



A  Sempra Energy utility®

Southern California Gas Company Standard Service Agreement
for
Labor and/or Services

PROJECT:	LA Better Buildings Challenge	
CONTRACTOR:	City of Los Angeles 1200 W 7 th Street Los Angeles, CA 90017	<i>MAIL ORIGINAL INVOICE TO:</i> Southern California Gas Company Accounts Payable P.B. Box 30777 Los Angeles, CA - 90030

This Standard Service Agreement ("Agreement") is made effective as of 4/1/2013 between Southern California Gas Company ("Company"), a regulated affiliate of Sempra Energy, a California Corporation, and City of Los Angeles Community Development Department, a municipal corporation ("Contractor" or "CDD").

The Parties hereby agree as follows:

SCOPE

Contractor shall perform, at its own proper cost and expense, in the most substantial and skillful manner, to the satisfaction of Company, the services required to support the LA Better Buildings Challenge ("LABBC") program as more fully described in the Statement of Work attached hereto as Schedule B ("Services").

AUTHORIZED REPRESENTATIVES

Company designates the individual or individuals named below as Company Representatives for all matters relating to the performance of the Services. The actions taken by the Company Representatives shall be deemed acts of the Company. Company may at any time upon written notice to Contractor change the designated Company Representative.

Company Representative: Chauncy Tou

Contractor designates the individual or individuals named below as Contractor Representative for all matters relating to the performance of Services. The actions taken by Contractor Representative shall be deemed acts of Contractor. Contractor Representative or designated

superintendent shall be at the jobsite at all times during the Services. Contractor may at any time upon written notice to Company change the designated Contractor Representative.

Contractor Representative: Rhonda Gaston
Contractor Representative: Robert Manford

COMPENSATION

Contractor shall be compensated for the Services at the rates set forth below in an amount Not-To-Exceed (“NTE”) \$1,670,200.00. Contractor shall notify Company in writing when the costs incurred under this Agreement based upon this Compensation Article equal ninety percent (90%) of \$1,670,200.00. Company will not be required to pay Contractor for the Services more than the NTE price unless and until, at Company’s sole option, Company elects in writing to increase the NTE price of the Agreement.

Contractor hereby agrees to accept as full compensation for satisfactory performance of the Services the labor rates and factors set forth in Schedule C, attached hereto and incorporated herein.

The final invoice shall be marked “FINAL” and must be received by Company within (60) calendar days after December 31, 2014. Company shall not be liable for payment of any late invoices that are delivered to Company beyond the 60 days.

COMMENCEMENT AND COMPLETION OF SERVICES

This Agreement shall commence as of 4/1/2013 and shall be in full force and effect through 12/31/2014, unless terminated earlier or extended by Company in accordance with the terms of this Agreement. Contractor agrees to commence and perform the Services in accordance with the requests of Company Representative identified herein. The nature of the Services is such that timely performance is critical to the orderly progress of related work and to the operating schedule of Company.

NON-ELECTRONIC INVOICING INSTRUCTIONS

Contractor shall invoice Company in accordance with the Compensation Schedule. All invoices submitted shall reference the Standard Service Agreement Number and have complete support documentation of all charges incurred, including any data required to calculate fees or variable rate changes, plus support documentation for any authorized reimbursable expenses by category.

ELECTRONIC INVOICING INSTRUCTIONS (Preferred Method)

All invoices submitted must reference the Agreement number (5660028693) and the Invoice Contact and have complete support documentation of all charges incurred, including any data required to calculate fees or variable rate changes, plus support documentation for any authorized reimbursable expenses by category.

Contractor may submit invoices via e-mail to:
SCG Accounts Payable: AP_Invoices_SCG@semprautilities.com

PAYMENT

Company shall make payment Net 30 days after receipt and approval of an undisputed invoice to the following address or to the address on each Release, if applicable:

Attn: Robert Manford
City of Los Angeles
1200 W 7TH STREET
LOS ANGELES, CA 90017

PAYMENT METHODS

At no additional cost, Company shall make payment through check, credit card, or wire transfer protocol.

COMPLETE AGREEMENT

This Agreement, including all Schedules attached hereto and which are incorporated by reference, constitutes the complete and entire Agreement between the parties and supersedes any previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. There are no additions to, or deletions from, or changes in, any of the provisions hereof, and no understandings, representations or agreements concerning any of the same, which are not expressed herein. **THE PARTIES HEREBY AGREE THAT NO TRADE USAGE; PRIOR COURSE OF DEALING OR COURSE OF PERFORMANCE UNDER THIS AGREEMENT SHALL BE A PART OF THIS AGREEMENT OR SHALL BE USED IN THE INTERPRETATION OR CONSTRUCTION OF THIS AGREEMENT.**

The following Schedules are attached hereto and incorporated herein by this reference:

SCHEDULE A - GENERAL TERMS AND CONDITIONS

SCHEDULE B - STATEMENT OF WORK

SCHEDULE C - COMPENSATION

IN WITNESS WHEREOF, the parties have executed this Agreement as of 4/1/2013.

Southern California Gas Company

City of Los Angeles Community Development
Department

By: 

By: 

Name: Richard D. Hobbs

Name: Rhonda Gaston

Title: Director - Supply Management &
Supplier Diversity

Title: Assistant General Manager

SCHEDULE A - GENERAL TERMS AND CONDITIONS

1. **PARTIES.** This Agreement is entered into between Company and Contractor. Contractor is the firm, person, corporation, or business entity performing the "Work" or "Services" specified in this Agreement.
2. **CONTRACT FORMATION.** By this Agreement, Company offers to contract with Contractor solely upon the terms and conditions stated herein. Any additional or different terms and conditions proposed by Contractor or Company prior to the execution of this Agreement are not agreed to, and hereby expressly rejected. Any additional or different terms and conditions proposed by Contractor or company after the date of this Agreement shall be of no force and effect unless expressly agreed to in writing by both parties. Contractor accepts and shall be bound by the terms and conditions of this Agreement upon the earlier of (a) the date on which it executes and returns the acknowledgment copy or (b) when it commences performance. No other form of acceptance shall be binding on Company.
3. **CHANGE ORDERS.** Company may at any time, in writing, direct or authorize Contractor to make changes or modifications to the scope of work. If such changes or modifications necessitate (a) an increase, or (b) decrease in the amount due, or (c) the nature or quantity of the goods and services or (d) in the time required for performance, or (e) otherwise, such matters shall be agreed upon in writing as an amendment to this Agreement. No payment shall be required from Company for any change or modification which is not authorized in writing.
4. **INVOICING.** If Contractor's invoice price does not match the Agreement price, Company shall pay Contractor the lesser of the amount payable under the Agreement or the invoice. Contractor will be notified of the reason for the adjustment. When Contractor is considered to be a retailer, Contractor's invoices shall properly identify California sales or use tax as a sales or use tax, and separately state the amount of such tax and any freight, installation, technical service or other charge which is excludable from such tax.
5. **PERFORMANCE.** Contractor shall perform the Services in accordance with established professional business standards and ethics and in conformity with each and every term of this Agreement. Contractor shall remedy any and all deficiencies in its Services that result from Contractor's failure to adhere to the Scope of Work.
6. **WARRANTIES.** Contractor expressly represents and warrants that all the Services performed hereunder shall be in compliance with the performance standards, drawings, specifications and any other description of services set forth in the Scope of Work, and the terms and conditions of this Agreement. Company may reject any Services furnished hereunder failing to meet such standards, and require Contractor to promptly repeat, correct or replace such defective Services, at **NO** charge to Company. Contractor further warrants and agrees that none of the materials to be furnished by Contractor and its subcontractors, if any, in the performance of the Scope of Work shall contain asbestos or asbestos-containing materials, unless feasible alternatives or commercially reasonable replacements do not exist or are not available.
7. **INSPECTION.** All Services performed by Contractor shall be subject to the inspection and approval of Company at all times, but such right of inspection of the Services shall not relieve Contractor of responsibility for the proper performance of the Services, nor shall such inspection waive Company's right to reject the Services at a later date. Contractor shall upon five (five) days written notice, provide Company reasonable access to Contractor's facility or facilities where the Services are being performed and sufficient, safe and proper work conditions for such inspection. Contractor shall furnish Company such information concerning its operations and/or the performance of the Services as Company may reasonably request.
8. **ADHERENCE TO COMPANY'S RULES.** Contractor shall, if operating upon Company's premises, conduct its operations in strict observation of access routes, entrance gates or doors, parking and temporary storage areas as designated by Company. Under no circumstances shall any of Contractor's personnel, vehicles or equipment enter, move or be stored upon any area not authorized in writing by Company.
9. **COMPANY AND REGULATORY SECURITY PROCEDURES.** Contractor shall abide by all Company Security procedures, rules and regulations and shall cooperate with Company Security personnel whenever on Company's property whether owned or leased. Contractor shall comply with and observe all applicable regulatory security procedures and requirements, including applicable Federal Energy Regulatory Commission Critical Infrastructure Protection Reliability Standards published at <http://www.ferc.gov/whats-new/comm-meet/2009/101509/M-1.pdf> and ftp://ftp.cpuc.ca.gov/gopher-data/energy_division/affiliate/D9808035.doc.
10. **PROHIBITION ON NON-PUBLIC INFORMATION SHARING.** Contractor understands that the California Public Utilities Commission ("CPUC") and the Federal Energy Regulatory Commission ("FERC") have issued certain Affiliate Rules, including, without limitation, *CPUC Decision ("D") 06-12-029*; *FERC Order 697 (18 C.F.R. Section 35.39(g))*; and *FERC Order No. 2004*. Contractor and its permitted subcontractors may be in receipt of or have access to non-public information which is subject to the foregoing rules. In accordance with those rules, Contractor understands and agrees, and shall cause its permitted subcontractors to understand and agree not to disclose or allow access to: (1) any non-public information of San Diego Gas & Electric Company and/or Southern California Gas Company with any entity affiliated with such utilities by virtue of substantial, even if not majority, direct or indirect ownership other than the ultimate parent company of both such entities, Sempra Energy (each, a "Sempra Subsidiary"); (2) any non-public electric or gas marketing, procurement or transmission-related information of any Sempra Subsidiary with any other Sempra Subsidiary; (3) any non-public transmission-related information of any Sempra Subsidiary's transmission operations with persons participating in the performance of the same Sempra Subsidiary's or any other Sempra Subsidiary's electric and/or gas procurement, marketing or other merchant functions; or (4) any gas procurement, marketing or merchant information associated with Southern California Gas Company's merchant function with persons participating in the performance of Southern California Gas Company's and/or San Diego Gas & Electric Company's gas operations function.
- 10.1. Training. Contractor and permitted subcontractors understand and agree that they may be required to complete training regarding the foregoing at the Company's sole discretion.
11. **INDEPENDENT CONTRACTOR.**
 - 11.1. It is agreed that Contractor is an independent business separate from Company and shall perform the Services under this Agreement as an independent contractor, and no principal-agent or employer-employee relationship or joint-venture partnership shall be created with Company.
 - 11.2. Contractor represents to Company that Contractor and its subcontractors, agents, and employees are properly licensed (including, to the extent required by law to perform or to subcontract the Work or Services, all necessary and appropriate licenses from the Contractors' State License Board), fully experienced and qualified (including having all necessary authorizations) to perform the class and type of Services as specified in this Agreement, in addition to being properly insured, equipped, organized, staffed, and financed to handle such Services, and shall remain properly licensed, authorized, insured, equipped, organized, staffed and financed to handle the Services or the Work throughout the term of this Agreement. Contractor shall not employ for the Services any personnel or subcontractor unskilled or unlicensed in the work assigned.
 - 11.3. Contractor acknowledges that it is responsible for its debts and obligations. Subject to and without limiting Contractor's obligation to perform as required under this Agreement, Contractor understands and agrees that Company has no authority to direct or control Contractor, its subcontractors, suppliers, agents, or employees. Contractor shall perform the Services in an orderly and professional manner in accordance with industry standards. Contractor shall use prudent business practices in its relationships with subcontractors, suppliers, agents, and employees. Contractor shall not hold itself or its employees out as employees or agents of Company. Subject to the Article entitled "**SUBCONTRACTORS**" herein, Contractor acknowledges that it is free to contract with others for similar services. Contractor shall provide and maintain its own business premises, equipment, and supplies at its sole expense.
 - 11.4. Prior to commencing Services and upon request of Company, Contractor will provide a list of employees and subcontractor's employees who will directly execute Services under this Agreement. The employee list will disclose any individuals who are former employees of Company or of any affiliate, parent or subsidiary of Company. Company has the right to disapprove the use of one or more of Contractor's or subcontractor's employees who will be executing the Services, and upon such notice of disapproval, Contractor shall immediately cease the use of such individual(s) in executing the Services.
12. **OWNERSHIP OF INTELLECTUAL PROPERTY.**
 - 12.1. Any idea, invention, work of authorship, drawing, design, formula, algorithm, utility, tool, pattern, compilation, program, device, method, technique, process, improvement, enhancement, modification, development or discovery, whether or not patentable, or copyrightable, or entitled to legal protection as a trade secret or otherwise, that Contractor or any subcontractor may conceive, make, develop, create, reduce to practice, or work

on, in whole or in part, in the course of performing the Services and solely compensated for under this Agreement (hereinafter, collectively, "Invention") shall be owned by Company and shall be delivered to Company upon completion of the Services. Contractor agrees that any copyrightable Invention shall constitute a "work made for hire." Contractor hereby assigns to Company, and shall cause its subcontractors to assign to Company, without royalty or any further consideration, Contractor's and any subcontractor's entire right, title and interest in and to any such Inventions. At Company's request, Contractor shall execute, or cause its subcontractors to execute, an assignment confirming such action upon the completion of any work made for hire.

12.2. Contractor hereby grants to Company, and shall promptly either cause its subcontractors to grant to Company or shall promptly sublicense to Company, an irrevocable, assignable, nonexclusive royalty-free unrestricted license to use, copy, distribute and make derivatives of any proprietary rights or specialized knowledge of Contractor that are part of any "Work Product" (defined below) furnished by Contractor to Company under this Agreement.

12.3. If requested by Company, Contractor agrees to take all actions necessary, at Company's sole cost and expense, to obtain, maintain or enforce patents, copyrights, trade secrets and other proprietary rights in connection with any Invention, and Contractor agrees that its obligations under this Article shall survive termination or expiration of this Agreement.

12.4. Any and all material and tangibly expressed information prepared, accumulated or developed by Contractor, any subcontractor or their respective employees or representatives, including, without limitation, documents, drawings, designs, calculations, maps, plans, workplans, text, filings, estimates, manifests, certificates, books, specifications, sketches, notes, reports, summaries, analyses, data models and samples, including summaries, extracts, analyses and preliminary or draft materials developed in connection therewith (hereinafter, collectively "Work Product"), shall become the sole property of Company without any further consideration to be provided therefore when (i) prepared or in process, solely in connection with the Services and (ii) whether or not delivered by Contractor. Contractor shall deliver the Work Product, or any portion thereof, to the Company on request, together with any other requested materials and/or equipment furnished to Contractor by Company hereunder, and, in any event, upon termination or expiration of this Agreement.

13. INDEMNITY.

13.1. As between Company and Contractor, Contractor shall be solely responsible for and Contractor shall indemnify, defend and hold Company, and its current and future parent company, subsidiaries, affiliates and their respective directors, officers, shareholders, employees, agents, representatives, successors and assigns (collectively, including Company, the "Indemnitees") harmless for, from and against any and all claims, actions, suits, proceedings, losses, liabilities, penalties, fines, damages, costs or expenses including without limitation, reasonable attorneys fees (including fees and disbursements of in-house and outside counsel) of any kind whatsoever resulting from: (a) injuries to or death of any and all individuals, including, without limitation, members of the general public, or any employee, agent, independent contractor or consultant or affiliate of either Company or Contractor, arising out of or connected in any manner with the performance of Services by Contractor, its subcontractor or any other person performing on behalf of Contractor, (b) damage to, loss, and/or destruction of property, arising out of or connected in any manner with the performance of Services by Contractor, its subcontractor or any other person performing on behalf of Contractor, (c) Contractor's failure to comply with the Article entitled "COMPLIANCE WITH LAWS" herein or (d) other third party claims of any kind, whether based upon negligence, strict liability or otherwise, arising out of or connected in any manner to Contractor's or any of its subcontractor's acts or omissions in breach of this Agreement. This indemnification obligation shall not apply only to the extent that injuries, death, loss, damage or destruction is caused by either the willful misconduct of Company or Company's sole negligence.

13.2. Contractor shall indemnify, defend and hold the Indemnitees harmless for, from and against any and all claims, actions, suits, proceedings, losses, liabilities, penalties, fines, damages, costs or expenses, including reasonable attorneys' fees (including fees and disbursements of in-house and outside counsel), of any kind whatsoever arising from or in connection with: (a) actual or alleged infringement or misappropriation by Contractor or any subcontractor or other representative of any patent, copyright, trade secret, trademark, service mark, trade name, or other intellectual property right in connection with the Services, including without limitation, any deliverable or related "work product"; and (b) Contractor's violation of any third party license to use intellectual property in connection with the Services, including, without limitation, any deliverable or related "work product."

13.3. If any claim or action is brought against Company arising out of or related to this Agreement or the Services provided hereunder, then Contractor shall assume the defense of such claim or action, with counsel reasonably acceptable to Company, unless in the opinion of counsel for Company a conflict of interest between Company and Contractor may exist with respect to such claim or action. If a conflict precludes Contractor from assuming the defense, then Contractor shall reimburse Company on a monthly basis for Company's defense costs through separate counsel of Company's choice. If Contractor assumes the defense of Company with acceptable counsel, Company, at its sole option and expense, may participate in the defense with counsel of Company's own choice without relieving Contractor of any of its obligations hereunder. This defense obligation shall not apply to claims or actions that allege willful misconduct or negligent acts of Company.

13.4. Contractor's obligation to indemnify Company under this Article shall not be limited in any way by any limitation on the amount or type of damages, compensation, penalty or benefits payable by or for Contractor under any statutory scheme, including without limitation, any Workers Compensation Acts, Disability Benefit Acts or other Employee Benefit Acts.

14. INSURANCE.

GENERAL REQUIREMENTS. Insurance requirements are set forth as follows, but shall not in any way limit the amount or scope of liability of Contractor under this Agreement. This Article constitutes the minimum insurance and requirements relating thereto.

14.1. EFFECTIVENESS, CERTIFICATES, NOTICE OF CANCELLATION. On or before the effective date of this Agreement, and thereafter during its term, Contractor shall provide Company with original, current certificates of insurance, and renewal certificates of insurance thereafter, executed by a duly authorized representative of each insurer, or by the insurance agent or broker authorized to do so, as evidence of all insurance policies required under this Article. Contractor shall not commence Services until Contractor has obtained all insurance required by this Article and has provided acceptable certificates of insurance. No insurance policy may be canceled, materially revised, or subject to non-renewal without at least thirty (30) calendar days prior written notice being given to Company, ten (10) days for non-payment of premium. Contractor shall provide Company with renewal certificates of insurance or binders within five (5) business days prior to or after such expiration. Insurance shall be maintained without lapse in coverage during the term of this Agreement. Company shall also be given certified copies of Contractor's policies of insurance, upon request.

14.2. AS CONTRIBUTION FROM COMPANY. The required policies, and any of Contractor's policies providing coverage excess of the required policies, shall provide that the coverage is primary for all purposes and Contractor shall not seek any contribution from any insurance or self-insurance maintained by Company.

14.3. RATING. All required policies of insurance shall be written by companies having an A. M. Best rating of "A -VII" or better, or equivalent.

14.4. DEDUCTIBLE. Contractor shall be solely responsible for any deductible or self-insured retention on insurance required hereunder.

14.5. ADDITIONAL INSURED. San Diego Gas & Electric Company and its parent company, and its subsidiaries, affiliates and their respective officers, directors, employees, agents, representatives, successors and assigns shall be named as an additional insured for the Commercial General Liability and Pollution Liability Insurance policies as listed below. The Commercial General Liability insurance policy listed below shall also provide a severability of interest or cross-liability clause.

14.6. Waiver of Subrogation. Each policy of insurance maintained by Contractor below except the Commercial Automobile Liability policy shall contain a waiver of subrogation in favor of San Diego Gas & Electric Company.

14.7. Types of insurance required to be provided by Contractor:

14.7.1. Commercial General Liability Insurance. Contractor shall carry and maintain an "occurrence" form commercial general liability policy or policies, insuring against liability arising from bodily injury, death, property damage, personal and advertising injury, products/completed operations liability, contractual liability covering all operations of Contractor for Work performed under this Agreement. There shall be no explosion, collapse or underground exclusion. Such coverage shall be in an amount of not less than \$1,000,000.00 per occurrence. If the policy maintains a policy aggregate, such aggregate shall not be less than twice the per occurrence limit.

14.7.2. Commercial Automobile Liability Insurance. Contractor shall maintain an automobile liability policy or policies insuring against liability for

damages because of bodily injury, death, or damage to property, (including loss of use thereof), and occurring in any way related to the use by or on behalf of Contractor, in pursuit of the Services, including loading or unloading of any of Contractor's automobiles (including owned, non-owned, leased, rented/or hired vehicles). Such coverage shall be in an amount of not less than \$1,000,000.00 combined single limit.

14.7.3. **Workers' Compensation & Employers' Liability Insurance.** In accordance with the laws of the State(s) in which the Work shall be performed, Contractor shall maintain in force workers' compensation insurance for all of its employees. If applicable, Contractor shall obtain U.S. Longshoremen's and Harbor Workers compensation insurance, separately, or as an endorsement to workers' compensation insurance. Contractor shall also maintain Employer's Liability coverage in an amount of not less than \$1,000,000.00 per accident and per employee for disease. In lieu of such insurance, Contractor may maintain a self-insurance program meeting the requirements of the State(s) in which the Services shall be performed along with the required Employer's Liability insurance.

14.7.4. **Pollution Liability Insurance.** If applicable to the Scope of Work under this Agreement, Contractor shall maintain pollution liability insurance or insurance policies insuring against liability arising out of activities contemplated under this Agreement or as might be required by federal, state, regional, municipal and local laws, in an amount of not less than \$1,000,000 per claim. If the policy maintains a policy aggregate, such aggregate shall not be less than twice the per claim limit.

14.7.5. **Professional Liability Insurance.** If the Contractor is providing professional design, engineering or other professional services (including Design-Build), Contractor shall maintain Professional Liability insurance covering liability arising out of error, omission, or negligent act in the performance, or lack thereof, of professional services contemplated under this Agreement in an amount of not less than \$1,000,000 per claim. If the policy maintains a policy aggregate, such aggregate shall not be less than twice the per claim limit.

14.8. **Contractor's Subcontractors.** In accordance with the Article of this Agreement entitled "**SUBCONTRACTORS**", Contractor shall accept total responsibility to require all other persons, firms and corporations engaged or employed by Contractor in connection with the performance of the Scope of Work to carry and maintain coverage with limits not less than those required in this Article. Contractor shall incorporate insurance requirement by reference within any contract executed by Contractor and its subcontractors, sub-subcontractors, suppliers, and agents shall cause each subcontractor, sub-subcontractor, supplier, and agent to comply with the terms of this Agreement. Contractor will obtain and verify accuracy in their entirety of certificates of insurance evidencing required coverage prior to permitting its subcontractors, sub-subcontractors, suppliers, and agents from performing work or services on the property of Company. Contractor will furnish original certificates of insurance with additional insured endorsements from all of its subcontractors, sub-subcontractors, suppliers, and agents as evidence thereof as Company may reasonably request.

14.9. **Reports.** Contractor shall immediately report to Company, and promptly thereafter confirm in writing, the occurrence of any injury, loss or damage incurred by Contractor or its consultants, subcontractors, sub-subcontractors, suppliers, agents or Contractor's receipt of notice or knowledge of any claim by a third party of any occurrence that might give rise to such a claim over \$100,000. Upon completion of Contractor's Services, Contractor shall submit to Company a written summary of all such injuries, losses, damage, notices or third party claims and occurrences that might give rise to such claims. Nil reports are required.

15. **SUPPLIER DIVERSITY.** It is the policy of Company to provide maximum opportunity for women; minority and service disabled veteran business enterprises, hereinafter referred to as DBE (Diverse Business Enterprises), to participate in the performance of contracts. Company expects as satisfactory performance to this Agreement, Contractor to utilize DBE subcontractors and suppliers and, as allowed by Federal and State law and regulations, to use good faith efforts to set and attain goals in parity with Company goals when contracting for work with Company. Contractor shall submit on a timely basis any documentation required by Company to report Contractor's DBE expenditures in connection with this Agreement.

16. **ASSIGNMENT.** Contractor shall give personal attention to the execution of the Services herein provided for, and shall not permit this Agreement to be assigned voluntarily, involuntarily or by operation of law; nor employ any subcontractor for the execution of the same or any part thereof, without the express prior written authorization of Company. No such written authorization, however, shall be construed as discharging or releasing Contractor in any way from the performance of the Services or the fulfillment of any obligation specified in this Agreement. As allowed under State law, Contractor shall remain jointly and severally liable with any permitted assignee for any failure to comply fully with all applicable obligations hereunder this Agreement. Company may assign in whole or in part its rights and obligations under this Agreement at any time without the consent of Contractor.

17. **TIME.** Time is expressly agreed to be of the essence in any performance related to this Agreement and each, every and all of the terms, conditions and provisions herein.

18. **GOVERNING LAW.** The formation, interpretation, performance and enforcement of this Agreement shall be governed by and enforced under the laws of the State of California, without reference to principles of conflicts of laws.

19. **COMPLIANCE WITH LAWS.** Contractor and its subcontractors at all times during performance of the Services shall comply with and observe, all applicable federal, state, regional, municipal and local laws, ordinances, rules, codes, regulations, executive orders, applicable employment, safety and environmental orders and any applicable orders or decrees of administrative agencies, courts or other legally constituted authorities having jurisdiction or authority over Contractor, Company or the Services furnished under this Agreement, as in effect from time to time, including, but not limited to, the Immigration Control Act of 1968 and the Foreign Corrupt Practices Act (15 USCS §§ 78A and 78m et seq.) ("Applicable Laws"). Prior to the performance of any Work, Contractor shall, at its own cost, have obtained, and shall have caused all subcontractors to obtain, all licenses and permits required by Applicable Laws to engage in the activities required of them in connection with this Agreement.

20. **TERMINATION.** It is also expressly agreed that Company shall have the right to terminate this Agreement, or any part thereof, at any time for its sole convenience upon ten (10) business days' written notice to Contractor. Contractor shall fully justify and document to Company in writing any termination charges claimed by Contractor (which shall not exceed 110% of the reasonable and actual cost already incurred of direct labor, materials and overhead). In no event shall Contractor be entitled to payment for any Services which has not been authorized by Company, or is not yet performed, or any anticipated profits for any Services that have not been authorized or performed. Any payment of termination charges shall occur within thirty (30) days of receipt of Contractor's written submittal of charges and justification to Company's satisfaction. Company shall have the right to review and verify by independent audit, any termination charges claimed by Contractor prior to payment.

21. **LIENS.** Without limiting the generality of any other provisions herein, Contractor shall indemnify, defend, and hold Company, and its current and future, direct and indirect parent company(ies), subsidiaries, affiliates and their respective directors, officers, shareholders, employees, agents, representatives, successors and assigns harmless from and against any mechanic's lien or stop notice claim against Company by Contractor, subcontractors, employees or agents pertaining to the Services specified in this Agreement. If Contractor fails to remove or discharge by bond, payment or otherwise any lien or claim within five (5) business days after Company's written demand to do so, Company may offset the compensation otherwise payable to Contractor under this Agreement or any other agreement in order to pay such liens directly.

22. **RETENTION.** Company shall have the right to withhold a retention from payments due Contractor. The amount of the retention shall be paid within 45 days after completion as defined by California Civil Code Section 3260. Provided, however, the Company may require Contractor to provide conditional or unconditional lien releases, as a condition to withhold the retention and such additional amounts due Contractor as necessary until such liens have been satisfied by Contractor. In addition, Company may use the retention to satisfy directly the claim of any lienor.

23. **AUDIT.** Company reserves the right to designate its own employee representative(s) or its contracted representative(s) with a certified public accounting firm, who shall have the right to audit and to examine any cost, payment, settlement or other supporting documentation resulting from any Services performed under this Agreement. Any such audit or examination may be undertaken by Company or its contracted representative at reasonable times during normal business hours with ten (10) days written notice thereof and in conformance with generally accepted auditing standards. Contractor agrees to fully cooperate with any such audit(s).

23.1. Contractor shall include a similar clause in its arrangements with its subcontractors reserving the right to designate Contractor's own employee representative(s), its contracted representative(s) from a certified public accounting firm, and/or representative(s) from Company, who shall have the right to audit and to examine any cost, payment, settlement or other supporting documentation resulting from any item related to the Services.

23.2. Contractor shall be notified in writing of any exception taken as a result of an audit of Contractor or a subcontractor. Contractor shall refund the amount of any exception to Company within ten (10) days. If Contractor fails to make such payment, Contractor shall pay interest on any unpaid portion of such payment, accruing monthly, at a rate equal to the lesser of ten percent (10%) per annum or the maximum lawful rate. Interest shall be

computed from the date of written notification of exception(s) to the date Contractor reimburses Company in full for any exception(s). In the event an audit in accordance with this Article discloses an overcharge of five percent (5%) or greater, then Contractor shall reimburse Company for the cost for the performance of such audit.

23.3. Company's right to audit shall extend for a period of five (5) years following the date of final payment under this Agreement. Contractor and each subcontractor shall retain all necessary records and documentation for the entire length of this audit period.

24. **TAXES.** Contractor assumes exclusive liability for and shall pay before delinquency, all federal, state, regional, municipal or local sales, use, excise and other taxes, charges or contributions imposed on, or with respect to, or measured by the equipment, materials, supplies or labor furnished hereunder, or the wages, salaries or other remunerations paid to individuals employed in connection with, the performance of the Services. Provided that the conditions of indemnification as set forth in this Agreement are satisfied, Contractor shall indemnify, defend and hold Company, and its current and future, direct and indirect parent company(ies), subsidiaries, affiliates and their respective directors, officers, shareholders, employees, agents, representatives, successors and assigns harmless from and against any claim, liability, penalty, interest and expense arising by reason of Contractor's failure to pay such taxes, charges or contributions.

24.1. Without limiting the generality of this Article, Contractor agrees to treat all individuals performing the Services under this Agreement, except those subcontractors identified in the Scope of Work or Compensation Schedule or as otherwise approved by Company, as employees of Contractor for purposes of federal and state income taxes, Social Security and Medicare taxes, unemployment and disability insurance premiums. No exceptions shall be permitted under this Article without a written Amendment to this Agreement prior to any individual performing any required Services under this Agreement. Contractor agrees that, at any time during the performance of this Agreement, Company shall have the right to audit Contractor's compliance with this provision in accordance with the Article entitled "**AUDIT**".

24.2. To the extent any portion of the Services are performed in the State of California, either (a) Contractor represents that Contractor is a California resident or registered with the California Secretary of State and shall provide Company with an original and a copy of Form 590, Withholding Exemption Certificate, in accordance with California Revenue and Taxation Code Section 18662 and regulations thereunder; or (b) seven percent (7%) of all compensation payable to Contractor for Services performed in California shall be withheld in accordance with applicable California Franchise Tax Board ("FTB") or successor regulations, unless Company has been notified in writing by FTB that withholding is waived or a lower rate of withholding is authorized.

24.3. Contractor and Company shall make commercially reasonable efforts to cooperate with each other to minimize the tax liability of both Parties to the extent legally permissible (and with no duty to increase either Party's tax liability), including separately stating taxable charges on Contractor's invoices and supplying resale and exemption certificates, if applicable, and any other information as reasonably requested.

24.4. Notwithstanding anything to the contrary set forth herein or in any other written or oral understanding or agreement to which the Parties are parties or by which they are bound, the Parties acknowledge and agree that: (i) any obligations of confidentiality contained herein and therein do not apply and have not applied from the commencement of discussions between the Parties to the tax treatment and tax structure of any transaction related to the Services or any other transactions or arrangements; and (ii) each Party (and each of its employees, representatives, or other agents) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of any transaction and all materials of any kind (including opinions or other tax analyses) that are provided to such Party relating to such tax treatment and tax structure, all within the meaning of Treasury Regulations Section 1.6011-4; provided, however, that the foregoing is not intended to affect any privileges that each Party is entitled, in its sole discretion, to maintain, including with respect to any confidential communications with its attorney or any confidential communications with a federally authorized tax practitioner under Section 7525 of the Internal Revenue Code.

25. **VALIDITY.** The invalidity, in whole or in part, of any provisions hereof shall not affect the validity of any other provisions hereof.

26. **DISPUTES.** Any dispute that cannot be resolved between Contractor Representative and Company Representative shall be referred to Company Director—Supply Management and an officer of Contractor for resolution. If Company and Contractor cannot reach an agreement within a reasonable period of time, Company and Contractor shall have the right to pursue litigation as provided for herein. In no event shall the litigation of any controversy or the settlement thereof delay the performance of this Agreement.

26.1. In the event of any litigation to enforce or interpret any terms of this Agreement, unless the Parties agree in writing otherwise, such action shall be brought in a Superior Court of the State of California located in the County of Los Angeles (or, if the federal courts have exclusive jurisdiction over the subject matter of the dispute, in the U.S. District Court for the Central District of California), and the Parties hereby submit to the exclusive jurisdiction of said courts.

26.2. In any action in litigation to enforce or interpret any of the terms of this Agreement, the prevailing party shall be entitled to recover from the unsuccessful party all costs, expenses, (including expert testimony) and reasonable attorneys fees (including fees and disbursements of in-house and outside counsel) incurred therein by the prevailing party.

27. **CONFIDENTIALITY.** For purposes of this Agreement, the term "Confidential Information" means proprietary information concerning the business, operations and assets of Company, its parent company(ies), subsidiaries and/or affiliates, including, without limitation, the terms and conditions of this Agreement or any related agreement, information or materials prepared in connection with the performance of Services under this Agreement, or any related subsequent agreement, designs, drawings, specifications, techniques, models, data, documentation, source code, object code, diagrams, flow charts, research, development, processes, procedures, know-how, manufacturing, development or marketing techniques and materials, development or marketing timetables, strategies and development plans, customer, supplier or personnel names and other information related to customers, suppliers or personnel, pricing policies and financial information, and other information of a similar nature, whether or not reduced to writing or other tangible form, and any other trade secrets. Confidential Information shall not include: (a) information known to Contractor prior to obtaining the same from Company; (b) information in the public domain at the time of disclosure by Contractor; (c) information obtained by Contractor from a third party who did not receive same, directly or indirectly, from Company; or (d) information approved for release by express prior written consent of an authorized officer of Company. Contractor shall have the burden of proof in establishing that its use of Company information is permitted by (a), (b), (c) and/or (d) of this provision.

27.1. Contractor hereby agrees that it shall use the Confidential Information solely for the purpose of performing Services under this Agreement and not in any way detrimental to Company, its parent company(ies), subsidiaries and/or affiliates. Neither Contractor nor its directors, officers, employees, agents or representatives shall use the Confidential Information for their own benefit.

27.2. Contractor agrees to use at least the same degree of care Contractor uses with respect to its own proprietary or confidential information, which in any event shall result in a reasonable standard of care to prevent unauthorized use or disclosure of the Confidential Information. Except as otherwise provided herein, Contractor shall keep confidential and not disclose the Confidential Information. Contractor shall cause each of its directors, officers, employees, agents, representatives, subcontractors and suppliers to become familiar with, and abide by, the terms of this Agreement.

27.3. Notwithstanding any other provisions of this Article, Contractor may disclose any of the Confidential Information in the event, but only to the extent, that, based upon advice of counsel, Contractor is required to do so by the disclosure requirements of any law, rule, regulation or any order, decree, subpoena or ruling or other similar process of any court, governmental agency or regulatory authority, including, but not limited to the California Public Records Act. Prior to making or permitting any such disclosure, Contractor shall provide Company with prompt written notice of any such requirement so that Company (with Contractor's assistance if requested by Company) may seek a protective order or other appropriate remedy.

27.4. Subject to the requirement above to keep the Confidential Information confidential, Contractor shall not, without the prior written consent of Company, disclose to any third party the fact that such Confidential Information has been made available to Contractor.

27.5. At any time upon the request of Company, Contractor shall promptly deliver to Company or destroy if so directed by Company (with such destruction to be certified to Company) all documents (and all copies thereof, however stored) furnished to or prepared by Contractor that contain Confidential Information and all other documents in Contractor's possession that contain or that are based on or derived from Confidential Information. This provision is not intended to prevent Contractor's compliance with Federal, State and City record retention requirements.

27.6. Notwithstanding the return or destruction of all or any part of the Confidential Information, the confidentiality provisions set forth in this Agreement shall nevertheless remain in full force and effect with respect to specific Confidential Information until the date that is five (5) years after the

date of disclosure of such Confidential Information, except as to Geographical Information Systems Data ("GIS Data") and Confidential Information about, regarding or attributable to Company's or its Affiliates' customers ("Confidential Customer Information"). Such term shall be perpetual for GIS Data and Confidential Customer Information. Moreover, Contractor represents, warrants, and covenants that security procedures and practices appropriate to the nature of the GIS Data and Confidential Customer Information involved are in place on the effective date of this Agreement and will be used at all times during the term of this Agreement to protect the GIS Data and Confidential Customer Information from unauthorized access, destruction, use, modification, or disclosure. Without limiting the generality of the foregoing or any other provision of this Agreement, Contractor shall access, collect, store, use, and disclose the Confidential Customer Information under policies, practices and notification requirements no less protective than those under which Company operates.

27.7. The Parties acknowledge that the Confidential Information is valuable and unique, and that damages would be an inadequate remedy for breach of this Agreement and the obligations of Contractor are specifically enforceable. Accordingly, the Parties agree that in the event of a breach or threatened breach of this Agreement by Contractor, Company, its parent company(ies), subsidiaries and/or affiliates, who shall be third party beneficiaries of this Agreement, shall be entitled to seek an injunction preventing such breach, without the necessity of proving damages or posting any bond. Any such relief shall be in addition to, and not in lieu of, monetary damages or any other legal or equitable remedy available to Company, its direct and indirect parent company(ies), subsidiaries or affiliates.

28. ENVIRONMENTAL TERMS

28.1. Definitions. For purposes of this Agreement, the following terms shall have the following meanings:

28.1.1. "Hazardous Materials" means any chemical, substance, material, controlled substance, object, product, by-product, residual, condition, solid, gas or waste or combination thereof which is hazardous to human health or safety or the environment due to its ignitability, corrosivity, reactivity, toxicity, or other harmful or potentially harmful properties or effects. Hazardous Materials include, without limitation, any flammable explosives, radioactive materials, hazardous wastes, toxic substances or related materials, and substances defined as "hazardous substances," "hazardous material," "hazardous wastes," or "toxic substances" in, under or pursuant to any Environmental Law (as that term is defined below). "Hazardous Materials" shall also include oil or petroleum and petroleum products, asbestos, and any asbestos containing materials, radon, polychlorinated biphenyls (PCBs), urea formaldehyde insulation, lead paints and coalings, and all of those chemicals, substances, materials, controlled substances, objects, conditions and waste or combinations thereof which now are, or become in the future, listed, defined or regulated in any manner by any Environmental Law (as that term is defined below). For purposes of this Agreement, the terms "encumbrance" and "encroachment" shall not be deemed to include the presence of any Hazardous Material contamination on, in or under the Property or its underlying groundwater.

28.1.2. "Environmental Law" means applicable federal, state, regional, county or local law, regulation, decision of the courts, ordinance, rule, code, order, directive, guideline, permit, or permit conditions which, now or in the future, relate in any way to worker or workplace safety, environmental conditions, environmental quality or policy, or health and safety issues or concerns (including product safety). Environmental Law includes, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, (42 USC, §§9601 et seq.), the Resource Conservation and Recovery Act (42 USC, §§6901 et seq.), the Federal Water Pollution Control Act (33 USC §§ 1251 et seq.), the Safe Drinking Water Act (42 USC §§300 et seq.), the Hazardous Materials Transportation Act (49 USC §§ 1801 et seq.), the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health and Safety Code, §§25300 et seq.), the Toxic Substance Control Act (15 USC §§2601, et seq.), the California Hazardous Waste Control Law (California Health & Safety Code, §§25100 et seq.), the Occupational Safety and Health Act (29 USC §§651 et seq.), the Safe Drinking Water and Toxic Enforcement Act (California Health & Safety Code, §§25249.5, et seq.), the California Occupational Safety and Health Act (California Labor Code §§6300 et seq.), the Porter-Cologne Water Quality Control Act (California Water Code §§ 13000 et seq.), and applicable regulations or rules promulgated thereunder.

28.1.3. "Governmental Agency" shall mean any federal, state regional, municipal or local governmental agency or other public or political body having the jurisdiction, mandate, authority or power to regulate, implement, coordinate, administer or enforce any Environmental Law.

28.2. Materials and Licenses. Contractor agrees that all materials and equipment to be supplied or used by Contractor, its subcontractors, if any, in the performance of its obligations under this Agreement, including, but not limited to vehicles, loading equipment, and containers, shall be in good condition and fit for the use(s) for which they are employed by Contractor or its subcontractor, if any. Contractor further agrees that none of the materials to be supplied or used by Contractor and its subcontractors, if any, in the performance of its obligations under this Agreement shall contain asbestos or asbestos-containing materials, unless feasible alternatives or commercially reasonable replacements do not exist or are not available. The materials, equipment and Services shall comply with all applicable Environmental Laws as of its delivery and installation and Contractor shall comply with applicable provisions of Environmental Laws, including, but not limited to, providing any Proposition 65 warnings and Material Safety Data Sheets. All materials and equipment used in the Services (including any warranty re-installation) shall at all times be maintained, inspected and operated as required by applicable Environmental Law. Contractor further agrees that all licenses, permits, registrations and certificates or other approvals required by any Environmental Law or Governmental Agency shall be procured and maintained for such materials and equipment at all times during the use of the same by Contractor or its subcontractors, if any, in the performance of any of Contractor's obligations under this Agreement.

28.3. Duty to Comply with Laws. Contractor specifically agrees that in the performance of its obligations under this Agreement, Contractor shall at all times fully comply with and cause each of its subcontractors, if any, to fully comply with all applicable Environmental Laws. Contractor further agrees that Contractor shall have and cause its subcontractors, if any, to have and keep in effect all licenses, permits, registrations, certificates, training, and approvals required by any Environmental Law or by any Governmental Agency for the Services undertaken by Contractor or its subcontractors, if any, in the performance of Contractor's obligations under this Agreement.

28.4. Indemnification. Contractor hereby specifically agrees to indemnify, defend and hold the Indemnitees harmless for, from and against any and all claims, actions, suits, proceedings, losses, liabilities, penalties, fines, damages, demands, causes of action, costs and expenses including, but not limited to, all reasonable consulting, engineering, attorney (in-house and outside counsel) or other professional fees including disbursements, which Indemnitees, or any of them, may incur or suffer by reason of:

- (1) any unauthorized release of a Hazardous Material;
- (2) any enforcement or compliance proceeding commenced by or in the name of any Governmental Agency because of an alleged, threatened or actual violation of any Environmental Law;
- (3) any action reasonably necessary to abate, remediate or prevent a violation or threatened violation of any Environmental Law; and/or
- (4) any other cause of whatsoever nature;

arising out of or in any way connected with the performance under this Agreement by Contractor, its subcontractor or any other person performing on behalf of Contractor, except to the extent the same were caused by the willful misconduct or sole negligence of the Indemnitees.

28.5. Release. In the event of any unauthorized release of a Hazardous Material, Contractor shall perform the following actions:

- (1) Take all reasonable steps necessary to stop and contain said release;
- (2) Make any report of such release as required under Environmental Law; and
- (3) Clean up such release as required by the applicable Governmental Agency and to the satisfaction of Company in the event such release occurs at or on Company or third party property.

28.6. Notification. Contractor shall immediately notify Company Representative of the following upon the occurrence of any unauthorized release of Hazardous Material in connection with the Services:

- (1) A description of the release;
- (2) The identification of the Hazardous Material and the volume released;
- (3) Death of any person;
- (4) Property damage;
- (5) Any communication from any Governmental Agency that alleges that Contractor is not acting in compliance with Environmental Law; and/or
- (6) Any communication from any Governmental Agency that affects any of Company's contractor's or subcontractor's permits or licenses.

28.7. Reports. Contractor shall submit within 36 hours of the unauthorized release to Company Representative a written report, in a format

required by Company describing in detail any event of any unauthorized release of a Hazardous Material which shall include the following information:

- (1) Name and address of Contractor and any subcontractor(s) involved.
- (2) Name and address of Contractor's commercial and environmental liability insurance carrier.
- (3) Name and address of any injured or deceased persons, if applicable.
- (4) Name and address of any property damage, if applicable.
- (5) A detailed description of the release including the identification of the Hazardous Material, the date and time of the release, the volume released, and the nature of the any environmental contamination.
- (6) A determination of whether any of Company's personnel, equipment, tools or materials were involved.
- (7) A detailed description of all reports made to any Governmental Agency, and a description of the actions taken to respond to the release.

28.8. No Transportation of Company's Hazardous Material. Contractor shall NOT (a) transport any Hazardous Material that Company generated for purposes of treatment, storage, recycling and/or disposal; or (b) conduct any treatment, storage, recycling and/or disposal of any Company generated Hazardous Material unless specifically authorized by Company to perform such activities in writing. If Contractor is authorized by Company to perform such activities then the following terms and conditions shall apply:

28.8.1. Authorized Treatment Facility. Contractor shall not transport any Company generated Hazardous Material to any treatment, storage, recycling and/or disposal facility (hereinafter called "TSDF") not authorized by Company in writing. Prior to transporting Company generated Hazardous Material in each case, Contractor shall confirm that the TSDF has procured and maintained in effect all licenses, permits, registrations, certificates or other authorizations required by any Environmental Law or Governmental Agency to lawfully receive, handle, transport, store, treat, recycle, incinerate, dispose of, or otherwise manage or use such Hazardous Material. Contractor shall not transport any Company generated Hazardous Material to any TSDF which is unable or fails to provide such confirmation and Contractor shall immediately notify Company. Company reserves the right at any time, in Company's sole discretion, to cancel its authorization of any TSDF by written notice to Contractor.

28.8.2. Hazardous Waste Manifest. Company shall, when required by Environmental Law, provide Contractor with a complete and executed Hazardous Waste Manifest or other shipping documentation for Company generated Hazardous Material to be transported for treatment, storage, recycling and/or disposal. Contractor's transportation, recycling, treatment, storage, and/or disposal of any such Hazardous Material in accordance with this Agreement shall be documented by Contractor utilizing, among other things, the Hazardous Waste Manifest tracking system or other records as required by Environmental Law, copies of which shall be provided to Company within ten (10) days of shipment.

28.8.3. No Asbestos or Asbestos-Containing Materials (ACM). Contractor shall not supply, sell, deliver or furnish to Company any Products or Goods, pursuant to this Agreement, that contain asbestos or ACM in any concentration or amount whatsoever, unless otherwise consented to in writing by Company, on the basis that no feasible replacement Products or Goods (that do not contain asbestos or ACM) are available.

29. HAZARDOUS MATERIALS.

29.1. Hazardous Materials and Toxic Chemicals. Contractor shall provide the following to Company for each material which Contractor furnishes under this Agreement: (a) a completed Material Safety Data Sheet (MSDS) for each material which contains a *hazardous material* as defined above; and (b) a written statement for each material that is a Mixture or Trade Name Product which contains a *Toxic Chemical* subject to the reporting requirements of Section 313 or EPCRA (40 CFR Section 372 et seq.) including: (1) the name and associated CAS (Chemical Abstract Services Registry) number of the *Toxic Chemical*; (2) the specific concentration at which each such *Toxic Chemical* is present in each such Mixture or Trade Name Product; and (3) the weight of each such *Toxic Chemical* in each such Mixture or Trade Name Product. Contractor shall indemnify, defend and hold Indemnitees harmless from and against any and all claims, actions, suits, proceedings, losses, liabilities, penalties, fines, damages, administrative actions, judgments, costs or expenses including expert witness, consulting and attorneys' fees (including fees and disbursements of in-house and outside counsel) that Company suffers as a result of Contractor's failure to comply with these requirements.

29.2. Proposition 65. If any part of the Services would require that a warning pursuant to Proposition 65 (California Health & Safety Code Sections 25249.5 et seq.), be provided to exposed individuals, then Contractor shall provide such warning to those individuals, including but not limited to members of the public, Company's employees, Contractor's employees, and any subcontractor's employees.

30. USE OF COMPANY EQUIPMENT. In the event Company loans Contractor any equipment for use under this Agreement, title to said property shall remain in Company. Notwithstanding the foregoing, Contractor shall be responsible for loss, damage, destruction, theft, maintenance, and repair of said property while in the possession of Contractor. Prior to use, Contractor shall have inspected said property and have satisfied Contractor that the property is in good repair and working condition. Contractor shall only allow qualified personnel to operate said equipment. Contractor shall surrender possession of said equipment upon demand by Company.

31. REMEDIES. Contractor agrees that if: (a) Contractor abandons the Services, (b) Contractor shall become bankrupt or insolvent, (c) Contractor assigns this Agreement, or sublets any part thereof, without the express prior written authorization of Company, (d) Contractor, in the sole opinion of Company Representative, violates any of the provisions of this Agreement, (e) Contractor executes this Agreement in bad faith, or (f) Contractor, in the sole opinion of the Company Representative, is not performing the Services in accordance with the terms of this Agreement, Company may notify Contractor, to discontinue all or any part of the Services and Contractor shall thereupon discontinue the Services or such parts thereof. The remedies herein shall be inclusive and additional to any other rights or remedies in law or equity, and no action by Company shall constitute a waiver of any such other rights or remedies. If it is determined for any reason by a tribunal of competent jurisdiction that Contractor was not in default, the Parties' rights and obligations shall be the same as if notice of termination had been issued pursuant to the Article entitled "TERMINATION."

32. OFFSET. Company may upon written notice to Contractor, setoff any amount due from Contractor, whether or not under this Agreement, against any amount due Contractor or claimed to be due by Contractor under this Agreement. In addition, Company may withhold from Contractor any amount sufficient to reimburse Company for any loss, damage, expense or liability for Contractor's actual, alleged or reasonably probable failure, based on factual evidence, to comply with the terms and conditions of this Agreement.

33. SURVIVAL. The obligations imposed on Contractor pursuant to each Article of this Agreement, which by its terms contains subject matter which relates to time periods subsequent to the term of this Agreement, including without limitation the following Articles: WARRANTY, INDEMNITY, DISPUTES, CONFIDENTIALITY, and this SURVIVAL provision, shall survive completion of the Services or termination of the Agreement.

34. EQUAL OPPORTUNITY. Company is an equal employment opportunity employer and is a federal contractor. Consequently, Contractor agrees, to the extent applicable, to comply with Executive Order 11246, the Vietnam Era Veterans Readjustment Assistance Act of 1974 and Section 503 of the Vocational Rehabilitation Act of 1973 and also agrees that these laws are incorporated herein by this reference. Contractor also agrees to comply with the provisions of Executive Order 13496 relating to the notice of employee rights under federal labor laws.

35. NO PUBLICITY. Contractor shall not, without Company's prior written consent, engage in advertising, promotion or publicity related to this Agreement, or make public use of any Company identification in any circumstances related to this Agreement or otherwise. "Identification" means any corporate name, trade name, trademark, service mark, insignia, symbol, logo or any other product, service or organization designation, or any specification or drawing owned by Company or its affiliates or any representation thereof.

36. EXCUSABLE DELAYS. Contractor shall notify Company in writing immediately of any delay or anticipated delay in Contractor's performance of this Agreement due to causes or circumstances beyond the reasonable control of Contractor. Notice shall include the reason for and anticipated length of the delay. Company may determine, in its sole judgment, to extend the date of performance for a period equal to the time lost by reason of the delay. Contractor shall not be eligible under any circumstances for additional compensation due to any such extension of time. Any extension of time pursuant to this Article shall be documented by a written amendment to this Agreement signed by both Parties. Examples of such possibly excusable delays are natural calamities, strikes and boycotts, war or civil unrest or governmental actions and other events that are commonly deemed Force Majeure. None of the foregoing, however, shall require Company to grant any extension of time for completing the Services.

37. REPORTS. Contractor shall provide periodic status reports as requested by Company Representative. The status reports shall make periodic comparisons of the Services rendered to date against the Scope of Work including, any milestones and costs. Such reports shall include an explanation of any significant variations, an identification of any potential or known developments that may impact Company or the Services and any corrective actions implemented.

38. **SUBCONTRACTORS.** Contractor must obtain Company's written consent prior to retaining subcontractor(s) to perform any of the Services. If Company authorizes Contractor to utilize any subcontractors under this Agreement, Contractor shall at all times be responsible for the acts and omissions of subcontractors and agents employed directly or indirectly by Contractor, which shall include holding all necessary licenses and other authorizations to subcontract the Work or Services. Contractor shall be responsible for performance of all the Services, whether performed by Contractor or its subcontractors or agents. This Agreement shall not give rise to any contractual relationship between Company and any subcontractor or agent of Contractor. Company shall not undertake any obligation to pay or to be responsible for the payment of any sums to any subcontractor or agent of Contractor. Upon request of Company, Contractor shall furnish to Company copies of any executed subcontracts entered into between Contractor and any subcontractor or agent.
39. **SUSPENSION OF SERVICES.** Company may, at any time, by written notice, require Contractor to stop all, or any portion, of the Services for a period of up to ninety (90) days ("Suspension Period") and any further period to which the Parties agree. Upon receipt of notice, Contractor shall immediately cease performance under this Agreement for the entire Suspension Period. Prior to the expiration of the Suspension Period, Company shall either: (a) cancel the Suspension Period; (b) permit the Suspension Period to expire whereupon Contractor shall resume its performance of the Services; or (c) terminate this Agreement pursuant to the provisions of the Article entitled "**TERMINATION**". If the suspension is canceled or permitted to expire, Contractor shall be granted a corresponding adjustment to all time periods and completion dates. Company shall not be liable for any payments to Contractor for expenses incurred during the Suspension Period.
40. **NO WAIVER.** The failure of Company to insist upon or enforce, in any instance, strict performance by Contractor of any of the terms or conditions of this Agreement, or to exercise any rights herein conferred shall not be construed as a waiver or relinquishment to any extent of its right to assert, or rely upon any such terms or rights on any future occasion. No waiver shall be valid unless stated in a written notice issued pursuant to this Agreement.
41. **NO ORAL MODIFICATIONS.** No modification of any provisions of this Agreement shall be valid unless in writing and signed by duly authorized representatives of both Parties. Company Representative is not the duly authorized representative for amendments to this Agreement. Representatives of both Parties internally authorized to execute such documents pursuant to its corporate policies shall sign any amendments to this Agreement.
42. **CAPTIONS.** The captions in this Agreement are for convenience and reference only and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.
43. **COUNTERPARTS.** This Agreement may be executed in counterparts which, taken together, shall constitute a single instrument.
44. **AUTHORITY.** Each individual executing this Agreement on behalf of the Parties represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of their Party and that this Agreement is binding upon their Party in accordance with its terms and conditions.
46. **CONSTRUCTION OF AGREEMENT.** Both Parties have participated in the negotiating and drafting of this Agreement. Therefore, the terms and conditions of this Agreement shall not be construed against either Party as the drafting party.
46. **NOTICES.** All notices to be given under this Agreement shall be in writing and either sent by: (1) pre-paid U.S. first-class mail, in which case notice will be deemed delivered as of two business days after mailing; (2) a nationally recognized pre-paid overnight courier service, in which case notice shall be deemed delivered as of the date shown on the courier's delivery receipt; or (3) telecopy sent during business hours of the recipient, in which case notice shall be deemed delivered when transmitted provided that a transmission report is generated reflecting the accurate transmission of the notice. All correspondence shall reference the Agreement number. Notices shall be directed to the addresses of the parties on the front page of this Agreement.
47. **SEVERAL LIABILITY.** In the event that more than one legal entity acquires goods and Services hereunder from Contractor and is a party to this Agreement, compensation payable or other obligations owed by each such entity with respect to any goods and/or Services provided by Contractor under this Agreement shall be exclusively the obligation of the entity that acquires such goods and/or Services. No such entity shall have any liability whatsoever (whether by direct payment, offset or otherwise) in connection with goods and/or Services acquired by any other such entity. Each such entity is severally and not jointly liable to Contractor hereunder, and each such entity disclaims any and all financial or other responsibility, except with respect to goods and/or services that are furnished and invoiced to such entity. If Contractor is comprised of more than one entity, all such entities shall be jointly and severally liable for all obligations of Contractor under this Agreement.

SCHEDULE B – STATEMENT OF WORK

**BETTER BUILDING CHALLENGE
CDD PROGRAM MANAGEMENT SCOPE**

1. Contract Negotiation with Company
2. Grants Management and Administration
3. Consultant Oversight and Supervision
 - a. Assistance with Program development, work-scope and implementation
 - b. Review of work product, invoices and program expenditure for consistency with scope of work and contractual obligations
 - c. Review and approval of qualifications of sub-contractors and functional oversight of their work-product
 - d. Monitoring, tracking, and reporting on consultant activities and progress with the program.
 - e. Periodic Meeting with consultant to review progress and eliminate bottlenecks within the City
4. Provide technical support for program implementation, including:
 - a. NHPA Section 106 Review and Compliance for historic buildings affected by program
 - b. Preparation and implementation of Waste Management Plans for program implementation
 - c. Coordinate entitlement processes for potential building retrofits (work with Building and Safety, Bureau of Engineering and Planning Departments)
 - d. CEQA/NEPA review and compliance, and review of program for compliance with other applicable and relevant local, state and federal laws and regulations.
5. Coordinate City of Los Angeles (“City”) interdisciplinary team’s effort and general management of team’s work (accounting, contracts, administration, support staff and other City Departments working on the program).
6. Provide feedback on program activities to CDD Senior Management (Director of Administrative Services and Assistant General Manager) and overall status of program
7. Consult with City Attorney regarding contractual and compliance issues relating to the program.
8. Prepare and present City Council Reports and Motions for matters such as status, contractual amendments, budget appropriations and other issues relating to the program.
9. Liaison between City and Company on contract and program-related issues.

SUSTENTO GROUP PROGRAM/PROJECT MANAGEMENT AND DEVELOPMENT:

Sustento Group is under contract with the City of Los Angeles to develop, launch and manage the LABBC, the goal of which is to achieve 20% energy savings across 30 million square feet of existing buildings by the year 2020. In support of this goal, the LABBC will work with Los Angeles Department of Water and Power (“LADWP”) and Company to offer a range of technical support services and other incentives to participating owners, and will work closely with the business and non-profit communities to reach out to property owners and drive participation.

It is envisioned that the LA Area Chamber of Commerce (“Chamber”) or another similar independent business organization will serve as the physical home of the LABBC, with dedicated staff taking primary responsibility for conducting outreach activities to bring more businesses in to the program. LADWP and Company will fund technical support services and other incentives, which will be offered to participating businesses. Sustento Group will serve as the bridge between these two elements of the LABBC – outreach to businesses, and delivery of technical support.

Program Development, Program Management and follow-up efforts include, but are not limited to the following tasks:

1. Oversee all sub-contractors; coordinate with CDD, LADWP and Company;
2. Work with LADWP staff and vendors to develop technical services offerings, including but not limited to energy audits, rebate application support, technology selection assistance, and project management support;
3. Work with LADWP staff to conduct onboarding and training of technical service providers, including development of general scope of work and deliverables;
4. Hire qualified subcontractors to perform support functions such as construction management to supplement LADWP technical service providers as needed, either on a time-and-materials, lump-sum, or other agreed-upon basis;
5. Organize and conduct follow up meetings with companies that have received energy audits or other services to explain energy audit findings, business issues, and other information to support the implementation of building energy retrofits;
6. Oversee and manage provision of technical project development support, such as assistance in evaluating energy audit findings, energy modeling services, tracking and analysis of building utility consumption, development of specifications and bid documents, assistance with utility rebate applications and documentation, and project management support;
7. Coordinate communication between City, Chamber, LADWP, Company and other partner organizations;
8. Train affiliate business organizations’ staff on the LABBC program offerings, benefits of participation, and the benefits of energy efficiency more generally;
9. Contribute content for marketing and outreach materials for use by affiliate business organizations’ staff Lead and participate in workshops and other events / meetings;
10. Collaborate with the affiliate business organizations to bring in additional funding in the form of donations, grants, and sponsorships from outside entities;
11. Follow up with property owners who have completed retrofits to ensure that projected savings do in fact materialize, and if not, take corrective action;
12. Develop case studies on completed projects;
13. Fund the cost to enroll all properties that participate in the LABBC in Energy Star Portfolio manager and WeGoWise to automate tracking of energy performance over time;
14. Engage a market research firm to develop a detailed market segmentation study to enable targeted marketing of program offerings;
15. Maintain and update the LABBC website to communicate progress and engage the broader community;

16. Reach out to potential project funders to expand & enhance the web-based directory of capital providers for the purpose of streamlining project financing and introducing the most competitive funding options available ;
17. Conduct energy efficiency financing charrettes to introduce financing options PACE, On-Bill Financing or Repayment, Energy Services Agreements, and other financing options to main points of contact at participating companies;
18. Facilitate conversations between property owners and capital providers to share information while maintaining property owners' confidentiality until the property owners are ready to engage directly with capital providers;

SCHEDULE C – COMPENSATION

2013-2014 ARRA Continuation Program - City of Los Angeles

Agreement Period: April 1, 2013 - December 31, 2014

Total
\$1,670,200.00

\$393,800.00 Sustento \$1,276,400.00

2013-14 Tasks	SoCalGas		LADWP		
	Co-funding Ratio	Maximum Contribution	Co-funding Ratio	Maximum Contribution	
Finance Tasks (Sustento)	50%	\$178,696.00	50%	\$178,696.00	
Other Technical Tasks (Sustento)	35%	\$321,652.80	65%	\$597,355.20	
Project Management & Related Tasks (CDD)	43.20%	\$170,121.60	56.80%	\$223,678.40	
2013-2014 Total Max. Contribution		\$670,470.40		\$999,729.60	\$1,670,200.00

LA Community Development Department
Proposed Budget & Staffing Plan
4/1/13 - 3/31/14

Name	Organization	Tasks	Scope of Work	Hours/ Month	# Months	Rate	# of staff	Total
Robert Manford	CDD	Staff Supervision, Program/Project Management, Grant/Contract Administration	Program Management	72	3	\$ 59.01	1	\$ 12,746
Robert Manford				65	9	\$ 61.96	1	\$ 36,247
Shelly Lo	CDD	Administrative	Compliance, EM & V	35	3	43.62	1	\$ 4,580
Shelly Lo				30	9	45.80	1	\$ 12,366
								\$ 16,946
Sonia Garcia	CDD	Accounting/Budget control	Accounting	25	3	\$ 60.15	1	\$ 4,511
Sonia Garcia				23	9	\$ 63.16	1	\$ 13,074
								\$ 17,585
Medy Mamarill	CDD	Accounting	Accounting	25	3	\$ 32.26	1	\$ 2,420
Medy Mamarill				23	9	\$ 33.87	1	\$ 7,011
								\$ 9,431
Rhonda Gaston	CDD	Program Management	Program Management	10	3	\$ 87.63	1	\$ 2,629
Rhonda Gaston				10	9	\$ 92.01	1	\$ 8,281
								\$ 10,910
Jeffry Whitmore	CDD	Program Management	Program Management	10	3	\$ 74.47	1	\$ 2,234
				7	9	\$ 78.19	1	\$ 4,926
								\$ 7,160
CDD General Administrative Support Services, Fringe Benefits, etc.								\$ 85,875
Total CDD								\$ 196,900
Total 2013-2014								\$ 393,800

Sustento Group Proposed Budget & Compensation Schedule

Name	Organization	Position	Hours/Month	# Months	Rate	# of staff	Total	4/1/13 - 6/30/13		7/1/13 - 12/31/13	
David Hodgins	Sustento Group	President	140	12	\$ 150	1	\$ 252,000	\$ 63,000.00	\$ 126,000.00	63,000.00	126,000.00
Project Development Manager	Sub-contractor to Sustento	Project Development Manager	80	12	\$ 125	1.5	\$ 180,000	\$ 45,000.00	\$ 90,000.00	45,000.00	90,000.00
Project Developer	Sub-contractor to Sustento	Project Developer	80	12	\$ 30	1	\$ 28,800	\$ 7,200.00	\$ 14,400.00	7,200.00	14,400.00
Marketing Coordinator	Sub-contractor to Sustento	Marketing Coordinator	80	12	\$ 30	1	\$ 28,800	\$ 7,200.00	\$ 14,400.00	7,200.00	14,400.00
Accounting/Admin	Sub-contractor to Sustento	Accounting/Admin	40	12	\$ 20	1	\$ 9,600	\$ 2,400.00	\$ 4,800.00	2,400.00	4,800.00
Website & Data Manager	Sub-contractors to Sustento	Website Developer, Data Management Firm	7.5	12	\$ 150	2	\$ 27,000	\$ 6,750.00	\$ 13,500.00	6,750.00	13,500.00
Supplemental Technical Resources	Sub-contractors to Sustento		40	12	\$ 150	1	\$ 72,000	\$ 18,000.00	\$ 36,000.00	18,000.00	36,000.00
Expenses							\$ 40,000	\$ 10,000.00	\$ 20,000.00	10,000.00	20,000.00
Total Sustento								\$ 159,550.00	\$ 319,100.00	159,550.00	319,100.00