, or firmware used by CONSULTANT, or its subconsultants of any tier, in performing the work under this AGREEMENT; or (2) as a result of the CITY'S actual or intended use of any Work Product furnished by CONSULTANT, or its subconsultants of any tier, under the AGREEMENT. Rights and remedies available to the CITY under this provision are cumulative of those provided for elsewhere in this AGREEMENT 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 AGREEMENT.

(ADD) ARTICLE 42 – INTELLECTUAL PROPERTY WARRANTY

The CONSULTANT represents and warrants that its performance of all obligations under this AGREEMENT 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.

(ADD) ARTICLE 43 – MUNICIPAL LOBBYING ORDINANCE

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

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

APPROVED AS TO FORM:

Carmen A. Trutanich, City Attorney

By: [Signature]
John Carvalho

Title: Deputy City Attorney

Date: 8/2/12

CITY OF LOS ANGELES

By: _____

Title: President, Board of Public Works

Date: _____

ATTEST

June Lagmay, City Clerk

By: _____

Title: Deputy City Clerk

Date: _____

DCSE

By: [Signature]

Title: President

Date: April 12, 2012