

DRAFT

PROFESSIONAL SERVICES AGREEMENT

Contractor: CHARLES AND CYNTHIA EBERLY, INCORPORATED DBA  
THE EBERLY COMPANY

Title: RENT ESCROW ACCOUNT PROGRAM (REAP) AND UTILITY  
MAINTENANCE PROGRAM (UMP) LANDLORD OUTREACH SERVICES

Said Agreement is Number \_\_\_\_\_ of City Contracts .

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AGREEMENT NUMBER \_\_\_\_\_ OF CITY CONTRACTS  
BETWEEN  
THE CITY OF LOS ANGELES  
AND  
CHARLES AND CYNTHIA EBERLY, INCORPORATED DBA THE EBERLY COMPANY

THIS AGREEMENT is made and entered into by and between the City of Los Angeles, a municipal corporation, hereinafter called the City, and Charles and Cynthia Eberly, Incorporated dba The Eberly Company, a California corporation, hereinafter called the Contractor.

W I T N E S S E T H

WHEREAS, the Los Angeles Housing and Community Investment Department, hereinafter called the HCIDLA, has been designated by the City to provide for proper planning, coordination, direction and management of the City's various housing activities; and

WHEREAS, the HCIDLA cooperates with private organizations, other agencies of the City and agencies of other governmental jurisdictions in carrying out certain functions and programs, hereinafter called the Program which are its responsibility; and

WHEREAS, the Contactor is an organization possessing special expertise related to outreach to landlords owning buildings in HCIDLA's Rent Escrow Account Program (REAP) and Utility Maintenance Program (UMP); and

WHEREAS, the project which is the subject of this agreement, hereinafter called the Agreement, has been established by the City as one of the above described programs, and will be funded by the Rent Stabilization and Code Enforcement Trust Funds which have been approved by the Los Angeles City Council and the Mayor; and

WHEREAS, the services to be provided herein are of a professional, expert, temporary, and occasional nature; and

WHEREAS, pursuant to Los Angeles City Charter Section 1022, the City Council or designee has determined that the work can be performed more economically or feasibly by independent contractors than by City employees; and

WHEREAS, the City and the Contractor are desirous of executing this Agreement as authorized by the City Council and the Mayor (refer to Council File Number 14-0113 dated March 18, 2014), which authorizes the General Manager of the Los Angeles Housing and Community Investment Department to prepare and execute the Agreement.

NOW, THEREFORE, the City and the Contractor agree as follows:

I.  
INTRODUCTION

§101. Parties to the Agreement

The parties to this Agreement are:

- A. The City of Los Angeles, a municipal corporation, having its principal office at 200 North Main Street, Los Angeles, California 90012.
- B. The Contractor, known as Charles and Cynthia Eberly, Incorporated dba The Eberly Company, a California Corporation, having its principal office at 8383 Wilshire Boulevard, Suite 906, Beverly Hills, CA 90211.

§102. Representatives of the Parties and Service of Notices

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

- 1. The representative of the City shall be, unless otherwise stated in the Agreement:

Rushmore Cervantes, General Manager  
Los Angeles Housing and Community Investment Department  
1200 W. 7<sup>th</sup> Street, 9<sup>th</sup> Floor  
Los Angeles, CA 90017

With copies to:

Roya Babazadeh, Director  
Compliance Division  
Los Angeles Housing and Community Investment Department  
1200 W. 7<sup>th</sup> Street, 8<sup>th</sup> Floor  
Los Angeles, CA 90017

- 2. The representative of the Contractor shall be:

Deena Eberly Weiss, Compliance Director  
The Eberly Company  
8383 Wilshire Boulevard, Suite 906  
Beverly Hills, CA 90211

- B. Formal notices, demands and communications to be given hereunder by either party shall be made in writing and may be effected by personal delivery or by registered or certified mail, postage prepaid, return receipt requested and shall be deemed communicated as of the date of mailing.
- C. If the name of the person designated to receive the notices, demands or communications or the address of such person is changed, written notice shall be given, in accord with this section, within five (5) working days of said change.

§103. Conditions Precedent to Execution of This Agreement

Contractor shall provide copies of the following documents to the City:

- A. Proof of insurance as required by the City in accordance with §419 of this Agreement and attached hereto as Exhibit 1 and made a part hereof.
- B. A Notice of Prohibition Against Retaliation in accordance with §427 of this Agreement and attached hereto as Exhibit 2 and made a part hereof.
- C. A Certification of Compliance With Equal Benefits Ordinance/Reasonable Measures Application for Equal Benefits Ordinance in accordance with §431 of this Agreement and the Slavery Disclosure Ordinance in accordance with §432 of this Agreement and attached hereto as Exhibit 3 and made a part hereof.

II.

TERM AND SERVICES TO BE PROVIDED

§201. Time of Performance

The term of this Agreement shall commence on November 1, 2014 for a one year period with an option to extend for up to two additional one-year terms, subject to the availability of funds, contractor's continuing compliance with applicable Federal, State, and local government legislation, and an evaluation of contractor's performance. Said term is subject to the provisions herein, and the City reserves the right to renegotiate the terms and services to be provided based on available funding and City needs. Performance shall not commence until the Contractor has obtained the City's approval of the insurance required in §419 herein.

§202. Services to be Provided by the Contractor

The Contractor shall provide contractual services identified in this section. There is no guarantee that the City will request any minimum or maximum amount of services during the term of this Agreement. All work is subject to prior City approval. Failure to receive approval may result in withholding compensation pursuant to §301.

The Contractor shall be assigned to provide services to the landlords that have existing REAP cases. Also, cases shall be assigned to the Contractor when the HCIDLA determines that the property or dwelling unit is accepted into the REAP or UMP. The Contractor shall provide outreach and educational services to the owners whose units are included in the referral; provide assistance through counseling and technical assistance with matters directly related to REAP and UMP, including but not limited to educating property owners regarding Housing Code violations and explaining the violations which need to be corrected on the property; providing assistance on how to complete the work required; linking property owners to those who can provide the needed services; providing property owners with the status of their case; and explaining provisions of REAP and UMP ordinances and regulations; facilitating communication with the HCIDLA including the Code Enforcement Division. The Contractor shall also be required to perform data entry in any existing/requested HCIDLA information system. The Contractor will assist property owners in expediting the removal of existing Housing Code violations, ensuring timely closure of the REAP/UMP case, and preventing properties from being placed in REAP/UMP multiple times.

The Contractor shall be available to assist the HCIDLA in gaining access to the dwelling units assigned to the Contractor for assessing violations if needed.

To achieve this goal, the following services are to be provided by the Contractor:

- A. Outreach Methodology. Annually, the Contractor shall provide a HCIDLA-approved work plan outlining the outreach methodology that will be used to successfully inform and educate property owners about the REAP and UMP status of their case. This work plan should include a basic strategy of how the outreach services shall be provided and a description of the resources to be used such as staffing, printed materials, mailing, etc. The plan shall include holding on-site meetings with landlords; disseminating information via telephone calls, U.S. postal mailings, and e-mail; developing seminars and group training sessions and, developing benchmarks for case closures. The Contractor shall also be responsible for conducting an average of two site visits over the duration of cases. The Contractor shall make evening and weekend schedules available for provision of services under this Agreement. The Contractor shall take all reasonable and necessary steps to collaborately work with Tenant Outreach Contractors, as needed, to increase the tenant participation and ensure timely closure of the REAP/UMP cases.
- B. Multilingual Services. The Contractor shall provide translators and bilingual educational materials in English and the dominant language(s) identified by the Contractors for all site visits and/or meetings at any individual building.
- C. Staff Communication. The Contractor shall maintain close contact with REAP and UMP Section case analysts, senior staff, and inspectors for information and updates on building and case-related matters, including owner progress toward the correction of habitability deficiencies.



- D. Referral Services. The Contractor shall refer matters not associated with this program to appropriate entities such as the Department of Consumer Affairs, an appropriate legal aid organization, and various citing agencies, including the HCIDLA, the Department of Building and Safety, the Los Angeles City Fire Department, the Los Angeles County Department of Health Services, the Department of Water and Power.
- E. Response Time Stipulations. The Contractor shall give priority and respond immediately to urgent matters such as discontinuation of utility services due to foreclosure. The Contractor shall respond to inquiries received via e-mail or telephone from landlords within two working days of receipt of the inquiry. The Contractor shall conduct site visits requested from owners within five (5) working days of receipt of the requests.

In the case of UMP, when payment arrangements have been established between the property owner and the Department of Water and Power (DWP), the REAP and/or UMP case will be closed upon notification by DWP. The HCIDLA will then notify the Contractor to cease outreach and education activity due to the closure of the case.

- F. Printed Materials. The Contractor shall develop and print clear, accessible, and user-friendly materials in English and the dominant language(s) identified by the Contractors to inform property owners about the REAP and UMP. In addition, the Contractor shall develop printed materials for outreach site meetings. All printed materials must be reviewed and approved by the HCIDLA prior to use.
- G. Legal Service Referrals. If in the course of providing services under this Contract, the Contractor is asked by owners, property managers, tenants or other members of the public to provide legal services, they must furnish the person with a City-approved list of alternative sources of those legal services, so that the person requesting legal assistance can make an informed choice. The Contractor shall not solicit or accept representation of landlords in a case the Contractor is handling for HCIDLA under this contract.
- H. Performance Conflict of Interest. While performing the services under this Agreement, the Contractor shall not provide any other services, including but not limited to property management or consulting services to parties related to this agreement, including but not limited to landlords, property managers, property owners, or tenants, which would result in the contractor receiving a benefit from such services.
- I. Property Owner/Contractor Communication. In the course of providing outreach and educational services, when required, the Contractor shall maintain the lines of communication between the property owner, tenants, and the Tenant Outreach Contractors to ensure information clarity, and provide intermediary resolution assistance in an effort to reach a solution to the habitability issues listed on the referring agency's (refer to L.A.M.C. Section 162.02 – Enforcement Agency) referral to the HCIDLA.
- J. Reports. The Contractor shall be required to provide information and prepare reports documenting the progress with each case. Additionally, the Contractor shall prepare ad hoc

reports relevant to the services rendered and/or to be rendered in furtherance of the terms of this Contract upon HCIDLA request. The form, format, and content of the information and reports will be determined by HCIDLA and communicated to the Contractor. The Contractor should allocate resources in anticipation of the need for reporting.

- K. Meetings. The Contractor shall be required to attend regular meetings with the HCIDLA staff and management to communicate topics including, but not limited to the following: Program progress; Program issues; and, impact of the Program activities. These meetings will be scheduled by the HCIDLA. The Contractor shall also be required to attend meetings with other City entities or community meetings in relation to the work of the Program. The Contractor shall attend and/or participate in scheduled hearings and conferences regarding REAP and UMP cases for assigned properties, that may entail hearings before the REAP Committee, the Rent Adjustment Commission, or a hearing officer, as well as City Council meetings.

§203. Deliverables

The Contractor shall provide the following:

- A. The Contractor shall provide status reports on the progress of landlord outreach, submitted on a monthly basis. Status reports shall include, the number of referrals received from HCIDLA, number of properties visited. The report shall also include the number of cases terminated. The report shall include, but may not be limited to, a discussion of work performed during the period, information regarding communication with landlords and the budget expended to date. The format for the reports will be decided by the HCIDLA and included in the contract.
- B. The Contractor shall develop and provide printed materials, brochures, letters, etc. for the outreach program. All printed materials developed for the program shall be provided to the HCIDLA in both hard copy (final or camera ready art as applicable) and editable electronic format. The Contractor acknowledges and agrees that all documents, databases, videos, Public Service Announcements, reports, analyses, studies, drawings, information, or data, originated and prepared by the Contractor pursuant to the terms of the final Contract shall become property of the City for its use in any manner it deems appropriate. The Contractor shall assign any and all of its respective interest and rights in such property to the City.
- C. The Contractor shall provide monthly fiscal invoice documentation on an HCIDLA approved form. The Contractor shall maintain financial records of monthly outreach program operating expenses. The Contractor shall make all such records available for HCIDLA review and verification and if the HCIDLA requests, provide copies of requested records. The Contractor shall maintain the financial records in accordance with acceptable accounting standards.

III.  
PAYMENT

§301. Compensation and Method of Payment

- A. The City shall pay to the Contractor as compensation for complete and satisfactory performance of the terms of this Agreement, an amount not to exceed One Hundred Fifty Thousand Dollars (\$150,000). The foregoing rate represents the total compensation to be paid by the City to the Contractor for services to be performed as designated by this Agreement.

Each monthly invoice shall be accompanied by a statement detailing the work completed for the month. Contractor shall submit invoices that conform to City standards in a format provided by HCIDLA that shall include, at a minimum, the following information:

1. Name and address of company or firm
2. Name and address of (City) department being billed
3. Date of the invoice and period covered
4. Reference to contract number or authority (purchase order) number
5. Reference to HCIDLA Incident/Case Number.
6. Detailed description of the services provided for each address and amount due for the task
7. Payment terms, total due and due date
8. Certification by a duly authorized officer
9. Remittance Address (if different from company address)

The Contractor shall submit all invoices on the Company's letterhead that contain the company's official logo, or contain other unique and identifying information such as name and address of company or individual. Invoices are considered complete when appropriate documentation or services provided are signed off as satisfactory by the City. Funds for services rendered shall not be released until HCIDLA has approved the services provided by the Contractor.

- B. It is understood that the City makes no commitment to fund this Agreement beyond the terms set herein.
- C. The Contractor acknowledges that it is aware of liabilities resulting from submitting a false claim for payment by the City under the False Claims Act (Cal. Gov. Code §§ 12650 *et seq.*), including treble damages, costs of legal actions to recover payments, and civil penalties of up to \$10,000 per false claim.
- D. The Contractor agrees to offer the City any discount terms that are offered to its best customers for the goods and services to be provided hereunder and apply such discount to payments made under this Contract which meet the discount terms.

IV.  
STANDARD PROVISIONS

§401. Construction of Provisions and Titles Herein

All titles, subtitles, or headings in this Contract have been inserted for convenience, and shall not be deemed to affect the meaning or construction of any of the terms or provisions hereof. The language of this Contract shall be construed according to its fair meaning and not strictly for or against the City or Contractor. The word "Contractor" herein in this Contract includes the party or parties identified in the Contract. The singular shall include the plural; if there is more than one Contractor herein, unless expressly stated otherwise, their obligations and liabilities hereunder shall be joint and several. Use of the feminine, masculine, or neuter genders shall be deemed to include the genders not used.

§402. Number of Originals

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

§403. Applicable Law, Interpretation and Enforcement

Each party's performance hereunder shall comply with all applicable laws of the United States of America, the State of California, and the City, including but not limited to, laws regarding health and safety, labor and employment, wage and hours and licensing laws which affect employees. This Contract shall be enforced and interpreted under the laws of the State of California without regard to conflict of law principles. Contractor shall comply with new, amended, or revised laws, regulations, and/or procedures that apply to the performance of this Contract.

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

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

§404. Time of Effectiveness

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

- A. This Contract has been signed on behalf of the Contractor by the person or persons

authorized to bind the Contractor hereto;

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

§405. Integrated Contract

This Contract sets forth all of the rights and duties of the parties with respect to the subject matter hereof, and replaces any and all previous Contracts or understandings, whether written or oral, relating thereto. This Contract may be amended only as provided for in paragraph §406 hereof.

§406. Amendment

All amendments to this Contract shall be in writing and signed and approved pursuant to the provisions of §404.

§407. Excusable Delays

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

§408. Breach

In the event any party fails to perform, in whole or in part, any promise or covenant in this Agreement, or should any representation made by it be untrue, any aggrieved party may avail itself of all rights and remedies, at law or equity, in the courts of law. These rights and remedies are cumulative of those provided for in this Agreement with respect termination, if any, except that in no event shall any party recover more than once, suffer a penalty or forfeiture, or be unjustly compensated.

This Contract may be terminated immediately for any violation of City Lobbying Ordinances.

In the event the City terminates this Agreement as provided in this section, the City may procure, upon such terms and in such manner as the City may deem appropriate, services similar in scope and level of effort to those so terminated, and Contractor shall be liable to the City for all of its costs and damages, including, but not limited, any excess costs for such services.

If, after notice of termination of this Contract, under the provisions of this section, it is determined for any reason that the Contractor was not in default under the provisions of this section, or that the default was excusable under the terms of this Agreement, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to §503 Termination.

§409. Waiver

Waiver of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the City.

No Waiver by the City or breach of any provision of these conditions shall be deemed for any purpose to be a waiver or breach of any other provision. A party's performance after the other party's default shall not be construed as a waiver of that default.

§410. Independent Contractor

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

§411. Contractor's Personnel

The Contractor shall only assign personnel to this job who are qualified for this assignment by experience and/or education to perform the tasks under this Agreement. In the event anyone is replaced or terminated, the Contractor shall notify the City in writing within five (5) days after termination, and provide information regarding the replacement employees' work and educational experience and qualifications.

§412. Prohibition Against Assignment or Delegation

The Contractor may not, unless it has first obtained the written permission of the City:

- A. Assign or otherwise alienate any of its rights under this Contract, including the right to payment; or
- B. Delegate, subcontract, or otherwise transfer any of its duties under this Contract.

§413. Permits

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

§414. Claims for Labor and Materials

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

§415. Current Los Angeles City Business Tax Registration Certificate Required

If applicable, the Contractor represents that it has obtained and presently holds the Business Tax Registration Certificate(s) required by the City's Business Tax Ordinance, Section 21.00 *et seq.* of the Los Angeles Municipal Code. For the term covered by this Contract, the Contractor shall maintain, or obtain as necessary, all such Certificates required of it under the Business Tax Ordinance, and shall not allow any such Certificate to be revoked or suspended.

§416. Retention of Records, Audit and Reports

The Contractor shall maintain all records, including records of financial transactions, pertaining to the performance of this Contract, in their original form, in accordance with requirements prescribed by the City. These records shall be retained for a period of no less than three years following final payment made by the City hereunder or the expiration date of this Contract, whichever occurs last. Said records shall be subject to examination and audit by authorized City personnel or by the City's representative at any time during the term of this Contract or within the three years following final payment made by the City hereunder or the expiration date of this Contract, whichever occurs last. The Contractor shall provide any reports requested by the City regarding performance of this Contract. Any subcontract entered into by the Contractor, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract.

§417. Bonds

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



§418. Indemnification

Except for the active negligence or willful misconduct of the City, or any of its Boards, Officers, Agents, Employees, Assigns and Successors in Interest, the Contractor 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, for death or injury to any person, including the Contractor's employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of the negligent acts, errors, omissions or willful misconduct incident to the performance of this Contract by the Contractor or its subcontractors of any tier. Rights and remedies available to the City under this provision are cumulative of those provided for elsewhere in this Contract and those allowed under the laws of the United States, the State of California, and the City. The provisions of §418 shall survive expiration or termination of this Contract.

§419. Insurance

A. General Conditions

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



2. The standard City of Los Angeles insurance conditions are incorporated into the sample standard subcontract provisions. The specific insurance coverages and limits shall be described by contractor in RFP. These coverages and limits should be tailored to the individual subcontract. For City contracts, **Required Insurance and Minimum Limits** are set by the City Risk Management staff in the Office of the City Administrative Officer of the City of Los Angeles on the Form Gen. 146. Electronic submission is the preferred method of submitting your evidence of insurance documents. **Track4LA™** is the City's online insurance compliance system and is designed to make the experience of submitting and retrieving insurance information quick and easy. The system is designed to be used primarily by insurance brokers and agents as they submit client insurance certificates directly to the City. It uses the standard insurance industry form known as the **ACORD 25 Certificate of Liability Insurance** in electronic format. The easiest and quickest way to obtain approval of your insurance is to have your insurance broker or agent access **Track4LA™** at <http://track4la.lacity.org> and follow the instructions to register and submit the appropriate proof of insurance on your behalf. Additional instructions and information on complying with City of Los Angeles insurance requirements can be found at [http://cao.lacity.org/risk/Submitting\\_proof\\_of\\_Insurance.pdf](http://cao.lacity.org/risk/Submitting_proof_of_Insurance.pdf).

#### B. Modification of Coverage

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

#### C. Failure to Procure Insurance

All required insurance must be submitted and approved by the City Administrative Officer/Risk Management/Insurance and Bonds prior to the inception of any operations or tenancy by the Contractor. The required coverages and limits are subject to availability on the open market at reasonable cost as determined by City. Non-availability or non-affordability must be documented by a letter from the Contractor's insurance broker or agent indicating a good faith effort to place the required insurance and showing as a minimum the names of the insurance carriers and the declinations or quotations received from each.

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

#### D. Workers' Compensation

By signing this Agreement, the Contractor hereby certifies that it is aware of the provisions of Section 3700 et seq., of the Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and that it will comply with such provisions at all such times as they may apply during the performance of the work pursuant to this Agreement.

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

§420. Inventions, Patents and Copyrights

A. Inventions and Discoveries

1. Reporting Procedure

If any invention or discovery conceived and/or reduced to practice, whether patentable or not under U.S. patent law, is produced or made during performance of this Agreement (“Invention”) including, without limitation, processes and business methods, the Contractor shall promptly report the Invention to the City and keep the Invention confidential until directed otherwise by the City. The City shall then report the Invention to the Grantor. The Contractor further agrees to oblige by all applicable provisions under the Bayh-Dole Act, as codified in 35 U.S.C. §§ 200-212 and augmented by relevant laws including 37 C.F.R. § 401.

2. Allocation of Patent Rights

The rights in the Invention, including rights under any patent issued thereon, will be determined in accordance with 37 C.F.R. § 401.

3. City’s Rights to Use Invention

Where the City is not allocated with the legal title, interest or right to the Invention or patent thereof, the Contractor hereby agrees that the City would be vested and hold an unencumbered right, and a non-exclusive, irrevocable, perpetual, royalty-free license to use, manufacture, improve upon, and allow others to do so for all government purposes, any Invention developed under this Agreement, subject to the Contractor’s pre-existing intellectual property rights.

B. Rights to Use Inventions

The City shall have an unencumbered right, and a non-exclusive, irrevocable, royalty-free license, to use, manufacture, improve upon, and allow others to do so for all government purposes, any Invention developed under this Agreement.

C. Copyright Policy

1. Unless otherwise provided by the terms of the Grantor or of this Agreement, when copyrightable material (Material) is developed under this Agreement, the author or the City, at the City's discretion, may copyright the Material. If the City declines to copyright the Material, the City shall have an unencumbered right, and a non-exclusive, irrevocable, royalty-free license, to use, manufacture, improve upon, and allow others to do so for all governmental purposes, any Material developed under this Agreement.
2. The Grantor shall have an unencumbered right, and a non-exclusive, irrevocable, royalty-free license, to use, manufacture, improve upon, and allow others to do so for all government purposes, any Material developed under this Agreement or any Copyright purchased under this Agreement. The Contractor shall comply with 24 CFR 85.34.

D. Rights to Data

1. The Grantor and the City shall have unlimited rights or copyright license to any data first produced or delivered under this Agreement. "Unlimited rights" means the right to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform and display publicly, or permit others to do so as required by 48 CFR 27.401. Where the data are not first produced under this Agreement or are published copyrighted data with the notice of 17 U.S.C. Section 401 or 402, the Grantor acquires the data under a copyright license as set forth in 48 CFR 27.404(f)(2) instead of unlimited rights (48 CFR 27.404 (a)).
2. Obligations Binding on Subcontractors: The Contractor shall require all subcontractors to comply with the obligations of this section by incorporating the terms of this section into all subcontracts.

E. Ownership

1. Except where the City has agreed in a signed writing to accept a license, the City shall be and remain, without additional compensation, the sole owner of any and all rights, title and interest in all intellectual property, from the moment of creation, whether or not jointly conceived, that are made, conceived, derived from, or reduced to practice by the Contractor or the City and which result directly or indirectly from this Agreement.
2. For the purposes of this Agreement, Intellectual Property means recognized protectable rights and interest such as: patents (whether or not issued,) copyrights, trademarks, service marks, applications for any of the foregoing, inventions, trade secrets, trade dress, logos, insignia, color combinations, slogans, moral rights, right of publicity, author's rights, contract and licensing rights, works, mask works,

industrial design rights, rights of priority, know-how, design flows, methodologies, devices, business processes, developments, innovations, good will any data or information maintained, collected or stored in the ordinary course of business by the City, and all other legal rights protecting intangible proprietary information as may exist now and/or hereafter come into existence, and all renewals and extensions, regardless of whether those rights arise under the laws of the United States, or any other state, country, jurisdiction.

3. For the purposes of the definition of Intellectual Property, “works” means all literary works, writings and printed matter, including the medium by which they are recorded or reproduced, photographs, art work, pictorial and graphic representations and works of a similar nature, film, motion pictures, digital images, animation cells, and other audiovisual works, including positives and negatives thereof, sound recordings, tapes, educational materials, interactive videos, computer software and any other materials of products created, produced, conceptualized and fixed in a tangible medium of expression. It includes preliminary and final products and any materials and information developed for the purposes of producing those final products. “Works” does not include articles submitted to peer review or reference journals or independent research projects.
4. In the performance of this Agreement, the Contractor may exercise and utilize certain of its Intellectual Property in existence prior to the effective date of this Contract. In addition, under this Agreement, the Contractor may access and utilize certain of City’s Intellectual Property in existence prior to the effective date of this Contract. Except as otherwise set forth herein, the Contractor shall not use any of City’s Intellectual Property now existing or hereafter existing for any purposes without the prior written permission of City. Except as otherwise set forth herein, neither the Contractor nor the City shall give any ownership interest in or rights to its Intellectual Property to the other Party. If, during the term of this Agreement, the Contractor accesses any third-party Intellectual Property that is licensed to the City, the Contractor agrees to abide by all license and confidentiality restrictions applicable to City in the third-party’s license agreement.
5. The Contractor agrees to cooperate with the City in establishing or maintaining the City’s exclusive rights in the Intellectual Property, and in assuring the City’s sole rights against third-parties with respect to the Intellectual Property. If the Contractor enters into any agreements or subcontracts with other parties in order to perform this Contract, the Contractor shall require the terms of agreement(s) to include all Intellectual Property provisions herein. Such terms must include, but are not limited to, the subcontractor assigning and agreeing to assign to the City all rights, title and interest in Intellectual Property made, conceived, derived from, or

reduced to practice by the subcontractor, the Contractor or the City and which result directly indirectly from this Contract or any subcontract.

6. The requirement for the Contractor to include all Intellectual Property Provisions in all agreements and subcontracts it enters into with other parties does not apply to agreements or subcontracts that are for customized and on-the-job-training as authorized under 20 CFR 663.700-730.
7. The Contractor further agrees to assist and cooperate with the City in all reasonable respects, and execute all documents and, subject to reasonable availability, give testimony, and take al further acts reasonably necessary to acquire, transfer, maintain, and enforce the City's Intellectual Property rights and interests.

#### F. Retained Rights/License Rights

1. Except for Intellectual Property made, conceived, derived from, or reduced to practice by the Contractor or the City and which result directly or indirectly from this Agreement, the Contractor shall retain title to all of its Intellectual Property to the extent such Intellectual Property is in existence prior to the effective date of this Contract. The Contractor hereby grants to the City, without additional compensation, a permanent, non-exclusive, royalty free, paid-up, worldwide, irrevocable, perpetual, non-terminable license to use, reproduce, manufacture, sell, offer to sell, import, export, modify, publicly and privately display/perform, distribute, and dispose of the Contractor's Intellectual Property with the right to sub-license through multiple layers, for any purpose whatsoever, to the extent it is incorporated in the Intellectual Property resulting from this Agreement, unless the Contractor assigns all rights, title and interest in the Intellectual Property as set forth herein.
2. Nothing in this provision shall restrict, limit, or otherwise prevent the Contractor from using any ideas, concepts, know-how, methodology or techniques related to its performance under this Agreement, provided that the Contractor's use does not infringe the patent, copyright, trademark rights, license or other Intellectual Property rights of the City or third-party, or result in a breach or default of any provisions herein or result in a breach of any provisions of law relating to confidentiality.

#### G. Copyright

1. The Contractor agrees that for purposes of copyright law, all works made by or on behalf of the Contractor in connection with the Contractor's performance of this Contract shall be deemed "works for hire". The Contractor further agrees that the work of each person utilized by the Contractor in connection with the performance of this Contract will be a "work made for hire", whether that person is an employee of the Contractor or that person has entered into an agreement with the Contractor



to perform the work. The Contractor shall enter into a written agreement with any such person that: (i) all work performed for the Contractor shall be deemed a “work made for hire” under the Copyright Act; and (ii) that person shall assign all right, title, and interest to the City to any work product made, conceived, derived from or reduced to practice by the Contractor or the City and which result directly or indirectly from this Contract.

2. All materials, including, but not limited to, computer software, visual works or text, reproduced or distributed pursuant to this Agreement that include Intellectual Property made, conceived, derived from, or reduced to practice by the Contractor or the City and which result directly or indirectly from this Agreement may not be reproduced or disseminated without prior written permission from the City.

#### H. Patent Rights

With respect to inventions made by the Contractor in the performance of this Contract, which did not result from research and development specifically included in the Agreement’s scope of work, the Contractor hereby grants to the City a license for devices or material incorporating, or made through the use of such inventions. If such inventions result from research and development work specifically included within the Agreement’s scope of work, then the Contractor agrees to assign to the City, without additional compensation, all its rights, title and interest in and to such inventions and to assist the City in securing United States and foreign patents with respect thereto.

#### I. Third-Party Intellectual Property

Except as provided herein, the Contractor agrees that its performance of this Agreement shall not be dependent upon or include any Intellectual Property of the Contractor or third-party without first: (i) obtaining the City’s prior written approval; and (i) granting to or obtaining for the City’s, without additional compensation, a license, as described in §420E.3 above, for any of the Contractor’s or third-party’s Intellectual Property in existence prior to the effective date of this Agreement. If such a license upon these terms is unattainable, and the City determines that the Intellectual Property should be included in or is required for the Contractor’s performance of this Agreement, the Contractor shall obtain a license under terms acceptable to the City.

#### J. Warranties

1. The Contractor represents and warrants that:
  - a. It has secured and will secure all rights and licenses necessary for its performance of this Agreement. Neither the Contractor’s performance of this Agreement, nor the exercise by either Party of the rights granted in this Agreement, nor any use, reproduction, manufacture, sale, offer to sell,

import, export, its modification, public and private display/performance, distribution, and disposition of the Intellectual Property made, conceived, derived from, or reduced to practice by the Contractor or the City and which result directly or indirectly from this Agreement will infringe upon or violate any Intellectual Property right, non-disclosure obligation, or other proprietary right or interest of any third-party or entity now existing under the laws of, or hereafter existing or issued by, any state, the United States, or any foreign country. There are currently no actual or threatened claims by any such third-party based on an alleged violation of any such right by the Contractor.

- b. Neither the Contractor's performance nor any part of its performance will violate the right of privacy of, or constitute a libel or slander against any person or entity.
  - c. It has secured and will secure all rights and licenses necessary for Intellectual Property, including, but not limited to, consents, waivers or releases from all authors or music or performances used, and talent (radio, television, and motion picture talent), owners of any interest in and to real estate, sites locations, property or props that may be used or shown.
  - d. It has not granted and shall not grant to any person or entity any right that would or might derogate, encumber, or interfere with any of the rights granted to the City in this Agreement.
  - e. It has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance or computer software in violation of copyright laws.
  - f. It has not knowledge of any outstanding claims, licenses or other charges, liens, or encumbrances of any kind or nature whatsoever that could affect in any way the Contractor's performance of this Agreement.
2. The City makes no warranty that the intellectual property resulting from this Agreement does not infringe upon any patent, trademark, copyright or the like, now existing or subsequently issued.

#### K. Intellectual Property Indemnity

1. The Contractor shall indemnify, defend and hold harmless the City and its licensees and assignees, and its officers, directors, employees, agents, representatives, successors, and users of its products ("Indemnities") from and against all claims, actions, damages, losses, liabilities (or actions or proceedings with respect to any thereof), whether or not rightful, arising from any and all actions or claims by any third-party or expenses related thereto (including, but not

limited to, all legal expenses, court costs, and attorney's fees incurred in investigating, preparing, serving as a witness in, or defending against, any such claim action, or proceeding, commenced or threatened) to which any of the Indemnities may be subject, whether or not the Contractor is a party to any pending or threatened litigation, which arise out of or are related to: (i) the incorrectness or breach of any of the representations, warranties, covenants or agreements of the Contractor pertaining to Intellectual Property; or (ii) any Intellectual Property infringement, or any other type of actual or alleged infringement claim, arising out of the City's use, reproduction, manufacture, sale, offer to sell, distribution, import, export, modification, public and private performance/display, license, and disposition of the Intellectual Property made, conceived, derived from, or reduced to practice by the Contractor or the City and which result directly or indirectly from this Agreement. This indemnity obligation shall apply irrespective of whether the infringement claim is based on a patent, trademark or copyright registration that was issued after the effective date of this Contract. The City reserves the right to participate in and/or control, at the Contractor's expense, any such infringement action brought against the City.

2. Should any Intellectual Property licensed by the Contractor to the City under this Agreement become the subject of an Intellectual Property infringement claim, the Contractor will exercise its authority reasonably and in good faith to preserve the City's right to use the licensed Intellectual Property in accordance with this Agreement at no expense to the City. The City shall have the right to monitor and appear through its own counsel (at the Contractor's expense) in any such claim or action. In the defense or settlement of the claim, Contractor may obtain the right for the City to continue using the licensed Intellectual Property, or replace or modify the licensed Intellectual Property so that the replaced or modified Intellectual Property becomes non-infringing provided that such replacement or modification is functionally equivalent to the original licensed Intellectual Property. If such remedies are not reasonably available, the City may be entitled to a refund of all monies paid under this Agreement, without restriction or limitation of any other rights and remedies available at law or in equity.
3. The Contractor agrees that damages alone would be inadequate to compensate the City for breach of any term of these Intellectual Property provisions herein by the Contractor. The Contractor acknowledges the City would suffer irreparable harm in the event of such breach and agrees the City shall be entitled to obtain equitable relief, including without limitation an injunction, from a court of competent jurisdiction, without restriction or limitation of any other rights and remedies available at law or in equity.

#### L. Survival



The provisions set forth herein shall survive any termination or expiration of this Agreement or any project schedule.

§421. Conflict of Interest

A. The Contractor covenants that none of its directors, officers, employees, or agents shall participate in selecting, or administrating any subcontract supported (in whole or in part) by Federal funds where such person is a director, officer, employee or agent of the subcontractor; or where the selection of subcontractors is or has the appearance of being motivated by a desire for personal gain for themselves or others such as family business, etc.; or where such person knows or should have known that:

1. A member of such person's immediate family, or partner or organization has a financial interest in the subcontract;
2. The subcontractor is someone with whom such person has or is negotiating any prospective employment; or
3. The participation of such person would be prohibited by the California Political Reform Act, California Government Code §87100 et seq. if such person were a public officer, because such person would have a "financial or other interest" in the subcontract.

B. Definitions:

1. The term "immediate family" includes but is not limited to those persons related by blood or marriage, such as husband, wife, father, mother, brother, sister, son, daughter, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, his or her significant other, and his or her domestic partner.
2. The term "financial or other interest" includes but is not limited to:
  - a. Any direct or indirect financial interest in the specific contract, including a commission or fee, a share of the proceeds, prospect of a promotion or of future employment, a profit, or any other form of financial reward.
  - b. Any of the following interests in the subcontractor ownership: partnership interest or other beneficial interest of five percent or more; ownership of five percent or more of the stock; employment in

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a managerial capacity; or membership on the board of directors or governing body.

3. The Contractor further covenants that no officer, director, employee, or agent shall solicit or accept gratuities, favors, anything of monetary value from any actual or potential subcontractor, supplier, a party to a subagreement, (or persons who are otherwise in a position to benefit from the actions of any officer, employee, or agent).
4. The Contractor shall not subcontract with a former director, officer, or employee within a one-year period following the termination of the relationship between said person and the Contractor.
5. Prior to obtaining the City's approval of any subcontract, the Contractor shall disclose to the City any relationship, financial or otherwise, direct or indirect, of the Contractor or any of its officers, directors or employees or their immediate family with the proposed subcontractor and its officers, directors or employees.
6. For further clarification of the meaning of any of the terms used herein, the parties agree that references shall be made to the guidelines, rules, and laws of the City of Los Angeles, State of California, and Federal regulations regarding conflict of interest.
7. The Contractor warrants that it has not paid or given and will not pay or give to any third person any money or other consideration for obtaining this Agreement.
8. The Contractor covenants that no member, officer or employee of the Contractor shall have interest, direct or indirect, in any contract or subcontract or the proceeds thereof for work to be performed in connection with this project during his/her tenure as such employee, member or officer for one year thereafter.
9. The Contractor and its subcontractor shall identify and disclose to HCIDLA all potential conflicts of interest and relationships that could lead to claims of bias at the time a case is assigned to the Contractor and before undertaking any work on the case. Such relationships to be disclosed include but are not limited to (1) where the Contractor or subcontractor or its agents are parties or are representing parties to a lawsuit involving the landlord or (2) the Contractor or subcontractor or its agents are receiving income from the landlord or have a financial interest in the landlord. In the event a potential conflict of interest or other relationship is identified after beginning work on a case, Contractor or subcontractor shall immediately terminate that relationship and disclose the potential conflict or relationship to the HCIDLA.

10. The Contractor shall incorporate the foregoing subsections of this Section into every agreement that it enters into in connection with this project and shall substitute the term "subcontractor" for the term "Contractor" and "sub-subcontractor" for "Subcontractor".

§422. Warranty and Responsibility of Contractor

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

§423. Non-discrimination and Affirmative Action

- A. The Contractor shall comply with the applicable nondiscrimination and affirmative action provisions of the laws of the United States of America, the State of California, and the City. In performing this Agreement, the Contractor shall not discriminate in its employment practices, denial of family and medical care leave; denial of pregnancy disability leave or reasonable accommodations against any employee or applicant for employment because of such person's race, color, religion, sex, national origin, ancestry, sexual harassment, sexual orientation, age, physical handicap, mental disability, marital status, domestic partner status, medical condition, citizenship, and political affiliation or belief. The Contractor shall comply with Executive Order 11246, entitled "Equal Employment Opportunity", as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).
- B. The Contractor shall comply with the provisions of the Los Angeles Administrative Code Sections 10.8 through 10.13, to the extent applicable hereto. If this Agreement contains a consideration in excess of One Thousand Dollars (\$1,000), but not more than One Hundred Thousand Dollars (\$100,000), the Equal Opportunity practices provisions of this Agreement shall be the mandatory contract provisions set forth in Los Angeles Administrative Code Section 10.8.3, in which event said provisions are incorporated herein by this reference. If this Agreement contains a consideration in excess of One Hundred Thousand Dollars (\$100,000), the Affirmative Action Program of this Agreement shall be the mandatory contract provisions set forth in Los Angeles Administrative Code Section 10.8.4, in which event said provisions are incorporated herein by this reference. The Contractor shall also comply with all rules, regulations, and policies of the City's Board of Public Works, Office of Contract Compliance relating to nondiscrimination and affirmative action, including the filing of all forms required by City.
- C. Any subcontract entered into by the Contractor relating to this Agreement, to the extent allowed hereunder, shall be subject to the provisions of this section.

- D. No person shall on the grounds of race, ancestry, color, citizenship, national origin, sex, sexual preference, age, physical handicap, mental disability, medical condition, marital status or domestic partner status, political affiliation or belief be excluded from participation in, be denied the benefit of, or be subjected to discrimination under this program/project. For purposes of this Section, Title 24 Code of Federal Regulations Part 107 and Section 570.601(b) defines specific discriminatory actions that are prohibited and corrective action that shall be taken in situation as defined therein.

§424. Child Support Assignment Orders

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

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

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

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

§425. Federal, State and Local Taxes

Federal, State, and local taxes shall be the responsibility of the Contractor as an independent contractor and not as a City employee.

§426. Living Wage Ordinance and Service Contractor Worker Retention Ordinance

A. Unless otherwise exempt, this Contract is subject to the applicable provisions of the Living Wage Ordinance (LWO), Section 10.37 *et seq.* of the Los Angeles Administrative Code, as amended from time to time, and the Service Contractor Worker Retention Ordinance (SCWRO), Section 10.36 *et seq.*, of the Los Angeles Administrative Code, as amended from time to time. These Ordinances require the following:

1. The Contractor assures payment of a minimum initial wage rate to employees as defined in the LWO and as may be adjusted each July 1 and provision of compensated and uncompensated days off and health benefits, as defined in the LWO.
2. The Contractor further pledges that it will comply with federal law proscribing retaliation for union organizing and will not retaliate for activities related to the LWO. The Contractor shall require each of its subcontractors within the meaning of the LWO to pledge to comply with the terms of federal law proscribing retaliation for union organizing. The Contractor shall deliver the executed pledges from each such subcontractor to the City within ninety (90) days of the execution of the subcontract. The Contractor's delivery of executed pledges from each such subcontractor shall fully discharge the obligation of the Contractor with respect to such pledges and fully discharge the obligation of the Contractor to comply with the provision in the LWO contained in Section 10.37.6(c) concerning compliance with such federal law.
3. The Contractor, whether an employer, as defined in the LWO, or any other person employing individuals, shall not discharge, reduce in compensation, or otherwise discriminate against any employee for complaining to the City with regard to the employer's compliance or anticipated compliance with the LWO, for opposing any practice proscribed by the LWO, for participating in proceedings related to the LWO, for seeking to enforce his or her rights under the LWO by any lawful means, or otherwise asserting rights under the LWO. The Contractor shall post the Notice of Prohibition Against Retaliation provided by the City.
4. Any subcontract entered into by the Contractor relating to this Contract, to the extent allowed hereunder, shall be subject to the provisions of §427 and shall incorporate the provisions of the LWO and the SCWRO.
5. The Contractor shall comply with all rules, regulations and policies promulgated by the City's designated administrative agency which may be amended from time to time.

B. Under the provisions of Sections 10.36.3(c) and 10.37.6(c) of the Los Angeles Administrative Code, the City shall have the authority, under appropriate circumstances, to terminate this Contract and otherwise pursue legal remedies that may be available if the City determines that the subject the Contractor has violated provisions of either the LWO or the SCWRO, or both.

- C. Where under the LWO Section 10.37.6(d), the City's designated administrative agency has determined (a) that the Contractor is in violation of the LWO in having failed to pay some or all of the living wage, and (b) that such violation has gone uncured, the City in such circumstances may impound monies otherwise due the Contractor in accordance with the following procedures. Impoundment shall mean that from monies due the Contractor, the City may deduct the amount determined to be due and owing by the Contractor to its employees. Such monies shall be placed in the holding account referred to in LWO Section 10.37.6(d)(3) and disposed of under procedures described therein through final and binding arbitration. Whether the Contractor is to continue work following an impoundment shall remain in the sole discretion of the City. The Contractor may not elect to discontinue work either because there has been an impoundment or because of the ultimate disposition of the impoundment by the arbitrator.
- D. The Contractor shall inform employees making less than Twelve Dollars (\$12.00) per hour of their possible right to the federal Earned Income Credit (EIC). The Contractor shall also make available to employees the forms informing them about the EIC and forms required to secure advance EIC payments from the Contractor.

§427. Americans With Disabilities Act

The Contractor hereby certifies that it will comply with the Americans with Disabilities Act, 42 U.S.C. §§ 12101 *et seq.*, and its implementing regulations and the Americans Disabilities Act Amendments Act (ADAAA) Pub.L. 110-325 and all subsequent amendments. The Contractor will provide reasonable accommodations to allow qualified individuals with disabilities to have access to and to participate in its programs, services and activities in accordance with the provisions of the Americans with Disabilities Act and the Americans Disabilities Act Amendments Act (ADAAA) Pub.L. 110-325 and all subsequent amendments. The Contractor will not discriminate against persons with disabilities or against persons due to their relationship to or association with a person with disability. Any subagreement entered into by the Contractor, relating to this Agreement, to the extent allowed hereunder, shall be subject to the provisions of this paragraph.

§428. Contractor Responsibility Ordinance

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

In accordance with the provisions of the Contractor Responsibility Ordinance, by signing this Contract, the Contractor pledges, under penalty of perjury, to comply with all applicable federal, state and local laws in the performance of this Contract, including but not limited to, laws regarding health and safety, labor and employment, wages and hours, and licensing laws which affect



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

§429. Equal Benefits Ordinance

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

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

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

"During the performance of a Contract with the City of Los Angeles, the Contractor will provide equal benefits to its employees with spouses and its employees with domestic

partners. Additional information about the City of Los Angeles' Equal Benefits Ordinance may be obtained from the Department of Public Works, Office of Contract Compliance at (213) 847-1922."

§430. Slavery Disclosure Ordinance

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

V.

DEFAULTS, SUSPENSION, AND TERMINATION

§501. Defaults

Should the Contractor fail for any reason to comply with the contractual obligations of this Agreement within the time specified by this Agreement, the City reserves the right to:

- A. Reduce the total budget;
- B. Make any changes in the general scope of this Agreement;
- C. Suspend project operations in accordance with §502 of this Agreement; or
- D. Terminate the Agreement.

§502. Suspension

The City may suspend all or part of the project operations for failure by the Contractor to comply with the terms and conditions of this Agreement by giving written notice, which shall be effective upon receipt.

- A. Said notice shall set forth the specific conditions of non-compliance and the period provided for corrective action.
- B. Within five (5) working days the Contractor shall reply in writing setting forth the corrective actions which will be undertaken, subject to City approval in writing.
- C. Performance under this Agreement shall be automatically suspended without any notice from the City as of the date the Contractor is not fully insured in compliance with §419 (Insurance) herein. Performance shall not resume without the prior written approval of the City.



§503. Termination

- A. The parties agree that at any time during the term of this Agreement, either party may terminate this Agreement, or any part of the Agreement, for convenience upon giving the other party at least 30 days written notice prior to the effective date of the termination, which date shall be specified in the notice.

The City is not required to use other remedies provided in this Agreement prior to issuing a 30-day notice to terminate the Agreement.

- B. The Contractor shall retain and dispose of all customers' documents and related records required by the Contractor under this Agreement in accordance with City Directives or written instructions.

All finished and unfinished documents and materials procured for or produced under this Agreement, including all intellectual property rights thereto, shall become City property upon the date of such termination. The Contractor agrees to execute any documents necessary for the City to perfect, memorialize, or record the City's ownership of rights provided herein.

- C. The Contractor shall return to the City all equipment that was purchased with City grant funds pursuant to this Agreement.

- D. In the event the Contractor dissolves or otherwise goes out of existence, copies of all records relating to the project or activity that are the subject of this Agreement shall be furnished to the City.

- E. Upon satisfactory completion and documentation of termination activities, the City shall determine the total amount of funds earned by the Contractor.

- F. The City may withhold any payments due to the Contractor after notice of termination has been issued for the purpose of set-aside until the exact amount of damages or unearned dollars due to the City from the Contractor is determined.

Subsections B, C, D, E, and F above shall also apply to Agreements terminating upon the date specified in §201 of the foregoing Agreement or upon completion of performance of this Agreement.

§504. Notices of Suspension or Termination

In the event that this Agreement is suspended or terminated, the Contractor shall immediately notify all employees and participants and shall notify in writing all other parties contracted with under the terms of Agreement within five (5) working days of such suspension or termination.

VI.  
ENTIRE AGREEMENT

§601. Complete Agreement

This Agreement contains the full and complete Agreement between the two parties. No verbal agreement nor conversation with any officer or employee of either party shall affect or modify any of the terms and conditions of this Agreement.

§602. Number of Pages and Attachments

This Agreement is executed in four (4) duplicate originals, each of which is deemed to be an original. This Agreement includes thirty-one (31) pages and three (3) Exhibits which constitute the entire understanding and agreement of the parties.

DRAFT

IN WITNESS WHEREOF, the City of Los Angeles and the Contractor have caused this Agreement to be executed by their duly authorized representatives.

APPROVED AS TO FORM:

MICHAEL N. FEUER, City Attorney

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2014

By \_\_\_\_\_  
Deputy/Assistant City Attorney

For: THE CITY OF LOS ANGELES

Date \_\_\_\_\_

RUSHMORE D. CERVANTES  
General Manager  
Housing and Community Investment  
Department

ATTEST:

HOLLY L. WOLCOTT, Interim City Clerk

By \_\_\_\_\_

Title \_\_\_\_\_

By \_\_\_\_\_  
Deputy City Clerk

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2014

Date \_\_\_\_\_

For: CHARLES AND CYNTHIA  
EBERLY, INCORPORATED DBA THE  
EBERLY COMPANY

(Contractor's Corporate  
Seal or Notary)

By \_\_\_\_\_  
Print Name \_\_\_\_\_  
Title \_\_\_\_\_

By \_\_\_\_\_  
Print Name \_\_\_\_\_  
Title \_\_\_\_\_

City Business License Number: 0000160994  
Internal Revenue Service ID Number: 95-4113766

Council File/CAO File: 14-0113/0220-00540-1079 Date of Approval: March 18, 2014  
Said Agreement is Number \_\_\_\_\_ of City Contracts.