

AMENDMENT NO. 1

to

Contract No. C-114380

for the

PRE-QUALIFIED ON-CALL LANDSCAPE ARCHITECTURAL CONSULTANT SERVICES

Between

CITY OF LOS ANGELES

and

AECOM TECHNICAL SERVICES, INC.

AMENDMENT NO. 1 TO CONTRACT NO. C-114380, FOR PRE-QUALIFIED ON-CALL LANDSCAPE ARCHITECTURAL CONSULTANT SERVICES BETWEEN THE CITY OF LOS ANGELES AND AECOM TECHNICAL SERVICES, INC. FORMERLY EDAW, INC.

This Amendment modifies Contract No. C-114380 executed on September 3, 2008 between the City of Los Angeles (hereinafter referred to as "CITY") and AECOM TECHNICAL SERVICES, INC. formerly EDAW, INC. (hereinafter referred to as "CONSULTANT").

WITNESSETH

WHEREAS, CITY issued a Request for Qualifications (RFQ) on April 16, 2007 for landscape architectural and related services, on a pre-qualified basis, on various projects and CONSULTANT submitted a statement of qualifications in response; and

WHEREAS, CONSULTANT demonstrated qualifications to perform said services and was selected to perform the design services by CITY staff based on the evaluation criteria set forth in the RFQ; and

WHEREAS, on September 3, 2008, Contract No. C-114380 was awarded to CONSULTANT, the terms of which will expire on September 3, 2013; and

WHEREAS, the CITY and CONSULTANT have agreed to extend the term of the Contract by three (3) additional years to September 3, 2016 in order to provide as needed landscape architectural and construction administration services; and

WHEREAS, the CITY'S Department of Public Works, Bureau of Engineering, (hereinafter referred to as "BUREAU"), is the Program Manager and oversees the CONSULTANT'S performance of this Contract; and

NOW, THEREFORE, in consideration of the foregoing and of the benefits which will accrue to the parties hereto in carrying out the conditions of this Amendment No. 1, Contract No. C-114380 is hereby amended as follows:

ARTICLE 1 SECTION HEADINGS AND CONSTRUCTION OF PROVISIONS AND TITLES HEREIN

No Change

ARTICLE 2 DEFINITIONS

Article 2 is hereby amended to change definition of CONSULTANT:

From: EDAW, INC.

To: AECOM Technical Services, Inc.

ARTICLE 3

PROJECT DESCRIPTION

No Change

ARTICLE 4

RESPONSIBILITIES OF AND TASKS TO BE PERFORMED BY THE CONSULTANT

No Change

ARTICLE 5

KEY CONSULTANT PERSONNEL

Article 5 is hereby to replace the Key Consultant Personnel table as follows:

5.1 CONSULTANT designates the following persons to implement the work:

From:

Name	Title
Vaughan Davies	Principal-in-Charge, Executive (Senior Principal)
Kathleen Bogaski	Project Coordinator (Senior Landscape Architect)
Eric Wilson	Environmental Project Manager (Principal)
Mike Williams	Project Manager (Senior Landscape Designer)
Yun Soo Kim	Project Manager (Senior Project Manager)
Jen Martinez	GIS Specialist (Project Manager)
Cheri Devlin	Environmental Graphics Specialist (Senior Graphic Designer)
Cecilia Meyer-Lovell	Senior Biologist (Senior Biologist I)
Donna Germann	Biologist (Biologist I)
Jeanette Duffels	Biologist (Biologist I)
Monica Strauss	Archaeologist (Project Archaeologist)
Marisa Grivas	Geologist (Analyst)
Jennifer Hirsch	Architectural Historian (Architectural Historian)
Joan Isaacson	Community Outreach (Project Director)
Eric Montelongo	Irrigation Specialist (Irrigation Engineer)

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

To:

Name	Title
Vaughan Davies	Principal-in-Charge, Executive (Senior Principal)
Esther Marguilies	Project Coordinator (Senior Landscape Architect)
Melissa Hatcher	Environmental Project Manager (Principal)
Joseh Segal	Project Manager (Senior Landscape Designer)

Yun Soo Kim	Project Manager (Senior Project Manager)
Keith Albury	GIS Specialist (Project Manager)
Cecilia Meyer-Lovell	Senior Biologist (Senior Biologist I)
Donna Germann	Biologist (Biologist I)
Heather Gibson	Archaeologist (Project Archaeologist)
Marisa Grivas	Geologist (Analyst)
Susan Lassell	Architectural Historian (Architectural Historian)
Ana Nolan	Community Outreach (Project Director)

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

ARTICLE 6

RESPONSIBILITIES OF AND TASKS TO BE PERFORMED BY CITY

No Change

ARTICLE 7

TERM OF CONTRACT AND TIME OF EFFECTIVENESS

Article 7 is hereby amended in its first paragraph to read as follows:

Unless otherwise provided, the term of this Contract shall begin on the date of full execution and shall expire on September 3, 2016, unless terminated as provided under Article 8 or extended by amendment to this Contract.

ARTICLE 8

TERMINATION

Article 8 is hereby amended in its entirety to read as follows:

8.1 Termination for Convenience

The CITY may terminate this Contract for the CITY'S convenience at any time by giving CONSULTANT thirty days written notice thereof. Upon receipt of said notice, CONSULTANT shall immediately take action not to incur any additional obligations, cost or expenses, except as may be reasonably necessary to terminate its activities. The CITY shall pay CONSULTANT its reasonable and allowable costs through the effective date of termination and those reasonable and necessary costs incurred by CONSULTANT to affect such termination. Thereafter, CONSULTANT shall have no further claims against the CITY under this Contract. All finished and unfinished documents and materials procured for or produced under this Contract, including all intellectual property rights thereto, shall become CITY property upon the date of such termination. CONSULTANT agrees to execute any documents necessary for

the CITY to perfect, memorialize, or record the CITY'S ownership of rights provided herein.

8.2 Termination for Breach of Contract

8.2.1 Except for excusable delays as provided in Article 20, if CONSULTANT fails to perform any of the provisions of this Contract or so fails to make progress as to endanger timely performance of this Contract, the CITY may give CONSULTANT written notice of such default. If CONSULTANT does not cure such default or provide a plan to cure such default which is acceptable to the CITY within the time permitted by the CITY, then the CITY may terminate this Contract due to CONSULTANT'S breach of this Contract.

8.2.2 If a federal or state proceeding for relief of debtors is undertaken by or against CONSULTANT, or if CONSULTANT makes an assignment for the benefit of creditors, then the CITY may immediately terminate this Contract.

8.2.3 If CONSULTANT engages in any dishonest conduct related to the performance or administration of this Contract or violates the CITY'S lobbying policies, then the CITY may immediately terminate this Contract.

8.2.4 In the event the CITY terminates this Contract 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 CONSULTANT shall be liable to the CITY for all of its costs and damages, including, but not limited, any excess costs for such services.

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

8.2.6 If, after notice of termination of this Contract under the provisions of this Section, it is determined for any reason that CONSULTANT was not in default under the

provisions of this Section, or that the default was excusable under the terms of this Contract, the rights and obligations of the parties shall be the same as if the notice of termination has been issued pursuant to Article 8.1 Termination for Convenience.

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

ARTICLE 9

SUBCONTRACT APPROVAL

Article 9 is hereby amended in its title and first paragraph to read as follows:

SUBCONSULTANT APPROVAL

CONSULTANT shall not use subconsultants to assist in performance of this Contract without the prior written approval of the CITY. If the CITY permits the use of subconsultants, CONSULTANT shall remain responsible for performing all aspects of this Contract. The CONSULTANT is required to provide the CITY a list of all subconsultants including the name and address of the firms. Refer to **Exhibit K** for CONSULTANT and subconsultant information. The CITY has the right to approve CONSULTANT'S subconsultants and the CITY reserves the right to request replacement of subconsultants. The CITY does not have any obligation to pay CONSULTANT'S subconsultants and nothing herein creates any privity between the CITY and the subconsultants. Wholly-owned subsidiaries of CONSULTANT shall not be considered subconsultants.

ARTICLE 10

COMPENSATION, INVOICING AND PAYMENT

Article 10 is hereby amended to include a third paragraph to Section 10.6 to read as follows:

For the sake of efficiency, the CONSULTANT may have provided services prior to the execution of this Amendment. Upon execution of this Amendment, and to the extent that said services were performed in accordance with the terms and conditions of the Contract and this Amendment, those services are hereby ratified and eligible for payment.

ARTICLE 11

AMENDMENTS, CHANGES OR MODIFICATIONS

No Change

ARTICLE 12

INDEMNIFICATION AND INSURANCE

No Change

ARTICLE 13

INDEPENDENT CONTRACTORS

No Change

ARTICLE 14

WARRANTY AND RESPONSIBILITY OF CONSULTANT

No Change

ARTICLE 15

OWNERSHIP OF DATA AND INTELLECTUAL PROPERTY

Article 15 is hereby amended in its title and content to read as follows:

15.1 Ownership of Data and License

15.1.1 Unless otherwise provided for herein, all Work Products originated and prepared by CONSULTANT or its subconsultants of any tier under this Contract shall be and remain the exclusive property of the CITY for its use in any manner it deems appropriate. Work Products are all works, tangible or not, created under this Contract including, without limitation, documents, material, data, reports, manuals, specifications, artwork, drawings, sketches, computer programs and databases, schematics, photographs, video and audiovisual recordings, sound recordings, marks, logos, graphic designs, notes, websites, domain names, inventions, processes, formulas matters and combinations thereof, and all forms of intellectual property. CONSULTANT hereby assigns, and agrees to assign, all goodwill, copyright, trademark, patent, trade secret and all other intellectual property rights worldwide in any Work Products originated and prepared by CONSULTANT under this Contract. CONSULTANT further agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights provided herein.

15.1.2 With regard to the basis for design calculations and engineering notes, such data shall be provided to the CITY in (a) hard cover post binder(s), appropriately indexed, on thin Mylar stock or good quality paper satisfactory for reproduction.

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

15.1.4 CONSULTANT shall not provide or disclose any Work Products to any third party without prior written consent of the City.

15.1.5 All documents, information and pre-existing materials provided by CITY to CONSULTANT and its subconsultants arising out of or related to this Contract shall remain the property of the CITY. The CONSULTANT may not use, distribute or otherwise make public in any manner, either for profit or not for profit, any of the information, documentation, or procedures developed for the CITY hereunder without the prior written consent of the CITY. CONSULTANT further agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights.

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

15.2 Intellectual Property Warranty

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

15.3 Intellectual Property Indemnification

15.3.1 CONSULTANT, at its own expense, undertakes and agrees to defend, indemnify, and hold harmless the CITY, and any of its Boards, officers, agents, employees, assigns, and successors in interest from and against all suits and causes of action, claims, losses, demands and expenses, including but not limited to, attorney's fees (both in-house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the CITY, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever arising out of the infringement, actual or alleged, direct or contributory, of any intellectual property rights, including, without limitation, patent, copyright, trademark, trade secret, right of publicity and proprietary information right (1) on or in any design, medium, matter, article, process, method, application, equipment, device, instrumentation, software, hardware, or firmware used by CONSULTANT, or its subconsultants of any tier, in performing the work under this Contract; or (2) as a result of the CITY'S actual or intended use of any Work Product furnished by CONSULTANT, or its subconsultants of any tier, under the Agreement. Rights and remedies available to the CITY under this provision are cumulative of those provided for elsewhere in this Contract and those allowed under the laws of the United States, the State of California, and the CITY. The provisions of Article 15 shall survive expiration or termination of this Contract.

15.3.2 In CONSULTANT'S defense of the CITY Defendants, negotiation, compromise, and settlement of any such infringement action, the Los Angeles City Attorney's Office shall retain discretion in and control of the litigation, negotiation, compromise, settlement, and appeals therefrom, as required by the Los Angeles City Charter, particularly Article II, Sections 271, 272 and 273 thereof.

15.3.3 Where any Work Product furnished by CONSULTANT (a) becomes the subject of an action, (b) is adjudicated as infringing a third party's Intellectual Property right, or (c) has its use enjoined or license terminated; CONSULTANT shall, with the CITY'S consent, do one of the following immediately. CONSULTANT shall at its expense either:

i) procure for the CITY the right or license to continue

using the Work Product; or

- ii) replace the Work Product with a functionally equivalent, non-infringing product.

Exercise of any of the above-mentioned options shall not cause undue business interruption to the CITY or diminish the intended benefits and use of the Work Product by the CITY under this Contract.

ARTICLE 16

NONDISCRIMINATION AND AFFIRMATIVE ACTION

Article 16 is hereby amended in its title and content to read as follows:

NONDISCRIMINATION

Unless otherwise exempt, this Contract is subject to the nondiscrimination provisions in Sections 10.8 through 10.8.2 of the Los Angeles Administrative Code, as amended from time to time. The CONSULTANT shall comply with the applicable nondiscrimination and affirmative action provisions of the laws of the United States of America, the State of California, and the CITY. In performing this Contract, CONSULTANT shall not discriminate in its employment practices against any employee or applicant for employment because of such person's race, religion, national origin, ancestry, sex, sexual orientation, age, disability, domestic partner status, marital status or medical condition. The CONSULTANT 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 said Office. Any subcontract entered into by CONSULTANT, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract.

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

ARTICLE 17

MINORITY, WOMEN AND OTHER BUSINESS ENTERPRISE OUTREACH PROGRAM

No Change

ARTICLE 18

SUCCESSORS AND ASSIGNS

No Change

ARTICLE 19

CONTACT PERSONS – PROPER ADDRESSES – NOTIFICATION

Article 19 is hereby amended as follows:

To Consultant:

From:

Contact Person: Vaughan Davies

Address: EDAW, INC.
515 S. Flower Street, 9th Floor
Los Angeles, CA 90071

To:
Contact Person: Esther Margulies

Address: AECOM Technical Services, Inc.
515 S. Flower Street, 9th Floor
Los Angeles, CA 90071

ARTICLE 20

EXCUSABLE DELAYS

No Change

ARTICLE 21

SEVERABILITY

No Change

ARTICLE 22

DISPUTES

No Change

ARTICLE 23

ENTIRE CONTRACT

No Change

ARTICLE 24

APPLICABLE LAW, INTERPRETATION AND ENFORCEMENT

No Change

ARTICLE 25

**CURRENT LOS ANGELES CITY BUSINESS TAX
REGISTRATION CERTIFICATE REQUIRED**

No Change

ARTICLE 26

BONDS

Article 26 is hereby amended in its entirety to read as follows:

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

ARTICLE 27

CHILD SUPPORT ASSIGNMENT ORDERS

No Change

ARTICLE 28

LIVING WAGE ORDINANCE AND SERVICE CONTRACTOR WORKER RETENTION ORDINANCE

No Change

ARTICLE 29

AMERICANS WITH DISABILITIES ACT

No Change

ARTICLE 30

EQUAL BENEFITS ORDINANCE

Article 30 is hereby amended in its entirety to read as follows:

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.

1. During the performance of the Contract, CONSULTANT certifies and represents that CONSULTANT will comply with the EBO.
2. The failure of CONSULTANT to comply with the EBO will be deemed to be a material breach of this Contract by the CITY.
3. If CONSULTANT fails to comply with the EBO, the CITY may cancel, terminate or suspend the 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.
4. Failure to comply with the EBO may be used as evidence against CONSULTANT in actions taken pursuant to the provisions of Los

Angeles Administrative Code Section 10.40 *et seq.*, Contractor Responsibility Ordinance.

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

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

“During the performance of a Contract with the City of Los Angeles, the Consultant 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) 847-2632.”

ARTICLE 31

WAIVER

No Change

ARTICLE 32

PROHIBITION AGAINST ASSIGNMENT OR DELEGATION

No Change

ARTICLE 33

PERMITS

No Change

ARTICLE 34

CLAIMS FOR LABOR AND MATERIALS

No Change

ARTICLE 35

DISCOUNTS

No Change

ARTICLE 36

CONTRACTOR RESPONSIBILITY ORDINANCE

No Change

ARTICLE 37

BREACH

No Change

ARTICLE 38

SLAVERY DISCLOSURE ORDINANCE

No Change

ARTICLE 39

CONTRACT BIDDER CERTIFICATION OF COMPLIANCE WITH LOBBYING LAWS

Article 39 is hereby amended in its title and content to read as follows:

BIDDER ETHICS

Pursuant to the Los Angeles Municipal Lobbying Ordinance, any bidder for a contract shall submit with its proposal a Bidder Certification CEC Form 50 (**Exhibit J**), proscribed by the City Ethics Commission, in which the bidder acknowledges and agrees to comply with the disclosure requirements and prohibitions established in the Ordinance if the bidder qualifies as a lobbying entity under the Ordinance.

As amended, this Contract is also subject to Charter Section 470(c)(12) and related ordinances and as a result, the CONSULTANT was required to submit Bidder Contributions CEC Form 55 (**Exhibit J**) within ten business days of discussing the amendment. Consequently, CONSULTANT may not make campaign contributions to and or engage in fundraising for certain elected City officials or candidates for elected City office from the date the amendment is first discussed until 12 months after the amendment is signed. The CONSULTANT'S principals and subconsultants performing \$100,000 or more in work on the contract, as well as the principals of those subconsultants, are also subject to the same limitations on campaign contributions and fundraising.

CONSULTANT must also notify their principals and subconsultants in writing of the restrictions and include the notice in contracts with subconsultants. Consultants who fail to comply with City law may be subject to penalties, termination of contract, and debarment. Additional information regarding these restrictions and requirements may be obtained from the City Ethics Commission at (213) 978-1960.

The Contract is hereby amended to include the following Articles:

ARTICLE 40

AFFIRMATIVE ACTION

Unless otherwise exempt, this Contract is subject to the affirmative action

program provisions in Section 10.8.4 of the Los Angeles Administrative Code, as amended from time to time.

- A. During the performance of a CITY contract, CONSULTANT certifies and represents that CONSULTANT and each subconsultant hereunder will adhere to an affirmative action program to ensure that in its employment practices, persons are employed and employees are treated equally and without regard to or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
 - 1. This provision applies to work or services performed or materials manufactured or assembled in the United States.
 - 2. Nothing in this Section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.
 - 3. CONSULTANT shall post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.
- B. CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of CONSULTANT, state that all qualified applicants will receive consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
- C. As part of the CITY'S supplier registration process, and/or at the request of the awarding authority or the Office of Contract Compliance, CONSULTANT shall certify on an electronic or hard copy form to be supplied, that CONSULTANT has not discriminated in the performance of CITY contracts against any employee or applicant for employment on the basis or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
- D. CONSULTANT shall permit access to and may be required to provide certified copies of all of its records pertaining to employment and to its employment practices by the awarding authority or the Office of Contract Compliance, for the purpose of investigation to ascertain compliance with the Affirmative Action Program provisions of CITY contracts, and on their or either of their request to provide evidence that it has or will comply therewith.

- E. The failure of any CONSULTANT to comply with the Affirmative Action Program provisions of CITY contracts may be deemed to be a material breach of contract. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made except upon a full and fair hearing after notice and an opportunity to be heard has been given to CONSULTANT.
- F. Upon a finding duly made that CONSULTANT has breached the Affirmative Action Program provisions of a CITY contract, the Contract may be forthwith cancelled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the CITY. In addition thereto, such breach may be the basis for a determination by the awarding authority or the Board of Public Works that the said CONSULTANT is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Los Angeles City Charter. In the event of such determination, such CONSULTANT shall be disqualified from being awarded a contract with the CITY for a period of two years, or until he or she shall establish and carry out a program in conformance with the provisions hereof.
- G. In the event of a finding by the Fair Employment and Housing Commission of the State of California, or the Board of Public Works of the City of Los Angeles, or any court of competent jurisdiction, that CONSULTANT has been guilty of a willful violation of the California Fair Employment and Housing Act, or the Affirmative Action Program provisions of a CITY contract, there may be deducted from the amount payable to CONSULTANT by the CITY under the Contract, a penalty of ten dollars (\$10.00) for each person for each calendar day on which such person was discriminated against in violation of the provisions of a CITY contract.
- H. Notwithstanding any other provisions of a CITY contract, the CITY shall have any and all other remedies at law or in equity for any breach hereof.
- I. Intentionally blank.
- J. Nothing contained in CITY contracts shall be construed in any manner so as to require or permit any act which is prohibited by law.

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

1. Every contract of \$5,000 or more which may provide construction, demolition, renovation, conservation or major maintenance of any kind shall in addition comply with the requirements of Section 10.13 of the Los Angeles Administrative Code.
2. CONSULTANT may establish and adopt as its own Affirmative Action Plan, by affixing his or her signature thereto, an Affirmative Action Plan prepared and furnished by the Office of Contract Compliance, or it may prepare and submit its own Plan for approval.

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

M. The Affirmative Action Plan required to be submitted hereunder and the pre-registration, pre-bid, pre-proposal or pre-award conference which may be required by the Board of Public Works, Office of Contract Compliance or the awarding authority shall,

without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:

1. Apprenticeship where approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;
 2. Classroom preparation for the job when not apprenticeable;
 3. Pre-apprenticeship education and preparation;
 4. Upgrading training and opportunities;
 5. Encouraging the use of consultants, subconsultants and suppliers of all racial and ethnic groups, provided, however, that any contract subject to this ordinance shall require the CONSULTANT, subconsultant or supplier to provide not less than the prevailing wage, working conditions and practices generally observed in private industries in the consultant's, subconsultant's, or supplier's geographical area for such work;
 6. The entry of qualified women, minority and all other journeymen into the industry; and
 7. The provision of needed supplies or job conditions to permit persons with disabilities to be employed, and minimize the impact of any disability.
- N. Any adjustments which may be made in the CONSULTANT'S or supplier's work force to achieve the requirements of the CITY'S Affirmative Action Contract Compliance Program in purchasing and construction shall be accomplished by either an increase in the size of the work force or replacement of those employees who leave the work force by reason of resignation, retirement or death and not by termination, layoff, demotion or change in grade.
- O. Affirmative Action Agreements resulting from the proposed Affirmative Action Plan or the pre-registration, pre-bid, pre-proposal or pre-award conferences shall not be confidential and may be publicized by the CONSULTANT at his or her discretion. Approved Affirmative Action Agreements become the property of the CITY and may be used at the discretion of the CITY in its Contract Compliance Affirmative Action Program.
- P. Intentionally blank.

- Q. All consultants subject to the provisions of this Section shall include a like provision in all subcontracts awarded for work to be performed under the Contract with the CITY and shall impose the same obligations, including but not limited to filing and reporting obligations, on the subconsultants as are applicable to the CONSULTANT. Failure of the CONSULTANT to comply with this requirement or to obtain the compliance of its subconsultants with all such obligations shall subject the CONSULTANT to the imposition of any and all sanctions allowed by law, including but not limited to termination of the CONSULTANT'S Contract with the CITY.

ARTICLE 41

FALSE CLAIMS ACT

CONSULTANT 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.

ARTICLE 42

EQUAL EMPLOYMENT PRACTICES

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

- A. During the performance of this Contract, CONSULTANT agrees and represents that it will provide equal employment practices and CONSULTANT and each subconsultant hereunder will ensure that in his or her employment practices, persons are employed and employees are treated equally and without regard to or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
1. This provision applies to work or service performed or materials manufactured or assembled in the United States.
 2. Nothing in this Section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.
 3. CONSULTANT agrees to post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.

- B. CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of CONSULTANT, state that all qualified applicants will receive consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
- C. As part of the CITY'S supplier registration process, and/or at the request of the awarding authority, or the Board of Public Works, Office of Contract Compliance, CONSULTANT shall certify in the specified format that he or she has not discriminated in the performance of CITY contracts against any employee or applicant for employment on the basis or because of race, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status or medical condition.
- D. CONSULTANT shall permit access to and may be required to provide certified copies of all of his or her records pertaining to employment and to employment practices by the awarding authority or the Office of Contract Compliance for the purpose of investigation to ascertain compliance with the Equal Employment Practices provisions of CITY contracts. On their or either of their request CONSULTANT shall provide evidence that he or she has or will comply therewith.
- E. The failure of any CONSULTANT to comply with the Equal Employment Practices provisions of this Contract may be deemed to be a material breach of CITY contracts. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made or penalties assessed except upon a full and fair hearing after notice, and an opportunity to be heard has been given to CONSULTANT.
- F. Upon a finding duly made that CONSULTANT has failed to comply with the Equal Employment Practices provisions of a CITY contract, the Contract may be forthwith cancelled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the CITY. In addition thereto, such failure to comply may be the basis for a determination by the awarding authority or the Board of Public Works that the CONSULTANT is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Charter of the City of Los Angeles. In the event of such a determination, CONSULTANT

shall be disqualified from being awarded a contract with the CITY for a period of two years, or until CONSULTANT shall establish and carry out a program in conformance with the provisions hereof.

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

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

1. CONSULTANT shall, prior to the execution of the contract, provide to the Designated Administrative Agency (DAA) a list of anticipated employment opportunities that CONSULTANT estimate they will need to fill in order to perform the services under the Contract.
2. CONSULTANT further pledges that it will, during the term of the Contract, shall a) At least seven business days prior to making an announcement of a specific employment opportunity, provide notifications of that employment opportunity to the Community Development Department (CDD), which will refer individuals for interview; b) Interview qualified individuals referred by CDD; and c) Prior to filling any employment opportunity, the CONSULTANT shall inform the DAA of the names of the Referral Resources used, the names of the individuals they referred, the names of the referred individuals who the CONSULTANT interviewed and the reasons why referred individuals were not hired.
3. Any Subcontract entered into by the CONSULTANT relating to this Agreement, to the extent allowed hereunder, shall be subject to the provisions of FSHO, and shall incorporate the FSHO.
4. CONSULTANT shall comply with all rules, regulations and policies promulgated by the designated administrative agency, which may be amended from time to time.

Where under the provisions of Section 10.44.13 of the Los Angeles Administrative Code the designated administrative agency has determined that the CONSULTANT intentionally violated or used hiring practices for the purpose of avoiding the article, the determination must be documented in the Awarding Authority's Contractor Evaluation, required under Los Angeles Administrative Code Section 10.39 et seq., and must be documented in each of the Contractor's subsequent Contractor Responsibility Questionnaires submitted under Los Angeles Administrative Code Section 10.40 et seq. This measure does not limit the City's authority to act under this article.

Under the provisions of Section 10.44.8 of the Los Angeles Administrative Code, the Awarding Authority shall, under appropriate circumstances, terminate this contract and otherwise pursue legal remedies

that may be available if the designated administrative agency determines that the subject CONSULTANT has violated provisions of the FSHO.

EXCEPT AS EXPRESSLY MODIFIED herein, the Contract executed on September 3, 2008 remains unchanged.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 1 on the day and year written below.

AECOM TECHNICAL SERVICES, INC.

By:

Title:

Date:

CITY OF LOS ANGELES

By:

Title: President, Board of Public Works

Date:

By:

Date:

ATTEST:

JUNE LAGMAY, City Clerk

By:

Date:

APPROVED AS TO FORM:

MICHAEL N. FEUER, City Attorney

By:

Title: Assistant City Attorney

Date:

AMENDMENT NO. 1

to

Contract No. C- 114384

for the

PRE-QUALIFIED ON-CALL LANDSCAPE ARCHITECTURAL CONSULTANT SERVICES

Between

CITY OF LOS ANGELES

and

CALVIN R. ABE & ASSOCIATES, INC.
DBA: AH'BE LANDSCAPE ARCHITECTS

**AMENDMENT NO. 1 TO CONTRACT NO. C-114384, FOR PRE-QUALIFIED ON-
CALL LANDSCAPE ARCHITECTURAL CONSULTANT SERVICES BETWEEN THE
CITY OF LOS ANGELES AND CALVIN R. ABE & ASSOCIATES, INC.
DBA: AH'BE LANDSCAPE ARCHITECTS**

This Amendment modifies Contract No. C-114384 executed on September 3, 2008 between the City of Los Angeles (hereinafter referred to as "CITY") and CALVIN R. ABE & ASSOCIATES, INC. DBA: AH'BE LANDSCAPE ARCHITECTS (hereinafter referred to as "CONSULTANT").

WITNESSETH

WHEREAS, CITY issued a Request for Qualifications (RFQ) on April 16, 2007 for landscape architectural and related services, on a pre-qualified basis, on various projects and CONSULTANT submitted a statement of qualifications in response; and

WHEREAS, CONSULTANT demonstrated qualifications to perform said services and was selected to perform the design services by CITY staff based on the evaluation criteria set forth in the RFQ; and

WHEREAS, on September 3, 2008, Contract No. C-114384 was awarded to CONSULTANT, the terms of which will expire on September 3, 2013; and

WHEREAS, the CITY and CONSULTANT have agreed to extend the term of the Contract by three (3) additional years to September 3, 2016 in order to provide as needed landscape architectural and construction administration services; and

WHEREAS, the CITY'S Department of Public Works, Bureau of Engineering, (hereinafter referred to as "BUREAU"), is the Program Manager and oversees the CONSULTANT'S performance of this Contract; and

NOW, THEREFORE, in consideration of the foregoing and of the benefits which will accrue to the parties hereto in carrying out the conditions of this Amendment No. 1, Contract No. C-114384 is hereby amended as follows:

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

No Change

ARTICLE 2 DEFINITIONS

Article 2 is hereby amended to change definition of CONSULTANT:

From: AHBE LANDSCAPE ARCHITECTS

To: Calvin R. Abe & Associates Inc. dba Ah'be Landscape Architects

ARTICLE 3

PROJECT DESCRIPTION

No Change

ARTICLE 4

RESPONSIBILITIES OF AND TASKS TO BE PERFORMED BY THE CONSULTANT

No Change

ARTICLE 5

KEY CONSULTANT PERSONNEL

No Change

ARTICLE 6

RESPONSIBILITIES OF AND TASKS TO BE PERFORMED BY CITY

No Change

ARTICLE 7

TERM OF CONTRACT AND TIME OF EFFECTIVENESS

Article 7 is hereby amended in its first paragraph to read as follows:

Unless otherwise provided, the term of this Contract shall begin on the date of full execution and shall expire on September 3, 2016, unless terminated as provided under Article 8 or extended by amendment to this Contract.

ARTICLE 8

TERMINATION

Article 8 is hereby amended in its entirety to read as follows:

8.1 Termination for Convenience

The CITY may terminate this Contract for the CITY'S convenience at any time by giving CONSULTANT thirty days written notice thereof. Upon receipt of said notice, CONSULTANT shall immediately take action not to incur any additional obligations, cost or expenses, except as may be reasonably necessary to terminate its activities. The CITY shall pay CONSULTANT its reasonable and allowable costs through the effective date of termination and those reasonable and necessary costs incurred by CONSULTANT to affect such termination. Thereafter, CONSULTANT shall have no further claims against the CITY under this Contract. All finished and unfinished

documents and materials procured for or produced under this Contract, including all intellectual property rights thereto, shall become CITY property upon the date of such termination. CONSULTANT agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights provided herein.

8.2 Termination for Breach of Contract

- 8.2.1 Except for excusable delays as provided in Article 20, if CONSULTANT fails to perform any of the provisions of this Contract or so fails to make progress as to endanger timely performance of this Contract, the CITY may give CONSULTANT written notice of such default. If CONSULTANT does not cure such default or provide a plan to cure such default which is acceptable to the CITY within the time permitted by the CITY, then the CITY may terminate this Contract due to CONSULTANT'S breach of this Contract.
- 8.2.2 If a federal or state proceeding for relief of debtors is undertaken by or against CONSULTANT, or if CONSULTANT makes an assignment for the benefit of creditors, then the CITY may immediately terminate this Contract.
- 8.2.3 If CONSULTANT engages in any dishonest conduct related to the performance or administration of this Contract or violates the CITY'S lobbying policies, then the CITY may immediately terminate this Contract.
- 8.2.4 In the event the CITY terminates this Contract 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 CONSULTANT shall be liable to the CITY for all of its costs and damages, including, but not limited, any excess costs for such services.
- 8.2.5 All finished and unfinished documents and materials produced or procured under this Contract, including all intellectual property rights thereto, shall become CITY property upon date of such termination. CONSULTANT agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights provided herein.

8.2.6 If, after notice of termination of this Contract under the provisions of this Section, it is determined for any reason that CONSULTANT was not in default under the provisions of this Section, or that the default was excusable under the terms of this Contract, the rights and obligations of the parties shall be the same as if the notice of termination has been issued pursuant to Article 8.1 Termination for Convenience.

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

ARTICLE 9

SUBCONTRACT APPROVAL

Article 9 is hereby amended in its title and first paragraph to read as follows and to include Sweeney Associates, Inc. to its list of potential subconsultants:

SUBCONSULTANT APPROVAL

CONSULTANT shall not use subconsultants to assist in performance of this Contract without the prior written approval of the CITY. If the CITY permits the use of subconsultants, CONSULTANT shall remain responsible for performing all aspects of this Contract. The CONSULTANT is required to provide the CITY a list of all subconsultants including the name and address of the firms. Refer to **Exhibit K** for CONSULTANT and subconsultant information. The CITY has the right to approve CONSULTANT'S subconsultants and the CITY reserves the right to request replacement of subconsultants. The CITY does not have any obligation to pay CONSULTANT'S subconsultants and nothing herein creates any privity between the CITY and the subconsultants. Wholly-owned subsidiaries of CONSULTANT shall not be considered subconsultants.

ARTICLE 10

COMPENSATION, INVOICING AND PAYMENT

Article 10 is hereby amended to include a third paragraph to Section 10.6 to read as follows:

For the sake of efficiency, the CONSULTANT may have provided services prior to the execution of this Amendment. Upon execution of this Amendment, and to the extent that said services were performed in accordance with the terms and conditions of the Contract and this

Amendment, those services are hereby ratified and eligible for payment.

ARTICLE 11

AMENDMENTS, CHANGES OR MODIFICATIONS

No Change

ARTICLE 12

INDEMNIFICATION AND INSURANCE

No Change

ARTICLE 13

INDEPENDENT CONTRACTORS

No Change

ARTICLE 14

WARRANTY AND RESPONSIBILITY OF CONSULTANT

No Change

ARTICLE 15

OWNERSHIP OF DATA AND INTELLECTUAL PROPERTY

Article 15 is hereby amended in its title and content to read as follows:

15.1 Ownership of Data and License

15.1.1 Unless otherwise provided for herein, all Work Products originated and prepared by CONSULTANT or its subconsultants of any tier under this Contract shall be and remain the exclusive property of the CITY for its use in any manner it deems appropriate. Work Products are all works, tangible or not, created under this Contract including, without limitation, documents, material, data, reports, manuals, specifications, artwork, drawings, sketches, computer programs and databases, schematics, photographs, video and audiovisual recordings, sound recordings, marks, logos, graphic designs, notes, websites, domain names, inventions, processes, formulas matters and combinations thereof, and all forms of intellectual property. CONSULTANT hereby assigns, and agrees to assign, all goodwill, copyright, trademark, patent, trade secret and all other intellectual property rights worldwide in any Work Products originated and prepared by CONSULTANT under this Contract. CONSULTANT further agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights provided herein.

- 15.1.2 With regard to the basis for design calculations and engineering notes, such data shall be provided to the CITY in (a) hard cover post binder(s), appropriately indexed, on thin Mylar stock or good quality paper satisfactory for reproduction.
- 15.1.3 For all Work Products delivered to the CITY that are not originated or prepared by CONSULTANT or its subconsultants of any tier under this Contract, CONSULTANT hereby grants a non-exclusive perpetual license to use such Work Products for any CITY purposes.
- 15.1.4 CONSULTANT shall not provide or disclose any Work Products to any third party without prior written consent of the City.
- 15.1.5 All documents, information and pre-existing materials provided by CITY to CONSULTANT and its subconsultants arising out of or related to this Contract shall remain the property of the CITY. The CONSULTANT may not use, distribute or otherwise make public in any manner, either for profit or not for profit, any of the information, documentation, or procedures developed for the CITY hereunder without the prior written consent of the CITY. CONSULTANT further agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights.
- 15.1.6 Any subcontract entered into by CONSULTANT relating to this Contract, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract to contractually bind or otherwise oblige its subconsultants performing work under this Contract such that the CITY'S ownership and license rights of all Work Products are preserved and protected as intended herein. Failure of CONSULTANT to comply with this requirement or to obtain the compliance of its subconsultants with such obligations shall subject CONSULTANT to the imposition of any and all sanctions allowed by law, including but not limited to termination of CONSULTANT'S Contract with the CITY.

15.2 Intellectual Property Warranty

- 15.2.1 CONSULTANT represents and warrants that its performance of all obligations under this Contract does not

infringe in any way, directly or contributorily, upon any third party's intellectual property rights, including, without limitation, patents, copyrights, trademarks, trade secrets, rights of publicity and proprietary information.

15.3 Intellectual Property Indemnification

15.3.1 CONSULTANT, at its own expense, undertakes and agrees to defend, indemnify, and hold harmless the CITY, and any of its Boards, officers, agents, employees, assigns, and successors in interest from and against all suits and causes of action, claims, losses, demands and expenses, including but not limited to, attorney's fees (both in-house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the CITY, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever arising out of the infringement, actual or alleged, direct or contributory, of any intellectual property rights, including, without limitation, patent, copyright, trademark, trade secret, right of publicity and proprietary information right (1) on or in any design, medium, matter, article, process, method, application, equipment, device, instrumentation, software, hardware, or firmware used by CONSULTANT, or its subconsultants of any tier, in performing the work under this Contract; or (2) as a result of the CITY'S actual or intended use of any Work Product furnished by CONSULTANT, or its subconsultants of any tier, under the Agreement. Rights and remedies available to the CITY under this provision are cumulative of those provided for elsewhere in this Contract and those allowed under the laws of the United States, the State of California, and the CITY. The provisions of Article 15 shall survive expiration or termination of this Contract.

15.3.2 In CONSULTANT'S defense of the CITY Defendants, negotiation, compromise, and settlement of any such infringement action, the Los Angeles City Attorney's Office shall retain discretion in and control of the litigation, negotiation, compromise, settlement, and appeals therefrom, as required by the Los Angeles City Charter, particularly Article II, Sections 271, 272 and 273 thereof.

15.3.3 Where any Work Product furnished by CONSULTANT (a) becomes the subject of an action, (b) is adjudicated as infringing a third party's Intellectual Property right, or (c)

has its use enjoined or license terminated; CONSULTANT shall, with the CITY'S consent, do one of the following immediately. CONSULTANT shall at its expense either:

- i) procure for the CITY the right or license to continue using the Work Product; or
- ii) replace the Work Product with a functionally equivalent, non-infringing product.

Exercise of any of the above-mentioned options shall not cause undue business interruption to the CITY or diminish the intended benefits and use of the Work Product by the CITY under this Contract.

ARTICLE 16

NONDISCRIMINATION AND AFFIRMATIVE ACTION

Article 16 is hereby amended in its title and content to read as follows:

NONDISCRIMINATION

Unless otherwise exempt, this Contract is subject to the nondiscrimination provisions in Sections 10.8 through 10.8.2 of the Los Angeles Administrative Code, as amended from time to time. The CONSULTANT shall comply with the applicable nondiscrimination and affirmative action provisions of the laws of the United States of America, the State of California, and the CITY. In performing this Contract, CONSULTANT shall not discriminate in its employment practices against any employee or applicant for employment because of such person's race, religion, national origin, ancestry, sex, sexual orientation, age, disability, domestic partner status, marital status or medical condition. The CONSULTANT 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 said Office. Any subcontract entered into by CONSULTANT, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract.

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

ARTICLE 17

**MINORITY, WOMEN AND OTHER BUSINESS ENTERPRISE
OUTREACH PROGRAM**

No Change

ARTICLE 18

SUCCESSORS AND ASSIGNS

No Change

ARTICLE 19

CONTACT PERSONS – PROPER ADDRESSES – NOTIFICATION

Article 19 is hereby amended as follows:

From:

Contact Person: Calvin Abe, President

Address: ah'be landscape architects
8729 Washington Boulevard
Culver City, CA 90232

To:

Contact Person: Calvin Abe, President

Address: Calvin R. Abe & Associates, Inc.
DBA: Ah'be Landscape Architects
8729 Washington Boulevard
Culver City, CA 90232

ARTICLE 20

EXCUSABLE DELAYS

No Change

ARTICLE 21

SEVERABILITY

No Change

ARTICLE 22

DISPUTES

No Change

ARTICLE 23

ENTIRE CONTRACT

No Change

ARTICLE 24

APPLICABLE LAW, INTERPRETATION AND ENFORCEMENT

No Change

ARTICLE 25

**CURRENT LOS ANGELES CITY BUSINESS TAX
REGISTRATION CERTIFICATE REQUIRED**

No Change

ARTICLE 26

BONDS

Article 26 is hereby amended in its entirety to read as follows:

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

ARTICLE 27

CHILD SUPPORT ASSIGNMENT ORDERS

No Change

ARTICLE 28

**LIVING WAGE ORDINANCE AND SERVICE CONTRACTOR
WORKER RETENTION ORDINANCE**

No Change

ARTICLE 29

AMERICANS WITH DISABILITIES ACT

No Change

ARTICLE 30

EQUAL BENEFITS ORDINANCE

Article 30 is hereby amended in its entirety to read as follows:

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.

1. During the performance of the Contract, CONSULTANT certifies and represents that CONSULTANT will comply with the EBO.
2. The failure of CONSULTANT to comply with the EBO will be deemed to be a material breach of this Contract by the CITY.
3. If CONSULTANT fails to comply with the EBO, the CITY may cancel, terminate or suspend the 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.

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

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

“During the performance of a Contract with the City of Los Angeles, the Consultant 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) 847-2632.”

ARTICLE 31

WAIVER

No Change

ARTICLE 32

PROHIBITION AGAINST ASSIGNMENT OR DELEGATION

No Change

ARTICLE 33

PERMITS

No Change

ARTICLE 34

CLAIMS FOR LABOR AND MATERIALS

No Change

ARTICLE 35

DISCOUNTS

No Change

ARTICLE 36

CONTRACTOR RESPONSIBILITY ORDINANCE

No Change

ARTICLE 37

BREACH

No Change

ARTICLE 38

SLAVERY DISCLOSURE ORDINANCE

No Change

ARTICLE 39

CONTRACT BIDDER CERTIFICATION OF COMPLIANCE WITH LOBBYING LAWS

Article 39 is hereby amended in its title and content to read as follows:

BIDDER ETHICS

Pursuant to the Los Angeles Municipal Lobbying Ordinance, any bidder for a contract shall submit with its proposal a Bidder Certification CEC Form 50 (**Exhibit J**), proscribed by the City Ethics Commission, in which the bidder acknowledges and agrees to comply with the disclosure requirements and prohibitions established in the Ordinance if the bidder qualifies as a lobbying entity under the Ordinance.

As amended, this Contract is also subject to Charter Section 470(c)(12) and related ordinances and as a result, the CONSULTANT was required to submit Bidder Contributions CEC Form 55 (**Exhibit J**) within ten business days of discussing the amendment. Consequently, CONSULTANT may not make campaign contributions to and or engage in fundraising for certain elected City officials or candidates for elected City office from the date the amendment is first discussed until 12 months after the amendment is signed. The CONSULTANT'S principals and subconsultants performing \$100,000 or more in work on the contract, as well as the principals of those subconsultants, are also subject to the same limitations on campaign contributions and fundraising.

CONSULTANT must also notify their principals and subconsultants in writing of the restrictions and include the notice in contracts with subconsultants. Consultants who fail to comply with City law may be subject to penalties, termination of contract, and debarment. Additional information regarding these restrictions and requirements may be obtained from the City Ethics Commission at (213) 978-1960.

The Contract is hereby amended to include the following Articles:

ARTICLE 40

AFFIRMATIVE ACTION

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

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

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

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

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

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

- E. The failure of any CONSULTANT to comply with the Affirmative Action Program provisions of CITY contracts may be deemed to be a material breach of contract. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made except upon a full and fair hearing after notice and an opportunity to be heard has been given to CONSULTANT.
- F. Upon a finding duly made that CONSULTANT has breached the Affirmative Action Program provisions of a CITY contract, the Contract may be forthwith cancelled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the CITY. In addition thereto, such breach may be the basis for a determination by the awarding authority or the Board of Public Works that the said CONSULTANT is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Los Angeles City Charter. In the event of such determination, such CONSULTANT shall be disqualified from being awarded a contract with the CITY for a period of two years, or until he or she shall establish and carry out a program in conformance with the provisions hereof.
- G. In the event of a finding by the Fair Employment and Housing Commission of the State of California, or the Board of Public Works of the City of Los Angeles, or any court of competent jurisdiction, that CONSULTANT has been guilty of a willful violation of the California Fair Employment and Housing Act, or the Affirmative Action Program provisions of a CITY contract, there may be deducted from the amount payable to CONSULTANT by the CITY under the Contract, a penalty of ten dollars (\$10.00) for each person for each calendar day on which such person was discriminated against in violation of the provisions of a CITY contract.
- H. Notwithstanding any other provisions of a CITY contract, the CITY shall have any and all other remedies at law or in equity for any breach hereof.
- I. Intentionally blank.

- J. Nothing contained in CITY contracts shall be construed in any manner so as to require or permit any act which is prohibited by law.
- K. CONSULTANT shall submit an Affirmative Action Plan which shall meet the requirements of this chapter at the time it submits its bid or proposal or at the time it registers to do business with the CITY. The plan shall be subject to approval by the Office of Contract Compliance prior to award of the Contract. The awarding authority may also require consultants and suppliers to take part in a pre-registration, pre-bid, pre-proposal, or pre-award conference in order to develop, improve or implement a qualifying Affirmative Action Plan. Affirmative Action Programs developed pursuant to this Section shall be effective for a period of twelve months from the date of approval by the Office of Contract Compliance. In case of prior submission of a plan, CONSULTANT may submit documentation that it has an Affirmative Action Plan approved by the Office of Contract Compliance within the previous twelve months. If the approval is 30 days or less from expiration, CONSULTANT must submit a new Plan to the Office of Contract Compliance and that Plan must be approved before the Contract is awarded.
1. Every contract of \$5,000 or more which may provide construction, demolition, renovation, conservation or major maintenance of any kind shall in addition comply with the requirements of Section 10.13 of the Los Angeles Administrative Code.
 2. CONSULTANT may establish and adopt as its own Affirmative Action Plan, by affixing his or her signature thereto, an Affirmative Action Plan prepared and furnished by the Office of Contract Compliance, or it may prepare and submit its own Plan for approval.
- L. The Office of Contract Compliance shall annually supply the awarding authorities of the CITY with a list of consultants and suppliers who have developed Affirmative Action Programs. For each consultant and supplier, the Office of Contract Compliance shall state the date the approval expires. The Office of Contract Compliance shall not withdraw its approval for any Affirmative Action Plan or change the Affirmative Action Plan after the date of contract award for the entire contract term without the mutual agreement of the awarding authority and CONSULTANT.

- M. The Affirmative Action Plan required to be submitted hereunder and the pre-registration, pre-bid, pre-proposal or pre-award conference which may be required by the Board of Public Works, Office of Contract Compliance or the awarding authority shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:
1. Apprenticeship where approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;
 2. Classroom preparation for the job when not apprenticeable;
 3. Pre-apprenticeship education and preparation;
 4. Upgrading training and opportunities;
 5. Encouraging the use of consultants, subconsultants and suppliers of all racial and ethnic groups, provided, however, that any contract subject to this ordinance shall require the CONSULTANT, subconsultant or supplier to provide not less than the prevailing wage, working conditions and practices generally observed in private industries in the consultant's, subconsultant's, or supplier's geographical area for such work;
 6. The entry of qualified women, minority and all other journeymen into the industry; and
 7. The provision of needed supplies or job conditions to permit persons with disabilities to be employed, and minimize the impact of any disability.
- N. Any adjustments which may be made in the CONSULTANT'S or supplier's work force to achieve the requirements of the CITY'S Affirmative Action Contract Compliance Program in purchasing and construction shall be accomplished by either an increase in the size of the work force or replacement of those employees who leave the work force by reason of resignation, retirement or death and not by termination, layoff, demotion or change in grade.
- O. Affirmative Action Agreements resulting from the proposed Affirmative Action Plan or the pre-registration, pre-bid, pre-proposal or pre-award conferences shall not be confidential and may be publicized by the CONSULTANT at his or her discretion. Approved Affirmative Action Agreements become the property of

the CITY and may be used at the discretion of the CITY in its Contract Compliance Affirmative Action Program.

- P. Intentionally blank.
- Q. All consultants subject to the provisions of this Section shall include a like provision in all subcontracts awarded for work to be performed under the Contract with the CITY and shall impose the same obligations, including but not limited to filing and reporting obligations, on the subconsultants as are applicable to the CONSULTANT. Failure of the CONSULTANT to comply with this requirement or to obtain the compliance of its subconsultants with all such obligations shall subject the CONSULTANT to the imposition of any and all sanctions allowed by law, including but not limited to termination of the CONSULTANT'S Contract with the CITY.

ARTICLE 41

FALSE CLAIMS ACT

CONSULTANT 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.

ARTICLE 42

EQUAL EMPLOYMENT PRACTICES

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

- A. During the performance of this Contract, CONSULTANT agrees and represents that it will provide equal employment practices and CONSULTANT and each subconsultant hereunder will ensure that in his or her employment practices, persons are employed and employees are treated equally and without regard to or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
 - 1. This provision applies to work or service performed or materials manufactured or assembled in the United States.
 - 2. Nothing in this Section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.

3. CONSULTANT agrees to post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.
- B. CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of CONSULTANT, state that all qualified applicants will receive consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
 - C. As part of the CITY'S supplier registration process, and/or at the request of the awarding authority, or the Board of Public Works, Office of Contract Compliance, CONSULTANT shall certify in the specified format that he or she has not discriminated in the performance of CITY contracts against any employee or applicant for employment on the basis or because of race, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status or medical condition.
 - D. CONSULTANT shall permit access to and may be required to provide certified copies of all of his or her records pertaining to employment and to employment practices by the awarding authority or the Office of Contract Compliance for the purpose of investigation to ascertain compliance with the Equal Employment Practices provisions of CITY contracts. On their or either of their request CONSULTANT shall provide evidence that he or she has or will comply therewith.
 - E. The failure of any CONSULTANT to comply with the Equal Employment Practices provisions of this Contract may be deemed to be a material breach of CITY contracts. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made or penalties assessed except upon a full and fair hearing after notice, and an opportunity to be heard has been given to CONSULTANT.
 - F. Upon a finding duly made that CONSULTANT has failed to comply with the Equal Employment Practices provisions of a CITY contract, the Contract may be forthwith cancelled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the CITY. In addition thereto, such failure to comply may be the basis for a determination by the

awarding authority or the Board of Public Works that the CONSULTANT is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Charter of the City of Los Angeles. In the event of such a determination, CONSULTANT shall be disqualified from being awarded a contract with the CITY for a period of two years, or until CONSULTANT shall establish and carry out a program in conformance with the provisions hereof.

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

ARTICLE 43

FIRST SOURCE HIRING ORDINANCE

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

1. CONSULTANT shall, prior to the execution of the contract, provide to the Designated Administrative Agency (DAA) a list of anticipated employment opportunities that CONSULTANT estimate they will need to fill in order to perform the services under the Contract.
2. CONSULTANT further pledges that it will, during the term of the Contract, shall a) At least seven business days prior to making an announcement of a specific employment opportunity, provide notifications of that employment opportunity to the Community Development Department (CDD), which will refer individuals for interview; b) Interview qualified individuals referred by CDD; and c) Prior to filling any employment opportunity, the CONSULTANT shall inform the DAA of the names of the Referral Resources used, the names of the individuals they referred, the names of the referred individuals who the CONSULTANT interviewed and the reasons why referred individuals were not hired.
3. Any Subcontract entered into by the CONSULTANT relating to this Agreement, to the extent allowed hereunder, shall be subject to the provisions of FSHO, and shall incorporate the FSHO.
4. CONSULTANT shall comply with all rules, regulations and policies promulgated by the designated administrative agency, which may be amended from time to time.

Where under the provisions of Section 10.44.13 of the Los Angeles Administrative Code the designated administrative agency has determined that the CONSULTANT intentionally violated or used hiring practices for the purpose of avoiding the article, the determination must be documented in the Awarding Authority's Contractor Evaluation, required under Los Angeles Administrative Code Section 10.39 et seq., and must be documented in each of the Contractor's subsequent Contractor Responsibility Questionnaires submitted under Los Angeles Administrative Code Section 10.40 et seq. This measure does not limit the City's authority to act under this article.

Under the provisions of Section 10.44.8 of the Los Angeles Administrative Code, the Awarding Authority shall, under appropriate circumstances, terminate this contract and otherwise pursue legal remedies that may be available if the designated administrative agency determines that the subject CONSULTANT has violated provisions of the FSHO.

EXCEPT AS EXPRESSLY MODIFIED herein, the Contract executed on September 3, 2008 remains unchanged.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 1 on the day and year written below.

**CALVIN R. ABE & ASSOCIATES, INC.
DBA: AH'BE LANDSCAPE ARCHITECTS**

By:

Title:

Date:

CITY OF LOS ANGELES

By:

Title: President, Board of Public Works

Date:

By:

Date:

ATTEST:

JUNE LAGMAY, City Clerk

By:

Date:

APPROVED AS TO FORM:

MICHAEL N. FEUER, City Attorney

By:

Title: Assistant City Attorney

Date:

AMENDMENT NO. 1

to

Contract No. C-114383

for the

PRE-QUALIFIED ON-CALL LANDSCAPE ARCHITECTURAL CONSULTANT SERVICES

Between

CITY OF LOS ANGELES

and

DAVID EVANS AND ASSOCIATES, INC.

AMENDMENT NO. 1 TO CONTRACT NO. C-114383, FOR PRE-QUALIFIED ON-CALL LANDSCAPE ARCHITECTURAL CONSULTANT SERVICES BETWEEN THE CITY OF LOS ANGELES AND DAVID EVANS AND ASSOCIATES, INC.

This Amendment modifies Contract No. C-114383 executed on September 3, 2008 between the City of Los Angeles (hereinafter referred to as "CITY") and DAVID EVANS AND ASSOCIATES, INC. (hereinafter referred to as "CONSULTANT").

WITNESSETH

WHEREAS, CITY issued a Request for Qualifications (RFQ) on April 16, 2007 for landscape architectural and related services, on a pre-qualified basis, on various projects and CONSULTANT submitted a statement of qualifications in response; and

WHEREAS, CONSULTANT demonstrated qualifications to perform said services and was selected to perform the design services by CITY staff based on the evaluation criteria set forth in the RFQ; and

WHEREAS, on September 3, 2008, Contract No. C-114383 was awarded to CONSULTANT, the terms of which will expire on September 3, 2013; and

WHEREAS, the CITY and CONSULTANT have agreed to extend the term of the Contract by three (3) additional years to September 3, 2016 in order to provide as needed landscape architectural and construction administration services; and

WHEREAS, the CITY'S Department of Public Works, Bureau of Engineering, (hereinafter referred to as "BUREAU"), is the Program Manager and oversees the CONSULTANT'S performance of this Contract; and

NOW, THEREFORE, in consideration of the foregoing and of the benefits which will accrue to the parties hereto in carrying out the conditions of this Amendment No. 1, Contract No. C-114383 is hereby amended as follows:

ARTICLE 1 SECTION HEADINGS AND CONSTRUCTION OF PROVISIONS AND TITLES HEREIN

No Change

ARTICLE 2 DEFINITIONS

No Change

ARTICLE 3 PROJECT DESCRIPTION

No Change

ARTICLE 4

RESPONSIBILITIES OF AND TASKS TO BE PERFORMED BY THE CONSULTANT

No Change

ARTICLE 5

KEY CONSULTANT PERSONNEL

Article 5 is hereby amended to replace the Key Consultant Personnel table as follows:

5.1 CONSULTANT designates the following persons to implement the work:

From:

Name	Title
Kim S. Rhodes, L.A. 3867	Vice President/Project Manager
Jeffrey K. Rupp, P.E.	Principal-in-Charge
David C. Agnew, AIA	Architect
Michael Evans, Associate AIA	Architectural Designer
Matt Evans, Associate AIA	Architectural Designer
Richard A. Hart, P.E.	Civil Engineering Task Leader
Stephen A. Henderson, P.E.	Civil Engineer
Rob Bathke, P.E.	Civil Engineer
Gabriel Rodriguez, P.E.	Civil Engineer
Chris Giannini, L.A. 4287	Landscape Architect
Jim Brands, L.A. 5318	Landscape Architect
Almabeth Benitez, L.A. 4985	Landscape Architect
Greg Clark, L.A. 5320	Landscape Architect
Ron Lee, ASLA	Landscape Designer
Jon-Sen Oen, CID	Irrigation Designer
Danny Wang, ASLA	Landscape Designer
Ted Young, CLIA	Construction Manager
Cristine McPhail, L.A. 4216	Construction Manager
John Little, ASLA	Construction Manager
Ryan Birdseye	Environmental Planner
Josephine Alido, AICP	Environmental Planner
Bernie J. McNally, P.L.S.	Southern California Survey Discipline Leader
Lisa M. Henstridge, P.L.S.	Survey Discipline Leader

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

To:

Name	Title
Kim S. Rhodes, L.A. 3867	Vice President / Project Manager
Chris Giannini, L.A. 4287	Landscape Architect
Almabeth Anderson, L.A. 4985	Landscape Architect
Greg Clark, L.A. 5320	Landscape Architect
Eric Sterling, L.A.5436	Landscape Architect

Ron Lee	Landscape Designer
Danny Wang	Landscape Designer
Jared Anderson	Landscape Designer
Yali Pelaez	Landscape Designer
Mark Pere	Landscape Designer
Audra Lee	Landscape Designer
Jon S. Oen, CID	Irrigation Designer
Ted Young, CLIA	Construction Manager
Patricia McColl, P.E.	Civil Engineer
Rob Bathke, P.E.	Civil Engineer
Bryan Lirley, P.E.	Civil Engineer
Alex Ramirez, P.E.	Civil Engineer
Bob Vasquez, P.L.S.	Survey Discipline Leader

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

ARTICLE 6

RESPONSIBILITIES OF AND TASKS TO BE PERFORMED BY CITY

No Change

ARTICLE 7

TERM OF CONTRACT AND TIME OF EFFECTIVENESS

Article 7 is hereby amended in its first paragraph to read as follows:

Unless otherwise provided, the term of this Contract shall begin on the date of full execution and shall expire on September 3, 2016, unless terminated as provided under Article 8 or extended by amendment to this Contract.

ARTICLE 8

TERMINATION

Article 8 is hereby amended in its entirety to read as follows:

8.1 Termination for Convenience

The CITY may terminate this Contract for the CITY'S convenience at any time by giving CONSULTANT thirty days written notice thereof. Upon receipt of said notice, CONSULTANT shall immediately take action not to incur any additional obligations, cost or expenses, except as may be reasonably necessary to terminate its activities. The CITY shall pay CONSULTANT its reasonable and allowable costs through the effective date of termination and those reasonable and necessary costs incurred by CONSULTANT to affect such termination. Thereafter, CONSULTANT shall have no further claims against the CITY under this Contract. All finished and unfinished

documents and materials procured for or produced under this Contract, including all intellectual property rights thereto, shall become CITY property upon the date of such termination. CONSULTANT agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights provided herein.

8.2 Termination for Breach of Contract

- 8.2.1 Except for excusable delays as provided in Article 20, if CONSULTANT fails to perform any of the provisions of this Contract or so fails to make progress as to endanger timely performance of this Contract, the CITY may give CONSULTANT written notice of such default. If CONSULTANT does not cure such default or provide a plan to cure such default which is acceptable to the CITY within the time permitted by the CITY, then the CITY may terminate this Contract due to CONSULTANT'S breach of this Contract.
- 8.2.2 If a federal or state proceeding for relief of debtors is undertaken by or against CONSULTANT, or if CONSULTANT makes an assignment for the benefit of creditors, then the CITY may immediately terminate this Contract.
- 8.2.3 If CONSULTANT engages in any dishonest conduct related to the performance or administration of this Contract or violates the CITY'S lobbying policies, then the CITY may immediately terminate this Contract.
- 8.2.4 In the event the CITY terminates this Contract 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 CONSULTANT shall be liable to the CITY for all of its costs and damages, including, but not limited, any excess costs for such services.
- 8.2.5 All finished and unfinished documents and materials produced or procured under this Contract, including all intellectual property rights thereto, shall become CITY property upon date of such termination. CONSULTANT agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights provided herein.

8.2.6 If, after notice of termination of this Contract under the provisions of this Section, it is determined for any reason that CONSULTANT was not in default under the provisions of this Section, or that the default was excusable under the terms of this Contract, the rights and obligations of the parties shall be the same as if the notice of termination has been issued pursuant to Article 8.1 Termination for Convenience.

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

ARTICLE 9

SUBCONTRACT APPROVAL

Article 9 is hereby amended in its title and first paragraph to read as follows:

SUBCONSULTANT APPROVAL

CONSULTANT shall not use subconsultants to assist in performance of this Contract without the prior written approval of the CITY. If the CITY permits the use of subconsultants, CONSULTANT shall remain responsible for performing all aspects of this Contract. The CONSULTANT is required to provide the CITY a list of all subconsultants including the name and address of the firms. Refer to **Exhibit K** for CONSULTANT and subconsultant information. The CITY has the right to approve CONSULTANT'S subconsultants and the CITY reserves the right to request replacement of subconsultants. The CITY does not have any obligation to pay CONSULTANT'S subconsultants and nothing herein creates any privity between the CITY and the subconsultants. Wholly-owned subsidiaries of CONSULTANT shall not be considered subconsultants.

ARTICLE 10

COMPENSATION, INVOICING AND PAYMENT

Article 10 is hereby amended to include a third paragraph to Section 10.6 to read as follows:

For the sake of efficiency, the CONSULTANT may have provided services prior to the execution of this Amendment. Upon execution of this Amendment, and to the extent that said services were performed in accordance with the terms and conditions of the Contract and this Amendment, those services are hereby ratified and eligible for payment.

ARTICLE 11 **AMENDMENTS, CHANGES OR MODIFICATIONS**

No Change

ARTICLE 12 **INDEMNIFICATION AND INSURANCE**

No Change

ARTICLE 13 **INDEPENDENT CONTRACTORS**

No Change

ARTICLE 14 **WARRANTY AND RESPONSIBILITY OF CONSULTANT**

No Change

ARTICLE 15 **OWNERSHIP OF DATA AND INTELLECTUAL PROPERTY**

Article 15 is hereby amended in its title and content to read as follows:

15.1 Ownership of Data and License

15.1.1 Unless otherwise provided for herein, all Work Products originated and prepared by CONSULTANT or its subconsultants of any tier under this Contract shall be and remain the exclusive property of the CITY for its use in any manner it deems appropriate. Work Products are all works, tangible or not, created under this Contract including, without limitation, documents, material, data, reports, manuals, specifications, artwork, drawings, sketches, computer programs and databases, schematics, photographs, video and audiovisual recordings, sound recordings, marks, logos, graphic designs, notes, websites, domain names, inventions, processes, formulas matters and combinations thereof, and all forms of intellectual property. CONSULTANT hereby assigns, and agrees to assign, all goodwill, copyright, trademark, patent, trade secret and all other intellectual property rights worldwide in any Work Products originated and prepared by CONSULTANT under this Contract. CONSULTANT further agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights provided herein.

- 15.1.2 With regard to the basis for design calculations and engineering notes, such data shall be provided to the CITY in (a) hard cover post binder(s), appropriately indexed, on thin Mylar stock or good quality paper satisfactory for reproduction.
- 15.1.3 For all Work Products delivered to the CITY that are not originated or prepared by CONSULTANT or its subconsultants of any tier under this Contract, CONSULTANT hereby grants a non-exclusive perpetual license to use such Work Products for any CITY purposes.
- 15.1.4 CONSULTANT shall not provide or disclose any Work Products to any third party without prior written consent of the City.
- 15.1.5 All documents, information and pre-existing materials provided by CITY to CONSULTANT and its subconsultants arising out of or related to this Contract shall remain the property of the CITY. The CONSULTANT may not use, distribute or otherwise make public in any manner, either for profit or not for profit, any of the information, documentation, or procedures developed for the CITY hereunder without the prior written consent of the CITY. CONSULTANT further agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights.
- 15.1.6 Any subcontract entered into by CONSULTANT relating to this Contract, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract to contractually bind or otherwise oblige its subconsultants performing work under this Contract such that the CITY'S ownership and license rights of all Work Products are preserved and protected as intended herein. Failure of CONSULTANT to comply with this requirement or to obtain the compliance of its subconsultants with such obligations shall subject CONSULTANT to the imposition of any and all sanctions allowed by law, including but not limited to termination of CONSULTANT'S Contract with the CITY.

15.2 Intellectual Property Warranty

- 15.2.1 CONSULTANT represents and warrants that its performance of all obligations under this Contract does not

infringe in any way, directly or contributorily, upon any third party's intellectual property rights, including, without limitation, patents, copyrights, trademarks, trade secrets, rights of publicity and proprietary information.

15.3 Intellectual Property Indemnification

15.3.1 CONSULTANT, at its own expense, undertakes and agrees to defend, indemnify, and hold harmless the CITY, and any of its Boards, officers, agents, employees, assigns, and successors in interest from and against all suits and causes of action, claims, losses, demands and expenses, including but not limited to, attorney's fees (both in-house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the CITY, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever arising out of the infringement, actual or alleged, direct or contributory, of any intellectual property rights, including, without limitation, patent, copyright, trademark, trade secret, right of publicity and proprietary information right (1) on or in any design, medium, matter, article, process, method, application, equipment, device, instrumentation, software, hardware, or firmware used by CONSULTANT, or its subconsultants of any tier, in performing the work under this Contract; or (2) as a result of the CITY'S actual or intended use of any Work Product furnished by CONSULTANT, or its subconsultants of any tier, under the Agreement. Rights and remedies available to the CITY under this provision are cumulative of those provided for elsewhere in this Contract and those allowed under the laws of the United States, the State of California, and the CITY. The provisions of Article 15 shall survive expiration or termination of this Contract.

15.3.2 In CONSULTANT'S defense of the CITY Defendants, negotiation, compromise, and settlement of any such infringement action, the Los Angeles City Attorney's Office shall retain discretion in and control of the litigation, negotiation, compromise, settlement, and appeals therefrom, as required by the Los Angeles City Charter, particularly Article II, Sections 271, 272 and 273 thereof.

15.3.3 Where any Work Product furnished by CONSULTANT (a) becomes the subject of an action, (b) is adjudicated as infringing a third party's Intellectual Property right, or (c)

has its use enjoined or license terminated; CONSULTANT shall, with the CITY'S consent, do one of the following immediately. CONSULTANT shall at its expense either:

- i) procure for the CITY the right or license to continue using the Work Product; or
- ii) replace the Work Product with a functionally equivalent, non-infringing product.

Exercise of any of the above-mentioned options shall not cause undue business interruption to the CITY or diminish the intended benefits and use of the Work Product by the CITY under this Contract.

ARTICLE 16

NONDISCRIMINATION AND AFFIRMATIVE ACTION

Article 16 is hereby amended in its title and content to read as follows:

NONDISCRIMINATION

Unless otherwise exempt, this Contract is subject to the nondiscrimination provisions in Sections 10.8 through 10.8.2 of the Los Angeles Administrative Code, as amended from time to time. The CONSULTANT shall comply with the applicable nondiscrimination and affirmative action provisions of the laws of the United States of America, the State of California, and the CITY. In performing this Contract, CONSULTANT shall not discriminate in its employment practices against any employee or applicant for employment because of such person's race, religion, national origin, ancestry, sex, sexual orientation, age, disability, domestic partner status, marital status or medical condition. The CONSULTANT 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 said Office. Any subcontract entered into by CONSULTANT, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract.

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

ARTICLE 17

MINORITY, WOMEN AND OTHER BUSINESS ENTERPRISE OUTREACH PROGRAM

No Change

ARTICLE 18

SUCCESSORS AND ASSIGNS

No Change

ARTICLE 19

CONTACT PERSONS – PROPER ADDRESSES – NOTIFICATION

Article 19 is hereby amended as follows:

To Consultant:

From:

Contact Person: Kim S. Rhodes, L.A. 3867
Vice President/Project Manager

Address: David Evans and Associates, Inc.
4200 Concours, Suite 200
Ontario, CA 91764
(909) 481-5750 fax (909) 481-5757

To:

Contact Person: Kim S. Rhodes, L.A. 3867
Vice President/Project Manager

Address: David Evans and Associates, Inc.
4200 Concours, Suite 200
Ontario, CA 91764
(909) 912-7348

ARTICLE 20

EXCUSABLE DELAYS

No Change

ARTICLE 21

SEVERABILITY

No Change

ARTICLE 22

DISPUTES

No Change

ARTICLE 23

ENTIRE CONTRACT

No Change

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

No Change

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

No Change

ARTICLE 26 **BONDS**

Article 26 is hereby amended in its entirety to read as follows:

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

ARTICLE 27 **CHILD SUPPORT ASSIGNMENT ORDERS**

No Change

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

No Change

ARTICLE 29 **AMERICANS WITH DISABILITIES ACT**

No Change

ARTICLE 30 **EQUAL BENEFITS ORDINANCE**

Article 30 is hereby amended in its entirety to read as follows:

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.

1. During the performance of the Contract, CONSULTANT certifies and represents that CONSULTANT will comply with the EBO.
2. The failure of CONSULTANT to comply with the EBO will be deemed to be a material breach of this Contract by the CITY.

3. If CONSULTANT fails to comply with the EBO, the CITY may cancel, terminate or suspend the 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.
4. Failure to comply with the EBO may be used as evidence against CONSULTANT in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40 *et seq.*, Contractor Responsibility Ordinance.
5. If the CITY’S Designated Administrative Agency determines that a CONSULTANT has set up or used its contracting entity for the purpose of evading the intent of the EBO, the CITY may terminate the Contract. Violation of this provision may be used as evidence against CONSULTANT in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40 *et seq.*, Contractor Responsibility Ordinance.

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

“During the performance of a Contract with the City of Los Angeles, the Consultant 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) 847-2632.”

ARTICLE 31

WAIVER

No Change

ARTICLE 32

PROHIBITION AGAINST ASSIGNMENT OR DELEGATION

No Change

ARTICLE 33

PERMITS

No Change

ARTICLE 34

CLAIMS FOR LABOR AND MATERIALS

No Change

ARTICLE 35 **DISCOUNTS**

No Change

ARTICLE 36 **CONTRACTOR RESPONSIBILITY ORDINANCE**

No Change

ARTICLE 37 **BREACH**

No Change

ARTICLE 38 **SLAVERY DISCLOSURE ORDINANCE**

No Change

ARTICLE 39 **CONTRACT BIDDER CERTIFICATION OF COMPLIANCE
WITH LOBBYING LAWS**

Article 39 is hereby amended in its title and content to read as follows:

BIDDER ETHICS

Pursuant to the Los Angeles Municipal Lobbying Ordinance, any bidder for a contract shall submit with its proposal a Bidder Certification CEC Form 50 (**Exhibit J**), proscribed by the City Ethics Commission, in which the bidder acknowledges and agrees to comply with the disclosure requirements and prohibitions established in the Ordinance if the bidder qualifies as a lobbying entity under the Ordinance.

As amended, this Contract is also subject to Charter Section 470(c)(12) and related ordinances and as a result, the CONSULTANT was required to submit Bidder Contributions CEC Form 55 (**Exhibit J**) within ten business days of discussing the amendment. Consequently, CONSULTANT may not make campaign contributions to and or engage in fundraising for certain elected City officials or candidates for elected City office from the date the amendment is first discussed until 12 months after the amendment is signed. The CONSULTANT'S principals and subconsultants performing \$100,000 or more in work on the contract, as well as the principals of those subconsultants, are also subject to the same limitations on campaign contributions and fundraising.

CONSULTANT must also notify their principals and subconsultants in writing of the restrictions and include the notice in contracts with subconsultants. Consultants who fail to comply with City law may be

subject to penalties, termination of contract, and debarment. Additional information regarding these restrictions and requirements may be obtained from the City Ethics Commission at (213) 978-1960.

The Contract is hereby amended to include the following Articles:

ARTICLE 40

AFFIRMATIVE ACTION

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

- A. During the performance of a CITY contract, CONSULTANT certifies and represents that CONSULTANT and each subconsultant hereunder will adhere to an affirmative action program to ensure that in its employment practices, persons are employed and employees are treated equally and without regard to or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
 - 1. This provision applies to work or services performed or materials manufactured or assembled in the United States.
 - 2. Nothing in this Section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.
 - 3. CONSULTANT shall post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.
- B. CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of CONSULTANT, state that all qualified applicants will receive consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
- C. As part of the CITY'S supplier registration process, and/or at the request of the awarding authority or the Office of Contract Compliance, CONSULTANT shall certify on an electronic or hard copy form to be supplied, that CONSULTANT has not discriminated in the performance of CITY contracts against any employee or applicant for employment on the basis or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.

- D. CONSULTANT shall permit access to and may be required to provide certified copies of all of its records pertaining to employment and to its employment practices by the awarding authority or the Office of Contract Compliance, for the purpose of investigation to ascertain compliance with the Affirmative Action Program provisions of CITY contracts, and on their or either of their request to provide evidence that it has or will comply therewith.
- E. The failure of any CONSULTANT to comply with the Affirmative Action Program provisions of CITY contracts may be deemed to be a material breach of contract. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made except upon a full and fair hearing after notice and an opportunity to be heard has been given to CONSULTANT.
- F. Upon a finding duly made that CONSULTANT has breached the Affirmative Action Program provisions of a CITY contract, the Contract may be forthwith cancelled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the CITY. In addition thereto, such breach may be the basis for a determination by the awarding authority or the Board of Public Works that the said CONSULTANT is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Los Angeles City Charter. In the event of such determination, such CONSULTANT shall be disqualified from being awarded a contract with the CITY for a period of two years, or until he or she shall establish and carry out a program in conformance with the provisions hereof.
- G. In the event of a finding by the Fair Employment and Housing Commission of the State of California, or the Board of Public Works of the City of Los Angeles, or any court of competent jurisdiction, that CONSULTANT has been guilty of a willful violation of the California Fair Employment and Housing Act, or the Affirmative Action Program provisions of a CITY contract, there may be deducted from the amount payable to CONSULTANT by the CITY under the Contract, a penalty of ten dollars (\$10.00) for each person for each calendar day on which such person was discriminated against in violation of the provisions of a CITY contract.

- H. Notwithstanding any other provisions of a CITY contract, the CITY shall have any and all other remedies at law or in equity for any breach hereof.
- I. Intentionally blank.
- J. Nothing contained in CITY contracts shall be construed in any manner so as to require or permit any act which is prohibited by law.
- K. CONSULTANT shall submit an Affirmative Action Plan which shall meet the requirements of this chapter at the time it submits its bid or proposal or at the time it registers to do business with the CITY. The plan shall be subject to approval by the Office of Contract Compliance prior to award of the Contract. The awarding authority may also require consultants and suppliers to take part in a pre-registration, pre-bid, pre-proposal, or pre-award conference in order to develop, improve or implement a qualifying Affirmative Action Plan. Affirmative Action Programs developed pursuant to this Section shall be effective for a period of twelve months from the date of approval by the Office of Contract Compliance. In case of prior submission of a plan, CONSULTANT may submit documentation that it has an Affirmative Action Plan approved by the Office of Contract Compliance within the previous twelve months. If the approval is 30 days or less from expiration, CONSULTANT must submit a new Plan to the Office of Contract Compliance and that Plan must be approved before the Contract is awarded.
 - 1. Every contract of \$5,000 or more which may provide construction, demolition, renovation, conservation or major maintenance of any kind shall in addition comply with the requirements of Section 10.13 of the Los Angeles Administrative Code.
 - 2. CONSULTANT may establish and adopt as its own Affirmative Action Plan, by affixing his or her signature thereto, an Affirmative Action Plan prepared and furnished by the Office of Contract Compliance, or it may prepare and submit its own Plan for approval.
- L. The Office of Contract Compliance shall annually supply the awarding authorities of the CITY with a list of consultants and suppliers who have developed Affirmative Action Programs. For each consultant and supplier, the Office of Contract Compliance shall state the date the approval expires. The Office of Contract

Compliance shall not withdraw its approval for any Affirmative Action Plan or change the Affirmative Action Plan after the date of contract award for the entire contract term without the mutual agreement of the awarding authority and CONSULTANT.

- M. The Affirmative Action Plan required to be submitted hereunder and the pre-registration, pre-bid, pre-proposal or pre-award conference which may be required by the Board of Public Works, Office of Contract Compliance or the awarding authority shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:
1. Apprenticeship where approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;
 2. Classroom preparation for the job when not apprenticeable;
 3. Pre-apprenticeship education and preparation;
 4. Upgrading training and opportunities;
 5. Encouraging the use of consultants, subconsultants and suppliers of all racial and ethnic groups, provided, however, that any contract subject to this ordinance shall require the CONSULTANT, subconsultant or supplier to provide not less than the prevailing wage, working conditions and practices generally observed in private industries in the consultant's, subconsultant's, or supplier's geographical area for such work;
 6. The entry of qualified women, minority and all other journeymen into the industry; and
 7. The provision of needed supplies or job conditions to permit persons with disabilities to be employed, and minimize the impact of any disability.
- N. Any adjustments which may be made in the CONSULTANT'S or supplier's work force to achieve the requirements of the CITY'S Affirmative Action Contract Compliance Program in purchasing and construction shall be accomplished by either an increase in the size of the work force or replacement of those employees who leave the work force by reason of resignation, retirement or death and not by termination, layoff, demotion or change in grade.

- O. Affirmative Action Agreements resulting from the proposed Affirmative Action Plan or the pre-registration, pre-bid, pre-proposal or pre-award conferences shall not be confidential and may be publicized by the CONSULTANT at his or her discretion. Approved Affirmative Action Agreements become the property of the CITY and may be used at the discretion of the CITY in its Contract Compliance Affirmative Action Program.
- P. Intentionally blank.
- Q. All consultants subject to the provisions of this Section shall include a like provision in all subcontracts awarded for work to be performed under the Contract with the CITY and shall impose the same obligations, including but not limited to filing and reporting obligations, on the subconsultants as are applicable to the CONSULTANT. Failure of the CONSULTANT to comply with this requirement or to obtain the compliance of its subconsultants with all such obligations shall subject the CONSULTANT to the imposition of any and all sanctions allowed by law, including but not limited to termination of the CONSULTANT'S Contract with the CITY.

ARTICLE 41

FALSE CLAIMS ACT

CONSULTANT 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.

ARTICLE 42

EQUAL EMPLOYMENT PRACTICES

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

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

2. Nothing in this Section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.
 3. CONSULTANT agrees to post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.
- B. CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of CONSULTANT, state that all qualified applicants will receive consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
- C. As part of the CITY'S supplier registration process, and/or at the request of the awarding authority, or the Board of Public Works, Office of Contract Compliance, CONSULTANT shall certify in the specified format that he or she has not discriminated in the performance of CITY contracts against any employee or applicant for employment on the basis or because of race, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status or medical condition.
- D. CONSULTANT shall permit access to and may be required to provide certified copies of all of his or her records pertaining to employment and to employment practices by the awarding authority or the Office of Contract Compliance for the purpose of investigation to ascertain compliance with the Equal Employment Practices provisions of CITY contracts. On their or either of their request CONSULTANT shall provide evidence that he or she has or will comply therewith.
- E. The failure of any CONSULTANT to comply with the Equal Employment Practices provisions of this Contract may be deemed to be a material breach of CITY contracts. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made or penalties assessed except upon a full and fair hearing after notice, and an opportunity to be heard has been given to CONSULTANT.
- F. Upon a finding duly made that CONSULTANT has failed to comply with the Equal Employment Practices provisions of a

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

- G. Notwithstanding any other provision of this Contract, the CITY shall have any and all other remedies at law or in equity for any breach hereof.
- H. Intentionally blank.
- I. Nothing contained in this Contract shall be construed in any manner so as to require or permit any act which is prohibited by law.
- J. At the time a supplier registers to do business with the CITY, or when an individual bid or proposal is submitted, CONSULTANT shall agree to adhere to the Equal Employment Practices specified herein during the performance or conduct of CITY Contracts.
- K. Equal Employment Practices shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:
 - 1. Hiring practices;
 - 2. Apprenticeships where such approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;
 - 3. Training and promotional opportunities; and
 - 4. Reasonable accommodations for persons with disabilities.
- L. Any subcontract entered into by CONSULTANT, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract. Failure of CONSULTANT to

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

ARTICLE 43

FIRST SOURCE HIRING ORDINANCE

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

1. CONSULTANT shall, prior to the execution of the contract, provide to the Designated Administrative Agency (DAA) a list of anticipated employment opportunities that CONSULTANT estimate they will need to fill in order to perform the services under the Contract.
2. CONSULTANT further pledges that it will, during the term of the Contract, shall a) At least seven business days prior to making an announcement of a specific employment opportunity, provide notifications of that employment opportunity to the Community Development Department (CDD), which will refer individuals for interview; b) Interview qualified individuals referred by CDD; and c) Prior to filling any employment opportunity, the CONSULTANT shall inform the DAA of the names of the Referral Resources used, the names of the individuals they referred, the names of the referred individuals who the CONSULTANT interviewed and the reasons why referred individuals were not hired.
3. Any Subcontract entered into by the CONSULTANT relating to this Agreement, to the extent allowed hereunder, shall be subject to the provisions of FSHO, and shall incorporate the FSHO.
4. CONSULTANT shall comply with all rules, regulations and policies promulgated by the designated administrative agency, which may be amended from time to time.

Where under the provisions of Section 10.44.13 of the Los Angeles Administrative Code the designated administrative agency has determined that the CONSULTANT intentionally violated or used hiring practices for the purpose of avoiding the article, the determination must be documented in the Awarding Authority's Contractor Evaluation, required under Los

Angeles Administrative Code Section 10.39 et seq., and must be documented in each of the Contractor's subsequent Contractor Responsibility Questionnaires submitted under Los Angeles Administrative Code Section 10.40 et seq. This measure does not limit the City's authority to act under this article.

Under the provisions of Section 10.44.8 of the Los Angeles Administrative Code, the Awarding Authority shall, under appropriate circumstances, terminate this contract and otherwise pursue legal remedies that may be available if the designated administrative agency determines that the subject CONSULTANT has violated provisions of the FSHO.

EXCEPT AS EXPRESSLY MODIFIED herein, the Contract executed on September 3, 2008 remains unchanged.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 1 on the day and year written below.

DAVID EVANS AND ASSOCIATES, INC.

By:

Title:

Date:

CITY OF LOS ANGELES

By:

Title: President, Board of Public Works

Date:

By:

Date:

ATTEST:

JUNE LAGMAY, City Clerk

By:

Date:

APPROVED AS TO FORM:

MICHAEL N. FEUER, City Attorney

By:

Title: Assistant City Attorney

Date:

AMENDMENT NO. 1

to

Contract No. C-114382

for the

PRE-QUALIFIED ON-CALL LANDSCAPE ARCHITECTURAL CONSULTANT SERVICES

Between

CITY OF LOS ANGELES

and

DAVID VOLZ DESIGN LANDSCAPE ARCHITECTS INC.

AMENDMENT NO. 1 TO CONTRACT NO. C-114382, FOR PRE-QUALIFIED ON-CALL LANDSCAPE ARCHITECTURAL CONSULTANT SERVICES BETWEEN THE CITY OF LOS ANGELES AND DAVID VOLZ DESIGN LANDSCAPE ARCHITECTS INC.

This Amendment modifies Contract No. C-114382 executed on September 3, 2008 between the City of Los Angeles (hereinafter referred to as "CITY") and DAVID VOLZ DESIGN LANDSCAPE ARCHITECTS INC. (hereinafter referred to as "CONSULTANT").

WITNESSETH

WHEREAS, CITY issued a Request for Qualifications (RFQ) on April 16, 2007 for landscape architectural and related services, on a pre-qualified basis, on various projects and CONSULTANT submitted a statement of qualifications in response; and

WHEREAS, CONSULTANT demonstrated qualifications to perform said services and was selected to perform the design services by CITY staff based on the evaluation criteria set forth in the RFQ; and

WHEREAS, on September 3, 2008, Contract No. C-114382 was awarded to CONSULTANT, the terms of which will expire on September 3, 2013; and

WHEREAS, the CITY and CONSULTANT have agreed to extend the term of the Contract by three (3) additional years to September 3, 2016 in order to provide as needed landscape architectural and construction administration services; and

WHEREAS, the CITY'S Department of Public Works, Bureau of Engineering, (hereinafter referred to as "BUREAU"), is the Program Manager and oversees the CONSULTANT'S performance of this Contract; and

NOW, THEREFORE, in consideration of the foregoing and of the benefits which will accrue to the parties hereto in carrying out the conditions of this Amendment No. 1, Contract No. C-114382 is hereby amended as follows:

ARTICLE 1 SECTION HEADINGS AND CONSTRUCTION OF PROVISIONS AND TITLES HEREIN

No Change

ARTICLE 2 DEFINITIONS

No Change

ARTICLE 3 PROJECT DESCRIPTION

No Change

ARTICLE 4

RESPONSIBILITIES OF AND TASKS TO BE PERFORMED BY THE CONSULTANT

No Change

ARTICLE 5

KEY CONSULTANT PERSONNEL

Article 5 is hereby amended in to replace the Key Consultant Personnel table as follows:

5.1 CONSULTANT designates the following persons to implement the work:

From:

Name	Title
David Volz	Landscape Architect, Principal- in-Charge
Jay Brown	Landscape Architect, Project Manager
Greg Meek	Landscape Architect, Project Manager
Gary Vasquez	Landscape Architect, Creative Director

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

To:

Name	Title
David Volz	Landscape Architect, Principal- in-Charge
Paul Casser	Landscape Architect, Project Manager
Kathrine McNiel	Landscape Architect, Project Manager
Gary Vasquez	Landscape Architect, Creative Director

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

ARTICLE 6

RESPONSIBILITIES OF AND TASKS TO BE PERFORMED BY CITY

No Change

ARTICLE 7

TERM OF CONTRACT AND TIME OF EFFECTIVENESS

Article 7 is hereby amended in its first paragraph to read as follows:

Unless otherwise provided, the term of this Contract shall begin on the date of full execution and shall expire on September 3, 2016, unless

terminated as provided under Article 8 or extended by amendment to this Contract.

ARTICLE 8

TERMINATION

Article 8 is hereby amended in its entirety to read as follows:

8.1 Termination for Convenience

The CITY may terminate this Contract for the CITY'S convenience at any time by giving CONSULTANT thirty days written notice thereof. Upon receipt of said notice, CONSULTANT shall immediately take action not to incur any additional obligations, cost or expenses, except as may be reasonably necessary to terminate its activities. The CITY shall pay CONSULTANT its reasonable and allowable costs through the effective date of termination and those reasonable and necessary costs incurred by CONSULTANT to affect such termination. Thereafter, CONSULTANT shall have no further claims against the CITY under this Contract. All finished and unfinished documents and materials procured for or produced under this Contract, including all intellectual property rights thereto, shall become CITY property upon the date of such termination. CONSULTANT agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights provided herein.

8.2 Termination for Breach of Contract

8.2.1 Except for excusable delays as provided in Article 20, if CONSULTANT fails to perform any of the provisions of this Contract or so fails to make progress as to endanger timely performance of this Contract, the CITY may give CONSULTANT written notice of such default. If CONSULTANT does not cure such default or provide a plan to cure such default which is acceptable to the CITY within the time permitted by the CITY, then the CITY may terminate this Contract due to CONSULTANT'S breach of this Contract.

8.2.2 If a federal or state proceeding for relief of debtors is undertaken by or against CONSULTANT, or if CONSULTANT makes an assignment for the benefit of creditors, then the CITY may immediately terminate this Contract.

- 8.2.3 If CONSULTANT engages in any dishonest conduct related to the performance or administration of this Contract or violates the CITY'S lobbying policies, then the CITY may immediately terminate this Contract.
- 8.2.4 In the event the CITY terminates this Contract 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 CONSULTANT shall be liable to the CITY for all of its costs and damages, including, but not limited, any excess costs for such services.
- 8.2.5 All finished and unfinished documents and materials produced or procured under this Contract, including all intellectual property rights thereto, shall become CITY property upon date of such termination. CONSULTANT agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights provided herein.
- 8.2.6 If, after notice of termination of this Contract under the provisions of this Section, it is determined for any reason that CONSULTANT was not in default under the provisions of this Section, or that the default was excusable under the terms of this Contract, the rights and obligations of the parties shall be the same as if the notice of termination has been issued pursuant to Article 8.1 Termination for Convenience.
- 8.2.7 The rights and remedies of the CITY provided in this Section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

ARTICLE 9

SUBCONTRACT APPROVAL

Article 9 is hereby amended in its title and first paragraph to read as follows:

SUBCONSULTANT APPROVAL

CONSULTANT shall not use subconsultants to assist in performance of this Contract without the prior written approval of the CITY. If the CITY permits the use of subconsultants, CONSULTANT shall remain responsible for performing all aspects of this Contract. The

CONSULTANT is required to provide the CITY a list of all subconsultants including the name and address of the firms. Refer to **Exhibit K** for CONSULTANT and subconsultant information. The CITY has the right to approve CONSULTANT'S subconsultants and the CITY reserves the right to request replacement of subconsultants. The CITY does not have any obligation to pay CONSULTANT'S subconsultants and nothing herein creates any privity between the CITY and the subconsultants. Wholly-owned subsidiaries of CONSULTANT shall not be considered subconsultants.

ARTICLE 10

COMPENSATION, INVOICING AND PAYMENT

Article 10 is hereby amended to include a third paragraph to Section 10.6 to read as follows:

For the sake of efficiency, the CONSULTANT may have provided services prior to the execution of this Amendment. Upon execution of this Amendment, and to the extent that said services were performed in accordance with the terms and conditions of the Contract and this Amendment, those services are hereby ratified and eligible for payment.

ARTICLE 11

AMENDMENTS, CHANGES OR MODIFICATIONS

No Change

ARTICLE 12

INDEMNIFICATION AND INSURANCE

No Change

ARTICLE 13

INDEPENDENT CONTRACTORS

No Change

ARTICLE 14

WARRANTY AND RESPONSIBILITY OF CONSULTANT

No Change

ARTICLE 15

OWNERSHIP OF DATA AND INTELLECTUAL PROPERTY

Article 15 is hereby amended in its title and content to read as follows:

15.1 Ownership of Data and License

15.1.1 Unless otherwise provided for herein, all Work Products originated and prepared by CONSULTANT or its subconsultants of any tier under this Contract shall be and

remain the exclusive property of the CITY for its use in any manner it deems appropriate. Work Products are all works, tangible or not, created under this Contract including, without limitation, documents, material, data, reports, manuals, specifications, artwork, drawings, sketches, computer programs and databases, schematics, photographs, video and audiovisual recordings, sound recordings, marks, logos, graphic designs, notes, websites, domain names, inventions, processes, formulas matters and combinations thereof, and all forms of intellectual property. CONSULTANT hereby assigns, and agrees to assign, all goodwill, copyright, trademark, patent, trade secret and all other intellectual property rights worldwide in any Work Products originated and prepared by CONSULTANT under this Contract. CONSULTANT further agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights provided herein.

- 15.1.2 With regard to the basis for design calculations and engineering notes, such data shall be provided to the CITY in (a) hard cover post binder(s), appropriately indexed, on thin Mylar stock or good quality paper satisfactory for reproduction.
- 15.1.3 For all Work Products delivered to the CITY that are not originated or prepared by CONSULTANT or its subconsultants of any tier under this Contract, CONSULTANT hereby grants a non-exclusive perpetual license to use such Work Products for any CITY purposes.
- 15.1.4 CONSULTANT shall not provide or disclose any Work Products to any third party without prior written consent of the City.
- 15.1.5 All documents, information and pre-existing materials provided by CITY to CONSULTANT and its subconsultants arising out of or related to this Contract shall remain the property of the CITY. The CONSULTANT may not use, distribute or otherwise make public in any manner, either for profit or not for profit, any of the information, documentation, or procedures developed for the CITY hereunder without the prior written consent of the CITY. CONSULTANT further agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights.

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

15.2 Intellectual Property Warranty

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

15.3 Intellectual Property Indemnification

15.3.1 CONSULTANT, at its own expense, undertakes and agrees to defend, indemnify, and hold harmless the CITY, and any of its Boards, officers, agents, employees, assigns, and successors in interest from and against all suits and causes of action, claims, losses, demands and expenses, including but not limited to, attorney's fees (both in-house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the CITY, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever arising out of the infringement, actual or alleged, direct or contributory, of any intellectual property rights, including, without limitation, patent, copyright, trademark, trade secret, right of publicity and proprietary information right (1) on or in any design, medium, matter, article, process, method, application, equipment, device, instrumentation, software, hardware, or firmware used by CONSULTANT, or its subconsultants of any tier, in performing the work under this Contract; or (2) as a result of the CITY'S actual or intended use of any Work Product furnished by

CONSULTANT, or its subconsultants of any tier, under the Agreement. Rights and remedies available to the CITY under this provision are cumulative of those provided for elsewhere in this Contract and those allowed under the laws of the United States, the State of California, and the CITY. The provisions of Article 15 shall survive expiration or termination of this Contract.

15.3.2 In CONSULTANT'S defense of the CITY Defendants, negotiation, compromise, and settlement of any such infringement action, the Los Angeles City Attorney's Office shall retain discretion in and control of the litigation, negotiation, compromise, settlement, and appeals therefrom, as required by the Los Angeles City Charter, particularly Article II, Sections 271, 272 and 273 thereof.

15.3.3 Where any Work Product furnished by CONSULTANT (a) becomes the subject of an action, (b) is adjudicated as infringing a third party's Intellectual Property right, or (c) has its use enjoined or license terminated; CONSULTANT shall, with the CITY'S consent, do one of the following immediately. CONSULTANT shall at its expense either:

- i) procure for the CITY the right or license to continue using the Work Product; or
- ii) replace the Work Product with a functionally equivalent, non-infringing product.

Exercise of any of the above-mentioned options shall not cause undue business interruption to the CITY or diminish the intended benefits and use of the Work Product by the CITY under this Contract.

ARTICLE 16

NONDISCRIMINATION AND AFFIRMATIVE ACTION

Article 16 is hereby amended in its title and content to read as follows:

NONDISCRIMINATION

Unless otherwise exempt, this Contract is subject to the nondiscrimination provisions in Sections 10.8 through 10.8.2 of the Los Angeles Administrative Code, as amended from time to time. The CONSULTANT shall comply with the applicable nondiscrimination and affirmative action provisions of the laws of the United States of America, the State of California, and the CITY. In performing this Contract, CONSULTANT

shall not discriminate in its employment practices against any employee or applicant for employment because of such person's race, religion, national origin, ancestry, sex, sexual orientation, age, disability, domestic partner status, marital status or medical condition. The CONSULTANT 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 said Office. Any subcontract entered into by CONSULTANT, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract.

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

ARTICLE 17

**MINORITY, WOMEN AND OTHER BUSINESS ENTERPRISE
OUTREACH PROGRAM**

No Change

ARTICLE 18

SUCCESSORS AND ASSIGNS

No Change

ARTICLE 19

CONTACT PERSONS – PROPER ADDRESSES – NOTIFICATION

Article 19 is hereby amended in its consultant contract to read as follows:

To Consultant:

From:

Contact Person: Greg Meek

Landscape Architect, Project Manager

Address: David Volz Design Landscape Architects Inc.

151 Kalmus Drive, Suite M8

Costa Mesa, CA 92626

To:

Contact Person: David Volz

Landscape Architect, LEED AP, QSD/P

Address: David Volz Design Landscape Architects Inc.

151 Kalmus Drive, Suite M8

Costa Mesa, CA 92626

ARTICLE 20

EXCUSABLE DELAYS

No Change

ARTICLE 21

SEVERABILITY

No Change

ARTICLE 22

DISPUTES

No Change

ARTICLE 23

ENTIRE CONTRACT

No Change

ARTICLE 24

APPLICABLE LAW, INTERPRETATION AND ENFORCEMENT

No Change

ARTICLE 25

**CURRENT LOS ANGELES CITY BUSINESS TAX
REGISTRATION CERTIFICATE REQUIRED**

No Change

ARTICLE 26

BONDS

Article 26 is hereby amended in its entirety to read as follows:

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

ARTICLE 27

CHILD SUPPORT ASSIGNMENT ORDERS

No Change

ARTICLE 28

**LIVING WAGE ORDINANCE AND SERVICE CONTRACTOR
WORKER RETENTION ORDINANCE**

No Change

ARTICLE 29

AMERICANS WITH DISABILITIES ACT

No Change

ARTICLE 30

EQUAL BENEFITS ORDINANCE

Article 30 is hereby amended in its entirety to read as follows:

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.

1. During the performance of the Contract, CONSULTANT certifies and represents that CONSULTANT will comply with the EBO.
2. The failure of CONSULTANT to comply with the EBO will be deemed to be a material breach of this Contract by the CITY.
3. If CONSULTANT fails to comply with the EBO, the CITY may cancel, terminate or suspend the 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.
4. Failure to comply with the EBO may be used as evidence against CONSULTANT in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40 *et seq.*, Contractor Responsibility Ordinance.
5. If the CITY'S Designated Administrative Agency determines that a CONSULTANT has set up or used its contracting entity for the purpose of evading the intent of the EBO, the CITY may terminate the Contract. Violation of this provision may be used as evidence against CONSULTANT in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40 *et seq.*, Contractor Responsibility Ordinance.

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

“During the performance of a Contract with the City of Los Angeles, the Consultant 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) 847-2632.”

ARTICLE 31

WAIVER

No Change

ARTICLE 32

PROHIBITION AGAINST ASSIGNMENT OR DELEGATION

No Change

ARTICLE 33

PERMITS

No Change

ARTICLE 34

CLAIMS FOR LABOR AND MATERIALS

No Change

ARTICLE 35

DISCOUNTS

No Change

ARTICLE 36

CONTRACTOR RESPONSIBILITY ORDINANCE

No Change

ARTICLE 37

BREACH

No Change

ARTICLE 38

SLAVERY DISCLOSURE ORDINANCE

No Change

ARTICLE 39

**CONTRACT BIDDER CERTIFICATION OF COMPLIANCE
WITH LOBBYING LAWS**

Article 39 is hereby amended in its title and content to read as follows:

BIDDER ETHICS

Pursuant to the Los Angeles Municipal Lobbying Ordinance, any bidder for a contract shall submit with its proposal a Bidder Certification CEC Form 50 (**Exhibit J**), proscribed by the City Ethics Commission, in which the bidder acknowledges and agrees to comply with the disclosure requirements and prohibitions established in the Ordinance if the bidder qualifies as a lobbying entity under the Ordinance.

As amended, this Contract is also subject to Charter Section 470(c)(12) and related ordinances and as a result, the CONSULTANT was required to submit Bidder Contributions CEC Form 55 (**Exhibit J**) within ten business days of discussing the amendment. Consequently, CONSULTANT may not make campaign contributions to and or engage in fundraising for certain elected City officials or candidates for elected City office from the date the amendment is first discussed until 12 months after the amendment is signed. The CONSULTANT'S principals and subconsultants performing \$100,000 or more in work on the contract, as well as the principals of those subconsultants, are also subject to the same limitations on campaign contributions and fundraising.

CONSULTANT must also notify their principals and subconsultants in writing of the restrictions and include the notice in contracts with subconsultants. Consultants who fail to comply with City law may be subject to penalties, termination of contract, and debarment. Additional information regarding these restrictions and requirements may be obtained from the City Ethics Commission at (213) 978-1960.

The Contract is hereby amended to include the following Articles:

ARTICLE 40 **AFFIRMATIVE ACTION**

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

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

- B. CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of CONSULTANT, state that all qualified applicants will receive consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
- C. As part of the CITY'S supplier registration process, and/or at the request of the awarding authority or the Office of Contract Compliance, CONSULTANT shall certify on an electronic or hard copy form to be supplied, that CONSULTANT has not discriminated in the performance of CITY contracts against any employee or applicant for employment on the basis or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
- D. CONSULTANT shall permit access to and may be required to provide certified copies of all of its records pertaining to employment and to its employment practices by the awarding authority or the Office of Contract Compliance, for the purpose of investigation to ascertain compliance with the Affirmative Action Program provisions of CITY contracts, and on their or either of their request to provide evidence that it has or will comply therewith.
- E. The failure of any CONSULTANT to comply with the Affirmative Action Program provisions of CITY contracts may be deemed to be a material breach of contract. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made except upon a full and fair hearing after notice and an opportunity to be heard has been given to CONSULTANT.
- F. Upon a finding duly made that CONSULTANT has breached the Affirmative Action Program provisions of a CITY contract, the Contract may be forthwith cancelled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the CITY. In addition thereto, such breach may be the basis for a determination by the awarding authority or the Board of Public Works that the said CONSULTANT is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Los Angeles City Charter. In the event of such determination, such CONSULTANT shall be disqualified from being awarded a contract with the CITY for a period of two years, or until he or she

shall establish and carry out a program in conformance with the provisions hereof.

- G. In the event of a finding by the Fair Employment and Housing Commission of the State of California, or the Board of Public Works of the City of Los Angeles, or any court of competent jurisdiction, that CONSULTANT has been guilty of a willful violation of the California Fair Employment and Housing Act, or the Affirmative Action Program provisions of a CITY contract, there may be deducted from the amount payable to CONSULTANT by the CITY under the Contract, a penalty of ten dollars (\$10.00) for each person for each calendar day on which such person was discriminated against in violation of the provisions of a CITY contract.
- H. Notwithstanding any other provisions of a CITY contract, the CITY shall have any and all other remedies at law or in equity for any breach hereof.
- I. Intentionally blank.
- J. Nothing contained in CITY contracts shall be construed in any manner so as to require or permit any act which is prohibited by law.
- K. CONSULTANT shall submit an Affirmative Action Plan which shall meet the requirements of this chapter at the time it submits its bid or proposal or at the time it registers to do business with the CITY. The plan shall be subject to approval by the Office of Contract Compliance prior to award of the Contract. The awarding authority may also require consultants and suppliers to take part in a pre-registration, pre-bid, pre-proposal, or pre-award conference in order to develop, improve or implement a qualifying Affirmative Action Plan. Affirmative Action Programs developed pursuant to this Section shall be effective for a period of twelve months from the date of approval by the Office of Contract Compliance. In case of prior submission of a plan, CONSULTANT may submit documentation that it has an Affirmative Action Plan approved by the Office of Contract Compliance within the previous twelve months. If the approval is 30 days or less from expiration, CONSULTANT must submit a new Plan to the Office of Contract Compliance and that Plan must be approved before the Contract is awarded.
 - 1. Every contract of \$5,000 or more which may provide construction, demolition, renovation, conservation or major

maintenance of any kind shall in addition comply with the requirements of Section 10.13 of the Los Angeles Administrative Code.

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

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

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

1. Apprenticeship where approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;
2. Classroom preparation for the job when not apprenticeable;
3. Pre-apprenticeship education and preparation;
4. Upgrading training and opportunities;
5. Encouraging the use of consultants, subconsultants and suppliers of all racial and ethnic groups, provided, however, that any contract subject to this ordinance shall require the CONSULTANT, subconsultant or supplier to provide not less than the prevailing wage, working conditions and practices generally observed in private industries in the consultant's, subconsultant's, or supplier's geographical area for such work;

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

ARTICLE 41

FALSE CLAIMS ACT

CONSULTANT 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.

ARTICLE 42

EQUAL EMPLOYMENT PRACTICES

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

- A. During the performance of this Contract, CONSULTANT agrees and represents that it will provide equal employment practices and CONSULTANT and each subconsultant hereunder will ensure that in his or her employment practices, persons are employed and employees are treated equally and without regard to or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
 - 1. This provision applies to work or service performed or materials manufactured or assembled in the United States.
 - 2. Nothing in this Section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.
 - 3. CONSULTANT agrees to post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.

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

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

- D. CONSULTANT shall permit access to and may be required to provide certified copies of all of his or her records pertaining to employment and to employment practices by the awarding authority or the Office of Contract Compliance for the purpose of investigation to ascertain compliance with the Equal Employment Practices provisions of CITY contracts. On their or either of their

request CONSULTANT shall provide evidence that he or she has or will comply therewith.

- E. The failure of any CONSULTANT to comply with the Equal Employment Practices provisions of this Contract may be deemed to be a material breach of CITY contracts. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made or penalties assessed except upon a full and fair hearing after notice, and an opportunity to be heard has been given to CONSULTANT.
- F. Upon a finding duly made that CONSULTANT has failed to comply with the Equal Employment Practices provisions of a CITY contract, the Contract may be forthwith cancelled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the CITY. In addition thereto, such failure to comply may be the basis for a determination by the awarding authority or the Board of Public Works that the CONSULTANT is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Charter of the City of Los Angeles. In the event of such a determination, CONSULTANT shall be disqualified from being awarded a contract with the CITY for a period of two years, or until CONSULTANT shall establish and carry out a program in conformance with the provisions hereof.
- G. Notwithstanding any other provision of this Contract, the CITY shall have any and all other remedies at law or in equity for any breach hereof.
- H. Intentionally blank.
- I. Nothing contained in this Contract shall be construed in any manner so as to require or permit any act which is prohibited by law.
- J. At the time a supplier registers to do business with the CITY, or when an individual bid or proposal is submitted, CONSULTANT shall agree to adhere to the Equal Employment Practices specified herein during the performance or conduct of CITY Contracts.
- K. Equal Employment Practices shall, without limitation as to the subject or nature of employment activity, be concerned with such

employment practices as:

1. Hiring practices;
 2. Apprenticeships where such approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;
 3. Training and promotional opportunities; and
 4. Reasonable accommodations for persons with disabilities.
- L. Any subcontract entered into by CONSULTANT, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract. Failure of CONSULTANT to comply with this requirement or to obtain the compliance of its subconsultants with all such obligations shall subject CONSULTANT to the imposition of any and all sanctions allowed by law, including but not limited to termination of the CONSULTANT'S Contract with the CITY.

ARTICLE 43

FIRST SOURCE HIRING ORDINANCE

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

1. CONSULTANT shall, prior to the execution of the contract, provide to the Designated Administrative Agency (DAA) a list of anticipated employment opportunities that CONSULTANT estimate they will need to fill in order to perform the services under the Contract.
2. CONSULTANT further pledges that it will, during the term of the Contract, shall a) At least seven business days prior to making an announcement of a specific employment opportunity, provide notifications of that employment opportunity to the Community Development Department (CDD), which will refer individuals for interview; b) Interview qualified individuals referred by CDD; and c) Prior to filling any employment opportunity, the CONSULTANT shall inform the DAA of the names of the Referral Resources used, the names of the individuals they referred, the names of the referred individuals who the CONSULTANT interviewed and the reasons why referred individuals were not hired.

3. Any Subcontract entered into by the CONSULTANT relating to this Agreement, to the extent allowed hereunder, shall be subject to the provisions of FSHO, and shall incorporate the FSHO.
4. CONSULTANT shall comply with all rules, regulations and policies promulgated by the designated administrative agency, which may be amended from time to time.

Where under the provisions of Section 10.44.13 of the Los Angeles Administrative Code the designated administrative agency has determined that the CONSULTANT intentionally violated or used hiring practices for the purpose of avoiding the article, the determination must be documented in the Awarding Authority's Contractor Evaluation, required under Los Angeles Administrative Code Section 10.39 et seq., and must be documented in each of the Contractor's subsequent Contractor Responsibility Questionnaires submitted under Los Angeles Administrative Code Section 10.40 et seq. This measure does not limit the City's authority to act under this article.

Under the provisions of Section 10.44.8 of the Los Angeles Administrative Code, the Awarding Authority shall, under appropriate circumstances, terminate this contract and otherwise pursue legal remedies that may be available if the designated administrative agency determines that the subject CONSULTANT has violated provisions of the FSHO.

EXCEPT AS EXPRESSLY MODIFIED herein, the Contract executed on September 3, 2008 remains unchanged.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 1 on the day and year written below.

DAVID VOLZ DESIGN LANDSCAPE ARCHITECTS

By:

Title:

Date:

CITY OF LOS ANGELES

By:

Title: President, Board of Public Works

Date:

By:

Date:

ATTEST:

JUNE LAGMAY, City Clerk

By:

Date:

APPROVED AS TO FORM:

MICHAEL N. FEUER, City Attorney

By:

Title: Assistant City Attorney

Date:

AMENDMENT NO. 1

to

Contract No. C-114381

for the

PRE-QUALIFIED ON-CALL LANDSCAPE ARCHITECTURAL CONSULTANT SERVICES

Between

CITY OF LOS ANGELES

and

KATHERINE SPITZ ASSOCIATES, INC.

AMENDMENT NO. 1 TO CONTRACT NO. C-114381, FOR PRE-QUALIFIED ON-CALL LANDSCAPE ARCHITECTURAL CONSULTANT SERVICES BETWEEN THE CITY OF LOS ANGELES AND KATHERINE SPITZ ASSOCIATES, INC.

This Amendment modifies Contract No. C-114381 executed on September 3, 2008 between the City of Los Angeles (hereinafter referred to as "CITY") and KATHERINE SPITZ ASSOCIATES, INC. (hereinafter referred to as "CONSULTANT").

WITNESSETH

WHEREAS, CITY issued a Request for Qualifications (RFQ) on April 16, 2007 for landscape architectural and related services, on a pre-qualified basis, on various projects and CONSULTANT submitted a statement of qualifications in response; and

WHEREAS, CONSULTANT demonstrated qualifications to perform said services and was selected to perform the design services by CITY staff based on the evaluation criteria set forth in the RFQ; and

WHEREAS, on September 3, 2008, Contract No. C-114381 was awarded to CONSULTANT, the terms of which will expire on September 3, 2013; and

WHEREAS, the CITY and CONSULTANT have agreed to extend the term of the Contract by three (3) additional years to September 3, 2016 in order to provide as needed landscape architectural and construction administration services; and

WHEREAS, the CITY'S Department of Public Works, Bureau of Engineering, (hereinafter referred to as "BUREAU"), is the Program Manager and oversees the CONSULTANT'S performance of this Contract; and

NOW, THEREFORE, in consideration of the foregoing and of the benefits which will accrue to the parties hereto in carrying out the conditions of this Amendment No. 1, Contract No. C-114381 is hereby amended as follows:

ARTICLE 1 SECTION HEADINGS AND CONSTRUCTION OF PROVISIONS AND TITLES HEREIN

No Change

ARTICLE 2 DEFINITIONS

No Change

ARTICLE 3 PROJECT DESCRIPTION

No Change

ARTICLE 4

RESPONSIBILITIES OF AND TASKS TO BE PERFORMED BY THE CONSULTANT

No Change

ARTICLE 5

KEY CONSULTANT PERSONNEL

Article 5 is hereby amended in to replace the Key Consultant Personnel table as follows:

5.1 CONSULTANT designates the following persons to implement the work:

From:

Name	Title
Katherine Spitz	Principal Landscape Architect
Melinda Wood	Landscape Architect
Steve Lacap	Production Manager
Eric Gibson	Project Designer
Karina Garcia	Project Designer
Lorena Matos	Project Designer
Marianne Simon	Project Designer
Sharn Ure	Project Manager
Anne Boyd	Project Manager
Thomas Lechich	Draftsperson

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

To:

Name	Title
Katherine Spitz	Principal Landscape Architect
Sharn Stinson-Ure	Principal
Steve Lacap	Production Manager
Karina Garcia	Project Designer
Brendan Bettwy	Project Designer
Milet Libuanao	Project Designer
Grant Saita	Project Designer
Ed Lew	Project Designer

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

ARTICLE 6

RESPONSIBILITIES OF AND TASKS TO BE PERFORMED BY CITY

No Change

ARTICLE 7

TERM OF CONTRACT AND TIME OF EFFECTIVENESS

Article 7 is hereby amended in its first paragraph to read as follows:

Unless otherwise provided, the term of this Contract shall begin on the date of full execution and shall expire on September 3, 2016, unless terminated as provided under Article 8 or extended by amendment to this Contract.

ARTICLE 8

TERMINATION

Article 8 is hereby amended in its entirety to read as follows:

8.1 Termination for Convenience

The CITY may terminate this Contract for the CITY'S convenience at any time by giving CONSULTANT thirty days written notice thereof. Upon receipt of said notice, CONSULTANT shall immediately take action not to incur any additional obligations, cost or expenses, except as may be reasonably necessary to terminate its activities. The CITY shall pay CONSULTANT its reasonable and allowable costs through the effective date of termination and those reasonable and necessary costs incurred by CONSULTANT to affect such termination. Thereafter, CONSULTANT shall have no further claims against the CITY under this Contract. All finished and unfinished documents and materials procured for or produced under this Contract, including all intellectual property rights thereto, shall become CITY property upon the date of such termination. CONSULTANT agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights provided herein.

8.2 Termination for Breach of Contract

8.2.1 Except for excusable delays as provided in Article 20, if CONSULTANT fails to perform any of the provisions of this Contract or so fails to make progress as to endanger timely performance of this Contract, the CITY may give CONSULTANT written notice of such default. If CONSULTANT does not cure such default or provide a plan to cure such default which is acceptable to the CITY within the time permitted by the CITY, then the CITY may terminate this Contract due to CONSULTANT'S breach of this Contract.

- 8.2.2 If a federal or state proceeding for relief of debtors is undertaken by or against CONSULTANT, or if CONSULTANT makes an assignment for the benefit of creditors, then the CITY may immediately terminate this Contract.
- 8.2.3 If CONSULTANT engages in any dishonest conduct related to the performance or administration of this Contract or violates the CITY'S lobbying policies, then the CITY may immediately terminate this Contract.
- 8.2.4 In the event the CITY terminates this Contract 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 CONSULTANT shall be liable to the CITY for all of its costs and damages, including, but not limited, any excess costs for such services.
- 8.2.5 All finished and unfinished documents and materials produced or procured under this Contract, including all intellectual property rights thereto, shall become CITY property upon date of such termination. CONSULTANT agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights provided herein.
- 8.2.6 If, after notice of termination of this Contract under the provisions of this Section, it is determined for any reason that CONSULTANT was not in default under the provisions of this Section, or that the default was excusable under the terms of this Contract, the rights and obligations of the parties shall be the same as if the notice of termination has been issued pursuant to Article 8.1 Termination for Convenience.
- 8.2.7 The rights and remedies of the CITY provided in this Section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

ARTICLE 9

SUBCONTRACT APPROVAL

Article 9 is hereby amended in its title and first paragraph to read as follows:

SUBCONSULTANT APPROVAL

CONSULTANT shall not use subconsultants to assist in performance of this Contract without the prior written approval of the CITY. If the CITY permits the use of subconsultants, CONSULTANT shall remain responsible for performing all aspects of this Contract. The CONSULTANT is required to provide the CITY a list of all subconsultants including the name and address of the firms. Refer to **Exhibit K** for CONSULTANT and subconsultant information. The CITY has the right to approve CONSULTANT'S subconsultants and the CITY reserves the right to request replacement of subconsultants. The CITY does not have any obligation to pay CONSULTANT'S subconsultants and nothing herein creates any privity between the CITY and the subconsultants. Wholly-owned subsidiaries of CONSULTANT shall not be considered subconsultants.

ARTICLE 10

COMPENSATION, INVOICING AND PAYMENT

Article 10 is hereby amended to include a third paragraph to Section 10.6 to read as follows:

For the sake of efficiency, the CONSULTANT may have provided services prior to the execution of this Amendment. Upon execution of this Amendment, and to the extent that said services were performed in accordance with the terms and conditions of the Contract and this Amendment, those services are hereby ratified and eligible for payment.

ARTICLE 11

AMENDMENTS, CHANGES OR MODIFICATIONS

No Change

ARTICLE 12

INDEMNIFICATION AND INSURANCE

No Change

ARTICLE 13

INDEPENDENT CONTRACTORS

No Change

ARTICLE 14

WARRANTY AND RESPONSIBILITY OF CONSULTANT

No Change

ARTICLE 15

OWNERSHIP OF DATA AND INTELLECTUAL PROPERTY

Article 15 is hereby amended in its title and content to read as follows:

15.1 Ownership of Data and License

- 15.1.1 Unless otherwise provided for herein, all Work Products originated and prepared by CONSULTANT or its subconsultants of any tier under this Contract shall be and remain the exclusive property of the CITY for its use in any manner it deems appropriate. Work Products are all works, tangible or not, created under this Contract including, without limitation, documents, material, data, reports, manuals, specifications, artwork, drawings, sketches, computer programs and databases, schematics, photographs, video and audiovisual recordings, sound recordings, marks, logos, graphic designs, notes, websites, domain names, inventions, processes, formulas matters and combinations thereof, and all forms of intellectual property. CONSULTANT hereby assigns, and agrees to assign, all goodwill, copyright, trademark, patent, trade secret and all other intellectual property rights worldwide in any Work Products originated and prepared by CONSULTANT under this Contract. CONSULTANT further agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights provided herein.
- 15.1.2 With regard to the basis for design calculations and engineering notes, such data shall be provided to the CITY in (a) hard cover post binder(s), appropriately indexed, on thin Mylar stock or good quality paper satisfactory for reproduction.
- 15.1.3 For all Work Products delivered to the CITY that are not originated or prepared by CONSULTANT or its subconsultants of any tier under this Contract, CONSULTANT hereby grants a non-exclusive perpetual license to use such Work Products for any CITY purposes.
- 15.1.4 CONSULTANT shall not provide or disclose any Work Products to any third party without prior written consent of the City.
- 15.1.5 All documents, information and pre-existing materials provided by CITY to CONSULTANT and its subconsultants arising out of or related to this Contract shall remain the property of the CITY. The CONSULTANT may not use, distribute or otherwise make

public in any manner, either for profit or not for profit, any of the information, documentation, or procedures developed for the CITY hereunder without the prior written consent of the CITY. CONSULTANT further agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights.

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

15.2 Intellectual Property Warranty

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

15.3 Intellectual Property Indemnification

15.3.1 CONSULTANT, at its own expense, undertakes and agrees to defend, indemnify, and hold harmless the CITY, and any of its Boards, officers, agents, employees, assigns, and successors in interest from and against all suits and causes of action, claims, losses, demands and expenses, including but not limited to, attorney's fees (both in-house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the CITY, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever arising out of the infringement, actual or alleged, direct or contributory, of any intellectual property rights, including, without limitation, patent, copyright, trademark, trade secret, right of publicity and proprietary information right (1) on or in

any design, medium, matter, article, process, method, application, equipment, device, instrumentation, software, hardware, or firmware used by CONSULTANT, or its subconsultants of any tier, in performing the work under this Contract; or (2) as a result of the CITY'S actual or intended use of any Work Product furnished by CONSULTANT, or its subconsultants of any tier, under the Agreement. Rights and remedies available to the CITY under this provision are cumulative of those provided for elsewhere in this Contract and those allowed under the laws of the United States, the State of California, and the CITY. The provisions of Article 15 shall survive expiration or termination of this Contract.

15.3.2 In CONSULTANT'S defense of the CITY Defendants, negotiation, compromise, and settlement of any such infringement action, the Los Angeles City Attorney's Office shall retain discretion in and control of the litigation, negotiation, compromise, settlement, and appeals therefrom, as required by the Los Angeles City Charter, particularly Article II, Sections 271, 272 and 273 thereof.

15.3.3 Where any Work Product furnished by CONSULTANT (a) becomes the subject of an action, (b) is adjudicated as infringing a third party's Intellectual Property right, or (c) has its use enjoined or license terminated; CONSULTANT shall, with the CITY'S consent, do one of the following immediately. CONSULTANT shall at its expense either:

- i) procure for the CITY the right or license to continue using the Work Product; or
- ii) replace the Work Product with a functionally equivalent, non-infringing product.

Exercise of any of the above-mentioned options shall not cause undue business interruption to the CITY or diminish the intended benefits and use of the Work Product by the CITY under this Contract.

ARTICLE 16

NONDISCRIMINATION AND AFFIRMATIVE ACTION

Article 16 is hereby amended in its title and content to read as follows:

NONDISCRIMINATION

Unless otherwise exempt, this Contract is subject to the nondiscrimination provisions in Sections 10.8 through 10.8.2 of the Los Angeles Administrative Code, as amended from time to time. The CONSULTANT shall comply with the applicable nondiscrimination and affirmative action provisions of the laws of the United States of America, the State of California, and the CITY. In performing this Contract, CONSULTANT shall not discriminate in its employment practices against any employee or applicant for employment because of such person's race, religion, national origin, ancestry, sex, sexual orientation, age, disability, domestic partner status, marital status or medical condition. The CONSULTANT 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 said Office. Any subcontract entered into by CONSULTANT, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract.

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

ARTICLE 17

**MINORITY, WOMEN AND OTHER BUSINESS ENTERPRISE
OUTREACH PROGRAM**

No Change

ARTICLE 18

SUCCESSORS AND ASSIGNS

No Change

ARTICLE 19

CONTACT PERSONS – PROPER ADDRESSES – NOTIFICATION

No Change

ARTICLE 20

EXCUSABLE DELAYS

No Change

ARTICLE 21

SEVERABILITY

No Change

ARTICLE 22

DISPUTES

No Change

ARTICLE 23 **ENTIRE CONTRACT**

No Change

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

No Change

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

No Change

ARTICLE 26 **BONDS**

Article 26 is hereby amended in its entirety to read as follows:

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

ARTICLE 27 **CHILD SUPPORT ASSIGNMENT ORDERS**

No Change

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

No Change

ARTICLE 29 **AMERICANS WITH DISABILITIES ACT**

No Change

ARTICLE 30 **EQUAL BENEFITS ORDINANCE**

Article 30 is hereby amended in its entirety to read as follows:

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.

1. During the performance of the Contract, CONSULTANT certifies and represents that CONSULTANT will comply with the EBO.
2. The failure of CONSULTANT to comply with the EBO will be deemed to be a material breach of this Contract by the CITY.
3. If CONSULTANT fails to comply with the EBO, the CITY may cancel, terminate or suspend the 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.
4. Failure to comply with the EBO may be used as evidence against CONSULTANT in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40 *et seq.*, Contractor Responsibility Ordinance.
5. If the CITY'S Designated Administrative Agency determines that a CONSULTANT has set up or used its contracting entity for the purpose of evading the intent of the EBO, the CITY may terminate the Contract. Violation of this provision may be used as evidence against CONSULTANT in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40 *et seq.*, Contractor Responsibility Ordinance.

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

“During the performance of a Contract with the City of Los Angeles, the Consultant 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) 847-2632.”

ARTICLE 31

WAIVER

No Change

ARTICLE 32

PROHIBITION AGAINST ASSIGNMENT OR DELEGATION

No Change

ARTICLE 33

PERMITS

No Change

ARTICLE 34

CLAIMS FOR LABOR AND MATERIALS

No Change

ARTICLE 35

DISCOUNTS

No Change

ARTICLE 36

CONTRACTOR RESPONSIBILITY ORDINANCE

No Change

ARTICLE 37

BREACH

No Change

ARTICLE 38

SLAVERY DISCLOSURE ORDINANCE

No Change

ARTICLE 39

**CONTRACT BIDDER CERTIFICATION OF COMPLIANCE
WITH LOBBYING LAWS**

Article 39 is hereby amended in its title and content to read as follows:

BIDDER ETHICS

Pursuant to the Los Angeles Municipal Lobbying Ordinance, any bidder for a contract shall submit with its proposal a Bidder Certification CEC Form 50 (**Exhibit J**), proscribed by the City Ethics Commission, in which the bidder acknowledges and agrees to comply with the disclosure requirements and prohibitions established in the Ordinance if the bidder qualifies as a lobbying entity under the Ordinance.

As amended, this Contract is also subject to Charter Section 470(c)(12) and related ordinances and as a result, the CONSULTANT was required to submit Bidder Contributions CEC Form 55 (**Exhibit J**) within ten business days of discussing the amendment. Consequently, CONSULTANT may not make campaign contributions to and or engage in fundraising for certain elected City officials or candidates for elected City office from the date the amendment is first discussed until 12 months after the amendment is signed. The CONSULTANT'S principals and subconsultants performing \$100,000 or more in work on the contract, as well as the principals of those subconsultants, are also subject to the same

limitations on campaign contributions and fundraising.

CONSULTANT must also notify their principals and subconsultants in writing of the restrictions and include the notice in contracts with subconsultants. Consultants who fail to comply with City law may be subject to penalties, termination of contract, and debarment. Additional information regarding these restrictions and requirements may be obtained from the City Ethics Commission at (213) 978-1960.

The Contract is hereby amended to include the following Articles:

ARTICLE 40

AFFIRMATIVE ACTION

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

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

copy form to be supplied, that CONSULTANT has not discriminated in the performance of CITY contracts against any employee or applicant for employment on the basis or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.

- D. CONSULTANT shall permit access to and may be required to provide certified copies of all of its records pertaining to employment and to its employment practices by the awarding authority or the Office of Contract Compliance, for the purpose of investigation to ascertain compliance with the Affirmative Action Program provisions of CITY contracts, and on their or either of their request to provide evidence that it has or will comply therewith.
- E. The failure of any CONSULTANT to comply with the Affirmative Action Program provisions of CITY contracts may be deemed to be a material breach of contract. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made except upon a full and fair hearing after notice and an opportunity to be heard has been given to CONSULTANT.
- F. Upon a finding duly made that CONSULTANT has breached the Affirmative Action Program provisions of a CITY contract, the Contract may be forthwith cancelled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the CITY. In addition thereto, such breach may be the basis for a determination by the awarding authority or the Board of Public Works that the said CONSULTANT is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Los Angeles City Charter. In the event of such determination, such CONSULTANT shall be disqualified from being awarded a contract with the CITY for a period of two years, or until he or she shall establish and carry out a program in conformance with the provisions hereof.
- G. In the event of a finding by the Fair Employment and Housing Commission of the State of California, or the Board of Public Works of the City of Los Angeles, or any court of competent jurisdiction, that CONSULTANT has been guilty of a willful violation of the California Fair Employment and Housing Act, or the Affirmative Action Program provisions of a CITY contract, there may be deducted from the amount payable to

CONSULTANT by the CITY under the Contract, a penalty of ten dollars (\$10.00) for each person for each calendar day on which such person was discriminated against in violation of the provisions of a CITY contract.

- H. Notwithstanding any other provisions of a CITY contract, the CITY shall have any and all other remedies at law or in equity for any breach hereof.
- I. Intentionally blank.
- J. Nothing contained in CITY contracts shall be construed in any manner so as to require or permit any act which is prohibited by law.
- K. CONSULTANT shall submit an Affirmative Action Plan which shall meet the requirements of this chapter at the time it submits its bid or proposal or at the time it registers to do business with the CITY. The plan shall be subject to approval by the Office of Contract Compliance prior to award of the Contract. The awarding authority may also require consultants and suppliers to take part in a pre-registration, pre-bid, pre-proposal, or pre-award conference in order to develop, improve or implement a qualifying Affirmative Action Plan. Affirmative Action Programs developed pursuant to this Section shall be effective for a period of twelve months from the date of approval by the Office of Contract Compliance. In case of prior submission of a plan, CONSULTANT may submit documentation that it has an Affirmative Action Plan approved by the Office of Contract Compliance within the previous twelve months. If the approval is 30 days or less from expiration, CONSULTANT must submit a new Plan to the Office of Contract Compliance and that Plan must be approved before the Contract is awarded.
 - 1. Every contract of \$5,000 or more which may provide construction, demolition, renovation, conservation or major maintenance of any kind shall in addition comply with the requirements of Section 10.13 of the Los Angeles Administrative Code.
 - 2. CONSULTANT may establish and adopt as its own Affirmative Action Plan, by affixing his or her signature thereto, an Affirmative Action Plan prepared and furnished by the Office of Contract Compliance, or it may prepare and submit its own Plan for approval.

- L. The Office of Contract Compliance shall annually supply the awarding authorities of the CITY with a list of consultants and suppliers who have developed Affirmative Action Programs. For each consultant and supplier, the Office of Contract Compliance shall state the date the approval expires. The Office of Contract Compliance shall not withdraw its approval for any Affirmative Action Plan or change the Affirmative Action Plan after the date of contract award for the entire contract term without the mutual agreement of the awarding authority and CONSULTANT.
- M. The Affirmative Action Plan required to be submitted hereunder and the pre-registration, pre-bid, pre-proposal or pre-award conference which may be required by the Board of Public Works, Office of Contract Compliance or the awarding authority shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:
1. Apprenticeship where approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;
 2. Classroom preparation for the job when not apprenticeable;
 3. Pre-apprenticeship education and preparation;
 4. Upgrading training and opportunities;
 5. Encouraging the use of consultants, subconsultants and suppliers of all racial and ethnic groups, provided, however, that any contract subject to this ordinance shall require the CONSULTANT, subconsultant or supplier to provide not less than the prevailing wage, working conditions and practices generally observed in private industries in the consultant's, subconsultant's, or supplier's geographical area for such work;
 6. The entry of qualified women, minority and all other journeymen into the industry; and
 7. The provision of needed supplies or job conditions to permit persons with disabilities to be employed, and minimize the impact of any disability.
- N. Any adjustments which may be made in the CONSULTANT'S or supplier's work force to achieve the requirements of the CITY'S Affirmative Action Contract Compliance Program in purchasing

and construction shall be accomplished by either an increase in the size of the work force or replacement of those employees who leave the work force by reason of resignation, retirement or death and not by termination, layoff, demotion or change in grade.

- O. Affirmative Action Agreements resulting from the proposed Affirmative Action Plan or the pre-registration, pre-bid, pre-proposal or pre-award conferences shall not be confidential and may be publicized by the CONSULTANT at his or her discretion. Approved Affirmative Action Agreements become the property of the CITY and may be used at the discretion of the CITY in its Contract Compliance Affirmative Action Program.
- P. Intentionally blank.
- Q. All consultants subject to the provisions of this Section shall include a like provision in all subcontracts awarded for work to be performed under the Contract with the CITY and shall impose the same obligations, including but not limited to filing and reporting obligations, on the subconsultants as are applicable to the CONSULTANT. Failure of the CONSULTANT to comply with this requirement or to obtain the compliance of its subconsultants with all such obligations shall subject the CONSULTANT to the imposition of any and all sanctions allowed by law, including but not limited to termination of the CONSULTANT'S Contract with the CITY.

ARTICLE 41

FALSE CLAIMS ACT

CONSULTANT 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.

ARTICLE 42

EQUAL EMPLOYMENT PRACTICES

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

- A. During the performance of this Contract, CONSULTANT agrees and represents that it will provide equal employment practices and CONSULTANT and each subconsultant hereunder will ensure that in his or her employment practices, persons are employed and employees are treated equally and without regard to or because of

race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.

1. This provision applies to work or service performed or materials manufactured or assembled in the United States.
 2. Nothing in this Section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.
 3. CONSULTANT agrees to post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.
- B. CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of CONSULTANT, state that all qualified applicants will receive consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
- C. As part of the CITY'S supplier registration process, and/or at the request of the awarding authority, or the Board of Public Works, Office of Contract Compliance, CONSULTANT shall certify in the specified format that he or she has not discriminated in the performance of CITY contracts against any employee or applicant for employment on the basis or because of race, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status or medical condition.
- D. CONSULTANT shall permit access to and may be required to provide certified copies of all of his or her records pertaining to employment and to employment practices by the awarding authority or the Office of Contract Compliance for the purpose of investigation to ascertain compliance with the Equal Employment Practices provisions of CITY contracts. On their or either of their request CONSULTANT shall provide evidence that he or she has or will comply therewith.
- E. The failure of any CONSULTANT to comply with the Equal Employment Practices provisions of this Contract may be deemed to be a material breach of CITY contracts. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made or penalties assessed except upon a full and fair

hearing after notice, and an opportunity to be heard has been given to CONSULTANT.

- F. Upon a finding duly made that CONSULTANT has failed to comply with the Equal Employment Practices provisions of a CITY contract, the Contract may be forthwith cancelled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the CITY. In addition thereto, such failure to comply may be the basis for a determination by the awarding authority or the Board of Public Works that the CONSULTANT is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Charter of the City of Los Angeles. In the event of such a determination, CONSULTANT shall be disqualified from being awarded a contract with the CITY for a period of two years, or until CONSULTANT shall establish and carry out a program in conformance with the provisions hereof.
- G. Notwithstanding any other provision of this Contract, the CITY shall have any and all other remedies at law or in equity for any breach hereof.
- H. Intentionally blank.
- I. Nothing contained in this Contract shall be construed in any manner so as to require or permit any act which is prohibited by law.
- J. At the time a supplier registers to do business with the CITY, or when an individual bid or proposal is submitted, CONSULTANT shall agree to adhere to the Equal Employment Practices specified herein during the performance or conduct of CITY Contracts.
- K. Equal Employment Practices shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:
 - 1. Hiring practices;
 - 2. Apprenticeships where such approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;
 - 3. Training and promotional opportunities; and

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

ARTICLE 43

FIRST SOURCE HIRING ORDINANCE

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

1. CONSULTANT shall, prior to the execution of the contract, provide to the Designated Administrative Agency (DAA) a list of anticipated employment opportunities that CONSULTANT estimate they will need to fill in order to perform the services under the Contract.
2. CONSULTANT further pledges that it will, during the term of the Contract, shall a) At least seven business days prior to making an announcement of a specific employment opportunity, provide notifications of that employment opportunity to the Community Development Department (CDD), which will refer individuals for interview; b) Interview qualified individuals referred by CDD; and c) Prior to filling any employment opportunity, the CONSULTANT shall inform the DAA of the names of the Referral Resources used, the names of the individuals they referred, the names of the referred individuals who the CONSULTANT interviewed and the reasons why referred individuals were not hired.
3. Any Subcontract entered into by the CONSULTANT relating to this Agreement, to the extent allowed hereunder, shall be subject to the provisions of FSHO, and shall incorporate the FSHO.
4. CONSULTANT shall comply with all rules, regulations and policies promulgated by the designated administrative agency, which may be amended from time to time.

Where under the provisions of Section 10.44.13 of the Los Angeles Administrative Code the designated administrative agency has determined that the CONSULTANT intentionally violated or used hiring practices for the purpose of avoiding the article, the determination must be documented in the Awarding Authority's Contractor Evaluation, required under Los Angeles Administrative Code Section 10.39 et seq., and must be documented in each of the Contractor's subsequent Contractor Responsibility Questionnaires submitted under Los Angeles Administrative Code Section 10.40 et seq. This measure does not limit the City's authority to act under this article.

Under the provisions of Section 10.44.8 of the Los Angeles Administrative Code, the Awarding Authority shall, under appropriate circumstances, terminate this contract and otherwise pursue legal remedies that may be available if the designated administrative agency determines that the subject CONSULTANT has violated provisions of the FSHO.

EXCEPT AS EXPRESSLY MODIFIED herein, the Contract executed on September 3, 2008 remains unchanged.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 1 on the day and year written below.

KATHERINE SPITZ ASSOCIATES, INC.

By:

Title:

Date:

CITY OF LOS ANGELES

By:

Title: President, Board of Public Works

Date:

By:

Date:

ATTEST:

JUNE LAGMAY, City Clerk

By:

Date:

APPROVED AS TO FORM:

MICHAEL N. FEUER, City Attorney

By:

Title: Assistant City Attorney

Date:

AMENDMENT NO. 1

to

Contract No. C-114379

for the

PRE-QUALIFIED ON-CALL LANDSCAPE ARCHITECTURAL CONSULTANT SERVICES

Between

CITY OF LOS ANGELES

and

MLA GREEN, INC. DBA
MIA LEHRER + ASSOCIATES

AMENDMENT NO. 1 TO CONTRACT NO. C-114379, FOR PRE-QUALIFIED ON-CALL LANDSCAPE ARCHITECTURAL CONSULTANT SERVICES BETWEEN THE CITY OF LOS ANGELES AND MLA GREEN, INC. DBA MIA LEHRER + ASSOCIATES

This Amendment modifies Contract No. C-114379 executed on September 3, 2008 between the City of Los Angeles (hereinafter referred to as "CITY") and MLA GREEN, INC. DBA MIA LEHRER + ASSOCIATES (hereinafter referred to as "CONSULTANT").

WITNESSETH

WHEREAS, CITY issued a Request for Qualifications (RFQ) on April 16, 2007 for landscape architectural and related services, on a pre-qualified basis, on various projects and CONSULTANT submitted a statement of qualifications in response; and

WHEREAS, CONSULTANT demonstrated qualifications to perform said services and was selected to perform the design services by CITY staff based on the evaluation criteria set forth in the RFQ; and

WHEREAS, on September 3, 2008, Contract No. C-114379 was awarded to CONSULTANT, the terms of which will expire on September 3, 2013; and

WHEREAS, the CITY and CONSULTANT have agreed to extend the term of the Contract by three (3) additional years to September 3, 2016 in order to provide as needed landscape architectural and construction administration services; and

WHEREAS, the CITY'S Department of Public Works, Bureau of Engineering, (hereinafter referred to as "BUREAU"), is the Program Manager and oversees the CONSULTANT'S performance of this Contract; and

NOW, THEREFORE, in consideration of the foregoing and of the benefits which will accrue to the parties hereto in carrying out the conditions of this Amendment No. 1, Contract No. C-114379 is hereby amended as follows:

ARTICLE 1 SECTION HEADINGS AND CONSTRUCTION OF PROVISIONS AND TITLES HEREIN

No Change

ARTICLE 2 DEFINITIONS

Article 2 is hereby amended to change definition of CONSULTANT:

From: MIA LEHRER + ASSOCIATES

To: MLA GREEN, INC. DBA MIA LEHRER + ASSOCIATES

ARTICLE 3 **PROJECT DESCRIPTION**

No Change

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

No Change

ARTICLE 5 **KEY CONSULTANT PERSONNEL**

No Change

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

No Change

ARTICLE 7 **TERM OF CONTRACT AND TIME OF EFFECTIVENESS**

Article 7 is hereby amended in its first paragraph to read as follows:

Unless otherwise provided, the term of this Contract shall begin on the date of full execution and shall expire on September 3, 2016, unless terminated as provided under Article 8 or extended by amendment to this Contract.

ARTICLE 8 **TERMINATION**

Article 8 is hereby amended in its entirety to read as follows:

8.1 Termination for Convenience

The CITY may terminate this Contract for the CITY'S convenience at any time by giving CONSULTANT thirty days written notice thereof. Upon receipt of said notice, CONSULTANT shall immediately take action not to incur any additional obligations, cost or expenses, except as may be reasonably necessary to terminate its activities. The CITY shall pay CONSULTANT its reasonable and allowable costs through the effective date of termination and those reasonable and necessary costs incurred by CONSULTANT to affect such termination. Thereafter, CONSULTANT shall have no further claims against the CITY under this Contract. All finished and unfinished documents and materials procured for or produced under this

Contract, including all intellectual property rights thereto, shall become CITY property upon the date of such termination. CONSULTANT agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights provided herein.

8.2 Termination for Breach of Contract

- 8.2.1 Except for excusable delays as provided in Article 20, if CONSULTANT fails to perform any of the provisions of this Contract or so fails to make progress as to endanger timely performance of this Contract, the CITY may give CONSULTANT written notice of such default. If CONSULTANT does not cure such default or provide a plan to cure such default which is acceptable to the CITY within the time permitted by the CITY, then the CITY may terminate this Contract due to CONSULTANT'S breach of this Contract.
- 8.2.2 If a federal or state proceeding for relief of debtors is undertaken by or against CONSULTANT, or if CONSULTANT makes an assignment for the benefit of creditors, then the CITY may immediately terminate this Contract.
- 8.2.3 If CONSULTANT engages in any dishonest conduct related to the performance or administration of this Contract or violates the CITY'S lobbying policies, then the CITY may immediately terminate this Contract.
- 8.2.4 In the event the CITY terminates this Contract 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 CONSULTANT shall be liable to the CITY for all of its costs and damages, including, but not limited, any excess costs for such services.
- 8.2.5 All finished and unfinished documents and materials produced or procured under this Contract, including all intellectual property rights thereto, shall become CITY property upon date of such termination. CONSULTANT agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights provided herein.

8.2.6 If, after notice of termination of this Contract under the provisions of this Section, it is determined for any reason that CONSULTANT was not in default under the provisions of this Section, or that the default was excusable under the terms of this Contract, the rights and obligations of the parties shall be the same as if the notice of termination has been issued pursuant to Article 8.1 Termination for Convenience.

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

ARTICLE 9

SUBCONTRACT APPROVAL

Article 9 is hereby amended in its title and first paragraph to read as follows:

SUBCONSULTANT APPROVAL

CONSULTANT shall not use subconsultants to assist in performance of this Contract without the prior written approval of the CITY. If the CITY permits the use of subconsultants, CONSULTANT shall remain responsible for performing all aspects of this Contract. The CONSULTANT is required to provide the CITY a list of all subconsultants including the name and address of the firms. Refer to **Exhibit K** for CONSULTANT and subconsultant information. The CITY has the right to approve CONSULTANT'S subconsultants and the CITY reserves the right to request replacement of subconsultants. The CITY does not have any obligation to pay CONSULTANT'S subconsultants and nothing herein creates any privity between the CITY and the subconsultants. Wholly-owned subsidiaries of CONSULTANT shall not be considered subconsultants.

ARTICLE 10

COMPENSATION, INVOICING AND PAYMENT

Article 10 is hereby amended to include a third paragraph to Section 10.6 to read as follows:

For the sake of efficiency, the CONSULTANT may have provided services prior to the execution of this Amendment. Upon execution of this Amendment, and to the extent that said services were performed in accordance with the terms and conditions of the Contract and this Amendment, those services are hereby ratified and eligible for payment.

ARTICLE 11 **AMENDMENTS, CHANGES OR MODIFICATIONS**

No Change

ARTICLE 12 **INDEMNIFICATION AND INSURANCE**

No Change

ARTICLE 13 **INDEPENDENT CONTRACTORS**

No Change

ARTICLE 14 **WARRANTY AND RESPONSIBILITY OF CONSULTANT**

No Change

ARTICLE 15 **OWNERSHIP OF DATA AND INTELLECTUAL PROPERTY**

Article 15 is hereby amended in its title and content to read as follows:

15.1 Ownership of Data and License

15.1.1 Unless otherwise provided for herein, all Work Products originated and prepared by CONSULTANT or its subconsultants of any tier under this Contract shall be and remain the exclusive property of the CITY for its use in any manner it deems appropriate. Work Products are all works, tangible or not, created under this Contract including, without limitation, documents, material, data, reports, manuals, specifications, artwork, drawings, sketches, computer programs and databases, schematics, photographs, video and audiovisual recordings, sound recordings, marks, logos, graphic designs, notes, websites, domain names, inventions, processes, formulas matters and combinations thereof, and all forms of intellectual property. CONSULTANT hereby assigns, and agrees to assign, all goodwill, copyright, trademark, patent, trade secret and all other intellectual property rights worldwide in any Work Products originated and prepared by CONSULTANT under this Contract. CONSULTANT further agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights provided herein.

15.1.2 With regard to the basis for design calculations and engineering notes, such data shall be provided to the CITY

in (a) hard cover post binder(s), appropriately indexed, on thin Mylar stock or good quality paper satisfactory for reproduction.

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

15.1.4 CONSULTANT shall not provide or disclose any Work Products to any third party without prior written consent of the City.

15.1.5 All documents, information and pre-existing materials provided by CITY to CONSULTANT and its subconsultants arising out of or related to this Contract shall remain the property of the CITY. The CONSULTANT may not use, distribute or otherwise make public in any manner, either for profit or not for profit, any of the information, documentation, or procedures developed for the CITY hereunder without the prior written consent of the CITY. CONSULTANT further agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights.

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

15.2 Intellectual Property Warranty

15.2.1 CONSULTANT represents and warrants that its performance of all obligations under this Contract does not infringe in any way, directly or contributorily, upon any third party's intellectual property rights, including, without

limitation, patents, copyrights, trademarks, trade secrets, rights of publicity and proprietary information.

15.3 Intellectual Property Indemnification

15.3.1 CONSULTANT, at its own expense, undertakes and agrees to defend, indemnify, and hold harmless the CITY, and any of its Boards, officers, agents, employees, assigns, and successors in interest from and against all suits and causes of action, claims, losses, demands and expenses, including but not limited to, attorney's fees (both in-house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the CITY, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever arising out of the infringement, actual or alleged, direct or contributory, of any intellectual property rights, including, without limitation, patent, copyright, trademark, trade secret, right of publicity and proprietary information right (1) on or in any design, medium, matter, article, process, method, application, equipment, device, instrumentation, software, hardware, or firmware used by CONSULTANT, or its subconsultants of any tier, in performing the work under this Contract; or (2) as a result of the CITY'S actual or intended use of any Work Product furnished by CONSULTANT, or its subconsultants of any tier, under the Agreement. Rights and remedies available to the CITY under this provision are cumulative of those provided for elsewhere in this Contract and those allowed under the laws of the United States, the State of California, and the CITY. The provisions of Article 15 shall survive expiration or termination of this Contract.

15.3.2 In CONSULTANT'S defense of the CITY Defendants, negotiation, compromise, and settlement of any such infringement action, the Los Angeles City Attorney's Office shall retain discretion in and control of the litigation, negotiation, compromise, settlement, and appeals therefrom, as required by the Los Angeles City Charter, particularly Article II, Sections 271, 272 and 273 thereof.

15.3.3 Where any Work Product furnished by CONSULTANT (a) becomes the subject of an action, (b) is adjudicated as infringing a third party's Intellectual Property right, or (c) has its use enjoined or license terminated; CONSULTANT

shall, with the CITY'S consent, do one of the following immediately. CONSULTANT shall at its expense either:

- i) procure for the CITY the right or license to continue using the Work Product; or
- ii) replace the Work Product with a functionally equivalent, non-infringing product.

Exercise of any of the above-mentioned options shall not cause undue business interruption to the CITY or diminish the intended benefits and use of the Work Product by the CITY under this Contract.

ARTICLE 16

NONDISCRIMINATION AND AFFIRMATIVE ACTION

Article 16 is hereby amended in its title and content to read as follows:

NONDISCRIMINATION

Unless otherwise exempt, this Contract is subject to the nondiscrimination provisions in Sections 10.8 through 10.8.2 of the Los Angeles Administrative Code, as amended from time to time. The CONSULTANT shall comply with the applicable nondiscrimination and affirmative action provisions of the laws of the United States of America, the State of California, and the CITY. In performing this Contract, CONSULTANT shall not discriminate in its employment practices against any employee or applicant for employment because of such person's race, religion, national origin, ancestry, sex, sexual orientation, age, disability, domestic partner status, marital status or medical condition. The CONSULTANT 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 said Office. Any subcontract entered into by CONSULTANT, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract.

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

ARTICLE 17

MINORITY, WOMEN AND OTHER BUSINESS ENTERPRISE OUTREACH PROGRAM

No Change

ARTICLE 18

SUCCESSORS AND ASSIGNS

No Change

ARTICLE 19

CONTACT PERSONS – PROPER ADDRESSES – NOTIFICATION

Article 19 is hereby amended as follows:

To Consultant:

From:

Contact Person: Esther Margulies, Partner

Address: Mia Lehrer + Associates
3780 Wilshire Blvd. Suite 1100
Los Angeles, C A 90010

To:

Contact Person: Mia Lehrer, President

Address: MLA Green, Inc. DBA Mia Lehrer + Associates
3780 Wilshire Blvd. Suite 1100
Los Angeles, C A 90010

ARTICLE 20

EXCUSABLE DELAYS

No Change

ARTICLE 21

SEVERABILITY

No Change

ARTICLE 22

DISPUTES

No Change

ARTICLE 23

ENTIRE CONTRACT

No Change

ARTICLE 24

APPLICABLE LAW, INTERPRETATION AND ENFORCEMENT

No Change

ARTICLE 25

**CURRENT LOS ANGELES CITY BUSINESS TAX
REGISTRATION CERTIFICATE REQUIRED**

No Change

ARTICLE 26

BONDS

Article 26 is hereby amended in its entirety to read as follows:

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

ARTICLE 27

CHILD SUPPORT ASSIGNMENT ORDERS

No Change

ARTICLE 28

**LIVING WAGE ORDINANCE AND SERVICE CONTRACTOR
WORKER RETENTION ORDINANCE**

No Change

ARTICLE 29

AMERICANS WITH DISABILITIES ACT

No Change

ARTICLE 30

EQUAL BENEFITS ORDINANCE

Article 30 is hereby amended in its entirety to read as follows:

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.

1. During the performance of the Contract, CONSULTANT certifies and represents that CONSULTANT will comply with the EBO.
2. The failure of CONSULTANT to comply with the EBO will be deemed to be a material breach of this Contract by the CITY.
3. If CONSULTANT fails to comply with the EBO, the CITY may cancel, terminate or suspend the 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.

4. Failure to comply with the EBO may be used as evidence against CONSULTANT in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40 *et seq.*, Contractor Responsibility Ordinance.
5. If the CITY’S Designated Administrative Agency determines that a CONSULTANT has set up or used its contracting entity for the purpose of evading the intent of the EBO, the CITY may terminate the Contract. Violation of this provision may be used as evidence against CONSULTANT in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40 *et seq.*, Contractor Responsibility Ordinance.

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

“During the performance of a Contract with the City of Los Angeles, the Consultant 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) 847-2632.”

ARTICLE 31

WAIVER

No Change

ARTICLE 32

PROHIBITION AGAINST ASSIGNMENT OR DELEGATION

No Change

ARTICLE 33

PERMITS

No Change

ARTICLE 34

CLAIMS FOR LABOR AND MATERIALS

No Change

ARTICLE 35

DISCOUNTS

No Change

ARTICLE 36

CONTRACTOR RESPONSIBILITY ORDINANCE

No Change

ARTICLE 37

BREACH

No Change

ARTICLE 38

SLAVERY DISCLOSURE ORDINANCE

No Change

ARTICLE 39

CONTRACT BIDDER CERTIFICATION OF COMPLIANCE WITH LOBBYING LAWS

Article 39 is hereby amended in its title and content to read as follows:

BIDDER ETHICS

Pursuant to the Los Angeles Municipal Lobbying Ordinance, any bidder for a contract shall submit with its proposal a Bidder Certification CEC Form 50 (**Exhibit J**), proscribed by the City Ethics Commission, in which the bidder acknowledges and agrees to comply with the disclosure requirements and prohibitions established in the Ordinance if the bidder qualifies as a lobbying entity under the Ordinance.

As amended, this Contract is also subject to Charter Section 470(c)(12) and related ordinances and as a result, the CONSULTANT was required to submit Bidder Contributions CEC Form 55 (**Exhibit J**) within ten business days of discussing the amendment. Consequently, CONSULTANT may not make campaign contributions to and or engage in fundraising for certain elected City officials or candidates for elected City office from the date the amendment is first discussed until 12 months after the amendment is signed. The CONSULTANT'S principals and subconsultants performing \$100,000 or more in work on the contract, as well as the principals of those subconsultants, are also subject to the same limitations on campaign contributions and fundraising.

CONSULTANT must also notify their principals and subconsultants in writing of the restrictions and include the notice in contracts with subconsultants. Consultants who fail to comply with City law may be subject to penalties, termination of contract, and debarment. Additional information regarding these restrictions and requirements may be obtained from the City Ethics Commission at (213) 978-1960.

The Contract is hereby amended to include the following Articles:

ARTICLE 40 **AFFIRMATIVE ACTION**

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

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

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

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

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

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

- E. The failure of any CONSULTANT to comply with the Affirmative Action Program provisions of CITY contracts may be deemed to be a material breach of contract. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made except upon a full and fair hearing after notice and an opportunity to be heard has been given to CONSULTANT.
- F. Upon a finding duly made that CONSULTANT has breached the Affirmative Action Program provisions of a CITY contract, the Contract may be forthwith cancelled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the CITY. In addition thereto, such breach may be the basis for a determination by the awarding authority or the Board of Public Works that the said CONSULTANT is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Los Angeles City Charter. In the event of such determination, such CONSULTANT shall be disqualified from being awarded a contract with the CITY for a period of two years, or until he or she shall establish and carry out a program in conformance with the provisions hereof.
- G. In the event of a finding by the Fair Employment and Housing Commission of the State of California, or the Board of Public Works of the City of Los Angeles, or any court of competent jurisdiction, that CONSULTANT has been guilty of a willful violation of the California Fair Employment and Housing Act, or the Affirmative Action Program provisions of a CITY contract, there may be deducted from the amount payable to CONSULTANT by the CITY under the Contract, a penalty of ten dollars (\$10.00) for each person for each calendar day on which such person was discriminated against in violation of the provisions of a CITY contract.
- H. Notwithstanding any other provisions of a CITY contract, the CITY shall have any and all other remedies at law or in equity for any breach hereof.

- I. Intentionally blank.
- J. Nothing contained in CITY contracts shall be construed in any manner so as to require or permit any act which is prohibited by law.
- K. CONSULTANT shall submit an Affirmative Action Plan which shall meet the requirements of this chapter at the time it submits its bid or proposal or at the time it registers to do business with the CITY. The plan shall be subject to approval by the Office of Contract Compliance prior to award of the Contract. The awarding authority may also require consultants and suppliers to take part in a pre-registration, pre-bid, pre-proposal, or pre-award conference in order to develop, improve or implement a qualifying Affirmative Action Plan. Affirmative Action Programs developed pursuant to this Section shall be effective for a period of twelve months from the date of approval by the Office of Contract Compliance. In case of prior submission of a plan, CONSULTANT may submit documentation that it has an Affirmative Action Plan approved by the Office of Contract Compliance within the previous twelve months. If the approval is 30 days or less from expiration, CONSULTANT must submit a new Plan to the Office of Contract Compliance and that Plan must be approved before the Contract is awarded.
 - 1. Every contract of \$5,000 or more which may provide construction, demolition, renovation, conservation or major maintenance of any kind shall in addition comply with the requirements of Section 10.13 of the Los Angeles Administrative Code.
 - 2. CONSULTANT may establish and adopt as its own Affirmative Action Plan, by affixing his or her signature thereto, an Affirmative Action Plan prepared and furnished by the Office of Contract Compliance, or it may prepare and submit its own Plan for approval.
- L. The Office of Contract Compliance shall annually supply the awarding authorities of the CITY with a list of consultants and suppliers who have developed Affirmative Action Programs. For each consultant and supplier, the Office of Contract Compliance shall state the date the approval expires. The Office of Contract Compliance shall not withdraw its approval for any Affirmative Action Plan or change the Affirmative Action Plan after the date of contract award for the entire contract term without the mutual agreement of the awarding authority and CONSULTANT.

- M. The Affirmative Action Plan required to be submitted hereunder and the pre-registration, pre-bid, pre-proposal or pre-award conference which may be required by the Board of Public Works, Office of Contract Compliance or the awarding authority shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:
1. Apprenticeship where approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;
 2. Classroom preparation for the job when not apprenticeable;
 3. Pre-apprenticeship education and preparation;
 4. Upgrading training and opportunities;
 5. Encouraging the use of consultants, subconsultants and suppliers of all racial and ethnic groups, provided, however, that any contract subject to this ordinance shall require the CONSULTANT, subconsultant or supplier to provide not less than the prevailing wage, working conditions and practices generally observed in private industries in the consultant's, subconsultant's, or supplier's geographical area for such work;
 6. The entry of qualified women, minority and all other journeymen into the industry; and
 7. The provision of needed supplies or job conditions to permit persons with disabilities to be employed, and minimize the impact of any disability.
- N. Any adjustments which may be made in the CONSULTANT'S or supplier's work force to achieve the requirements of the CITY'S Affirmative Action Contract Compliance Program in purchasing and construction shall be accomplished by either an increase in the size of the work force or replacement of those employees who leave the work force by reason of resignation, retirement or death and not by termination, layoff, demotion or change in grade.
- O. Affirmative Action Agreements resulting from the proposed Affirmative Action Plan or the pre-registration, pre-bid, pre-proposal or pre-award conferences shall not be confidential and may be publicized by the CONSULTANT at his or her discretion.

Approved Affirmative Action Agreements become the property of the CITY and may be used at the discretion of the CITY in its Contract Compliance Affirmative Action Program.

- P. Intentionally blank.
- Q. All consultants subject to the provisions of this Section shall include a like provision in all subcontracts awarded for work to be performed under the Contract with the CITY and shall impose the same obligations, including but not limited to filing and reporting obligations, on the subconsultants as are applicable to the CONSULTANT. Failure of the CONSULTANT to comply with this requirement or to obtain the compliance of its subconsultants with all such obligations shall subject the CONSULTANT to the imposition of any and all sanctions allowed by law, including but not limited to termination of the CONSULTANT'S Contract with the CITY.

ARTICLE 41

FALSE CLAIMS ACT

CONSULTANT 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.

ARTICLE 42

EQUAL EMPLOYMENT PRACTICES

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

- A. During the performance of this Contract, CONSULTANT agrees and represents that it will provide equal employment practices and CONSULTANT and each subconsultant hereunder will ensure that in his or her employment practices, persons are employed and employees are treated equally and without regard to or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
 1. This provision applies to work or service performed or materials manufactured or assembled in the United States.
 2. Nothing in this Section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.

3. CONSULTANT agrees to post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.
- B. CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of CONSULTANT, state that all qualified applicants will receive consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
 - C. As part of the CITY'S supplier registration process, and/or at the request of the awarding authority, or the Board of Public Works, Office of Contract Compliance, CONSULTANT shall certify in the specified format that he or she has not discriminated in the performance of CITY contracts against any employee or applicant for employment on the basis or because of race, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status or medical condition.
 - D. CONSULTANT shall permit access to and may be required to provide certified copies of all of his or her records pertaining to employment and to employment practices by the awarding authority or the Office of Contract Compliance for the purpose of investigation to ascertain compliance with the Equal Employment Practices provisions of CITY contracts. On their or either of their request CONSULTANT shall provide evidence that he or she has or will comply therewith.
 - E. The failure of any CONSULTANT to comply with the Equal Employment Practices provisions of this Contract may be deemed to be a material breach of CITY contracts. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made or penalties assessed except upon a full and fair hearing after notice, and an opportunity to be heard has been given to CONSULTANT.
 - F. Upon a finding duly made that CONSULTANT has failed to comply with the Equal Employment Practices provisions of a CITY contract, the Contract may be forthwith cancelled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the CITY. In addition thereto, such

failure to comply may be the basis for a determination by the awarding authority or the Board of Public Works that the CONSULTANT is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Charter of the City of Los Angeles. In the event of such a determination, CONSULTANT shall be disqualified from being awarded a contract with the CITY for a period of two years, or until CONSULTANT shall establish and carry out a program in conformance with the provisions hereof.

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

CONSULTANT'S Contract with the CITY.

ARTICLE 43

FIRST SOURCE HIRING ORDINANCE

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

1. CONSULTANT shall, prior to the execution of the contract, provide to the Designated Administrative Agency (DAA) a list of anticipated employment opportunities that CONSULTANT estimate they will need to fill in order to perform the services under the Contract.
2. CONSULTANT further pledges that it will, during the term of the Contract, shall a) At least seven business days prior to making an announcement of a specific employment opportunity, provide notifications of that employment opportunity to the Community Development Department (CDD), which will refer individuals for interview; b) Interview qualified individuals referred by CDD; and c) Prior to filling any employment opportunity, the CONSULTANT shall inform the DAA of the names of the Referral Resources used, the names of the individuals they referred, the names of the referred individuals who the CONSULTANT interviewed and the reasons why referred individuals were not hired.
3. Any Subcontract entered into by the CONSULTANT relating to this Agreement, to the extent allowed hereunder, shall be subject to the provisions of FSHO, and shall incorporate the FSHO.
4. CONSULTANT shall comply with all rules, regulations and policies promulgated by the designated administrative agency, which may be amended from time to time.

Where under the provisions of Section 10.44.13 of the Los Angeles Administrative Code the designated administrative agency has determined that the CONSULTANT intentionally violated or used hiring practices for the purpose of avoiding the article, the determination must be documented in the Awarding Authority's Contractor Evaluation, required under Los Angeles Administrative Code Section 10.39 et seq., and must be documented in each of the Contractor's subsequent Contractor Responsibility Questionnaires submitted under Los Angeles Administrative Code Section 10.40 et seq. This measure does not limit the City's authority to act under this article.

Under the provisions of Section 10.44.8 of the Los Angeles Administrative Code, the Awarding Authority shall, under appropriate circumstances, terminate this contract and otherwise pursue legal remedies that may be available if the designated administrative agency determines that the subject CONSULTANT has violated provisions of the FSHO.

EXCEPT AS EXPRESSLY MODIFIED herein, the Contract executed on September 3, 2008 remains unchanged.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 1 on the day and year written below.

MLA GREEN, INC. DBA MIA LEHRER + ASSOCIATES

By:

Title:

Date:

CITY OF LOS ANGELES

By:

Title: President, Board of Public Works

Date:

By:

Date:

ATTEST:

JUNE LAGMAY, City Clerk

By:

Date:

APPROVED AS TO FORM:

MICHAEL N. FEUER, City Attorney

By:

Title: Assistant City Attorney

Date:

AMENDMENT NO. 1

to

Contract No. C-114385

for the

PRE-QUALIFIED ON-CALL LANDSCAPE ARCHITECTURAL CONSULTANT SERVICES

Between

CITY OF LOS ANGELES

and

NORTH EAST TREES

AMENDMENT NO. 1 TO CONTRACT NO. C-114385, FOR PRE-QUALIFIED ON-CALL LANDSCAPE ARCHITECTURAL CONSULTANT SERVICES BETWEEN THE CITY OF LOS ANGELES AND NORTH EAST TREES

This Amendment modifies Contract No. C-114385 executed on September 3, 2008 between the City of Los Angeles (hereinafter referred to as "CITY") and NORTH EAST TREES (hereinafter referred to as "CONSULTANT").

WITNESSETH

WHEREAS, CITY issued a Request for Qualifications (RFQ) on April 16, 2007 for landscape architectural and related services, on a pre-qualified basis, on various projects and CONSULTANT submitted a statement of qualifications in response; and

WHEREAS, CONSULTANT demonstrated qualifications to perform said services and was selected to perform the design services by CITY staff based on the evaluation criteria set forth in the RFQ; and

WHEREAS, on September 3, 2008, Contract No. C-114385 was awarded to CONSULTANT, the terms of which will expire on September 3, 2013; and

WHEREAS, the CITY and CONSULTANT have agreed to extend the term of the Contract by three (3) additional years to September 3, 2016 in order to provide as needed landscape architectural and construction administration services; and

WHEREAS, the CITY'S Department of Public Works, Bureau of Engineering, (hereinafter referred to as "BUREAU"), is the Program Manager and oversees the CONSULTANT'S performance of this Contract; and

NOW, THEREFORE, in consideration of the foregoing and of the benefits which will accrue to the parties hereto in carrying out the conditions of this Amendment No. 1, Contract No. C-114385 is hereby amended as follows:

ARTICLE 1 SECTION HEADINGS AND CONSTRUCTION OF PROVISIONS AND TITLES HEREIN

No Change

ARTICLE 2 DEFINITIONS

No Change

ARTICLE 3 PROJECT DESCRIPTION

No Change

ARTICLE 4

RESPONSIBILITIES OF AND TASKS TO BE PERFORMED BY THE CONSULTANT

No Change

ARTICLE 5

KEY CONSULTANT PERSONNEL

Article 5 is hereby amended to replace the Key Consultant Personnel table as follows:

5.1 CONSULTANT designates the following persons to implement the work:

From:

Name	Title
Larry E. Smith	Executive Director Senior Urban Designer
Hannan Awad	Programs Director Senior Environmental Planner
Pieter Severynen	Director of Planning & Design Senior Landscape Architect
Jason Pelletier	Project Manager Environmental Engineer
Sonia Nicholson	Project Manager Senior Architect
Holly Harper	Watershed BMP Specialist Architect
Theresa Rossof	Project Landscape Designer
Kathleen McKerin	Landscape Designer
Tom Dwyer	Construction Manager Landscape Contractor
Aaron Thomas	Urban Forestry & Youth Environmental Stewards Program Manager Certified Arborist
Nidia Garcia	Outreach Director Urban Planner
Simran Sikand	Office Manager/ Executive Assistant Clerical - Senior
Adan Arreola	Graphic Assistant/Clerk Clerical - Junior

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

To:

Name	Title
Mark Kenyon	Executive Director
Holly Harper	Watershed BMP Specialist Architect
Theresa Rossoff	Project Landscape Designer
Kathleen McKermin	Landscape Architect
Tom Dwyer	Construction Manager Landscape Contractor
Aaron Thomas	Urban Forestry & Youth Environmental Stewards Program Manager Certified Arborist
Simran Sikand	Office Manager / Development Officer

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

ARTICLE 6

RESPONSIBILITIES OF AND TASKS TO BE PERFORMED BY CITY

No Change

ARTICLE 7

TERM OF CONTRACT AND TIME OF EFFECTIVENESS

Article 7 is hereby amended in its first paragraph to read as follows:

Unless otherwise provided, the term of this Contract shall begin on the date of full execution and shall expire on September 3, 2016, unless terminated as provided under Article 8 or extended by amendment to this Contract.

ARTICLE 8

TERMINATION

Article 8 is hereby amended in its entirety to read as follows:

8.1 Termination for Convenience

The CITY may terminate this Contract for the CITY'S convenience at any time by giving CONSULTANT thirty days written notice thereof. Upon receipt of said notice, CONSULTANT shall immediately take action not to incur any additional obligations, cost or expenses, except as may be reasonably necessary to terminate its activities. The CITY shall pay CONSULTANT its reasonable and allowable costs through the effective date of termination and those reasonable and necessary costs incurred by CONSULTANT to affect such termination. Thereafter, CONSULTANT shall have no further claims against the CITY under this Contract. All finished and unfinished documents and materials procured for or produced under this Contract, including all intellectual property rights thereto, shall become CITY property upon the date of such termination. CONSULTANT agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights provided herein.

8.2 Termination for Breach of Contract

8.2.1 Except for excusable delays as provided in Article 20, if CONSULTANT fails to perform any of the provisions of this Contract or so fails to make progress as to endanger timely performance of this Contract, the CITY may give CONSULTANT written notice of such default. If

CONSULTANT does not cure such default or provide a plan to cure such default which is acceptable to the CITY within the time permitted by the CITY, then the CITY may terminate this Contract due to CONSULTANT'S breach of this Contract.

- 8.2.2 If a federal or state proceeding for relief of debtors is undertaken by or against CONSULTANT, or if CONSULTANT makes an assignment for the benefit of creditors, then the CITY may immediately terminate this Contract.
- 8.2.3 If CONSULTANT engages in any dishonest conduct related to the performance or administration of this Contract or violates the CITY'S lobbying policies, then the CITY may immediately terminate this Contract.
- 8.2.4 In the event the CITY terminates this Contract 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 CONSULTANT shall be liable to the CITY for all of its costs and damages, including, but not limited, any excess costs for such services.
- 8.2.5 All finished and unfinished documents and materials produced or procured under this Contract, including all intellectual property rights thereto, shall become CITY property upon date of such termination. CONSULTANT agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights provided herein.
- 8.2.6 If, after notice of termination of this Contract under the provisions of this Section, it is determined for any reason that CONSULTANT was not in default under the provisions of this Section, or that the default was excusable under the terms of this Contract, the rights and obligations of the parties shall be the same as if the notice of termination has been issued pursuant to Article 8.1 Termination for Convenience.
- 8.2.7 The rights and remedies of the CITY provided in this Section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

ARTICLE 9

SUBCONTRACT APPROVAL

Article 9 is hereby amended in its title and first paragraph to read as follows:

SUBCONSULTANT APPROVAL

CONSULTANT shall not use subconsultants to assist in performance of this Contract without the prior written approval of the CITY. If the CITY permits the use of subconsultants, CONSULTANT shall remain responsible for performing all aspects of this Contract. The CONSULTANT is required to provide the CITY a list of all subconsultants including the name and address of the firms. Refer to **Exhibit K** for CONSULTANT and subconsultant information. The CITY has the right to approve CONSULTANT'S subconsultants and the CITY reserves the right to request replacement of subconsultants. The CITY does not have any obligation to pay CONSULTANT'S subconsultants and nothing herein creates any privity between the CITY and the subconsultants. Wholly-owned subsidiaries of CONSULTANT shall not be considered subconsultants.

ARTICLE 10

COMPENSATION, INVOICING AND PAYMENT

Article 10 is hereby amended to include a third paragraph to Section 10.6 to read as follows:

For the sake of efficiency, the CONSULTANT may have provided services prior to the execution of this Amendment. Upon execution of this Amendment, and to the extent that said services were performed in accordance with the terms and conditions of the Contract and this Amendment, those services are hereby ratified and eligible for payment.

ARTICLE 11

AMENDMENTS, CHANGES OR MODIFICATIONS

No Change

ARTICLE 12

INDEMNIFICATION AND INSURANCE

No Change

ARTICLE 13

INDEPENDENT CONTRACTORS

No Change

ARTICLE 14

WARRANTY AND RESPONSIBILITY OF CONSULTANT

No Change

ARTICLE 15

OWNERSHIP OF DATA AND INTELLECTUAL PROPERTY

Article 15 is hereby amended in its title and content to read as follows:

15.1 Ownership of Data and License

15.1.1 Unless otherwise provided for herein, all Work Products originated and prepared by CONSULTANT or its subconsultants of any tier under this Contract shall be and remain the exclusive property of the CITY for its use in any manner it deems appropriate. Work Products are all works, tangible or not, created under this Contract including, without limitation, documents, material, data, reports, manuals, specifications, artwork, drawings, sketches, computer programs and databases, schematics, photographs, video and audiovisual recordings, sound recordings, marks, logos, graphic designs, notes, websites, domain names, inventions, processes, formulas matters and combinations thereof, and all forms of intellectual property. CONSULTANT hereby assigns, and agrees to assign, all goodwill, copyright, trademark, patent, trade secret and all other intellectual property rights worldwide in any Work Products originated and prepared by CONSULTANT under this Contract. CONSULTANT further agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights provided herein.

15.1.2 With regard to the basis for design calculations and engineering notes, such data shall be provided to the CITY in (a) hard cover post binder(s), appropriately indexed, on thin Mylar stock or good quality paper satisfactory for reproduction.

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

15.1.4 CONSULTANT shall not provide or disclose any Work Products to any third party without prior written consent of the City.

15.1.5 All documents, information and pre-existing materials provided by CITY to CONSULTANT and its subconsultants arising out of or related to this Contract shall remain the property of the CITY. The CONSULTANT may not use, distribute or otherwise make public in any manner, either for profit or not for profit, any of the information, documentation, or procedures developed for the CITY hereunder without the prior written consent of the CITY. CONSULTANT further agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights.

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

15.2 Intellectual Property Warranty

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

15.3 Intellectual Property Indemnification

15.3.1 CONSULTANT, at its own expense, undertakes and agrees to defend, indemnify, and hold harmless the CITY, and any of its Boards, officers, agents, employees, assigns, and successors in interest from and against all suits and causes of action, claims, losses, demands and expenses, including but not limited to, attorney's fees (both in-house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the CITY, including but not

limited to, costs of experts and consultants), damages or liability of any nature whatsoever arising out of the infringement, actual or alleged, direct or contributory, of any intellectual property rights, including, without limitation, patent, copyright, trademark, trade secret, right of publicity and proprietary information right (1) on or in any design, medium, matter, article, process, method, application, equipment, device, instrumentation, software, hardware, or firmware used by CONSULTANT, or its subconsultants of any tier, in performing the work under this Contract; or (2) as a result of the CITY'S actual or intended use of any Work Product furnished by CONSULTANT, or its subconsultants of any tier, under the Agreement. Rights and remedies available to the CITY under this provision are cumulative of those provided for elsewhere in this Contract and those allowed under the laws of the United States, the State of California, and the CITY. The provisions of Article 15 shall survive expiration or termination of this Contract.

15.3.2 In CONSULTANT'S defense of the CITY Defendants, negotiation, compromise, and settlement of any such infringement action, the Los Angeles City Attorney's Office shall retain discretion in and control of the litigation, negotiation, compromise, settlement, and appeals therefrom, as required by the Los Angeles City Charter, particularly Article II, Sections 271, 272 and 273 thereof.

15.3.3 Where any Work Product furnished by CONSULTANT (a) becomes the subject of an action, (b) is adjudicated as infringing a third party's Intellectual Property right, or (c) has its use enjoined or license terminated; CONSULTANT shall, with the CITY'S consent, do one of the following immediately. CONSULTANT shall at its expense either:

- i) procure for the CITY the right or license to continue using the Work Product; or
- ii) replace the Work Product with a functionally equivalent, non-infringing product.

Exercise of any of the above-mentioned options shall not cause undue business interruption to the CITY or diminish the intended benefits and use of the Work Product by the CITY under this Contract.

ARTICLE 16

NONDISCRIMINATION AND AFFIRMATIVE ACTION

Article 16 is hereby amended in its title and content to read as follows:

NONDISCRIMINATION

Unless otherwise exempt, this Contract is subject to the nondiscrimination provisions in Sections 10.8 through 10.8.2 of the Los Angeles Administrative Code, as amended from time to time. The CONSULTANT shall comply with the applicable nondiscrimination and affirmative action provisions of the laws of the United States of America, the State of California, and the CITY. In performing this Contract, CONSULTANT shall not discriminate in its employment practices against any employee or applicant for employment because of such person's race, religion, national origin, ancestry, sex, sexual orientation, age, disability, domestic partner status, marital status or medical condition. The CONSULTANT 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 said Office. Any subcontract entered into by CONSULTANT, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract.

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

ARTICLE 17

**MINORITY, WOMEN AND OTHER BUSINESS ENTERPRISE
OUTREACH PROGRAM**

No Change

ARTICLE 18

SUCCESSORS AND ASSIGNS

No Change

ARTICLE 19

CONTACT PERSONS – PROPER ADDRESSES – NOTIFICATION

Article 19 is hereby amended as follows:

To Consultant:

From:

Contact Person: Larry E. Smith, Executive Director

Address: North East Trees, Inc.
570 W. Ave 26, Suite 200
Los Angeles, CA 90065

To:
Contact Person: Mark Kenyon, Executive Director

Address: North East Trees, Inc.
570 W. Ave 26, Suite 200
Los Angeles, CA 90065

ARTICLE 20 **EXCUSABLE DELAYS**

No Change

ARTICLE 21 **SEVERABILITY**

No Change

ARTICLE 22 **DISPUTES**

No Change

ARTICLE 23 **ENTIRE CONTRACT**

No Change

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

No Change

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

No Change

ARTICLE 26 **BONDS**

Article 26 is hereby amended in its entirety to read as follows:

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

ARTICLE 27

CHILD SUPPORT ASSIGNMENT ORDERS

No Change

ARTICLE 28

**LIVING WAGE ORDINANCE AND SERVICE CONTRACTOR
WORKER RETENTION ORDINANCE**

No Change

ARTICLE 29

AMERICANS WITH DISABILITIES ACT

No Change

ARTICLE 30

EQUAL BENEFITS ORDINANCE

Article 30 is hereby amended in its entirety to read as follows:

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.

1. During the performance of the Contract, CONSULTANT certifies and represents that CONSULTANT will comply with the EBO.
2. The failure of CONSULTANT to comply with the EBO will be deemed to be a material breach of this Contract by the CITY.
3. If CONSULTANT fails to comply with the EBO, the CITY may cancel, terminate or suspend the 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.
4. Failure to comply with the EBO may be used as evidence against CONSULTANT in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40 *et seq.*, Contractor Responsibility Ordinance.
5. If the CITY'S Designated Administrative Agency determines that a CONSULTANT has set up or used its contracting entity for the purpose of evading the intent of the EBO, the CITY may terminate the Contract. Violation of this provision may be used as evidence against CONSULTANT in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40 *et seq.*, Contractor Responsibility Ordinance.

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

“During the performance of a Contract with the City of Los Angeles, the Consultant 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) 847-2632.”

ARTICLE 31

WAIVER

No Change

ARTICLE 32

PROHIBITION AGAINST ASSIGNMENT OR DELEGATION

No Change

ARTICLE 33

PERMITS

No Change

ARTICLE 34

CLAIMS FOR LABOR AND MATERIALS

No Change

ARTICLE 35

DISCOUNTS

No Change

ARTICLE 36

CONTRACTOR RESPONSIBILITY ORDINANCE

No Change

ARTICLE 37

BREACH

No Change

ARTICLE 38

SLAVERY DISCLOSURE ORDINANCE

No Change

ARTICLE 39

CONTRACT BIDDER CERTIFICATION OF COMPLIANCE WITH LOBBYING LAWS

Article 39 is hereby amended in its title and content to read as follows:

BIDDER ETHICS

Pursuant to the Los Angeles Municipal Lobbying Ordinance, any bidder for a contract shall submit with its proposal a Bidder Certification CEC Form 50 (**Exhibit J**), proscribed by the City Ethics Commission, in which the bidder acknowledges and agrees to comply with the disclosure requirements and prohibitions established in the Ordinance if the bidder qualifies as a lobbying entity under the Ordinance.

As amended, this Contract is also subject to Charter Section 470(c)(12) and related ordinances and as a result, the CONSULTANT was required to submit Bidder Contributions CEC Form 55 (**Exhibit J**) within ten business days of discussing the amendment. Consequently, CONSULTANT may not make campaign contributions to and or engage in fundraising for certain elected City officials or candidates for elected City office from the date the amendment is first discussed until 12 months after the amendment is signed. The CONSULTANT'S principals and subconsultants performing \$100,000 or more in work on the contract, as well as the principals of those subconsultants, are also subject to the same limitations on campaign contributions and fundraising.

CONSULTANT must also notify their principals and subconsultants in writing of the restrictions and include the notice in contracts with subconsultants. Consultants who fail to comply with City law may be subject to penalties, termination of contract, and debarment. Additional information regarding these restrictions and requirements may be obtained from the City Ethics Commission at (213) 978-1960.

The Contract is hereby amended to include the following Articles:

ARTICLE 40

AFFIRMATIVE ACTION

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

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

1. This provision applies to work or services performed or materials manufactured or assembled in the United States.
 2. Nothing in this Section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.
 3. CONSULTANT shall post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.
- B. CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of CONSULTANT, state that all qualified applicants will receive consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
- C. As part of the CITY'S supplier registration process, and/or at the request of the awarding authority or the Office of Contract Compliance, CONSULTANT shall certify on an electronic or hard copy form to be supplied, that CONSULTANT has not discriminated in the performance of CITY contracts against any employee or applicant for employment on the basis or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
- D. CONSULTANT shall permit access to and may be required to provide certified copies of all of its records pertaining to employment and to its employment practices by the awarding authority or the Office of Contract Compliance, for the purpose of investigation to ascertain compliance with the Affirmative Action Program provisions of CITY contracts, and on their or either of their request to provide evidence that it has or will comply therewith.
- E. The failure of any CONSULTANT to comply with the Affirmative Action Program provisions of CITY contracts may be deemed to be a material breach of contract. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made except upon a full and fair hearing after notice and an opportunity to be heard has been given to CONSULTANT.

- F. Upon a finding duly made that CONSULTANT has breached the Affirmative Action Program provisions of a CITY contract, the Contract may be forthwith cancelled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the CITY. In addition thereto, such breach may be the basis for a determination by the awarding authority or the Board of Public Works that the said CONSULTANT is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Los Angeles City Charter. In the event of such determination, such CONSULTANT shall be disqualified from being awarded a contract with the CITY for a period of two years, or until he or she shall establish and carry out a program in conformance with the provisions hereof.
- G. In the event of a finding by the Fair Employment and Housing Commission of the State of California, or the Board of Public Works of the City of Los Angeles, or any court of competent jurisdiction, that CONSULTANT has been guilty of a willful violation of the California Fair Employment and Housing Act, or the Affirmative Action Program provisions of a CITY contract, there may be deducted from the amount payable to CONSULTANT by the CITY under the Contract, a penalty of ten dollars (\$10.00) for each person for each calendar day on which such person was discriminated against in violation of the provisions of a CITY contract.
- H. Notwithstanding any other provisions of a CITY contract, the CITY shall have any and all other remedies at law or in equity for any breach hereof.
- I. Intentionally blank.
- J. Nothing contained in CITY contracts shall be construed in any manner so as to require or permit any act which is prohibited by law.
- K. CONSULTANT shall submit an Affirmative Action Plan which shall meet the requirements of this chapter at the time it submits its bid or proposal or at the time it registers to do business with the CITY. The plan shall be subject to approval by the Office of Contract Compliance prior to award of the Contract. The awarding authority may also require consultants and suppliers to take part in a pre-registration, pre-bid, pre-proposal, or pre-award conference in order to develop, improve or implement a qualifying Affirmative Action Plan. Affirmative Action Programs developed

pursuant to this Section shall be effective for a period of twelve months from the date of approval by the Office of Contract Compliance. In case of prior submission of a plan, CONSULTANT may submit documentation that it has an Affirmative Action Plan approved by the Office of Contract Compliance within the previous twelve months. If the approval is 30 days or less from expiration, CONSULTANT must submit a new Plan to the Office of Contract Compliance and that Plan must be approved before the Contract is awarded.

1. Every contract of \$5,000 or more which may provide construction, demolition, renovation, conservation or major maintenance of any kind shall in addition comply with the requirements of Section 10.13 of the Los Angeles Administrative Code.
2. CONSULTANT may establish and adopt as its own Affirmative Action Plan, by affixing his or her signature thereto, an Affirmative Action Plan prepared and furnished by the Office of Contract Compliance, or it may prepare and submit its own Plan for approval.

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

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

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

4. Upgrading training and opportunities;
 5. Encouraging the use of consultants, subconsultants and suppliers of all racial and ethnic groups, provided, however, that any contract subject to this ordinance shall require the CONSULTANT, subconsultant or supplier to provide not less than the prevailing wage, working conditions and practices generally observed in private industries in the consultant's, subconsultant's, or supplier's geographical area for such work;
 6. The entry of qualified women, minority and all other journeymen into the industry; and
 7. The provision of needed supplies or job conditions to permit persons with disabilities to be employed, and minimize the impact of any disability.
- N. Any adjustments which may be made in the CONSULTANT'S or supplier's work force to achieve the requirements of the CITY'S Affirmative Action Contract Compliance Program in purchasing and construction shall be accomplished by either an increase in the size of the work force or replacement of those employees who leave the work force by reason of resignation, retirement or death and not by termination, layoff, demotion or change in grade.
- O. Affirmative Action Agreements resulting from the proposed Affirmative Action Plan or the pre-registration, pre-bid, pre-proposal or pre-award conferences shall not be confidential and may be publicized by the CONSULTANT at his or her discretion. Approved Affirmative Action Agreements become the property of the CITY and may be used at the discretion of the CITY in its Contract Compliance Affirmative Action Program.
- P. Intentionally blank.
- Q. All consultants subject to the provisions of this Section shall include a like provision in all subcontracts awarded for work to be performed under the Contract with the CITY and shall impose the same obligations, including but not limited to filing and reporting obligations, on the subconsultants as are applicable to the CONSULTANT. Failure of the CONSULTANT to comply with this requirement or to obtain the compliance of its subconsultants with all such obligations shall subject the CONSULTANT to the imposition of any and all sanctions allowed by law, including but

not limited to termination of the CONSULTANT'S Contract with the CITY.

ARTICLE 41

FALSE CLAIMS ACT

CONSULTANT 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.

ARTICLE 42

EQUAL EMPLOYMENT PRACTICES

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

- A. During the performance of this Contract, CONSULTANT agrees and represents that it will provide equal employment practices and CONSULTANT and each subconsultant hereunder will ensure that in his or her employment practices, persons are employed and employees are treated equally and without regard to or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
 - 1. This provision applies to work or service performed or materials manufactured or assembled in the United States.
 - 2. Nothing in this Section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.
 - 3. CONSULTANT agrees to post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.
- B. CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of CONSULTANT, state that all qualified applicants will receive consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
- C. As part of the CITY'S supplier registration process, and/or at the request of the awarding authority, or the Board of Public Works, Office of Contract Compliance, CONSULTANT shall certify in

the specified format that he or she has not discriminated in the performance of CITY contracts against any employee or applicant for employment on the basis or because of race, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status or medical condition.

- D. CONSULTANT shall permit access to and may be required to provide certified copies of all of his or her records pertaining to employment and to employment practices by the awarding authority or the Office of Contract Compliance for the purpose of investigation to ascertain compliance with the Equal Employment Practices provisions of CITY contracts. On their or either of their request CONSULTANT shall provide evidence that he or she has or will comply therewith.
- E. The failure of any CONSULTANT to comply with the Equal Employment Practices provisions of this Contract may be deemed to be a material breach of CITY contracts. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made or penalties assessed except upon a full and fair hearing after notice, and an opportunity to be heard has been given to CONSULTANT.
- F. Upon a finding duly made that CONSULTANT has failed to comply with the Equal Employment Practices provisions of a CITY contract, the Contract may be forthwith cancelled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the CITY. In addition thereto, such failure to comply may be the basis for a determination by the awarding authority or the Board of Public Works that the CONSULTANT is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Charter of the City of Los Angeles. In the event of such a determination, CONSULTANT shall be disqualified from being awarded a contract with the CITY for a period of two years, or until CONSULTANT shall establish and carry out a program in conformance with the provisions hereof.
- G. Notwithstanding any other provision of this Contract, the CITY shall have any and all other remedies at law or in equity for any breach hereof.
- H. Intentionally blank.

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

ARTICLE 43

FIRST SOURCE HIRING ORDINANCE

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

- 1. CONSULTANT shall, prior to the execution of the contract, provide to the Designated Administrative Agency (DAA) a list of anticipated employment opportunities that CONSULTANT estimate they will need to fill in order to perform the services under the Contract.

2. CONSULTANT further pledges that it will, during the term of the Contract, shall a) At least seven business days prior to making an announcement of a specific employment opportunity, provide notifications of that employment opportunity to the Community Development Department (CDD), which will refer individuals for interview; b) Interview qualified individuals referred by CDD; and c) Prior to filling any employment opportunity, the CONSULTANT shall inform the DAA of the names of the Referral Resources used, the names of the individuals they referred, the names of the referred individuals who the CONSULTANT interviewed and the reasons why referred individuals were not hired.
3. Any Subcontract entered into by the CONSULTANT relating to this Agreement, to the extent allowed hereunder, shall be subject to the provisions of FSHO, and shall incorporate the FSHO.
4. CONSULTANT shall comply with all rules, regulations and policies promulgated by the designated administrative agency, which may be amended from time to time.

Where under the provisions of Section 10.44.13 of the Los Angeles Administrative Code the designated administrative agency has determined that the CONSULTANT intentionally violated or used hiring practices for the purpose of avoiding the article, the determination must be documented in the Awarding Authority's Contractor Evaluation, required under Los Angeles Administrative Code Section 10.39 et seq., and must be documented in each of the Contractor's subsequent Contractor Responsibility Questionnaires submitted under Los Angeles Administrative Code Section 10.40 et seq. This measure does not limit the City's authority to act under this article.

Under the provisions of Section 10.44.8 of the Los Angeles Administrative Code, the Awarding Authority shall, under appropriate circumstances, terminate this contract and otherwise pursue legal remedies that may be available if the designated administrative agency determines that the subject CONSULTANT has violated provisions of the FSHO.

EXCEPT AS EXPRESSLY MODIFIED herein, the Contract executed on September 3, 2008 remains unchanged.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 1 on the day and year written below.

NORTH EAST TREES

By:

Title:

Date:

CITY OF LOS ANGELES

By:

Title: President, Board of Public Works

Date:

By:

Date:

ATTEST:

JUNE LAGMAY, City Clerk

By:

Date:

APPROVED AS TO FORM:

MICHAEL N. FEUER, City Attorney

By:

Title: Assistant City Attorney

Date:

AMENDMENT NO. 1

to

Contract No. C-114377

for the

PRE-QUALIFIED ON-CALL LANDSCAPE ARCHITECTURAL CONSULTANT SERVICES

Between

CITY OF LOS ANGELES

and

NUVIS

AMENDMENT NO. 1 TO CONTRACT NO. C-114377, FOR PRE-QUALIFIED ON-CALL LANDSCAPE ARCHITECTURAL CONSULTANT SERVICES BETWEEN THE CITY OF LOS ANGELES AND NUVIS

This Amendment modifies Contract No. C-114377 executed on September 3, 2008 between the City of Los Angeles (hereinafter referred to as "CITY") and NUVIS (hereinafter referred to as "CONSULTANT").

WITNESSETH

WHEREAS, CITY issued a Request for Qualifications (RFQ) on April 16, 2007 for landscape architectural and related services, on a pre-qualified basis, on various projects and CONSULTANT submitted a statement of qualifications in response; and

WHEREAS, CONSULTANT demonstrated qualifications to perform said services and was selected to perform the design services by CITY staff based on the evaluation criteria set forth in the RFQ; and

WHEREAS, on September 3, 2008, Contract No. C-114377 was awarded to CONSULTANT, the terms of which will expire on September 3, 2013; and

WHEREAS, the CITY and CONSULTANT have agreed to extend the term of the Contract by three (3) additional years to September 3, 2016 in order to provide as needed landscape architectural and construction administration services; and

WHEREAS, the CITY'S Department of Public Works, Bureau of Engineering, (hereinafter referred to as "BUREAU"), is the Program Manager and oversees the CONSULTANT'S performance of this Contract; and

NOW, THEREFORE, in consideration of the foregoing and of the benefits which will accrue to the parties hereto in carrying out the conditions of this Amendment No. 1, Contract No. C-114377 is hereby amended as follows:

ARTICLE 1 SECTION HEADINGS AND CONSTRUCTION OF PROVISIONS AND TITLES HEREIN

No Change

ARTICLE 2 DEFINITIONS

No Change

ARTICLE 3 PROJECT DESCRIPTION

No Change

ARTICLE 4

RESPONSIBILITIES OF AND TASKS TO BE PERFORMED BY THE CONSULTANT

No Change

ARTICLE 5

KEY CONSULTANT PERSONNEL

Article 5 is hereby amended to replace the Key Consultant Personnel table as follows:

5.1 CONSULTANT designates the following persons to implement the work:

From:

Name	Title
Robert R. Cardoza, FASLA	President/CEO – Quality Control/Quality Assurance
Leslee A. Temple, FASLA	Vice President/CFO – Contract Administration
Tomas Munoz	Principal – Project Manager
Perry Cardoza	Principal – Design Director
Linda Forde	Sr. Associate – Technical Documents/Graphics
Alicia Taylor	Administrative Assistant – Administrative Support

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

To:

Name	Title
Leslee A. Temple	FASLA President - Contract Administration
Robert Stone	Executive Vice President - Quality Control/Quality Assurance
Perry Cardoza	Executive Vice President- Project Principal
Tomas Munoz	Principal - Project Manager
Linda Forde	Principal - Technical Documents/Graphics, LEED Support
Alicia Taylor	Administrative Assistant - Administrative Support

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

ARTICLE 6

RESPONSIBILITIES OF AND TASKS TO BE PERFORMED BY CITY

No Change

ARTICLE 7

TERM OF CONTRACT AND TIME OF EFFECTIVENESS

Article 7 is hereby amended in its first paragraph to read as follows:

Unless otherwise provided, the term of this Contract shall begin on the date of full execution and shall expire on September 3, 2016, unless terminated as provided under Article 8 or extended by amendment to this Contract.

ARTICLE 8

TERMINATION

Article 8 is hereby amended in its entirety to read as follows:

8.1 Termination for Convenience

The CITY may terminate this Contract for the CITY'S convenience at any time by giving CONSULTANT thirty days written notice thereof. Upon receipt of said notice, CONSULTANT shall immediately take action not to incur any additional obligations, cost or expenses, except as may be reasonably necessary to terminate its activities. The CITY shall pay CONSULTANT its reasonable and allowable costs through the effective date of termination and those reasonable and necessary costs incurred by CONSULTANT to affect such termination. Thereafter, CONSULTANT shall have no further claims against the CITY under this Contract. All finished and unfinished documents and materials procured for or produced under this Contract, including all intellectual property rights thereto, shall become CITY property upon the date of such termination. CONSULTANT agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights provided herein.

8.2 Termination for Breach of Contract

8.2.1 Except for excusable delays as provided in Article 20, if CONSULTANT fails to perform any of the provisions of this Contract or so fails to make progress as to endanger timely performance of this Contract, the CITY may give CONSULTANT written notice of such default. If CONSULTANT does not cure such default or provide a plan to cure such default which is acceptable to the CITY within the time permitted by the CITY, then the CITY may terminate this Contract due to CONSULTANT'S breach of this Contract.

8.2.2 If a federal or state proceeding for relief of debtors is

undertaken by or against CONSULTANT, or if CONSULTANT makes an assignment for the benefit of creditors, then the CITY may immediately terminate this Contract.

- 8.2.3 If CONSULTANT engages in any dishonest conduct related to the performance or administration of this Contract or violates the CITY'S lobbying policies, then the CITY may immediately terminate this Contract.
- 8.2.4 In the event the CITY terminates this Contract 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 CONSULTANT shall be liable to the CITY for all of its costs and damages, including, but not limited, any excess costs for such services.
- 8.2.5 All finished and unfinished documents and materials produced or procured under this Contract, including all intellectual property rights thereto, shall become CITY property upon date of such termination. CONSULTANT agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights provided herein.
- 8.2.6 If, after notice of termination of this Contract under the provisions of this Section, it is determined for any reason that CONSULTANT was not in default under the provisions of this Section, or that the default was excusable under the terms of this Contract, the rights and obligations of the parties shall be the same as if the notice of termination has been issued pursuant to Article 8.1 Termination for Convenience.
- 8.2.7 The rights and remedies of the CITY provided in this Section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

ARTICLE 9

SUBCONTRACT APPROVAL

Article 9 is hereby amended in its title and first paragraph to read as follows:

SUBCONSULTANT APPROVAL

CONSULTANT shall not use subconsultants to assist in performance of this Contract without the prior written approval of the CITY. If the CITY permits the use of subconsultants, CONSULTANT shall remain responsible for performing all aspects of this Contract. The CONSULTANT is required to provide the CITY a list of all subconsultants including the name and address of the firms. Refer to **Exhibit K** for CONSULTANT and subconsultant information. The CITY has the right to approve CONSULTANT'S subconsultants and the CITY reserves the right to request replacement of subconsultants. The CITY does not have any obligation to pay CONSULTANT'S subconsultants and nothing herein creates any privity between the CITY and the subconsultants. Wholly-owned subsidiaries of CONSULTANT shall not be considered subconsultants.

ARTICLE 10

COMPENSATION, INVOICING AND PAYMENT

Article 10 is hereby amended to include a third paragraph to Section 10.6 to read as follows:

For the sake of efficiency, the CONSULTANT may have provided services prior to the execution of this Amendment. Upon execution of this Amendment, and to the extent that said services were performed in accordance with the terms and conditions of the Contract and this Amendment, those services are hereby ratified and eligible for payment.

ARTICLE 11

AMENDMENTS, CHANGES OR MODIFICATIONS

No Change

ARTICLE 12

INDEMNIFICATION AND INSURANCE

No Change

ARTICLE 13

INDEPENDENT CONTRACTORS

No Change

ARTICLE 14

WARRANTY AND RESPONSIBILITY OF CONSULTANT

No Change

ARTICLE 15

OWNERSHIP OF DATA AND INTELLECTUAL PROPERTY

Article 15 is hereby amended in its title and content to read as follows:

15.1 Ownership of Data and License

- 15.1.1 Unless otherwise provided for herein, all Work Products originated and prepared by CONSULTANT or its subconsultants of any tier under this Contract shall be and remain the exclusive property of the CITY for its use in any manner it deems appropriate. Work Products are all works, tangible or not, created under this Contract including, without limitation, documents, material, data, reports, manuals, specifications, artwork, drawings, sketches, computer programs and databases, schematics, photographs, video and audiovisual recordings, sound recordings, marks, logos, graphic designs, notes, websites, domain names, inventions, processes, formulas matters and combinations thereof, and all forms of intellectual property. CONSULTANT hereby assigns, and agrees to assign, all goodwill, copyright, trademark, patent, trade secret and all other intellectual property rights worldwide in any Work Products originated and prepared by CONSULTANT under this Contract. CONSULTANT further agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights provided herein.
- 15.1.2 With regard to the basis for design calculations and engineering notes, such data shall be provided to the CITY in (a) hard cover post binder(s), appropriately indexed, on thin Mylar stock or good quality paper satisfactory for reproduction.
- 15.1.3 For all Work Products delivered to the CITY that are not originated or prepared by CONSULTANT or its subconsultants of any tier under this Contract, CONSULTANT hereby grants a non-exclusive perpetual license to use such Work Products for any CITY purposes.
- 15.1.4 CONSULTANT shall not provide or disclose any Work Products to any third party without prior written consent of the City.
- 15.1.5 All documents, information and pre-existing materials provided by CITY to CONSULTANT and its subconsultants arising out of or related to this Contract shall remain the property of the CITY. The CONSULTANT may not use, distribute or otherwise make public in any manner, either for profit or not for profit, any

of the information, documentation, or procedures developed for the CITY hereunder without the prior written consent of the CITY. CONSULTANT further agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights.

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

15.2 Intellectual Property Warranty

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

15.3 Intellectual Property Indemnification

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

application, equipment, device, instrumentation, software, hardware, or firmware used by CONSULTANT, or its subconsultants of any tier, in performing the work under this Contract; or (2) as a result of the CITY'S actual or intended use of any Work Product furnished by CONSULTANT, or its subconsultants of any tier, under the Agreement. Rights and remedies available to the CITY under this provision are cumulative of those provided for elsewhere in this Contract and those allowed under the laws of the United States, the State of California, and the CITY. The provisions of Article 15 shall survive expiration or termination of this Contract.

15.3.2 In CONSULTANT'S defense of the CITY Defendants, negotiation, compromise, and settlement of any such infringement action, the Los Angeles City Attorney's Office shall retain discretion in and control of the litigation, negotiation, compromise, settlement, and appeals therefrom, as required by the Los Angeles City Charter, particularly Article II, Sections 271, 272 and 273 thereof.

15.3.3 Where any Work Product furnished by CONSULTANT (a) becomes the subject of an action, (b) is adjudicated as infringing a third party's Intellectual Property right, or (c) has its use enjoined or license terminated; CONSULTANT shall, with the CITY'S consent, do one of the following immediately. CONSULTANT shall at its expense either:

- i) procure for the CITY the right or license to continue using the Work Product; or
- ii) replace the Work Product with a functionally equivalent, non-infringing product.

Exercise of any of the above-mentioned options shall not cause undue business interruption to the CITY or diminish the intended benefits and use of the Work Product by the CITY under this Contract.

ARTICLE 16

NONDISCRIMINATION AND AFFIRMATIVE ACTION

Article 16 is hereby amended in its title and content to read as follows:

NONDISCRIMINATION

Unless otherwise exempt, this Contract is subject to the nondiscrimination

provisions in Sections 10.8 through 10.8.2 of the Los Angeles Administrative Code, as amended from time to time. The CONSULTANT shall comply with the applicable nondiscrimination and affirmative action provisions of the laws of the United States of America, the State of California, and the CITY. In performing this Contract, CONSULTANT shall not discriminate in its employment practices against any employee or applicant for employment because of such person's race, religion, national origin, ancestry, sex, sexual orientation, age, disability, domestic partner status, marital status or medical condition. The CONSULTANT 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 said Office. Any subcontract entered into by CONSULTANT, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract.

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

ARTICLE 17

**MINORITY, WOMEN AND OTHER BUSINESS ENTERPRISE
OUTREACH PROGRAM**

No Change

ARTICLE 18

SUCCESSORS AND ASSIGNS

No Change

ARTICLE 19

CONTACT PERSONS – PROPER ADDRESSES – NOTIFICATION

Article 19 is hereby amended as follows:

To Consultant:

From:

Contact Person: Leslee A. Temple, FASLA, Vice President/CFO

Address: NUVIS
 3151 Airway Avenue Suite J3
 Costa Mesa, CA 92626

To:

Contact Person: Perry Cardoza, ASLA, Executive Vice President

Address: NUVIS
3151 Airway Avenue Suite J3
Costa Mesa, CA 92626

ARTICLE 20

EXCUSABLE DELAYS

No Change

ARTICLE 21

SEVERABILITY

No Change

ARTICLE 22

DISPUTES

No Change

ARTICLE 23

ENTIRE CONTRACT

No Change

ARTICLE 24

APPLICABLE LAW, INTERPRETATION AND ENFORCEMENT

No Change

ARTICLE 25

**CURRENT LOS ANGELES CITY BUSINESS TAX
REGISTRATION CERTIFICATE REQUIRED**

No Change

ARTICLE 26

BONDS

Article 26 is hereby amended in its entirety to read as follows:

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

ARTICLE 27

CHILD SUPPORT ASSIGNMENT ORDERS

No Change

ARTICLE 28

LIVING WAGE ORDINANCE AND SERVICE CONTRACTOR

WORKER RETENTION ORDINANCE

No Change

ARTICLE 29

AMERICANS WITH DISABILITIES ACT

No Change

ARTICLE 30

EQUAL BENEFITS ORDINANCE

Article 30 is hereby amended in its entirety to read as follows:

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.

1. During the performance of the Contract, CONSULTANT certifies and represents that CONSULTANT will comply with the EBO.
2. The failure of CONSULTANT to comply with the EBO will be deemed to be a material breach of this Contract by the CITY.
3. If CONSULTANT fails to comply with the EBO, the CITY may cancel, terminate or suspend the 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.
4. Failure to comply with the EBO may be used as evidence against CONSULTANT in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40 *et seq.*, Contractor Responsibility Ordinance.
5. If the CITY'S Designated Administrative Agency determines that a CONSULTANT has set up or used its contracting entity for the purpose of evading the intent of the EBO, the CITY may terminate the Contract. Violation of this provision may be used as evidence against CONSULTANT in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40 *et seq.*, Contractor Responsibility Ordinance.

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

“During the performance of a Contract with the City of Los Angeles, the

Consultant 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) 847-2632."

ARTICLE 31

WAIVER

No Change

ARTICLE 32

PROHIBITION AGAINST ASSIGNMENT OR DELEGATION

No Change

ARTICLE 33

PERMITS

No Change

ARTICLE 34

CLAIMS FOR LABOR AND MATERIALS

No Change

ARTICLE 35

DISCOUNTS

No Change

ARTICLE 36

CONTRACTOR RESPONSIBILITY ORDINANCE

No Change

ARTICLE 37

BREACH

No Change

ARTICLE 38

SLAVERY DISCLOSURE ORDINANCE

No Change

ARTICLE 39

CONTRACT BIDDER CERTIFICATION OF COMPLIANCE WITH LOBBYING LAWS

Article 39 is hereby amended in its title and content to read as follows:

BIDDER ETHICS

Pursuant to the Los Angeles Municipal Lobbying Ordinance, any bidder for a contract shall submit with its proposal a Bidder Certification CEC Form 50 (**Exhibit J**), proscribed by the City Ethics Commission, in which the bidder acknowledges and agrees to comply with the disclosure requirements and prohibitions established in the Ordinance if the bidder qualifies as a lobbying entity under the Ordinance.

As amended, this Contract is also subject to Charter Section 470(c)(12) and related ordinances and as a result, the CONSULTANT was required to submit Bidder Contributions CEC Form 55 (**Exhibit J**) within ten business days of discussing the amendment. Consequently, CONSULTANT may not make campaign contributions to and or engage in fundraising for certain elected City officials or candidates for elected City office from the date the amendment is first discussed until 12 months after the amendment is signed. The CONSULTANT'S principals and subconsultants performing \$100,000 or more in work on the contract, as well as the principals of those subconsultants, are also subject to the same limitations on campaign contributions and fundraising.

CONSULTANT must also notify their principals and subconsultants in writing of the restrictions and include the notice in contracts with subconsultants. Consultants who fail to comply with City law may be subject to penalties, termination of contract, and debarment. Additional information regarding these restrictions and requirements may be obtained from the City Ethics Commission at (213) 978-1960.

The Contract is hereby amended to include the following Articles:

ARTICLE 40 **AFFIRMATIVE ACTION**

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

- A. During the performance of a CITY contract, CONSULTANT certifies and represents that CONSULTANT and each subconsultant hereunder will adhere to an affirmative action program to ensure that in its employment practices, persons are employed and employees are treated equally and without regard to or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
 - 1. This provision applies to work or services performed or materials manufactured or assembled in the United States.
 - 2. Nothing in this Section shall require or prohibit the

establishment of new classifications of employees in any given craft, work or service category.

3. CONSULTANT shall post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.
- B. CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of CONSULTANT, state that all qualified applicants will receive consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
 - C. As part of the CITY'S supplier registration process, and/or at the request of the awarding authority or the Office of Contract Compliance, CONSULTANT shall certify on an electronic or hard copy form to be supplied, that CONSULTANT has not discriminated in the performance of CITY contracts against any employee or applicant for employment on the basis or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
 - D. CONSULTANT shall permit access to and may be required to provide certified copies of all of its records pertaining to employment and to its employment practices by the awarding authority or the Office of Contract Compliance, for the purpose of investigation to ascertain compliance with the Affirmative Action Program provisions of CITY contracts, and on their or either of their request to provide evidence that it has or will comply therewith.
 - E. The failure of any CONSULTANT to comply with the Affirmative Action Program provisions of CITY contracts may be deemed to be a material breach of contract. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made except upon a full and fair hearing after notice and an opportunity to be heard has been given to CONSULTANT.
 - F. Upon a finding duly made that CONSULTANT has breached the Affirmative Action Program provisions of a CITY contract, the Contract may be forthwith cancelled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the

CITY. In addition thereto, such breach may be the basis for a determination by the awarding authority or the Board of Public Works that the said CONSULTANT is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Los Angeles City Charter. In the event of such determination, such CONSULTANT shall be disqualified from being awarded a contract with the CITY for a period of two years, or until he or she shall establish and carry out a program in conformance with the provisions hereof.

- G. In the event of a finding by the Fair Employment and Housing Commission of the State of California, or the Board of Public Works of the City of Los Angeles, or any court of competent jurisdiction, that CONSULTANT has been guilty of a willful violation of the California Fair Employment and Housing Act, or the Affirmative Action Program provisions of a CITY contract, there may be deducted from the amount payable to CONSULTANT by the CITY under the Contract, a penalty of ten dollars (\$10.00) for each person for each calendar day on which such person was discriminated against in violation of the provisions of a CITY contract.
- H. Notwithstanding any other provisions of a CITY contract, the CITY shall have any and all other remedies at law or in equity for any breach hereof.
- I. Intentionally blank.
- J. Nothing contained in CITY contracts shall be construed in any manner so as to require or permit any act which is prohibited by law.
- K. CONSULTANT shall submit an Affirmative Action Plan which shall meet the requirements of this chapter at the time it submits its bid or proposal or at the time it registers to do business with the CITY. The plan shall be subject to approval by the Office of Contract Compliance prior to award of the Contract. The awarding authority may also require consultants and suppliers to take part in a pre-registration, pre-bid, pre-proposal, or pre-award conference in order to develop, improve or implement a qualifying Affirmative Action Plan. Affirmative Action Programs developed pursuant to this Section shall be effective for a period of twelve months from the date of approval by the Office of Contract Compliance. In case of prior submission of a plan, CONSULTANT may submit documentation that it has an Affirmative Action Plan approved by the Office of Contract

Compliance within the previous twelve months. If the approval is 30 days or less from expiration, CONSULTANT must submit a new Plan to the Office of Contract Compliance and that Plan must be approved before the Contract is awarded.

1. Every contract of \$5,000 or more which may provide construction, demolition, renovation, conservation or major maintenance of any kind shall in addition comply with the requirements of Section 10.13 of the Los Angeles Administrative Code.
2. CONSULTANT may establish and adopt as its own Affirmative Action Plan, by affixing his or her signature thereto, an Affirmative Action Plan prepared and furnished by the Office of Contract Compliance, or it may prepare and submit its own Plan for approval.

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

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

1. Apprenticeship where approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;
2. Classroom preparation for the job when not apprenticeable;
3. Pre-apprenticeship education and preparation;
4. Upgrading training and opportunities;
5. Encouraging the use of consultants, subconsultants and suppliers of all racial and ethnic groups, provided,

however, that any contract subject to this ordinance shall require the CONSULTANT, subconsultant or supplier to provide not less than the prevailing wage, working conditions and practices generally observed in private industries in the consultant's, subconsultant's, or supplier's geographical area for such work;

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

CONSULTANT 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.

ARTICLE 42

EQUAL EMPLOYMENT PRACTICES

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

- A. During the performance of this Contract, CONSULTANT agrees and represents that it will provide equal employment practices and CONSULTANT and each subconsultant hereunder will ensure that in his or her employment practices, persons are employed and employees are treated equally and without regard to or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
 - 1. This provision applies to work or service performed or materials manufactured or assembled in the United States.
 - 2. Nothing in this Section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.
 - 3. CONSULTANT agrees to post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.
- B. CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of CONSULTANT, state that all qualified applicants will receive consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
- C. As part of the CITY'S supplier registration process, and/or at the request of the awarding authority, or the Board of Public Works, Office of Contract Compliance, CONSULTANT shall certify in the specified format that he or she has not discriminated in the performance of CITY contracts against any employee or applicant for employment on the basis or because of race, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status or medical condition.

- D. CONSULTANT shall permit access to and may be required to provide certified copies of all of his or her records pertaining to employment and to employment practices by the awarding authority or the Office of Contract Compliance for the purpose of investigation to ascertain compliance with the Equal Employment Practices provisions of CITY contracts. On their or either of their request CONSULTANT shall provide evidence that he or she has or will comply therewith.
- E. The failure of any CONSULTANT to comply with the Equal Employment Practices provisions of this Contract may be deemed to be a material breach of CITY contracts. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made or penalties assessed except upon a full and fair hearing after notice, and an opportunity to be heard has been given to CONSULTANT.
- F. Upon a finding duly made that CONSULTANT has failed to comply with the Equal Employment Practices provisions of a CITY contract, the Contract may be forthwith cancelled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the CITY. In addition thereto, such failure to comply may be the basis for a determination by the awarding authority or the Board of Public Works that the CONSULTANT is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Charter of the City of Los Angeles. In the event of such a determination, CONSULTANT shall be disqualified from being awarded a contract with the CITY for a period of two years, or until CONSULTANT shall establish and carry out a program in conformance with the provisions hereof.
- G. Notwithstanding any other provision of this Contract, the CITY shall have any and all other remedies at law or in equity for any breach hereof.
- H. Intentionally blank.
- I. Nothing contained in this Contract shall be construed in any manner so as to require or permit any act which is prohibited by law.

- J. At the time a supplier registers to do business with the CITY, or when an individual bid or proposal is submitted, CONSULTANT shall agree to adhere to the Equal Employment Practices specified herein during the performance or conduct of CITY Contracts.
- K. Equal Employment Practices shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:
 - 1. Hiring practices;
 - 2. Apprenticeships where such approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;
 - 3. Training and promotional opportunities; and
 - 4. Reasonable accommodations for persons with disabilities.
- L. Any subcontract entered into by CONSULTANT, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract. Failure of CONSULTANT to comply with this requirement or to obtain the compliance of its subconsultants with all such obligations shall subject CONSULTANT to the imposition of any and all sanctions allowed by law, including but not limited to termination of the CONSULTANT'S Contract with the CITY.

ARTICLE 43

FIRST SOURCE HIRING ORDINANCE

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

- 1. CONSULTANT shall, prior to the execution of the contract, provide to the Designated Administrative Agency (DAA) a list of anticipated employment opportunities that CONSULTANT estimate they will need to fill in order to perform the services under the Contract.
- 2. CONSULTANT further pledges that it will, during the term of the Contract, shall a) At least seven business days prior to making an announcement of a specific employment opportunity, provide notifications of that employment opportunity to the Community Development Department (CDD), which will refer individuals for

interview; b) Interview qualified individuals referred by CDD; and
c) Prior to filling any employment opportunity, the
CONSULTANT shall inform the DAA of the names of the
Referral Resources used, the names of the individuals they
referred, the names of the referred individuals who the
CONSULTANT interviewed and the reasons why referred
individuals were not hired.

3. Any Subcontract entered into by the CONSULTANT relating to this Agreement, to the extent allowed hereunder, shall be subject to the provisions of FSHO, and shall incorporate the FSHO.
4. CONSULTANT shall comply with all rules, regulations and policies promulgated by the designated administrative agency, which may be amended from time to time.

Where under the provisions of Section 10.44.13 of the Los Angeles Administrative Code the designated administrative agency has determined that the CONSULTANT intentionally violated or used hiring practices for the purpose of avoiding the article, the determination must be documented in the Awarding Authority's Contractor Evaluation, required under Los Angeles Administrative Code Section 10.39 et seq., and must be documented in each of the Contractor's subsequent Contractor Responsibility Questionnaires submitted under Los Angeles Administrative Code Section 10.40 et seq. This measure does not limit the City's authority to act under this article.

Under the provisions of Section 10.44.8 of the Los Angeles Administrative Code, the Awarding Authority shall, under appropriate circumstances, terminate this contract and otherwise pursue legal remedies that may be available if the designated administrative agency determines that the subject CONSULTANT has violated provisions of the FSHO.

EXCEPT AS EXPRESSLY MODIFIED herein, the Contract executed on September 3, 2008 remains unchanged.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 1 on the day and year written below.

NUVIS

By:

Title:

Date:

CITY OF LOS ANGELES

By:

Title: President, Board of Public Works

Date:

By:

Date:

ATTEST:

JUNE LAGMAY, City Clerk

By:

Date:

APPROVED AS TO FORM:

MICHAEL N. FEUER, City Attorney

By:

Title: Assistant City Attorney

Date:

AMENDMENT NO. 1

to

Contract No. C-114378

for the

PRE-QUALIFIED ON-CALL LANDSCAPE ARCHITECTURAL CONSULTANT SERVICES

Between

CITY OF LOS ANGELES

and

RJM DESIGN GROUP, INC.

AMENDMENT NO. 1 TO CONTRACT NO. C-114378, FOR PRE-QUALIFIED ON-CALL LANDSCAPE ARCHITECTURAL CONSULTANT SERVICES BETWEEN THE CITY OF LOS ANGELES AND RJM DESIGN GROUP, INC.

This Amendment modifies Contract No. C-114378 executed on September 3, 2008 between the City of Los Angeles (hereinafter referred to as "CITY") and RJM DESIGN GROUP, INC. (hereinafter referred to as "CONSULTANT").

WITNESSETH

WHEREAS, CITY issued a Request for Qualifications (RFQ) on April 16, 2007 for landscape architectural and related services, on a pre-qualified basis, on various projects and CONSULTANT submitted a statement of qualifications in response; and

WHEREAS, CONSULTANT demonstrated qualifications to perform said services and was selected to perform the design services by CITY staff based on the evaluation criteria set forth in the RFQ; and

WHEREAS, on September 3, 2008, Contract No. C-114378 was awarded to CONSULTANT, the terms of which will expire on September 3, 2013; and

WHEREAS, the CITY and CONSULTANT have agreed to extend the term of the Contract by three (3) additional years to September 3, 2016 in order to provide as needed landscape architectural and construction administration services; and

WHEREAS, the CITY'S Department of Public Works, Bureau of Engineering, (hereinafter referred to as "BUREAU"), is the Program Manager and oversees the CONSULTANT'S performance of this Contract; and

NOW, THEREFORE, in consideration of the foregoing and of the benefits which will accrue to the parties hereto in carrying out the conditions of this Amendment No. 1, Contract No. C-114378 is hereby amended as follows:

ARTICLE 1 SECTION HEADINGS AND CONSTRUCTION OF PROVISIONS AND TITLES HEREIN

No Change

ARTICLE 2 DEFINITIONS

No Change

ARTICLE 3 PROJECT DESCRIPTION

No Change

ARTICLE 4

RESPONSIBILITIES OF AND TASKS TO BE PERFORMED BY THE CONSULTANT

No Change

ARTICLE 5

KEY CONSULTANT PERSONNEL

Article 5 is hereby amended to replace the Key Consultant Personnel table as follows:

5.1 CONSULTANT designates the following persons to implement the work:

From:

Name	Title
Robert J. Mueting	Principal Landscape Architect
Larry P. Ryan	Principal Landscape Architect
Eric Chastain	Associate Landscape Architect
Lori Pullman	Job Captain / Landscape Designer
Jacob Johnson	CADD Technician

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

To:

Name	Title
Robert J. Mueting	Principal Landscape Architect
Larry P. Ryan	Principal Landscape Architect
Eric Chastain	Associate Landscape Architect
Robert Mier	Job Captain / Landscape Designer

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

ARTICLE 6

RESPONSIBILITIES OF AND TASKS TO BE PERFORMED BY CITY

No Change

ARTICLE 7

TERM OF CONTRACT AND TIME OF EFFECTIVENESS

Article 7 is hereby amended in its first paragraph to read as follows:

Unless otherwise provided, the term of this Contract shall begin on the date of full execution and shall expire on September 3, 2016, unless terminated as provided under Article 8 or extended by amendment to this Contract.

ARTICLE 8

TERMINATION

Article 8 is hereby amended in its entirety to read as follows:

8.1 Termination for Convenience

The CITY may terminate this Contract for the CITY'S convenience at any time by giving CONSULTANT thirty days written notice thereof. Upon receipt of said notice, CONSULTANT shall immediately take action not to incur any additional obligations, cost or expenses, except as may be reasonably necessary to terminate its activities. The CITY shall pay CONSULTANT its reasonable and allowable costs through the effective date of termination and those reasonable and necessary costs incurred by CONSULTANT to affect such termination. Thereafter, CONSULTANT shall have no further claims against the CITY under this Contract. All finished and unfinished documents and materials procured for or produced under this Contract, including all intellectual property rights thereto, shall become CITY property upon the date of such termination. CONSULTANT agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights provided herein.

8.2 Termination for Breach of Contract

8.2.1 Except for excusable delays as provided in Article 20, if CONSULTANT fails to perform any of the provisions of this Contract or so fails to make progress as to endanger timely performance of this Contract, the CITY may give CONSULTANT written notice of such default. If CONSULTANT does not cure such default or provide a plan to cure such default which is acceptable to the CITY within the time permitted by the CITY, then the CITY may terminate this Contract due to CONSULTANT'S breach of this Contract.

8.2.2 If a federal or state proceeding for relief of debtors is undertaken by or against CONSULTANT, or if CONSULTANT makes an assignment for the benefit of creditors, then the CITY may immediately terminate this Contract.

8.2.3 If CONSULTANT engages in any dishonest conduct related to the performance or administration of this

Contract or violates the CITY'S lobbying policies, then the CITY may immediately terminate this Contract.

- 8.2.4 In the event the CITY terminates this Contract 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 CONSULTANT shall be liable to the CITY for all of its costs and damages, including, but not limited, any excess costs for such services.
- 8.2.5 All finished and unfinished documents and materials produced or procured under this Contract, including all intellectual property rights thereto, shall become CITY property upon date of such termination. CONSULTANT agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights provided herein.
- 8.2.6 If, after notice of termination of this Contract under the provisions of this Section, it is determined for any reason that CONSULTANT was not in default under the provisions of this Section, or that the default was excusable under the terms of this Contract, the rights and obligations of the parties shall be the same as if the notice of termination has been issued pursuant to Article 8.1 Termination for Convenience.
- 8.2.7 The rights and remedies of the CITY provided in this Section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

ARTICLE 9

SUBCONTRACT APPROVAL

Article 9 is hereby amended in its title and first paragraph to read as follows:

SUBCONSULTANT APPROVAL

CONSULTANT shall not use subconsultants to assist in performance of this Contract without the prior written approval of the CITY. If the CITY permits the use of subconsultants, CONSULTANT shall remain responsible for performing all aspects of this Contract. The CONSULTANT is required to provide the CITY a list of all subconsultants including the name and address of the firms. Refer to

Exhibit K for CONSULTANT and subconsultant information. The CITY has the right to approve CONSULTANT'S subconsultants and the CITY reserves the right to request replacement of subconsultants. The CITY does not have any obligation to pay CONSULTANT'S subconsultants and nothing herein creates any privity between the CITY and the subconsultants. Wholly-owned subsidiaries of CONSULTANT shall not be considered subconsultants.

ARTICLE 10

COMPENSATION, INVOICING AND PAYMENT

Article 10 is hereby amended to include a third paragraph to Section 10.6 to read as follows:

For the sake of efficiency, the CONSULTANT may have provided services prior to the execution of this Amendment. Upon execution of this Amendment, and to the extent that said services were performed in accordance with the terms and conditions of the Contract and this Amendment, those services are hereby ratified and eligible for payment.

ARTICLE 11

AMENDMENTS, CHANGES OR MODIFICATIONS

No Change

ARTICLE 12

INDEMNIFICATION AND INSURANCE

No Change

ARTICLE 13

INDEPENDENT CONTRACTORS

No Change

ARTICLE 14

WARRANTY AND RESPONSIBILITY OF CONSULTANT

No Change

ARTICLE 15

OWNERSHIP OF DATA AND INTELLECTUAL PROPERTY

Article 15 is hereby amended in its title and content to read as follows:

15.1 Ownership of Data and License

15.1.1 Unless otherwise provided for herein, all Work Products originated and prepared by CONSULTANT or its subconsultants of any tier under this Contract shall be and remain the exclusive property of the CITY for its use in any manner it deems appropriate. Work Products are all works,

tangible or not, created under this Contract including, without limitation, documents, material, data, reports, manuals, specifications, artwork, drawings, sketches, computer programs and databases, schematics, photographs, video and audiovisual recordings, sound recordings, marks, logos, graphic designs, notes, websites, domain names, inventions, processes, formulas matters and combinations thereof, and all forms of intellectual property. CONSULTANT hereby assigns, and agrees to assign, all goodwill, copyright, trademark, patent, trade secret and all other intellectual property rights worldwide in any Work Products originated and prepared by CONSULTANT under this Contract. CONSULTANT further agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights provided herein.

- 15.1.2 With regard to the basis for design calculations and engineering notes, such data shall be provided to the CITY in (a) hard cover post binder(s), appropriately indexed, on thin Mylar stock or good quality paper satisfactory for reproduction.
- 15.1.3 For all Work Products delivered to the CITY that are not originated or prepared by CONSULTANT or its subconsultants of any tier under this Contract, CONSULTANT hereby grants a non-exclusive perpetual license to use such Work Products for any CITY purposes.
- 15.1.4 CONSULTANT shall not provide or disclose any Work Products to any third party without prior written consent of the City.
- 15.1.5 All documents, information and pre-existing materials provided by CITY to CONSULTANT and its subconsultants arising out of or related to this Contract shall remain the property of the CITY. The CONSULTANT may not use, distribute or otherwise make public in any manner, either for profit or not for profit, any of the information, documentation, or procedures developed for the CITY hereunder without the prior written consent of the CITY. CONSULTANT further agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights.

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

15.2 Intellectual Property Warranty

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

15.3 Intellectual Property Indemnification

15.3.1 CONSULTANT, at its own expense, undertakes and agrees to defend, indemnify, and hold harmless the CITY, and any of its Boards, officers, agents, employees, assigns, and successors in interest from and against all suits and causes of action, claims, losses, demands and expenses, including but not limited to, attorney's fees (both in-house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the CITY, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever arising out of the infringement, actual or alleged, direct or contributory, of any intellectual property rights, including, without limitation, patent, copyright, trademark, trade secret, right of publicity and proprietary information right (1) on or in any design, medium, matter, article, process, method, application, equipment, device, instrumentation, software, hardware, or firmware used by CONSULTANT, or its subconsultants of any tier, in performing the work under this Contract; or (2) as a result of the CITY'S actual or intended use of any Work Product furnished by CONSULTANT, or its subconsultants of any tier, under

the Agreement. Rights and remedies available to the CITY under this provision are cumulative of those provided for elsewhere in this Contract and those allowed under the laws of the United States, the State of California, and the CITY. The provisions of Article 15 shall survive expiration or termination of this Contract.

15.3.2 In CONSULTANT'S defense of the CITY Defendants, negotiation, compromise, and settlement of any such infringement action, the Los Angeles City Attorney's Office shall retain discretion in and control of the litigation, negotiation, compromise, settlement, and appeals therefrom, as required by the Los Angeles City Charter, particularly Article II, Sections 271, 272 and 273 thereof.

15.3.3 Where any Work Product furnished by CONSULTANT (a) becomes the subject of an action, (b) is adjudicated as infringing a third party's Intellectual Property right, or (c) has its use enjoined or license terminated; CONSULTANT shall, with the CITY'S consent, do one of the following immediately. CONSULTANT shall at its expense either:

- i) procure for the CITY the right or license to continue using the Work Product; or
- ii) replace the Work Product with a functionally equivalent, non-infringing product.

Exercise of any of the above-mentioned options shall not cause undue business interruption to the CITY or diminish the intended benefits and use of the Work Product by the CITY under this Contract.

ARTICLE 16

NONDISCRIMINATION AND AFFIRMATIVE ACTION

Article 16 is hereby amended in its title and content to read as follows:

NONDISCRIMINATION

Unless otherwise exempt, this Contract is subject to the nondiscrimination provisions in Sections 10.8 through 10.8.2 of the Los Angeles Administrative Code, as amended from time to time. The CONSULTANT shall comply with the applicable nondiscrimination and affirmative action provisions of the laws of the United States of America, the State of California, and the CITY. In performing this Contract, CONSULTANT shall not discriminate in its employment practices against any employee or

applicant for employment because of such person's race, religion, national origin, ancestry, sex, sexual orientation, age, disability, domestic partner status, marital status or medical condition. The CONSULTANT 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 said Office. Any subcontract entered into by CONSULTANT, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract.

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

<u>ARTICLE 17</u>	MINORITY, WOMEN AND OTHER BUSINESS ENTERPRISE OUTREACH PROGRAM
	No Change
<u>ARTICLE 18</u>	SUCCESSORS AND ASSIGNS
	No Change
<u>ARTICLE 19</u>	CONTACT PERSONS – PROPER ADDRESSES – NOTIFICATION
	No Change
<u>ARTICLE 20</u>	EXCUSABLE DELAYS
	No Change
<u>ARTICLE 21</u>	SEVERABILITY
	No Change
<u>ARTICLE 22</u>	DISPUTES
	No Change
<u>ARTICLE 23</u>	ENTIRE CONTRACT
	No Change
<u>ARTICLE 24</u>	APPLICABLE LAW, INTERPRETATION AND ENFORCEMENT

No Change

ARTICLE 25

**CURRENT LOS ANGELES CITY BUSINESS TAX
REGISTRATION CERTIFICATE REQUIRED**

No Change

ARTICLE 26

BONDS

Article 26 is hereby amended in its entirety to read as follows:

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

ARTICLE 27

CHILD SUPPORT ASSIGNMENT ORDERS

No Change

ARTICLE 28

**LIVING WAGE ORDINANCE AND SERVICE CONTRACTOR
WORKER RETENTION ORDINANCE**

No Change

ARTICLE 29

AMERICANS WITH DISABILITIES ACT

No Change

ARTICLE 30

EQUAL BENEFITS ORDINANCE

Article 30 is hereby amended in its entirety to read as follows:

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.

1. During the performance of the Contract, CONSULTANT certifies and represents that CONSULTANT will comply with the EBO.
2. The failure of CONSULTANT to comply with the EBO will be deemed to be a material breach of this Contract by the CITY.
3. If CONSULTANT fails to comply with the EBO, the CITY may

cancel, terminate or suspend the 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.

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

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

“During the performance of a Contract with the City of Los Angeles, the Consultant 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) 847-2632.”

ARTICLE 31

WAIVER

No Change

ARTICLE 32

PROHIBITION AGAINST ASSIGNMENT OR DELEGATION

No Change

ARTICLE 33

PERMITS

No Change

ARTICLE 34

CLAIMS FOR LABOR AND MATERIALS

No Change

ARTICLE 35

DISCOUNTS

No Change

ARTICLE 36

CONTRACTOR RESPONSIBILITY ORDINANCE

No Change

ARTICLE 37

BREACH

No Change

ARTICLE 38

SLAVERY DISCLOSURE ORDINANCE

No Change

ARTICLE 39

CONTRACT BIDDER CERTIFICATION OF COMPLIANCE WITH LOBBYING LAWS

Article 39 is hereby amended in its title and content to read as follows:

BIDDER ETHICS

Pursuant to the Los Angeles Municipal Lobbying Ordinance, any bidder for a contract shall submit with its proposal a Bidder Certification CEC Form 50 (**Exhibit J**), proscribed by the City Ethics Commission, in which the bidder acknowledges and agrees to comply with the disclosure requirements and prohibitions established in the Ordinance if the bidder qualifies as a lobbying entity under the Ordinance.

As amended, this Contract is also subject to Charter Section 470(c)(12) and related ordinances and as a result, the CONSULTANT was required to submit Bidder Contributions CEC Form 55 (**Exhibit J**) within ten business days of discussing the amendment. Consequently, CONSULTANT may not make campaign contributions to and or engage in fundraising for certain elected City officials or candidates for elected City office from the date the amendment is first discussed until 12 months after the amendment is signed. The CONSULTANT'S principals and subconsultants performing \$100,000 or more in work on the contract, as well as the principals of those subconsultants, are also subject to the same limitations on campaign contributions and fundraising.

CONSULTANT must also notify their principals and subconsultants in writing of the restrictions and include the notice in contracts with subconsultants. Consultants who fail to comply with City law may be subject to penalties, termination of contract, and debarment. Additional

information regarding these restrictions and requirements may be obtained from the City Ethics Commission at (213) 978-1960.

The Contract is hereby amended to include the following Articles:

ARTICLE 40

AFFIRMATIVE ACTION

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

- A. During the performance of a CITY contract, CONSULTANT certifies and represents that CONSULTANT and each subconsultant hereunder will adhere to an affirmative action program to ensure that in its employment practices, persons are employed and employees are treated equally and without regard to or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
 - 1. This provision applies to work or services performed or materials manufactured or assembled in the United States.
 - 2. Nothing in this Section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.
 - 3. CONSULTANT shall post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.
- B. CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of CONSULTANT, state that all qualified applicants will receive consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
- C. As part of the CITY'S supplier registration process, and/or at the request of the awarding authority or the Office of Contract Compliance, CONSULTANT shall certify on an electronic or hard copy form to be supplied, that CONSULTANT has not discriminated in the performance of CITY contracts against any employee or applicant for employment on the basis or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.

- D. CONSULTANT shall permit access to and may be required to provide certified copies of all of its records pertaining to employment and to its employment practices by the awarding authority or the Office of Contract Compliance, for the purpose of investigation to ascertain compliance with the Affirmative Action Program provisions of CITY contracts, and on their or either of their request to provide evidence that it has or will comply therewith.
- E. The failure of any CONSULTANT to comply with the Affirmative Action Program provisions of CITY contracts may be deemed to be a material breach of contract. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made except upon a full and fair hearing after notice and an opportunity to be heard has been given to CONSULTANT.
- F. Upon a finding duly made that CONSULTANT has breached the Affirmative Action Program provisions of a CITY contract, the Contract may be forthwith cancelled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the CITY. In addition thereto, such breach may be the basis for a determination by the awarding authority or the Board of Public Works that the said CONSULTANT is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Los Angeles City Charter. In the event of such determination, such CONSULTANT shall be disqualified from being awarded a contract with the CITY for a period of two years, or until he or she shall establish and carry out a program in conformance with the provisions hereof.
- G. In the event of a finding by the Fair Employment and Housing Commission of the State of California, or the Board of Public Works of the City of Los Angeles, or any court of competent jurisdiction, that CONSULTANT has been guilty of a willful violation of the California Fair Employment and Housing Act, or the Affirmative Action Program provisions of a CITY contract, there may be deducted from the amount payable to CONSULTANT by the CITY under the Contract, a penalty of ten dollars (\$10.00) for each person for each calendar day on which such person was discriminated against in violation of the provisions of a CITY contract.
- H. Notwithstanding any other provisions of a CITY contract, the

CITY shall have any and all other remedies at law or in equity for any breach hereof.

- I. Intentionally blank.
- J. Nothing contained in CITY contracts shall be construed in any manner so as to require or permit any act which is prohibited by law.
- K. CONSULTANT shall submit an Affirmative Action Plan which shall meet the requirements of this chapter at the time it submits its bid or proposal or at the time it registers to do business with the CITY. The plan shall be subject to approval by the Office of Contract Compliance prior to award of the Contract. The awarding authority may also require consultants and suppliers to take part in a pre-registration, pre-bid, pre-proposal, or pre-award conference in order to develop, improve or implement a qualifying Affirmative Action Plan. Affirmative Action Programs developed pursuant to this Section shall be effective for a period of twelve months from the date of approval by the Office of Contract Compliance. In case of prior submission of a plan, CONSULTANT may submit documentation that it has an Affirmative Action Plan approved by the Office of Contract Compliance within the previous twelve months. If the approval is 30 days or less from expiration, CONSULTANT must submit a new Plan to the Office of Contract Compliance and that Plan must be approved before the Contract is awarded.
 - 1. Every contract of \$5,000 or more which may provide construction, demolition, renovation, conservation or major maintenance of any kind shall in addition comply with the requirements of Section 10.13 of the Los Angeles Administrative Code.
 - 2. CONSULTANT may establish and adopt as its own Affirmative Action Plan, by affixing his or her signature thereto, an Affirmative Action Plan prepared and furnished by the Office of Contract Compliance, or it may prepare and submit its own Plan for approval.
- L. The Office of Contract Compliance shall annually supply the awarding authorities of the CITY with a list of consultants and suppliers who have developed Affirmative Action Programs. For each consultant and supplier, the Office of Contract Compliance shall state the date the approval expires. The Office of Contract Compliance shall not withdraw its approval for any Affirmative

Action Plan or change the Affirmative Action Plan after the date of contract award for the entire contract term without the mutual agreement of the awarding authority and CONSULTANT.

- M. The Affirmative Action Plan required to be submitted hereunder and the pre-registration, pre-bid, pre-proposal or pre-award conference which may be required by the Board of Public Works, Office of Contract Compliance or the awarding authority shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:
1. Apprenticeship where approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;
 2. Classroom preparation for the job when not apprenticeable;
 3. Pre-apprenticeship education and preparation;
 4. Upgrading training and opportunities;
 5. Encouraging the use of consultants, subconsultants and suppliers of all racial and ethnic groups, provided, however, that any contract subject to this ordinance shall require the CONSULTANT, subconsultant or supplier to provide not less than the prevailing wage, working conditions and practices generally observed in private industries in the consultant's, subconsultant's, or supplier's geographical area for such work;
 6. The entry of qualified women, minority and all other journeymen into the industry; and
 7. The provision of needed supplies or job conditions to permit persons with disabilities to be employed, and minimize the impact of any disability.
- N. Any adjustments which may be made in the CONSULTANT'S or supplier's work force to achieve the requirements of the CITY'S Affirmative Action Contract Compliance Program in purchasing and construction shall be accomplished by either an increase in the size of the work force or replacement of those employees who leave the work force by reason of resignation, retirement or death and not by termination, layoff, demotion or change in grade.
- O. Affirmative Action Agreements resulting from the proposed

Affirmative Action Plan or the pre-registration, pre-bid, pre-proposal or pre-award conferences shall not be confidential and may be publicized by the CONSULTANT at his or her discretion. Approved Affirmative Action Agreements become the property of the CITY and may be used at the discretion of the CITY in its Contract Compliance Affirmative Action Program.

- P. Intentionally blank.
- Q. All consultants subject to the provisions of this Section shall include a like provision in all subcontracts awarded for work to be performed under the Contract with the CITY and shall impose the same obligations, including but not limited to filing and reporting obligations, on the subconsultants as are applicable to the CONSULTANT. Failure of the CONSULTANT to comply with this requirement or to obtain the compliance of its subconsultants with all such obligations shall subject the CONSULTANT to the imposition of any and all sanctions allowed by law, including but not limited to termination of the CONSULTANT'S Contract with the CITY.

ARTICLE 41

FALSE CLAIMS ACT

CONSULTANT 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.

ARTICLE 42

EQUAL EMPLOYMENT PRACTICES

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

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

2. Nothing in this Section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.
 3. CONSULTANT agrees to post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.
- B. CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of CONSULTANT, state that all qualified applicants will receive consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
- C. As part of the CITY'S supplier registration process, and/or at the request of the awarding authority, or the Board of Public Works, Office of Contract Compliance, CONSULTANT shall certify in the specified format that he or she has not discriminated in the performance of CITY contracts against any employee or applicant for employment on the basis or because of race, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status or medical condition.
- D. CONSULTANT shall permit access to and may be required to provide certified copies of all of his or her records pertaining to employment and to employment practices by the awarding authority or the Office of Contract Compliance for the purpose of investigation to ascertain compliance with the Equal Employment Practices provisions of CITY contracts. On their or either of their request CONSULTANT shall provide evidence that he or she has or will comply therewith.
- E. The failure of any CONSULTANT to comply with the Equal Employment Practices provisions of this Contract may be deemed to be a material breach of CITY contracts. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made or penalties assessed except upon a full and fair hearing after notice, and an opportunity to be heard has been given to CONSULTANT.
- F. Upon a finding duly made that CONSULTANT has failed to comply with the Equal Employment Practices provisions of a CITY contract, the Contract may be forthwith cancelled,

terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the CITY. In addition thereto, such failure to comply may be the basis for a determination by the awarding authority or the Board of Public Works that the CONSULTANT is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Charter of the City of Los Angeles. In the event of such a determination, CONSULTANT shall be disqualified from being awarded a contract with the CITY for a period of two years, or until CONSULTANT shall establish and carry out a program in conformance with the provisions hereof.

- G. Notwithstanding any other provision of this Contract, the CITY shall have any and all other remedies at law or in equity for any breach hereof.
- H. Intentionally blank.
- I. Nothing contained in this Contract shall be construed in any manner so as to require or permit any act which is prohibited by law.
- J. At the time a supplier registers to do business with the CITY, or when an individual bid or proposal is submitted, CONSULTANT shall agree to adhere to the Equal Employment Practices specified herein during the performance or conduct of CITY Contracts.
- K. Equal Employment Practices shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:
 - 1. Hiring practices;
 - 2. Apprenticeships where such approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;
 - 3. Training and promotional opportunities; and
 - 4. Reasonable accommodations for persons with disabilities.
- L. Any subcontract entered into by CONSULTANT, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract. Failure of CONSULTANT to comply with this requirement or to obtain the compliance of its

subconsultants with all such obligations shall subject CONSULTANT to the imposition of any and all sanctions allowed by law, including but not limited to termination of the CONSULTANT'S Contract with the CITY.

ARTICLE 43

FIRST SOURCE HIRING ORDINANCE

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

1. CONSULTANT shall, prior to the execution of the contract, provide to the Designated Administrative Agency (DAA) a list of anticipated employment opportunities that CONSULTANT estimate they will need to fill in order to perform the services under the Contract.
2. CONSULTANT further pledges that it will, during the term of the Contract, shall a) At least seven business days prior to making an announcement of a specific employment opportunity, provide notifications of that employment opportunity to the Community Development Department (CDD), which will refer individuals for interview; b) Interview qualified individuals referred by CDD; and c) Prior to filling any employment opportunity, the CONSULTANT shall inform the DAA of the names of the Referral Resources used, the names of the individuals they referred, the names of the referred individuals who the CONSULTANT interviewed and the reasons why referred individuals were not hired.
3. Any Subcontract entered into by the CONSULTANT relating to this Agreement, to the extent allowed hereunder, shall be subject to the provisions of FSHO, and shall incorporate the FSHO.
4. CONSULTANT shall comply with all rules, regulations and policies promulgated by the designated administrative agency, which may be amended from time to time.

Where under the provisions of Section 10.44.13 of the Los Angeles Administrative Code the designated administrative agency has determined that the CONSULTANT intentionally violated or used hiring practices for the purpose of avoiding the article, the determination must be documented in the Awarding Authority's Contractor Evaluation, required under Los Angeles Administrative Code Section 10.39 et seq., and must be documented in each of the Contractor's subsequent

Contractor Responsibility Questionnaires submitted under Los Angeles Administrative Code Section 10.40 et seq. This measure does not limit the City's authority to act under this article.

Under the provisions of Section 10.44.8 of the Los Angeles Administrative Code, the Awarding Authority shall, under appropriate circumstances, terminate this contract and otherwise pursue legal remedies that may be available if the designated administrative agency determines that the subject CONSULTANT has violated provisions of the FSHO.

EXCEPT AS EXPRESSLY MODIFIED herein, the Contract executed on September 3, 2008 remains unchanged.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 1 on the day and year written below.

RJM DESIGN GROUP, INC.

By:

Title:

Date:

CITY OF LOS ANGELES

By:

Title: President, Board of Public Works

Date:

By:

Date:

ATTEST:

JUNE LAGMAY, City Clerk

By:

Date:

APPROVED AS TO FORM:

MICHAEL N. FEUER, City Attorney

By:

Title: Assistant City Attorney

Date:

AMENDMENT NO. 1

to

Contract No. C-114376

for the

PRE-QUALIFIED ON-CALL LANDSCAPE ARCHITECTURAL CONSULTANT SERVICES

Between

CITY OF LOS ANGELES

and

RRM DESIGN GROUP

AMENDMENT NO. 1 TO CONTRACT NO. C-114376, FOR PRE-QUALIFIED ON-CALL LANDSCAPE ARCHITECTURAL CONSULTANT SERVICES BETWEEN THE CITY OF LOS ANGELES AND RRM DESIGN GROUP

This Amendment modifies Contract No. C-114376 executed on September 3, 2008 between the City of Los Angeles (hereinafter referred to as "CITY") and RRM DESIGN GROUP (hereinafter referred to as "CONSULTANT").

WITNESSETH

WHEREAS, CITY issued a Request for Qualifications (RFQ) on April 16, 2007 for landscape architectural and related services, on a pre-qualified basis, on various projects and CONSULTANT submitted a statement of qualifications in response; and

WHEREAS, CONSULTANT demonstrated qualifications to perform said services and was selected to perform the design services by CITY staff based on the evaluation criteria set forth in the RFQ; and

WHEREAS, on September 3, 2008, Contract No. C-114376 was awarded to CONSULTANT, the terms of which will expire on September 3, 2013; and

WHEREAS, the CITY and CONSULTANT have agreed to extend the term of the Contract by three (3) additional years to September 3, 2016 in order to provide as needed landscape architectural and construction administration services; and

WHEREAS, the CITY'S Department of Public Works, Bureau of Engineering, (hereinafter referred to as "BUREAU"), is the Program Manager and oversees the CONSULTANT'S performance of this Contract; and

NOW, THEREFORE, in consideration of the foregoing and of the benefits which will accrue to the parties hereto in carrying out the conditions of this Amendment No. 1, Contract No. C-114376 is hereby amended as follows:

ARTICLE 1 SECTION HEADINGS AND CONSTRUCTION OF PROVISIONS AND TITLES HEREIN

No Change

ARTICLE 2 DEFINITIONS

No Change

ARTICLE 3 PROJECT DESCRIPTION

No Change

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

No Change

ARTICLE 5 **KEY CONSULTANT PERSONNEL**

No Change

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

No Change

ARTICLE 7 **TERM OF CONTRACT AND TIME OF EFFECTIVENESS**

Article 7 is hereby amended in its first paragraph to read as follows:

Unless otherwise provided, the term of this Contract shall begin on the date of full execution and shall expire on September 3, 2016, unless terminated as provided under Article 8 or extended by amendment to this Contract.

ARTICLE 8 **TERMINATION**

Article 8 is hereby amended in its entirety to read as follows:

8.1 Termination for Convenience

The CITY may terminate this Contract for the CITY'S convenience at any time by giving CONSULTANT thirty days written notice thereof. Upon receipt of said notice, CONSULTANT shall immediately take action not to incur any additional obligations, cost or expenses, except as may be reasonably necessary to terminate its activities. The CITY shall pay CONSULTANT its reasonable and allowable costs through the effective date of termination and those reasonable and necessary costs incurred by CONSULTANT to affect such termination. Thereafter, CONSULTANT shall have no further claims against the CITY under this Contract. All finished and unfinished documents and materials procured for or produced under this Contract, including all intellectual property rights thereto, shall become CITY property upon the date of such termination. CONSULTANT agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership

of rights provided herein.

8.2 Termination for Breach of Contract

- 8.2.1 Except for excusable delays as provided in Article 20, if CONSULTANT fails to perform any of the provisions of this Contract or so fails to make progress as to endanger timely performance of this Contract, the CITY may give CONSULTANT written notice of such default. If CONSULTANT does not cure such default or provide a plan to cure such default which is acceptable to the CITY within the time permitted by the CITY, then the CITY may terminate this Contract due to CONSULTANT'S breach of this Contract.
- 8.2.2 If a federal or state proceeding for relief of debtors is undertaken by or against CONSULTANT, or if CONSULTANT makes an assignment for the benefit of creditors, then the CITY may immediately terminate this Contract.
- 8.2.3 If CONSULTANT engages in any dishonest conduct related to the performance or administration of this Contract or violates the CITY'S lobbying policies, then the CITY may immediately terminate this Contract.
- 8.2.4 In the event the CITY terminates this Contract 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 CONSULTANT shall be liable to the CITY for all of its costs and damages, including, but not limited, any excess costs for such services.
- 8.2.5 All finished and unfinished documents and materials produced or procured under this Contract, including all intellectual property rights thereto, shall become CITY property upon date of such termination. CONSULTANT agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights provided herein.
- 8.2.6 If, after notice of termination of this Contract under the provisions of this Section, it is determined for any reason that CONSULTANT was not in default under the provisions of this Section, or that the default was excusable

under the terms of this Contract, the rights and obligations of the parties shall be the same as if the notice of termination has been issued pursuant to Article 8.1 Termination for Convenience.

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

ARTICLE 9

SUBCONTRACT APPROVAL

Article 9 is hereby amended in its title and first paragraph to read as follows:

SUBCONSULTANT APPROVAL

CONSULTANT shall not use subconsultants to assist in performance of this Contract without the prior written approval of the CITY. If the CITY permits the use of subconsultants, CONSULTANT shall remain responsible for performing all aspects of this Contract. The CONSULTANT is required to provide the CITY a list of all subconsultants including the name and address of the firms. Refer to **Exhibit K** for CONSULTANT and subconsultant information. The CITY has the right to approve CONSULTANT'S subconsultants and the CITY reserves the right to request replacement of subconsultants. The CITY does not have any obligation to pay CONSULTANT'S subconsultants and nothing herein creates any privity between the CITY and the subconsultants. Wholly-owned subsidiaries of CONSULTANT shall not be considered subconsultants.

ARTICLE 10

COMPENSATION, INVOICING AND PAYMENT

Article 10 is hereby amended to include a third paragraph to Section 10.6 to read as follows:

For the sake of efficiency, the CONSULTANT may have provided services prior to the execution of this Amendment. Upon execution of this Amendment, and to the extent that said services were performed in accordance with the terms and conditions of the Contract and this Amendment, those services are hereby ratified and eligible for payment.

ARTICLE 11

AMENDMENTS, CHANGES OR MODIFICATIONS

No Change

ARTICLE 12

INDEMNIFICATION AND INSURANCE

No Change

ARTICLE 13

INDEPENDENT CONTRACTORS

No Change

ARTICLE 14

WARRANTY AND RESPONSIBILITY OF CONSULTANT

No Change

ARTICLE 15

OWNERSHIP OF DATA AND INTELLECTUAL PROPERTY

Article 15 is hereby amended in its title and content to read as follows:

15.1 Ownership of Data and License

15.1.1 Unless otherwise provided for herein, all Work Products originated and prepared by CONSULTANT or its subconsultants of any tier under this Contract shall be and remain the exclusive property of the CITY for its use in any manner it deems appropriate. Work Products are all works, tangible or not, created under this Contract including, without limitation, documents, material, data, reports, manuals, specifications, artwork, drawings, sketches, computer programs and databases, schematics, photographs, video and audiovisual recordings, sound recordings, marks, logos, graphic designs, notes, websites, domain names, inventions, processes, formulas matters and combinations thereof, and all forms of intellectual property. CONSULTANT hereby assigns, and agrees to assign, all goodwill, copyright, trademark, patent, trade secret and all other intellectual property rights worldwide in any Work Products originated and prepared by CONSULTANT under this Contract. CONSULTANT further agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights provided herein.

15.1.2 With regard to the basis for design calculations and engineering notes, such data shall be provided to the CITY in (a) hard cover post binder(s), appropriately indexed, on thin Mylar stock or good quality paper satisfactory for reproduction.

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

15.1.4 CONSULTANT shall not provide or disclose any Work Products to any third party without prior written consent of the City.

15.1.5 All documents, information and pre-existing materials provided by CITY to CONSULTANT and its subconsultants arising out of or related to this Contract shall remain the property of the CITY. The CONSULTANT may not use, distribute or otherwise make public in any manner, either for profit or not for profit, any of the information, documentation, or procedures developed for the CITY hereunder without the prior written consent of the CITY. CONSULTANT further agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights.

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

15.2 Intellectual Property Warranty

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

15.3 Intellectual Property Indemnification

15.3.1 CONSULTANT, at its own expense, undertakes and agrees to defend, indemnify, and hold harmless the CITY, and any of its Boards, officers, agents, employees, assigns, and successors in interest from and against all suits and causes of action, claims, losses, demands and expenses, including but not limited to, attorney's fees (both in-house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the CITY, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever arising out of the infringement, actual or alleged, direct or contributory, of any intellectual property rights, including, without limitation, patent, copyright, trademark, trade secret, right of publicity and proprietary information right (1) on or in any design, medium, matter, article, process, method, application, equipment, device, instrumentation, software, hardware, or firmware used by CONSULTANT, or its subconsultants of any tier, in performing the work under this Contract; or (2) as a result of the CITY'S actual or intended use of any Work Product furnished by CONSULTANT, or its subconsultants of any tier, under the Agreement. Rights and remedies available to the CITY under this provision are cumulative of those provided for elsewhere in this Contract and those allowed under the laws of the United States, the State of California, and the CITY. The provisions of Article 15 shall survive expiration or termination of this Contract.

15.3.2 In CONSULTANT'S defense of the CITY Defendants, negotiation, compromise, and settlement of any such infringement action, the Los Angeles City Attorney's Office shall retain discretion in and control of the litigation, negotiation, compromise, settlement, and appeals therefrom, as required by the Los Angeles City Charter, particularly Article II, Sections 271, 272 and 273 thereof.

15.3.3 Where any Work Product furnished by CONSULTANT (a) becomes the subject of an action, (b) is adjudicated as infringing a third party's Intellectual Property right, or (c) has its use enjoined or license terminated; CONSULTANT shall, with the CITY'S consent, do one of the following immediately. CONSULTANT shall at its expense either:

- i) procure for the CITY the right or license to continue using the Work Product; or

- ii) replace the Work Product with a functionally equivalent, non-infringing product.

Exercise of any of the above-mentioned options shall not cause undue business interruption to the CITY or diminish the intended benefits and use of the Work Product by the CITY under this Contract.

ARTICLE 16

NONDISCRIMINATION AND AFFIRMATIVE ACTION

Article 16 is hereby amended in its title and content to read as follows:

NONDISCRIMINATION

Unless otherwise exempt, this Contract is subject to the nondiscrimination provisions in Sections 10.8 through 10.8.2 of the Los Angeles Administrative Code, as amended from time to time. The CONSULTANT shall comply with the applicable nondiscrimination and affirmative action provisions of the laws of the United States of America, the State of California, and the CITY. In performing this Contract, CONSULTANT shall not discriminate in its employment practices against any employee or applicant for employment because of such person's race, religion, national origin, ancestry, sex, sexual orientation, age, disability, domestic partner status, marital status or medical condition. The CONSULTANT 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 said Office. Any subcontract entered into by CONSULTANT, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract.

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

ARTICLE 17

MINORITY, WOMEN AND OTHER BUSINESS ENTERPRISE OUTREACH PROGRAM

No Change

ARTICLE 18

SUCCESSORS AND ASSIGNS

No Change

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

No Change

ARTICLE 20 **EXCUSABLE DELAYS**

No Change

ARTICLE 21 **SEVERABILITY**

No Change

ARTICLE 22 **DISPUTES**

No Change

ARTICLE 23 **ENTIRE CONTRACT**

No Change

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

No Change

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

No Change

ARTICLE 26 **BONDS**

Article 26 is hereby amended in its entirety to read as follows:

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

ARTICLE 27 **CHILD SUPPORT ASSIGNMENT ORDERS**

No Change

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

No Change

ARTICLE 29

AMERICANS WITH DISABILITIES ACT

No Change

ARTICLE 30

EQUAL BENEFITS ORDINANCE

Article 30 is hereby amended in its entirety to read as follows:

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.

1. During the performance of the Contract, CONSULTANT certifies and represents that CONSULTANT will comply with the EBO.
2. The failure of CONSULTANT to comply with the EBO will be deemed to be a material breach of this Contract by the CITY.
3. If CONSULTANT fails to comply with the EBO, the CITY may cancel, terminate or suspend the 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.
4. Failure to comply with the EBO may be used as evidence against CONSULTANT in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40 *et seq.*, Contractor Responsibility Ordinance.
5. If the CITY'S Designated Administrative Agency determines that a CONSULTANT has set up or used its contracting entity for the purpose of evading the intent of the EBO, the CITY may terminate the Contract. Violation of this provision may be used as evidence against CONSULTANT in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40 *et seq.*, Contractor Responsibility Ordinance.

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

“During the performance of a Contract with the City of Los Angeles, the Consultant 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) 847-2632.”

ARTICLE 31

WAIVER

No Change

ARTICLE 32

PROHIBITION AGAINST ASSIGNMENT OR DELEGATION

No Change

ARTICLE 33

PERMITS

No Change

ARTICLE 34

CLAIMS FOR LABOR AND MATERIALS

No Change

ARTICLE 35

DISCOUNTS

No Change

ARTICLE 36

CONTRACTOR RESPONSIBILITY ORDINANCE

No Change

ARTICLE 37

BREACH

No Change

ARTICLE 38

SLAVERY DISCLOSURE ORDINANCE

No Change

ARTICLE 39

CONTRACT BIDDER CERTIFICATION OF COMPLIANCE WITH LOBBYING LAWS

Article 39 is hereby amended in its title and content to read as follows:

BIDDER ETHICS

Pursuant to the Los Angeles Municipal Lobbying Ordinance, any bidder for a contract shall submit with its proposal a Bidder Certification CEC

Form 50 (**Exhibit J**), proscribed by the City Ethics Commission, in which the bidder acknowledges and agrees to comply with the disclosure requirements and prohibitions established in the Ordinance if the bidder qualifies as a lobbying entity under the Ordinance.

As amended, this Contract is also subject to Charter Section 470(c)(12) and related ordinances and as a result, the CONSULTANT was required to submit Bidder Contributions CEC Form 55 (**Exhibit J**) within ten business days of discussing the amendment. Consequently, CONSULTANT may not make campaign contributions to and or engage in fundraising for certain elected City officials or candidates for elected City office from the date the amendment is first discussed until 12 months after the amendment is signed. The CONSULTANT'S principals and subconsultants performing \$100,000 or more in work on the contract, as well as the principals of those subconsultants, are also subject to the same limitations on campaign contributions and fundraising.

CONSULTANT must also notify their principals and subconsultants in writing of the restrictions and include the notice in contracts with subconsultants. Consultants who fail to comply with City law may be subject to penalties, termination of contract, and debarment. Additional information regarding these restrictions and requirements may be obtained from the City Ethics Commission at (213) 978-1960.

The Contract is hereby amended to include the following Articles:

ARTICLE 40

AFFIRMATIVE ACTION

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

- A. During the performance of a CITY contract, CONSULTANT certifies and represents that CONSULTANT and each subconsultant hereunder will adhere to an affirmative action program to ensure that in its employment practices, persons are employed and employees are treated equally and without regard to or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
 - 1. This provision applies to work or services performed or materials manufactured or assembled in the United States.
 - 2. Nothing in this Section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.

3. CONSULTANT shall post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.
- B. CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of CONSULTANT, state that all qualified applicants will receive consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
 - C. As part of the CITY'S supplier registration process, and/or at the request of the awarding authority or the Office of Contract Compliance, CONSULTANT shall certify on an electronic or hard copy form to be supplied, that CONSULTANT has not discriminated in the performance of CITY contracts against any employee or applicant for employment on the basis or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
 - D. CONSULTANT shall permit access to and may be required to provide certified copies of all of its records pertaining to employment and to its employment practices by the awarding authority or the Office of Contract Compliance, for the purpose of investigation to ascertain compliance with the Affirmative Action Program provisions of CITY contracts, and on their or either of their request to provide evidence that it has or will comply therewith.
 - E. The failure of any CONSULTANT to comply with the Affirmative Action Program provisions of CITY contracts may be deemed to be a material breach of contract. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made except upon a full and fair hearing after notice and an opportunity to be heard has been given to CONSULTANT.
 - F. Upon a finding duly made that CONSULTANT has breached the Affirmative Action Program provisions of a CITY contract, the Contract may be forthwith cancelled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the CITY. In addition thereto, such breach may be the basis for a determination by the awarding authority or the Board of Public

Works that the said CONSULTANT is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Los Angeles City Charter. In the event of such determination, such CONSULTANT shall be disqualified from being awarded a contract with the CITY for a period of two years, or until he or she shall establish and carry out a program in conformance with the provisions hereof.

- G. In the event of a finding by the Fair Employment and Housing Commission of the State of California, or the Board of Public Works of the City of Los Angeles, or any court of competent jurisdiction, that CONSULTANT has been guilty of a willful violation of the California Fair Employment and Housing Act, or the Affirmative Action Program provisions of a CITY contract, there may be deducted from the amount payable to CONSULTANT by the CITY under the Contract, a penalty of ten dollars (\$10.00) for each person for each calendar day on which such person was discriminated against in violation of the provisions of a CITY contract.
- H. Notwithstanding any other provisions of a CITY contract, the CITY shall have any and all other remedies at law or in equity for any breach hereof.
- I. Intentionally blank.
- J. Nothing contained in CITY contracts shall be construed in any manner so as to require or permit any act which is prohibited by law.
- K. CONSULTANT shall submit an Affirmative Action Plan which shall meet the requirements of this chapter at the time it submits its bid or proposal or at the time it registers to do business with the CITY. The plan shall be subject to approval by the Office of Contract Compliance prior to award of the Contract. The awarding authority may also require consultants and suppliers to take part in a pre-registration, pre-bid, pre-proposal, or pre-award conference in order to develop, improve or implement a qualifying Affirmative Action Plan. Affirmative Action Programs developed pursuant to this Section shall be effective for a period of twelve months from the date of approval by the Office of Contract Compliance. In case of prior submission of a plan, CONSULTANT may submit documentation that it has an Affirmative Action Plan approved by the Office of Contract Compliance within the previous twelve months. If the approval is 30 days or less from expiration, CONSULTANT must submit a

new Plan to the Office of Contract Compliance and that Plan must be approved before the Contract is awarded.

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

provide not less than the prevailing wage, working conditions and practices generally observed in private industries in the consultant's, subconsultant's, or supplier's geographical area for such work;

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

ARTICLE 41

FALSE CLAIMS ACT

CONSULTANT 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.

ARTICLE 42

EQUAL EMPLOYMENT PRACTICES

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

- A. During the performance of this Contract, CONSULTANT agrees and represents that it will provide equal employment practices and CONSULTANT and each subconsultant hereunder will ensure that in his or her employment practices, persons are employed and employees are treated equally and without regard to or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
 - 1. This provision applies to work or service performed or materials manufactured or assembled in the United States.
 - 2. Nothing in this Section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.
 - 3. CONSULTANT agrees to post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.
- B. CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of CONSULTANT, state that all qualified applicants will receive consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
- C. As part of the CITY'S supplier registration process, and/or at the request of the awarding authority, or the Board of Public Works, Office of Contract Compliance, CONSULTANT shall certify in the specified format that he or she has not discriminated in the performance of CITY contracts against any employee or applicant for employment on the basis or because of race, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status or medical condition.
- D. CONSULTANT shall permit access to and may be required to

provide certified copies of all of his or her records pertaining to employment and to employment practices by the awarding authority or the Office of Contract Compliance for the purpose of investigation to ascertain compliance with the Equal Employment Practices provisions of CITY contracts. On their or either of their request CONSULTANT shall provide evidence that he or she has or will comply therewith.

- E. The failure of any CONSULTANT to comply with the Equal Employment Practices provisions of this Contract may be deemed to be a material breach of CITY contracts. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made or penalties assessed except upon a full and fair hearing after notice, and an opportunity to be heard has been given to CONSULTANT.
- F. Upon a finding duly made that CONSULTANT has failed to comply with the Equal Employment Practices provisions of a CITY contract, the Contract may be forthwith cancelled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the CITY. In addition thereto, such failure to comply may be the basis for a determination by the awarding authority or the Board of Public Works that the CONSULTANT is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Charter of the City of Los Angeles. In the event of such a determination, CONSULTANT shall be disqualified from being awarded a contract with the CITY for a period of two years, or until CONSULTANT shall establish and carry out a program in conformance with the provisions hereof.
- G. Notwithstanding any other provision of this Contract, the CITY shall have any and all other remedies at law or in equity for any breach hereof.
- H. Intentionally blank.
- I. Nothing contained in this Contract shall be construed in any manner so as to require or permit any act which is prohibited by law.
- J. At the time a supplier registers to do business with the CITY, or when an individual bid or proposal is submitted, CONSULTANT

shall agree to adhere to the Equal Employment Practices specified herein during the performance or conduct of CITY Contracts.

- K. Equal Employment Practices shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:
 - 1. Hiring practices;
 - 2. Apprenticeships where such approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;
 - 3. Training and promotional opportunities; and
 - 4. Reasonable accommodations for persons with disabilities.
- L. Any subcontract entered into by CONSULTANT, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract. Failure of CONSULTANT to comply with this requirement or to obtain the compliance of its subconsultants with all such obligations shall subject CONSULTANT to the imposition of any and all sanctions allowed by law, including but not limited to termination of the CONSULTANT'S Contract with the CITY.

ARTICLE 43

FIRST SOURCE HIRING ORDINANCE

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

- 1. CONSULTANT shall, prior to the execution of the contract, provide to the Designated Administrative Agency (DAA) a list of anticipated employment opportunities that CONSULTANT estimate they will need to fill in order to perform the services under the Contract.
- 2. CONSULTANT further pledges that it will, during the term of the Contract, shall a) At least seven business days prior to making an announcement of a specific employment opportunity, provide notifications of that employment opportunity to the Community Development Department (CDD), which will refer individuals for interview; b) Interview qualified individuals referred by CDD; and c) Prior to filling any employment opportunity, the

CONSULTANT shall inform the DAA of the names of the Referral Resources used, the names of the individuals they referred, the names of the referred individuals who the CONSULTANT interviewed and the reasons why referred individuals were not hired.

3. Any Subcontract entered into by the CONSULTANT relating to this Agreement, to the extent allowed hereunder, shall be subject to the provisions of FSHO, and shall incorporate the FSHO.
4. CONSULTANT shall comply with all rules, regulations and policies promulgated by the designated administrative agency, which may be amended from time to time.

Where under the provisions of Section 10.44.13 of the Los Angeles Administrative Code the designated administrative agency has determined that the CONSULTANT intentionally violated or used hiring practices for the purpose of avoiding the article, the determination must be documented in the Awarding Authority's Contractor Evaluation, required under Los Angeles Administrative Code Section 10.39 et seq., and must be documented in each of the Contractor's subsequent Contractor Responsibility Questionnaires submitted under Los Angeles Administrative Code Section 10.40 et seq. This measure does not limit the City's authority to act under this article.

Under the provisions of Section 10.44.8 of the Los Angeles Administrative Code, the Awarding Authority shall, under appropriate circumstances, terminate this contract and otherwise pursue legal remedies that may be available if the designated administrative agency determines that the subject CONSULTANT has violated provisions of the FSHO.

EXCEPT AS EXPRESSLY MODIFIED herein, the Contract executed on September 3, 2008 remains unchanged.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 1 on the day and year written below.

RRM DESIGN GROUP

By:

Title:

Date:

CITY OF LOS ANGELES

By:

Title: President, Board of Public Works

Date:

By:

Date:

ATTEST:

JUNE LAGMAY, City Clerk

By:

Date:

APPROVED AS TO FORM:

MICHAEL N. FEUER, City Attorney

By:

Title: Assistant City Attorney

Date:

AMENDMENT NO. 1

to

Contract No. C-114368

for the

PRE-QUALIFIED ON-CALL LANDSCAPE ARCHITECTURAL CONSULTANT SERVICES

Between

CITY OF LOS ANGELES

and

TROLLER MAYER ASSOCIATES

AMENDMENT NO. 1 TO CONTRACT NO. C-114368, FOR PRE-QUALIFIED ON-CALL LANDSCAPE ARCHITECTURAL CONSULTANT SERVICES BETWEEN THE CITY OF LOS ANGELES AND TROLLER MAYER ASSOCIATES

This Amendment modifies Contract No. C-114368 executed on September 3, 2008 between the City of Los Angeles (hereinafter referred to as "CITY") and TROLLER MAYER ASSOCIATES (hereinafter referred to as "CONSULTANT").

WITNESSETH

WHEREAS, CITY issued a Request for Qualifications (RFQ) on April 16, 2007 for landscape architectural and related services, on a pre-qualified basis, on various projects and CONSULTANT submitted a statement of qualifications in response; and

WHEREAS, CONSULTANT demonstrated qualifications to perform said services and was selected to perform the design services by CITY staff based on the evaluation criteria set forth in the RFQ; and

WHEREAS, on September 3, 2008, Contract No. C-114368 was awarded to CONSULTANT, the terms of which will expire on September 3, 2013; and

WHEREAS, the CITY and CONSULTANT have agreed to extend the term of the Contract by three (3) additional years to September 3, 2016 in order to provide as needed landscape architectural and construction administration services; and

WHEREAS, the CITY'S Department of Public Works, Bureau of Engineering, (hereinafter referred to as "BUREAU"), is the Program Manager and oversees the CONSULTANT'S performance of this Contract; and

NOW, THEREFORE, in consideration of the foregoing and of the benefits which will accrue to the parties hereto in carrying out the conditions of this Amendment No. 1, Contract No. C-114368 is hereby amended as follows:

ARTICLE 1 SECTION HEADINGS AND CONSTRUCTION OF PROVISIONS AND TITLES HEREIN

No Change

ARTICLE 2 DEFINITIONS

No Change

ARTICLE 3 PROJECT DESCRIPTION

No Change

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

No Change

ARTICLE 5 **KEY CONSULTANT PERSONNEL**

No Change

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

No Change

ARTICLE 7 **TERM OF CONTRACT AND TIME OF EFFECTIVENESS**

Article 7 is hereby amended in its first paragraph to read as follows:

Unless otherwise provided, the term of this Contract shall begin on the date of full execution and shall expire on September 3, 2016, unless terminated as provided under Article 8 or extended by amendment to this Contract.

ARTICLE 8 **TERMINATION**

Article 8 is hereby amended in its entirety to read as follows:

8.1 Termination for Convenience

The CITY may terminate this Contract for the CITY'S convenience at any time by giving CONSULTANT thirty days written notice thereof. Upon receipt of said notice, CONSULTANT shall immediately take action not to incur any additional obligations, cost or expenses, except as may be reasonably necessary to terminate its activities. The CITY shall pay CONSULTANT its reasonable and allowable costs through the effective date of termination and those reasonable and necessary costs incurred by CONSULTANT to affect such termination. Thereafter, CONSULTANT shall have no further claims against the CITY under this Contract. All finished and unfinished documents and materials procured for or produced under this Contract, including all intellectual property rights thereto, shall become CITY property upon the date of such termination. CONSULTANT agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership

of rights provided herein.

8.2 Termination for Breach of Contract

- 8.2.1 Except for excusable delays as provided in Article 20, if CONSULTANT fails to perform any of the provisions of this Contract or so fails to make progress as to endanger timely performance of this Contract, the CITY may give CONSULTANT written notice of such default. If CONSULTANT does not cure such default or provide a plan to cure such default which is acceptable to the CITY within the time permitted by the CITY, then the CITY may terminate this Contract due to CONSULTANT'S breach of this Contract.
- 8.2.2 If a federal or state proceeding for relief of debtors is undertaken by or against CONSULTANT, or if CONSULTANT makes an assignment for the benefit of creditors, then the CITY may immediately terminate this Contract.
- 8.2.3 If CONSULTANT engages in any dishonest conduct related to the performance or administration of this Contract or violates the CITY'S lobbying policies, then the CITY may immediately terminate this Contract.
- 8.2.4 In the event the CITY terminates this Contract 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 CONSULTANT shall be liable to the CITY for all of its costs and damages, including, but not limited, any excess costs for such services.
- 8.2.5 All finished and unfinished documents and materials produced or procured under this Contract, including all intellectual property rights thereto, shall become CITY property upon date of such termination. CONSULTANT agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights provided herein.
- 8.2.6 If, after notice of termination of this Contract under the provisions of this Section, it is determined for any reason that CONSULTANT was not in default under the provisions of this Section, or that the default was excusable

under the terms of this Contract, the rights and obligations of the parties shall be the same as if the notice of termination has been issued pursuant to Article 8.1 Termination for Convenience.

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

ARTICLE 9

SUBCONTRACT APPROVAL

Article 9 is hereby amended in its title and first paragraph to read as follows:

SUBCONSULTANT APPROVAL

CONSULTANT shall not use subconsultants to assist in performance of this Contract without the prior written approval of the CITY. If the CITY permits the use of subconsultants, CONSULTANT shall remain responsible for performing all aspects of this Contract. The CONSULTANT is required to provide the CITY a list of all subconsultants including the name and address of the firms. Refer to **Exhibit K** for CONSULTANT and subconsultant information. The CITY has the right to approve CONSULTANT'S subconsultants and the CITY reserves the right to request replacement of subconsultants. The CITY does not have any obligation to pay CONSULTANT'S subconsultants and nothing herein creates any privity between the CITY and the subconsultants. Wholly-owned subsidiaries of CONSULTANT shall not be considered subconsultants.

ARTICLE 10

COMPENSATION, INVOICING AND PAYMENT

Article 10 is hereby amended to include a third paragraph to Section 10.6 to read as follows:

For the sake of efficiency, the CONSULTANT may have provided services prior to the execution of this Amendment. Upon execution of this Amendment, and to the extent that said services were performed in accordance with the terms and conditions of the Contract and this Amendment, those services are hereby ratified and eligible for payment.

ARTICLE 11

AMENDMENTS, CHANGES OR MODIFICATIONS

No Change

ARTICLE 12

INDEMNIFICATION AND INSURANCE

No Change

ARTICLE 13

INDEPENDENT CONTRACTORS

No Change

ARTICLE 14

WARRANTY AND RESPONSIBILITY OF CONSULTANT

No Change

ARTICLE 15

OWNERSHIP OF DATA AND INTELLECTUAL PROPERTY

Article 15 is hereby amended in its title and content to read as follows:

15.1 Ownership of Data and License

15.1.1 Unless otherwise provided for herein, all Work Products originated and prepared by CONSULTANT or its subconsultants of any tier under this Contract shall be and remain the exclusive property of the CITY for its use in any manner it deems appropriate. Work Products are all works, tangible or not, created under this Contract including, without limitation, documents, material, data, reports, manuals, specifications, artwork, drawings, sketches, computer programs and databases, schematics, photographs, video and audiovisual recordings, sound recordings, marks, logos, graphic designs, notes, websites, domain names, inventions, processes, formulas matters and combinations thereof, and all forms of intellectual property. CONSULTANT hereby assigns, and agrees to assign, all goodwill, copyright, trademark, patent, trade secret and all other intellectual property rights worldwide in any Work Products originated and prepared by CONSULTANT under this Contract. CONSULTANT further agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights provided herein.

15.1.2 With regard to the basis for design calculations and engineering notes, such data shall be provided to the CITY in (a) hard cover post binder(s), appropriately indexed, on thin Mylar stock or good quality paper satisfactory for reproduction.

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

15.1.4 CONSULTANT shall not provide or disclose any Work Products to any third party without prior written consent of the City.

15.1.5 All documents, information and pre-existing materials provided by CITY to CONSULTANT and its subconsultants arising out of or related to this Contract shall remain the property of the CITY. The CONSULTANT may not use, distribute or otherwise make public in any manner, either for profit or not for profit, any of the information, documentation, or procedures developed for the CITY hereunder without the prior written consent of the CITY. CONSULTANT further agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights.

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

15.2 Intellectual Property Warranty

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

15.3 Intellectual Property Indemnification

15.3.1 CONSULTANT, at its own expense, undertakes and agrees to defend, indemnify, and hold harmless the CITY, and any of its Boards, officers, agents, employees, assigns, and successors in interest from and against all suits and causes of action, claims, losses, demands and expenses, including but not limited to, attorney's fees (both in-house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the CITY, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever arising out of the infringement, actual or alleged, direct or contributory, of any intellectual property rights, including, without limitation, patent, copyright, trademark, trade secret, right of publicity and proprietary information right (1) on or in any design, medium, matter, article, process, method, application, equipment, device, instrumentation, software, hardware, or firmware used by CONSULTANT, or its subconsultants of any tier, in performing the work under this Contract; or (2) as a result of the CITY'S actual or intended use of any Work Product furnished by CONSULTANT, or its subconsultants of any tier, under the Agreement. Rights and remedies available to the CITY under this provision are cumulative of those provided for elsewhere in this Contract and those allowed under the laws of the United States, the State of California, and the CITY. The provisions of Article 15 shall survive expiration or termination of this Contract.

15.3.2 In CONSULTANT'S defense of the CITY Defendants, negotiation, compromise, and settlement of any such infringement action, the Los Angeles City Attorney's Office shall retain discretion in and control of the litigation, negotiation, compromise, settlement, and appeals therefrom, as required by the Los Angeles City Charter, particularly Article II, Sections 271, 272 and 273 thereof.

15.3.3 Where any Work Product furnished by CONSULTANT (a) becomes the subject of an action, (b) is adjudicated as infringing a third party's Intellectual Property right, or (c) has its use enjoined or license terminated; CONSULTANT shall, with the CITY'S consent, do one of the following immediately. CONSULTANT shall at its expense either:

- i) procure for the CITY the right or license to continue using the Work Product; or

- ii) replace the Work Product with a functionally equivalent, non-infringing product.

Exercise of any of the above-mentioned options shall not cause undue business interruption to the CITY or diminish the intended benefits and use of the Work Product by the CITY under this Contract.

ARTICLE 16

NONDISCRIMINATION AND AFFIRMATIVE ACTION

Article 16 is hereby amended in its title and content to read as follows:

NONDISCRIMINATION

Unless otherwise exempt, this Contract is subject to the nondiscrimination provisions in Sections 10.8 through 10.8.2 of the Los Angeles Administrative Code, as amended from time to time. The CONSULTANT shall comply with the applicable nondiscrimination and affirmative action provisions of the laws of the United States of America, the State of California, and the CITY. In performing this Contract, CONSULTANT shall not discriminate in its employment practices against any employee or applicant for employment because of such person's race, religion, national origin, ancestry, sex, sexual orientation, age, disability, domestic partner status, marital status or medical condition. The CONSULTANT 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 said Office. Any subcontract entered into by CONSULTANT, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract.

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

ARTICLE 17

MINORITY, WOMEN AND OTHER BUSINESS ENTERPRISE OUTREACH PROGRAM

No Change

ARTICLE 18

SUCCESSORS AND ASSIGNS

No Change

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

No Change

ARTICLE 20 **EXCUSABLE DELAYS**

No Change

ARTICLE 21 **SEVERABILITY**

No Change

ARTICLE 22 **DISPUTES**

No Change

ARTICLE 23 **ENTIRE CONTRACT**

No Change

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

No Change

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

No Change

ARTICLE 26 **BONDS**

Article 26 is hereby amended in its entirety to read as follows:

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

ARTICLE 27 **CHILD SUPPORT ASSIGNMENT ORDERS**

No Change

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

No Change

ARTICLE 29

AMERICANS WITH DISABILITIES ACT

No Change

ARTICLE 30

EQUAL BENEFITS ORDINANCE

Article 30 is hereby amended in its entirety to read as follows:

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.

1. During the performance of the Contract, CONSULTANT certifies and represents that CONSULTANT will comply with the EBO.
2. The failure of CONSULTANT to comply with the EBO will be deemed to be a material breach of this Contract by the CITY.
3. If CONSULTANT fails to comply with the EBO, the CITY may cancel, terminate or suspend the 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.
4. Failure to comply with the EBO may be used as evidence against CONSULTANT in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40 *et seq.*, Contractor Responsibility Ordinance.
5. If the CITY'S Designated Administrative Agency determines that a CONSULTANT has set up or used its contracting entity for the purpose of evading the intent of the EBO, the CITY may terminate the Contract. Violation of this provision may be used as evidence against CONSULTANT in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40 *et seq.*, Contractor Responsibility Ordinance.

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

“During the performance of a Contract with the City of Los Angeles, the Consultant 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) 847-2632.”

ARTICLE 31

WAIVER

No Change

ARTICLE 32

PROHIBITION AGAINST ASSIGNMENT OR DELEGATION

No Change

ARTICLE 33

PERMITS

No Change

ARTICLE 34

CLAIMS FOR LABOR AND MATERIALS

No Change

ARTICLE 35

DISCOUNTS

No Change

ARTICLE 36

CONTRACTOR RESPONSIBILITY ORDINANCE

No Change

ARTICLE 37

BREACH

No Change

ARTICLE 38

SLAVERY DISCLOSURE ORDINANCE

No Change

ARTICLE 39

CONTRACT BIDDER CERTIFICATION OF COMPLIANCE WITH LOBBYING LAWS

Article 39 is hereby amended in its title and content to read as follows:

BIDDER ETHICS

Pursuant to the Los Angeles Municipal Lobbying Ordinance, any bidder for a contract shall submit with its proposal a Bidder Certification CEC

Form 50 (**Exhibit J**), proscribed by the City Ethics Commission, in which the bidder acknowledges and agrees to comply with the disclosure requirements and prohibitions established in the Ordinance if the bidder qualifies as a lobbying entity under the Ordinance.

As amended, this Contract is also subject to Charter Section 470(c)(12) and related ordinances and as a result, the CONSULTANT was required to submit Bidder Contributions CEC Form 55 (**Exhibit J**) within ten business days of discussing the amendment. Consequently, CONSULTANT may not make campaign contributions to and or engage in fundraising for certain elected City officials or candidates for elected City office from the date the amendment is first discussed until 12 months after the amendment is signed. The CONSULTANT'S principals and subconsultants performing \$100,000 or more in work on the contract, as well as the principals of those subconsultants, are also subject to the same limitations on campaign contributions and fundraising.

CONSULTANT must also notify their principals and subconsultants in writing of the restrictions and include the notice in contracts with subconsultants. Consultants who fail to comply with City law may be subject to penalties, termination of contract, and debarment. Additional information regarding these restrictions and requirements may be obtained from the City Ethics Commission at (213) 978-1960.

The Contract is hereby amended to include the following Articles:

ARTICLE 40

AFFIRMATIVE ACTION

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

- A. During the performance of a CITY contract, CONSULTANT certifies and represents that CONSULTANT and each subconsultant hereunder will adhere to an affirmative action program to ensure that in its employment practices, persons are employed and employees are treated equally and without regard to or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
 - 1. This provision applies to work or services performed or materials manufactured or assembled in the United States.
 - 2. Nothing in this Section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.

3. CONSULTANT shall post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.
- B. CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of CONSULTANT, state that all qualified applicants will receive consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
 - C. As part of the CITY'S supplier registration process, and/or at the request of the awarding authority or the Office of Contract Compliance, CONSULTANT shall certify on an electronic or hard copy form to be supplied, that CONSULTANT has not discriminated in the performance of CITY contracts against any employee or applicant for employment on the basis or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
 - D. CONSULTANT shall permit access to and may be required to provide certified copies of all of its records pertaining to employment and to its employment practices by the awarding authority or the Office of Contract Compliance, for the purpose of investigation to ascertain compliance with the Affirmative Action Program provisions of CITY contracts, and on their or either of their request to provide evidence that it has or will comply therewith.
 - E. The failure of any CONSULTANT to comply with the Affirmative Action Program provisions of CITY contracts may be deemed to be a material breach of contract. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made except upon a full and fair hearing after notice and an opportunity to be heard has been given to CONSULTANT.
 - F. Upon a finding duly made that CONSULTANT has breached the Affirmative Action Program provisions of a CITY contract, the Contract may be forthwith cancelled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the CITY. In addition thereto, such breach may be the basis for a determination by the awarding authority or the Board of Public

Works that the said CONSULTANT is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Los Angeles City Charter. In the event of such determination, such CONSULTANT shall be disqualified from being awarded a contract with the CITY for a period of two years, or until he or she shall establish and carry out a program in conformance with the provisions hereof.

- G. In the event of a finding by the Fair Employment and Housing Commission of the State of California, or the Board of Public Works of the City of Los Angeles, or any court of competent jurisdiction, that CONSULTANT has been guilty of a willful violation of the California Fair Employment and Housing Act, or the Affirmative Action Program provisions of a CITY contract, there may be deducted from the amount payable to CONSULTANT by the CITY under the Contract, a penalty of ten dollars (\$10.00) for each person for each calendar day on which such person was discriminated against in violation of the provisions of a CITY contract.
- H. Notwithstanding any other provisions of a CITY contract, the CITY shall have any and all other remedies at law or in equity for any breach hereof.
- I. Intentionally blank.
- J. Nothing contained in CITY contracts shall be construed in any manner so as to require or permit any act which is prohibited by law.
- K. CONSULTANT shall submit an Affirmative Action Plan which shall meet the requirements of this chapter at the time it submits its bid or proposal or at the time it registers to do business with the CITY. The plan shall be subject to approval by the Office of Contract Compliance prior to award of the Contract. The awarding authority may also require consultants and suppliers to take part in a pre-registration, pre-bid, pre-proposal, or pre-award conference in order to develop, improve or implement a qualifying Affirmative Action Plan. Affirmative Action Programs developed pursuant to this Section shall be effective for a period of twelve months from the date of approval by the Office of Contract Compliance. In case of prior submission of a plan, CONSULTANT may submit documentation that it has an Affirmative Action Plan approved by the Office of Contract Compliance within the previous twelve months. If the approval is 30 days or less from expiration, CONSULTANT must submit a

new Plan to the Office of Contract Compliance and that Plan must be approved before the Contract is awarded.

1. Every contract of \$5,000 or more which may provide construction, demolition, renovation, conservation or major maintenance of any kind shall in addition comply with the requirements of Section 10.13 of the Los Angeles Administrative Code.
2. CONSULTANT may establish and adopt as its own Affirmative Action Plan, by affixing his or her signature thereto, an Affirmative Action Plan prepared and furnished by the Office of Contract Compliance, or it may prepare and submit its own Plan for approval.

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

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

1. Apprenticeship where approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;
2. Classroom preparation for the job when not apprenticeable;
3. Pre-apprenticeship education and preparation;
4. Upgrading training and opportunities;
5. Encouraging the use of consultants, subconsultants and suppliers of all racial and ethnic groups, provided, however, that any contract subject to this ordinance shall require the CONSULTANT, subconsultant or supplier to

provide not less than the prevailing wage, working conditions and practices generally observed in private industries in the consultant's, subconsultant's, or supplier's geographical area for such work;

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

ARTICLE 41

FALSE CLAIMS ACT

CONSULTANT 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.

ARTICLE 42

EQUAL EMPLOYMENT PRACTICES

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

- A. During the performance of this Contract, CONSULTANT agrees and represents that it will provide equal employment practices and CONSULTANT and each subconsultant hereunder will ensure that in his or her employment practices, persons are employed and employees are treated equally and without regard to or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
 - 1. This provision applies to work or service performed or materials manufactured or assembled in the United States.
 - 2. Nothing in this Section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.
 - 3. CONSULTANT agrees to post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.
- B. CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of CONSULTANT, state that all qualified applicants will receive consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
- C. As part of the CITY'S supplier registration process, and/or at the request of the awarding authority, or the Board of Public Works, Office of Contract Compliance, CONSULTANT shall certify in the specified format that he or she has not discriminated in the performance of CITY contracts against any employee or applicant for employment on the basis or because of race, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status or medical condition.
- D. CONSULTANT shall permit access to and may be required to

provide certified copies of all of his or her records pertaining to employment and to employment practices by the awarding authority or the Office of Contract Compliance for the purpose of investigation to ascertain compliance with the Equal Employment Practices provisions of CITY contracts. On their or either of their request CONSULTANT shall provide evidence that he or she has or will comply therewith.

- E. The failure of any CONSULTANT to comply with the Equal Employment Practices provisions of this Contract may be deemed to be a material breach of CITY contracts. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made or penalties assessed except upon a full and fair hearing after notice, and an opportunity to be heard has been given to CONSULTANT.
- F. Upon a finding duly made that CONSULTANT has failed to comply with the Equal Employment Practices provisions of a CITY contract, the Contract may be forthwith cancelled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the CITY. In addition thereto, such failure to comply may be the basis for a determination by the awarding authority or the Board of Public Works that the CONSULTANT is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Charter of the City of Los Angeles. In the event of such a determination, CONSULTANT shall be disqualified from being awarded a contract with the CITY for a period of two years, or until CONSULTANT shall establish and carry out a program in conformance with the provisions hereof.
- G. Notwithstanding any other provision of this Contract, the CITY shall have any and all other remedies at law or in equity for any breach hereof.
- H. Intentionally blank.
- I. Nothing contained in this Contract shall be construed in any manner so as to require or permit any act which is prohibited by law.
- J. At the time a supplier registers to do business with the CITY, or when an individual bid or proposal is submitted, CONSULTANT

shall agree to adhere to the Equal Employment Practices specified herein during the performance or conduct of CITY Contracts.

- K. Equal Employment Practices shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:
1. Hiring practices;
 2. Apprenticeships where such approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;
 3. Training and promotional opportunities; and
 4. Reasonable accommodations for persons with disabilities.
- L. Any subcontract entered into by CONSULTANT, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract. Failure of CONSULTANT to comply with this requirement or to obtain the compliance of its subconsultants with all such obligations shall subject CONSULTANT to the imposition of any and all sanctions allowed by law, including but not limited to termination of the CONSULTANT'S Contract with the CITY.

ARTICLE 43

FIRST SOURCE HIRING ORDINANCE

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

1. CONSULTANT shall, prior to the execution of the contract, provide to the Designated Administrative Agency (DAA) a list of anticipated employment opportunities that CONSULTANT estimate they will need to fill in order to perform the services under the Contract.
2. CONSULTANT further pledges that it will, during the term of the Contract, shall a) At least seven business days prior to making an announcement of a specific employment opportunity, provide notifications of that employment opportunity to the Community Development Department (CDD), which will refer individuals for interview; b) Interview qualified individuals referred by CDD; and c) Prior to filling any employment opportunity, the

CONSULTANT shall inform the DAA of the names of the Referral Resources used, the names of the individuals they referred, the names of the referred individuals who the CONSULTANT interviewed and the reasons why referred individuals were not hired.

3. Any Subcontract entered into by the CONSULTANT relating to this Agreement, to the extent allowed hereunder, shall be subject to the provisions of FSHO, and shall incorporate the FSHO.
4. CONSULTANT shall comply with all rules, regulations and policies promulgated by the designated administrative agency, which may be amended from time to time.

Where under the provisions of Section 10.44.13 of the Los Angeles Administrative Code the designated administrative agency has determined that the CONSULTANT intentionally violated or used hiring practices for the purpose of avoiding the article, the determination must be documented in the Awarding Authority's Contractor Evaluation, required under Los Angeles Administrative Code Section 10.39 et seq., and must be documented in each of the Contractor's subsequent Contractor Responsibility Questionnaires submitted under Los Angeles Administrative Code Section 10.40 et seq. This measure does not limit the City's authority to act under this article.

Under the provisions of Section 10.44.8 of the Los Angeles Administrative Code, the Awarding Authority shall, under appropriate circumstances, terminate this contract and otherwise pursue legal remedies that may be available if the designated administrative agency determines that the subject CONSULTANT has violated provisions of the FSHO.

EXCEPT AS EXPRESSLY MODIFIED herein, the Contract executed on September 3, 2008 remains unchanged.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 1 on the day and year written below.

TROLLER MAYER ASSOCIATES

By:

Title:

Date:

CITY OF LOS ANGELES

By:

Title: President, Board of Public Works

Date:

By:

Date:

ATTEST:

JUNE LAGMAY, City Clerk

By:

Date:

APPROVED AS TO FORM:

MICHAEL N. FEUER, City Attorney

By:

Title: Assistant City Attorney

Date:

AMENDMENT NO. 1

to

Contract No. C-114367

for the

PRE-QUALIFIED ON-CALL LANDSCAPE ARCHITECTURAL CONSULTANT SERVICES

Between

CITY OF LOS ANGELES

and

WITHERS & SANDGREN LTD.

AMENDMENT NO. 1 TO CONTRACT NO. C-114367, FOR PRE-QUALIFIED ON-CALL LANDSCAPE ARCHITECTURAL CONSULTANT SERVICES BETWEEN THE CITY OF LOS ANGELES AND WITHERS & SANDGREN LTD.

This Amendment modifies Contract No. C-114367 executed on September 3, 2008 between the City of Los Angeles (hereinafter referred to as "CITY") and WITHERS & SANDGREN LTD. (hereinafter referred to as "CONSULTANT").

WITNESSETH

WHEREAS, CITY issued a Request for Qualifications (RFQ) on April 16, 2007 for landscape architectural and related services, on a pre-qualified basis, on various projects and CONSULTANT submitted a statement of qualifications in response; and

WHEREAS, CONSULTANT demonstrated qualifications to perform said services and was selected to perform the design services by CITY staff based on the evaluation criteria set forth in the RFQ; and

WHEREAS, on September 3, 2008, Contract No. C-114367 was awarded to CONSULTANT, the terms of which will expire on September 3, 2013; and

WHEREAS, the CITY and CONSULTANT have agreed to extend the term of the Contract by three (3) additional years to September 3, 2016 in order to provide as needed landscape architectural and construction administration services; and

WHEREAS, the CITY'S Department of Public Works, Bureau of Engineering, (hereinafter referred to as "BUREAU"), is the Program Manager and oversees the CONSULTANT'S performance of this Contract; and

NOW, THEREFORE, in consideration of the foregoing and of the benefits which will accrue to the parties hereto in carrying out the conditions of this Amendment No. 1, Contract No. C-114367 is hereby amended as follows:

ARTICLE 1 SECTION HEADINGS AND CONSTRUCTION OF PROVISIONS AND TITLES HEREIN

No Change

ARTICLE 2 DEFINITIONS

No Change

ARTICLE 3 PROJECT DESCRIPTION

No Change

ARTICLE 4

RESPONSIBILITIES OF AND TASKS TO BE PERFORMED BY THE CONSULTANT

No Change

ARTICLE 5

KEY CONSULTANT PERSONNEL

Article 5 is hereby amended in to replace the Key Consultant Personnel table as follows:

5.1 CONSULTANT designates the following persons to implement the work:

From:

Name	Title
Jan Sandgren	Principal Landscape Architect
Lacey Withers	Principal Landscape Architect
Patty Nalle	Senior Associate
Desiree Norris	Senior Associate
Bonnie Schwartz	Senior Draft
Jessica Williams	Clerical
Jennie McAninch-Bowman	Clerical

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

To:

Name	Title
Jan Sandgren	Principal Landscape Architect
Lacey Withers	Principal Landscape Architect
Patty Nalle	Senior Associate
Desiree Norris	Senior Associate
Bryan Matsumoto	Senior Draft
Jennie McAninch-Bowman	Clerical

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

ARTICLE 6

RESPONSIBILITIES OF AND TASKS TO BE PERFORMED BY CITY

No Change

ARTICLE 7

TERM OF CONTRACT AND TIME OF EFFECTIVENESS

Article 7 is hereby amended in its first paragraph to read as follows:

Unless otherwise provided, the term of this Contract shall begin on the date of full execution and shall expire on September 3, 2016, unless terminated as provided under Article 8 or extended by amendment to this Contract.

ARTICLE 8

TERMINATION

Article 8 is hereby amended in its entirety to read as follows:

8.1 Termination for Convenience

The CITY may terminate this Contract for the CITY'S convenience at any time by giving CONSULTANT thirty days written notice thereof. Upon receipt of said notice, CONSULTANT shall immediately take action not to incur any additional obligations, cost or expenses, except as may be reasonably necessary to terminate its activities. The CITY shall pay CONSULTANT its reasonable and allowable costs through the effective date of termination and those reasonable and necessary costs incurred by CONSULTANT to affect such termination. Thereafter, CONSULTANT shall have no further claims against the CITY under this Contract. All finished and unfinished documents and materials procured for or produced under this Contract, including all intellectual property rights thereto, shall become CITY property upon the date of such termination. CONSULTANT agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights provided herein.

8.2 Termination for Breach of Contract

8.2.1 Except for excusable delays as provided in Article 20, if CONSULTANT fails to perform any of the provisions of this Contract or so fails to make progress as to endanger timely performance of this Contract, the CITY may give CONSULTANT written notice of such default. If CONSULTANT does not cure such default or provide a plan to cure such default which is acceptable to the CITY within the time permitted by the CITY, then the CITY may terminate this Contract due to CONSULTANT'S breach of this Contract.

8.2.2 If a federal or state proceeding for relief of debtors is undertaken by or against CONSULTANT, or if CONSULTANT makes an assignment for the benefit of creditors, then the CITY may immediately terminate this

Contract.

- 8.2.3 If CONSULTANT engages in any dishonest conduct related to the performance or administration of this Contract or violates the CITY'S lobbying policies, then the CITY may immediately terminate this Contract.
- 8.2.4 In the event the CITY terminates this Contract 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 CONSULTANT shall be liable to the CITY for all of its costs and damages, including, but not limited, any excess costs for such services.
- 8.2.5 All finished and unfinished documents and materials produced or procured under this Contract, including all intellectual property rights thereto, shall become CITY property upon date of such termination. CONSULTANT agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights provided herein.
- 8.2.6 If, after notice of termination of this Contract under the provisions of this Section, it is determined for any reason that CONSULTANT was not in default under the provisions of this Section, or that the default was excusable under the terms of this Contract, the rights and obligations of the parties shall be the same as if the notice of termination has been issued pursuant to Article 8.1 Termination for Convenience.
- 8.2.7 The rights and remedies of the CITY provided in this Section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

ARTICLE 9

SUBCONTRACT APPROVAL

Article 9 is hereby amended in its title and first paragraph to read as follows:

SUBCONSULTANT APPROVAL

CONSULTANT shall not use subconsultants to assist in performance of this Contract without the prior written approval of the CITY. If the CITY

permits the use of subconsultants, CONSULTANT shall remain responsible for performing all aspects of this Contract. The CONSULTANT is required to provide the CITY a list of all subconsultants including the name and address of the firms. Refer to **Exhibit K** for CONSULTANT and subconsultant information. The CITY has the right to approve CONSULTANT'S subconsultants and the CITY reserves the right to request replacement of subconsultants. The CITY does not have any obligation to pay CONSULTANT'S subconsultants and nothing herein creates any privity between the CITY and the subconsultants. Wholly-owned subsidiaries of CONSULTANT shall not be considered subconsultants.

ARTICLE 10

COMPENSATION, INVOICING AND PAYMENT

Article 10 is hereby amended to include a third paragraph to Section 10.6 to read as follows:

For the sake of efficiency, the CONSULTANT may have provided services prior to the execution of this Amendment. Upon execution of this Amendment, and to the extent that said services were performed in accordance with the terms and conditions of the Contract and this Amendment, those services are hereby ratified and eligible for payment.

ARTICLE 11

AMENDMENTS, CHANGES OR MODIFICATIONS

No Change

ARTICLE 12

INDEMNIFICATION AND INSURANCE

No Change

ARTICLE 13

INDEPENDENT CONTRACTORS

No Change

ARTICLE 14

WARRANTY AND RESPONSIBILITY OF CONSULTANT

No Change

ARTICLE 15

OWNERSHIP OF DATA AND INTELLECTUAL PROPERTY

Article 15 is hereby amended in its title and content to read as follows:

15.1 Ownership of Data and License

15.1.1 Unless otherwise provided for herein, all Work Products

originated and prepared by CONSULTANT or its subconsultants of any tier under this Contract shall be and remain the exclusive property of the CITY for its use in any manner it deems appropriate. Work Products are all works, tangible or not, created under this Contract including, without limitation, documents, material, data, reports, manuals, specifications, artwork, drawings, sketches, computer programs and databases, schematics, photographs, video and audiovisual recordings, sound recordings, marks, logos, graphic designs, notes, websites, domain names, inventions, processes, formulas matters and combinations thereof, and all forms of intellectual property. CONSULTANT hereby assigns, and agrees to assign, all goodwill, copyright, trademark, patent, trade secret and all other intellectual property rights worldwide in any Work Products originated and prepared by CONSULTANT under this Contract. CONSULTANT further agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights provided herein.

- 15.1.2 With regard to the basis for design calculations and engineering notes, such data shall be provided to the CITY in (a) hard cover post binder(s), appropriately indexed, on thin Mylar stock or good quality paper satisfactory for reproduction.
- 15.1.3 For all Work Products delivered to the CITY that are not originated or prepared by CONSULTANT or its subconsultants of any tier under this Contract, CONSULTANT hereby grants a non-exclusive perpetual license to use such Work Products for any CITY purposes.
- 15.1.4 CONSULTANT shall not provide or disclose any Work Products to any third party without prior written consent of the City.
- 15.1.5 All documents, information and pre-existing materials provided by CITY to CONSULTANT and its subconsultants arising out of or related to this Contract shall remain the property of the CITY. The CONSULTANT may not use, distribute or otherwise make public in any manner, either for profit or not for profit, any of the information, documentation, or procedures developed for the CITY hereunder without the prior written consent of the CITY. CONSULTANT further agrees to

execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights.

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

15.2 Intellectual Property Warranty

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

15.3 Intellectual Property Indemnification

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

this Contract; or (2) as a result of the CITY'S actual or intended use of any Work Product furnished by CONSULTANT, or its subconsultants of any tier, under the Agreement. Rights and remedies available to the CITY under this provision are cumulative of those provided for elsewhere in this Contract and those allowed under the laws of the United States, the State of California, and the CITY. The provisions of Article 15 shall survive expiration or termination of this Contract.

15.3.2 In CONSULTANT'S defense of the CITY Defendants, negotiation, compromise, and settlement of any such infringement action, the Los Angeles City Attorney's Office shall retain discretion in and control of the litigation, negotiation, compromise, settlement, and appeals therefrom, as required by the Los Angeles City Charter, particularly Article II, Sections 271, 272 and 273 thereof.

15.3.3 Where any Work Product furnished by CONSULTANT (a) becomes the subject of an action, (b) is adjudicated as infringing a third party's Intellectual Property right, or (c) has its use enjoined or license terminated; CONSULTANT shall, with the CITY'S consent, do one of the following immediately. CONSULTANT shall at its expense either:

- i) procure for the CITY the right or license to continue using the Work Product; or
- ii) replace the Work Product with a functionally equivalent, non-infringing product.

Exercise of any of the above-mentioned options shall not cause undue business interruption to the CITY or diminish the intended benefits and use of the Work Product by the CITY under this Contract.

ARTICLE 16

NONDISCRIMINATION AND AFFIRMATIVE ACTION

Article 16 is hereby amended in its title and content to read as follows:

NONDISCRIMINATION

Unless otherwise exempt, this Contract is subject to the nondiscrimination provisions in Sections 10.8 through 10.8.2 of the Los Angeles Administrative Code, as amended from time to time. The CONSULTANT shall comply with the applicable nondiscrimination and affirmative action

provisions of the laws of the United States of America, the State of California, and the CITY. In performing this Contract, CONSULTANT shall not discriminate in its employment practices against any employee or applicant for employment because of such person's race, religion, national origin, ancestry, sex, sexual orientation, age, disability, domestic partner status, marital status or medical condition. The CONSULTANT 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 said Office. Any subcontract entered into by CONSULTANT, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract.

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

ARTICLE 17

**MINORITY, WOMEN AND OTHER BUSINESS ENTERPRISE
OUTREACH PROGRAM**

No Change

ARTICLE 18

SUCCESSORS AND ASSIGNS

No Change

ARTICLE 19

CONTACT PERSONS – PROPER ADDRESSES – NOTIFICATION

Article 19 is hereby amended as follows:

To Consultant:

From:

Contact Person: Jan Sandgren, Principal

Address: Withers & Sandgren Ltd.
3476 Ocean View Blvd., Suite A
Glendale, CA 91208

To:

Contact Person: Jan Sandgren, Principal Planner

or

Lacey Withers, Principal Landscape Architect

Address: Withers & Sandgren Ltd.

P.O. Box 276
Montrose, CA 91021

When a P.O. Box is not accepted

Withers & Sandgren Ltd.
1801 Tamerlane Drive, #4
Glendale, CA 91208

ARTICLE 20

EXCUSABLE DELAYS

No Change

ARTICLE 21

SEVERABILITY

No Change

ARTICLE 22

DISPUTES

No Change

ARTICLE 23

ENTIRE CONTRACT

No Change

ARTICLE 24

APPLICABLE LAW, INTERPRETATION AND ENFORCEMENT

No Change

ARTICLE 25

**CURRENT LOS ANGELES CITY BUSINESS TAX
REGISTRATION CERTIFICATE REQUIRED**

No Change

ARTICLE 26

BONDS

Article 26 is hereby amended in its entirety to read as follows:

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

ARTICLE 27

CHILD SUPPORT ASSIGNMENT ORDERS

No Change

ARTICLE 28

**LIVING WAGE ORDINANCE AND SERVICE CONTRACTOR
WORKER RETENTION ORDINANCE**

No Change

ARTICLE 29

AMERICANS WITH DISABILITIES ACT

No Change

ARTICLE 30

EQUAL BENEFITS ORDINANCE

Article 30 is hereby amended in its entirety to read as follows:

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.

1. During the performance of the Contract, CONSULTANT certifies and represents that CONSULTANT will comply with the EBO.
2. The failure of CONSULTANT to comply with the EBO will be deemed to be a material breach of this Contract by the CITY.
3. If CONSULTANT fails to comply with the EBO, the CITY may cancel, terminate or suspend the 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.
4. Failure to comply with the EBO may be used as evidence against CONSULTANT in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40 *et seq.*, Contractor Responsibility Ordinance.
5. If the CITY'S Designated Administrative Agency determines that a CONSULTANT has set up or used its contracting entity for the purpose of evading the intent of the EBO, the CITY may terminate the Contract. Violation of this provision may be used as evidence against CONSULTANT in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40 *et seq.*, Contractor Responsibility Ordinance.

CONSULTANT shall post the following statement in conspicuous places

at its place of business available to employees and applicants for employment:

“During the performance of a Contract with the City of Los Angeles, the Consultant 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) 847-2632.”

ARTICLE 31

WAIVER

No Change

ARTICLE 32

PROHIBITION AGAINST ASSIGNMENT OR DELEGATION

No Change

ARTICLE 33

PERMITS

No Change

ARTICLE 34

CLAIMS FOR LABOR AND MATERIALS

No Change

ARTICLE 35

DISCOUNTS

No Change

ARTICLE 36

CONTRACTOR RESPONSIBILITY ORDINANCE

No Change

ARTICLE 37

BREACH

No Change

ARTICLE 38

SLAVERY DISCLOSURE ORDINANCE

No Change

ARTICLE 39

CONTRACT BIDDER CERTIFICATION OF COMPLIANCE WITH LOBBYING LAWS

Article 39 is hereby amended in its title and content to read as follows:

BIDDER ETHICS

Pursuant to the Los Angeles Municipal Lobbying Ordinance, any bidder for a contract shall submit with its proposal a Bidder Certification CEC Form 50 (**Exhibit J**), proscribed by the City Ethics Commission, in which the bidder acknowledges and agrees to comply with the disclosure requirements and prohibitions established in the Ordinance if the bidder qualifies as a lobbying entity under the Ordinance.

As amended, this Contract is also subject to Charter Section 470(c)(12) and related ordinances and as a result, the CONSULTANT was required to submit Bidder Contributions CEC Form 55 (**Exhibit J**) within ten business days of discussing the amendment. Consequently, CONSULTANT may not make campaign contributions to and or engage in fundraising for certain elected City officials or candidates for elected City office from the date the amendment is first discussed until 12 months after the amendment is signed. The CONSULTANT'S principals and subconsultants performing \$100,000 or more in work on the contract, as well as the principals of those subconsultants, are also subject to the same limitations on campaign contributions and fundraising.

CONSULTANT must also notify their principals and subconsultants in writing of the restrictions and include the notice in contracts with subconsultants. Consultants who fail to comply with City law may be subject to penalties, termination of contract, and debarment. Additional information regarding these restrictions and requirements may be obtained from the City Ethics Commission at (213) 978-1960.

The Contract is hereby amended to include the following Articles:

ARTICLE 40

AFFIRMATIVE ACTION

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

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

1. This provision applies to work or services performed or

materials manufactured or assembled in the United States.

2. Nothing in this Section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.
 3. CONSULTANT shall post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.
- B. CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of CONSULTANT, state that all qualified applicants will receive consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
- C. As part of the CITY'S supplier registration process, and/or at the request of the awarding authority or the Office of Contract Compliance, CONSULTANT shall certify on an electronic or hard copy form to be supplied, that CONSULTANT has not discriminated in the performance of CITY contracts against any employee or applicant for employment on the basis or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
- D. CONSULTANT shall permit access to and may be required to provide certified copies of all of its records pertaining to employment and to its employment practices by the awarding authority or the Office of Contract Compliance, for the purpose of investigation to ascertain compliance with the Affirmative Action Program provisions of CITY contracts, and on their or either of their request to provide evidence that it has or will comply therewith.
- E. The failure of any CONSULTANT to comply with the Affirmative Action Program provisions of CITY contracts may be deemed to be a material breach of contract. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made except upon a full and fair hearing after notice and an opportunity to be heard has been given to CONSULTANT.
- F. Upon a finding duly made that CONSULTANT has breached the Affirmative Action Program provisions of a CITY contract, the

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

- G. In the event of a finding by the Fair Employment and Housing Commission of the State of California, or the Board of Public Works of the City of Los Angeles, or any court of competent jurisdiction, that CONSULTANT has been guilty of a willful violation of the California Fair Employment and Housing Act, or the Affirmative Action Program provisions of a CITY contract, there may be deducted from the amount payable to CONSULTANT by the CITY under the Contract, a penalty of ten dollars (\$10.00) for each person for each calendar day on which such person was discriminated against in violation of the provisions of a CITY contract.
- H. Notwithstanding any other provisions of a CITY contract, the CITY shall have any and all other remedies at law or in equity for any breach hereof.
- I. Intentionally blank.
- J. Nothing contained in CITY contracts shall be construed in any manner so as to require or permit any act which is prohibited by law.
- K. CONSULTANT shall submit an Affirmative Action Plan which shall meet the requirements of this chapter at the time it submits its bid or proposal or at the time it registers to do business with the CITY. The plan shall be subject to approval by the Office of Contract Compliance prior to award of the Contract. The awarding authority may also require consultants and suppliers to take part in a pre-registration, pre-bid, pre-proposal, or pre-award conference in order to develop, improve or implement a qualifying Affirmative Action Plan. Affirmative Action Programs developed pursuant to this Section shall be effective for a period of twelve months from the date of approval by the Office of Contract

Compliance. In case of prior submission of a plan, CONSULTANT may submit documentation that it has an Affirmative Action Plan approved by the Office of Contract Compliance within the previous twelve months. If the approval is 30 days or less from expiration, CONSULTANT must submit a new Plan to the Office of Contract Compliance and that Plan must be approved before the Contract is awarded.

1. Every contract of \$5,000 or more which may provide construction, demolition, renovation, conservation or major maintenance of any kind shall in addition comply with the requirements of Section 10.13 of the Los Angeles Administrative Code.
2. CONSULTANT may establish and adopt as its own Affirmative Action Plan, by affixing his or her signature thereto, an Affirmative Action Plan prepared and furnished by the Office of Contract Compliance, or it may prepare and submit its own Plan for approval.

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

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

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

5. Encouraging the use of consultants, subconsultants and suppliers of all racial and ethnic groups, provided, however, that any contract subject to this ordinance shall require the CONSULTANT, subconsultant or supplier to provide not less than the prevailing wage, working conditions and practices generally observed in private industries in the consultant's, subconsultant's, or supplier's geographical area for such work;
 6. The entry of qualified women, minority and all other journeymen into the industry; and
 7. The provision of needed supplies or job conditions to permit persons with disabilities to be employed, and minimize the impact of any disability.
- N. Any adjustments which may be made in the CONSULTANT'S or supplier's work force to achieve the requirements of the CITY'S Affirmative Action Contract Compliance Program in purchasing and construction shall be accomplished by either an increase in the size of the work force or replacement of those employees who leave the work force by reason of resignation, retirement or death and not by termination, layoff, demotion or change in grade.
- O. Affirmative Action Agreements resulting from the proposed Affirmative Action Plan or the pre-registration, pre-bid, pre-proposal or pre-award conferences shall not be confidential and may be publicized by the CONSULTANT at his or her discretion. Approved Affirmative Action Agreements become the property of the CITY and may be used at the discretion of the CITY in its Contract Compliance Affirmative Action Program.
- P. Intentionally blank.
- Q. All consultants subject to the provisions of this Section shall include a like provision in all subcontracts awarded for work to be performed under the Contract with the CITY and shall impose the same obligations, including but not limited to filing and reporting obligations, on the subconsultants as are applicable to the CONSULTANT. Failure of the CONSULTANT to comply with this requirement or to obtain the compliance of its subconsultants with all such obligations shall subject the CONSULTANT to the imposition of any and all sanctions allowed by law, including but not limited to termination of the CONSULTANT'S Contract with the CITY.

ARTICLE 41

FALSE CLAIMS ACT

CONSULTANT 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.

ARTICLE 42

EQUAL EMPLOYMENT PRACTICES

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

- A. During the performance of this Contract, CONSULTANT agrees and represents that it will provide equal employment practices and CONSULTANT and each subconsultant hereunder will ensure that in his or her employment practices, persons are employed and employees are treated equally and without regard to or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
 - 1. This provision applies to work or service performed or materials manufactured or assembled in the United States.
 - 2. Nothing in this Section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.
 - 3. CONSULTANT agrees to post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.
- B. CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of CONSULTANT, state that all qualified applicants will receive consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
- C. As part of the CITY'S supplier registration process, and/or at the request of the awarding authority, or the Board of Public Works, Office of Contract Compliance, CONSULTANT shall certify in the specified format that he or she has not discriminated in the performance of CITY contracts against any employee or applicant

for employment on the basis or because of race, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status or medical condition.

- D. CONSULTANT shall permit access to and may be required to provide certified copies of all of his or her records pertaining to employment and to employment practices by the awarding authority or the Office of Contract Compliance for the purpose of investigation to ascertain compliance with the Equal Employment Practices provisions of CITY contracts. On their or either of their request CONSULTANT shall provide evidence that he or she has or will comply therewith.
- E. The failure of any CONSULTANT to comply with the Equal Employment Practices provisions of this Contract may be deemed to be a material breach of CITY contracts. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made or penalties assessed except upon a full and fair hearing after notice, and an opportunity to be heard has been given to CONSULTANT.
- F. Upon a finding duly made that CONSULTANT has failed to comply with the Equal Employment Practices provisions of a CITY contract, the Contract may be forthwith cancelled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the CITY. In addition thereto, such failure to comply may be the basis for a determination by the awarding authority or the Board of Public Works that the CONSULTANT is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Charter of the City of Los Angeles. In the event of such a determination, CONSULTANT shall be disqualified from being awarded a contract with the CITY for a period of two years, or until CONSULTANT shall establish and carry out a program in conformance with the provisions hereof.
- G. Notwithstanding any other provision of this Contract, the CITY shall have any and all other remedies at law or in equity for any breach hereof.
- H. Intentionally blank.
- I. Nothing contained in this Contract shall be construed in any

manner so as to require or permit any act which is prohibited by law.

- J. At the time a supplier registers to do business with the CITY, or when an individual bid or proposal is submitted, CONSULTANT shall agree to adhere to the Equal Employment Practices specified herein during the performance or conduct of CITY Contracts.
- K. Equal Employment Practices shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:
 - 1. Hiring practices;
 - 2. Apprenticeships where such approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;
 - 3. Training and promotional opportunities; and
 - 4. Reasonable accommodations for persons with disabilities.
- L. Any subcontract entered into by CONSULTANT, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract. Failure of CONSULTANT to comply with this requirement or to obtain the compliance of its subconsultants with all such obligations shall subject CONSULTANT to the imposition of any and all sanctions allowed by law, including but not limited to termination of the CONSULTANT'S Contract with the CITY.

ARTICLE 43

FIRST SOURCE HIRING ORDINANCE

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

- 1. CONSULTANT shall, prior to the execution of the contract, provide to the Designated Administrative Agency (DAA) a list of anticipated employment opportunities that CONSULTANT estimate they will need to fill in order to perform the services under the Contract.
- 2. CONSULTANT further pledges that it will, during the term of the Contract, shall a) At least seven business days prior to making an

announcement of a specific employment opportunity, provide notifications of that employment opportunity to the Community Development Department (CDD), which will refer individuals for interview; b) Interview qualified individuals referred by CDD; and c) Prior to filling any employment opportunity, the CONSULTANT shall inform the DAA of the names of the Referral Resources used, the names of the individuals they referred, the names of the referred individuals who the CONSULTANT interviewed and the reasons why referred individuals were not hired.

3. Any Subcontract entered into by the CONSULTANT relating to this Agreement, to the extent allowed hereunder, shall be subject to the provisions of FSHO, and shall incorporate the FSHO.
4. CONSULTANT shall comply with all rules, regulations and policies promulgated by the designated administrative agency, which may be amended from time to time.

Where under the provisions of Section 10.44.13 of the Los Angeles Administrative Code the designated administrative agency has determined that the CONSULTANT intentionally violated or used hiring practices for the purpose of avoiding the article, the determination must be documented in the Awarding Authority's Contractor Evaluation, required under Los Angeles Administrative Code Section 10.39 et seq., and must be documented in each of the Contractor's subsequent Contractor Responsibility Questionnaires submitted under Los Angeles Administrative Code Section 10.40 et seq. This measure does not limit the City's authority to act under this article.

Under the provisions of Section 10.44.8 of the Los Angeles Administrative Code, the Awarding Authority shall, under appropriate circumstances, terminate this contract and otherwise pursue legal remedies that may be available if the designated administrative agency determines that the subject CONSULTANT has violated provisions of the FSHO.

EXCEPT AS EXPRESSLY MODIFIED herein, the Contract executed on September 3, 2008 remains unchanged.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 1 on the day and year written below.

WITHERS & SANDGREN LTD.

By:

Title:

Date:

CITY OF LOS ANGELES

By:

Title: President, Board of Public Works

Date:

By:

Date:

ATTEST:

JUNE LAGMAY, City Clerk

By:

Date:

APPROVED AS TO FORM:

MICHAEL N. FEUER, City Attorney

By:

Title: Assistant City Attorney

Date: