

REPORT FROM

OFFICE OF THE CITY ADMINISTRATIVE OFFICER

Date: October 9, 2020

CAO File No. 0220-00540-1497

Council File No. 20-1282

Council District: Citywide

To: The Mayor
The Council

From: *Wanda Chavis*
~~for~~ Richard H. Llewellyn, Jr., City Administrative Officer

Reference: Housing and Community Investment Department transmittal dated October 2, 2020; Received by the City Administrative Officer on October 2, 2020; Additional Information Received through October 8, 2020

Subject: **REQUEST TO APPROVE THE RESULTS OF THE EXPERT AUDITOR REQUEST FOR PROPOSALS (RFP) AND GRANT AUTHORITY TO ENTER INTO A CONTRACT WITH ABT ASSOCIATES, INC.; GRANT AUTHORITY TO ENTER INTO A SOLE-SOURCE CONTRACT WITH EVAN TERRY ASSOCIATES (ETA); ENTER INTO AGREEMENTS TO PAY MONITOR AND PLAINTIFF FEES; ESTABLISH NEW SPECIAL SERVICES ACCOUNTS, AND TRANSFER FUNDS FOR THE ACCESSIBLE HOUSING PROGRAM**

RECOMMENDATIONS

That the Council, subject to the approval of the Mayor:

1. Authorize the General Manager of Housing and Community Investment Department (HCID), or designee, to:
 - a. Negotiate and execute a contract with Abt Associates for the provision of auditing services for the Management, Education, and Compliance (MCE) components of the Accessible Housing Program (AcHP) with a compensation amount not to exceed \$4,800,000, and a five-year contract term commencing on or about October 31, 2020 through October 30, 2025, with the option to extend for up to two additional two-year terms, in substantial conformance with the draft Agreement attached to this report, subject to funding availability, compliance with the City's contracting policies, and approval of the City Attorney as to form; and,
 - b. Negotiate and execute a sole-source contract with Evan Terry Associates (ETA) for the provision of expert and neutral accessibility consultant services for the AcHP with a compensation amount not to exceed \$20,000,000, and a five-year contract term commencing on or about November 16, 2020 through November 15, 2025, with the option to extend for up to two additional two-year terms, subject to funding availability,

compliance with the City's contracting policies, review of the negotiated Scope of Work by the City Administrative Officer prior to contract execution, and approval of the City Attorney as to form; and,

2. Adopt Recommendations C through F of the HCID transmittal dated October 2, 2020 (Report) relative to their request to negotiate and execute a Fee Agreement with the Plaintiffs in the City's Corrected Settlement Agreement (CSA) with the Independent Living Center of Southern California, et al., establish new accounts for special services, and transfer Accessible Housing Funds for the AcHP.

SUMMARY

The Housing and Community Investment Department (HCID) requests authority to: 1) negotiate and execute a contract with Abt Associates, Inc. for the provision of auditing services for the Management, Education, and Compliance (MCE) components of the Accessible Housing Program (AcHP) with a compensation amount not to exceed \$4,800,000, and a contract term commencing on or about October 31, 2020 through October 30, 2025, with the option to extend for up to two additional two-year terms; 2) negotiate and execute a sole-source contract with Evan Terry Associates (ETA) for the provision of expert and neutral accessibility consultant services for the AcHP with a compensation amount not to exceed \$20,000,000, and a contract term commencing on or about November 16, 2020 through November 15, 2025, with the option to extend for up to two additional two-year terms; 3) increase the fees paid to the Court Monitor and the Plaintiffs' legal counsel for monitoring and oversight; and, 4) establish new special service accounts and transfer funds for the AcHP. It should be noted that the recommendations in this report differ from the recommendations included in HCID's transmittal dated October 2, 2020 (Report). Subsequent to the release of their Report, the HCID provided a revised Pro Forma Agreement with Abt Associates, which includes the correct contract compensation amount and term, and incorporates language indicating that the proposed contract is subject to the availability of funds (Attachment). Additionally, HCID confirmed the intended term and not to exceed compensation amount for ETA, but could not provide a Scope of Work at the writing of this report, which is discussed further below. This Office concurs with the Department's recommendations, as amended to clarify contract terms and compensation amounts, as well as a requirement for the City Administrative Officer (CAO) to review the negotiated Scope of Work for ETA, prior to contract execution.

Audit Services Contract

On August 2020, the HCID released a Request for Proposals (RFP) to solicit responses from interested organizations to provide audit services for the Management, Education, and Compliance (MCE) components of the AcHP. Two respondents submitted proposals and Abt Associates received the highest score. Additional details regarding the RFP process can be found in HCID's Report. HCID indicates that the proposed contract is necessary to comply with the legally mandated MCE requirements under the Corrected Settlement Agreement (CSA) with the Independent Living Center of Southern California, et al. Additional information regarding the CSA can be found in the HCID's Report.

Pursuant to Charter Section 1022, the Personnel Department determined on August 8, 2020 that

City employees have the necessary qualifications to perform the audit services for the MCE components of the CSA. Additionally, this Office determined on September 17, 2020 that it is more feasible to contract audit services because the services exceed staffing availability and additional staff cannot be deployed or trained in a timely manner.

The HCID requests a transfer of funds from the Unappropriated Balance (UB) to pay for a portion of the first year of the contract with Abt Associates for audit services. There is currently \$2 million in the UB for construction and architectural services for the ACHP. In light of the pandemic making it difficult to properly survey work needed and to disturb tenants in place for non-emergency work, the Department reports that a transfer of \$228,525.82 from the UB for the audit services would not impede progress or compliance with the CSA.

Accessibility Consultant Contract

The CSA and the Voluntary Compliance Agreement (VCA) with the U.S. Department of Housing and Urban Development (HUD) require a neutral accessibility consultant to oversee and approve the City's compliance with applicable accessibility standards for all new construction, substantial rehabilitation, and the retrofit of existing properties. The HCID, Plaintiffs, HUD and the Court Monitor became concerned with the inability to determine compliance using HCID's current contractor's, LCM Associates' (LCM), protocols and reports. The Department subsequently requested that LCM cease all work and plans to terminate the contract on or before November 30, 2020. The Plaintiffs, HUD, and the Court Monitor recommended replacing LCM with ETA. At the writing of this report, HCID stated that they are still negotiating the Scope of Work (SOW) with ETA. The Department reports that HCID and ETA are reviewing the standard SOW from the previous contract with LCM to develop survey protocols and standards, confirm the codes that apply to each building, and develop a plan to survey all the new construction buildings. In addition, ETA will develop a plan to inspect covered properties in the CSA in the era of COVID-19, focusing on those most in need of renovation due to existing conditions, or those planning renovation because of refinancing and capital investment needs. This Office recommends that HCID submit the final negotiated SOW to the CAO for review prior to contract execution.

It should be noted that ETA has not submitted the necessary compliance documents through the Los Angeles Business Assistance Virtual Network (BAVN). Prior to contract execution, HCID should ensure that the contract compliance documentation is collected and verified by the Department of Public Works Bureau of Contract Administration. In addition, evidence of the Contractors' insurance coverage meeting the limits deemed appropriate by the Risk Management Division of the Office of the City Administrative Officer has not been submitted through the City's KwikComply system at the writing of this report. In order to comply with the City's contracting requirements, HCID must ensure that proof of insurance coverage is uploaded through KwikComply prior to contract execution. The HCID indicated that they will instruct ETA to upload the required documentation once they receive Mayor and Council approval to negotiate and execute the proposed sole-source contract and that the KwikComply documentation will be verified prior to forwarding the proposed contract to the Office of the City Attorney for review and signature.

Court Monitor and Plaintiff Fees

On December 2019, the Court expanded the role of the Court Monitor and directed parties in the

CSA to agree on a new fee schedule. Additionally, two of the three Plaintiffs requested an increase in annual fees paid by the City. Additional information on the fee schedules is included in HCID's Report. The Department indicates that, unlike the Court Monitor fees, the Plaintiff fees were not capped in the Court Order, and in the past fiscal year, the additional monitoring and oversight time incurred by the Plaintiffs and their counsel resulted in large fee increases. The HCID requests, and the City Attorney's Office concurs with, a transfer of the funding for the Plaintiff fees from the City Attorney's budget to HCID's budget. The HCID also requests authority for the General Manager to negotiate and execute an agreement with Plaintiffs to cap fees, as further described in their Report.

FISCAL IMPACT STATEMENT

There is no impact to the General Fund. Partial funding for the proposed contracts with Abt Associates and Evan Terry Associates will be provided by the Accessible Housing Fund No. 10D and funding available in the Unappropriated Balance for the Accessible Housing Program. Funding for subsequent years of the contract is subject to approval as part of the 2021-22 and subsequent annual budget processes.

FINANCIAL POLICIES STATEMENT

The recommendations in this report comply with the City's Financial Policies in that the City's financial obligation is limited to funds budgeted for this purpose according to the City's Standard Provisions.

RHL:EIC:02210058c

Attachment

PROFESSIONAL SERVICES AGREEMENT

Contractor: Abt Associates, Inc.

Title: Accessible Housing Program – Expert Auditor Services

Said Agreement is Number _____ of City Contracts

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Exhibits

- Exhibit A. Required Insurance and Minimum Limits
Instructions and Information on Complying with City Insurance Requirements
- Exhibit B. Notice of Prohibition Against Retaliation
- Exhibit C. Professional Fee Schedule

AGREEMENT NUMBER _____ OF CITY CONTRACTS
BETWEEN
THE CITY OF LOS ANGELES
AND
ABT ASSOCIATES, INC.

THIS AGREEMENT (hereinafter “Agreement” or “Contract”) is made and entered into by and between the City of Los Angeles, a municipal corporation, hereinafter called the City, and Abt Associates, Inc., a **Massachusetts corporation**, hereinafter called the “Contractor”.

W I T N E S S E T H

WHEREAS, the Housing and Community Investment Department, hereinafter called the “HCID”, has been designated by the City to provide for the proper planning, coordination, direction and management of the City's various community development activities; and

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

WHEREAS, pursuant to a Corrected Settlement Agreement (hereinafter “CSA”) in the lawsuit titled *Independent Living Center of Southern California, et al. vs. City of Los Angeles, et al.*, the City is obligated to ensure that Covered Housing Developments comply with fair housing and disability rights laws with specific obligations set out in the CSA; and

WHEREAS, pursuant to the CSA, the City has adopted a Monitoring, Compliance and Enforcement Plan (hereinafter “MCE Plan”) to ensure that Covered Housing Developments comply with management policies to ensure accessibility; and

WHEREAS, as part of the MCE Plan, the City is required to audit Covered Housing Developments to determine their compliance with the CSA and the MCE plan and has agreed to retain a qualified consultant to conduct the audits; and

WHEREAS, HCID will contract with a qualified consultant to conduct the audits of the aforementioned Covered Housing Developments to ensure compliance with the CSA; and

WHEREAS, the project which is the subject of this Agreement, hereinafter called the Agreement, has been established by the City as one of the above-described programs, and has been funded in the **General Fund** Housing and Community Investment Department budget which has been approved by the Los Angeles City Council and the Mayor; and

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

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

WHEREAS, the City and the Contractor are desirous of executing this Agreement as authorized by the City Council and the Mayor (refer to Council File Number XX-XXXX approved by City Council on XXXXber XX 201X and concurred by the Mayor on XXXXber XX 2020), which authorizes the General Manager of the Housing and Community Investment Department to prepare and execute the Agreement.

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

I. INTRODUCTION

§101. Parties to the Agreement

The parties to this Agreement are:

- A. The City of Los Angeles, a municipal corporation, having its principal office at: 200 North Spring Street, Los Angeles, California 90012.
- B. The Contractor, known as Abt Associates, Inc., a **Massachusetts Corporation**, having its principal office at 6130 Executive Boulevard, Rockville, Maryland 20852.

§102. Representatives of the Parties and Service of Notices

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

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

Ann Sewill, General Manager
Housing and Community Investment Department
1200 West 7th Street, 9th Floor
Los Angeles, CA 90017

With copies to:

Sharon Lowe, Director
Accessible Housing Program
201 North Figueroa Street, 14th Floor
Los Angeles, CA 90012

- 2. The representative of the Contractor shall be:

Melissa B. Ashcraft, Vice President, Contracts and Procurement
Abt Associates, Inc.
6130 Executive Boulevard
Rockville, MD 20852
Lisa_Ashcraft@abtassoc.com

- B. Formal notices, demands and communications to be given hereunder by either party shall be made in writing and may be effected by personal delivery or by registered or certified mail, postage prepaid, return receipt requested and shall be deemed communicated as of the date of mailing.

- C. If the name of the person designated to receive the notices, demands or communications or the address of such person is changed, written notice shall be given, in accord with this section, within five (5) working days of said change.

§103. Conditions Precedent to Execution of This Agreement

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

- A. Proof of insurance as required by the City in accordance with and attached hereto as Exhibit A.
- B. A Certification of Compliance with the Living Wage Ordinance Service Contractor Worker Contention and Living Wage Policy in accordance with the Los Angeles Administrative Code §10.37 *et seq.*
- C. A Certification of Compliance with Slavery Disclosure Ordinance in accordance with §433, First Source Hiring Ordinance in accordance with §434, Local Business Preference Ordinance in accordance with §435, and the Disclosure of Border Wall Contracting Ordinance in accordance with §445, available on the City of Los Angeles' Business Assistance Virtual Network (BAVN) residing at www.labavn.org, prior to award of a City contract.
- D. Contractor shall submit a Code of Conduct to the City for approval and that it must meet the requirements of the Executive Directive Number FY 12-0001.
- E. An Iran Contracting Act of 2010 Compliance Affidavit.

II. TERM AND SERVICES TO BE PROVIDED

§201. Time of Performance

The term of this Agreement shall commence for a five-year term on or about **October 31, 2020** and end **October 30, 2025**. Said term is subject to the provisions herein. Performance shall not commence until the Contractor has obtained the City's approval of the insurance as required herein.

§202. Services to be Provided by the Contractor

The Contractor shall provide contractual services which are supported by the work task schedule identified in this section. All work is subject to prior City approval. Failure to receive approval may result in withholding compensation pursuant to §301.

The Monitoring, Compliance, and Enforcement Plan (MCE) Plan provides that there shall be two types of audits: Triggered Audits and Survey Audits.

A. Triggered Audits (MCE Plan Section II.C.3.i (a)-(j)):

Triggered audits are to be performed on those Covered Housing Developments that have been identified by the City or the Monitor as not complying with significant specified CSA obligations. Audits can be triggered by:

1. Review of Quarterly Reports and related information, including Information contained in the Quarterly Reports and/or trends in the Quarterly Reports.
2. Identified trends in covered properties sharing the same Owner and/or Property Management Agents.
3. Failure of an Owner or Property Management Agent to attend a training or refresher training.
4. Grievances and/or trends in grievances.
5. Repetitive, continued or serious noncompliance with City requirements or Policies.
6. Review of Reasonable Accommodation/Reasonable Modification logs, and provision of effective communication responses.
7. Review of PMPs and marketing efforts or failure to submit an updated PMP or conduct adequate marketing.
8. Notification of HUD Complaints or Fair Housing Lawsuits filed against the property.
9. Noncompliance with reporting, website posting, and registry obligations.
10. Renting vacant accessible units to people who do not need the features.

B. Survey Audits (MCE Plan Section II.C.3.i (k)):

Survey Audits are audits that are done on a random or selected basis of Housing Developments, pursuant to a Survey Audit Plan developed by the eventual contractor and approved by the Monitor, not as a result of triggering events.

The Expert Auditor (contractor) shall be responsible for the following services including but not limited to:

- A. Developing the materials listed in this paragraph for triggered audits by December 31, 2020, in compliance with the CSA and Section II(C)(3) of the MCE Plan. A draft of the triggered audit materials shall be developed no later than December 15, 2020 and provided to the Parties and the Court Monitor for review and approval prior to finalization by December 31, 2020.

- B. Developing the materials listed in this paragraph for survey audits by March 1, 2021, in compliance with the CSA and Section II(C)(3) of the MCE Plan. A draft of the survey audit materials shall be developed no later than February 15, 2021 and provided to the Parties and the Court Monitor for review and approval prior to finalization by March 1, 2021.
1. For Triggered audits: The contractor will be required to develop a process for weighting triggering events for audit priority-setting purposes, including recommendations on what events, number of events, or combinations of events will trigger an audit and how the City or Monitor should determine if a triggering event has occurred.
 2. For Survey Audits: The contractor will be required to develop a Survey Audit Plan, which shall be provided to the Parties and the Monitor by February 15, 2021 for review and approval. The Survey Audit Plan shall:
 - a. Include a process for selection of properties subject to Survey Audits and for determination of the number of properties to be surveyed annually to get an appropriate sample size. Survey audits should be done in a quantity to ensure that all properties are surveyed by the end of the CSA period.
 - b. Be designed to annually report on a cross-section of Covered Housing Developments, with attention to: geographic location; age of property and number/variety of unit sizes; funding/eligibility restrictions (e.g., units set aside or prioritized for seniors, veterans, people who are chronically homeless or are HIV+); affordability; variety of property management companies or in-house management by size and other factors; new construction and buildings that have been or will be retrofit; and other appropriate variables; and
 - c. Provide the Monitor and the Parties—by October 31 of each year—a proposed list of properties to be surveyed during the following calendar year.
 3. For all Audits (Triggered and Survey): The contractor will be required to develop:
 - a. Checklists and manuals describing the steps to be taken during each audit, including, pursuant to MCE Plan Section II.C.3.ii, at a minimum:
 - (1) Conducting a Site Visit of the Covered Property (COVID issues to be addressed);
 - (2) Reviewing records that support information contained in the Required Documents and Quarterly Reports;
 - (3) Reviewing records relating to the Audit triggering event;

- (4) Conducting Interviews with Owners, Property Management Agents and other Covered Property staff;
 - (5) Corroborating compliance with selected interviews or surveys of tenants and applicants on wait lists, with lease addendums, and in covered units, and other tenants and applicants as relevant; and
 - (6) Further investigation as needed.
- b. A written checklist of documents to be reviewed in connection with each audit, identifying which are mandatory for each audit and which are discretionary, including but not limited to:
- (1) Documents identified in MCE Plan Sections II(B), (C), (D), (F) and (G).
 - (2) Data available from the AcHP database and files
 - (3) Correspondence between AcHP and Property, including any Corrective Action Plans and responses.
 - (4) Current leasing records, leases, and lease addendums.
 - (5) Owner/manager contracts.
 - (6) Rental Application and lottery files.
 - (7) Funding sources and occupancy and rental restrictions, including affordability levels (which may be found in AcHP documents, regulatory documents from City or in recorded documents).
 - (8) Information from the City and the property identifying purported and certified accessible units and status of accessibility certificates and retrofits, with information on bedroom sizes and accessibility type.
 - (9) Web Registry information.
- c. A plan for collecting audit data in its own database and coordinating that data with the City's Comprehensive AcHP database, so that it will be available to the Monitor, the Parties and the Court for monitoring and reporting purposes.
- d. Procedures for notifying Covered Housing Developments and tenants and applicants of upcoming audits, including notices in accessible and alternative formats as needed, and specifying what information, if any, Housing Developments must supply to the Expert Auditor in advance.

- e. A protocol for selection or identification of management staff, residents and applicants who will be interviewed in connection with each property and guidelines for the interviews. Interviews will include but not be limited to: (a) interviews of Housing Development owners, Property Management Agents and other staff; (b) interviews of tenants and applicants for housing; and (c) other appropriate third parties. The purpose of the interviews is to corroborate reported information related to compliance and obtain other information related to compliance or noncompliance.

A specific protocol shall be included for interviewing tenants and applicants that describes how disability related information will be addressed in a lawful, respectful, and non-invasive manner and that will reduce tenant and applicant fears of retaliation or eviction.

The guidelines should address interviewing non-English speaking tenants and applicants, as well as translators, and use of reasonable accommodations and effective communication auxiliary aids and services for people with disabilities as needed. As necessary, staff of the Audit Expert shall be trained on disability law, reasonable accommodations, and effective communications.

- f. A completed check list form and report template for reporting to the Monitor and the Parties to document individual property findings, and recommend corrective actions and/or enforcement actions on each property, which may include photos as appropriate.

C. Conducting any field testing that may be necessary.

D. Conducting timely Audits Triggered by an Audit-Triggering Event, in the developed weighted order.

E. Annually, conducting Survey Audits on a random or selected basis of Housing Developments, pursuant to the Survey Audit Plan approved by the Monitor, that are not as a result of triggering events.

F. Auditing Expert Reporting Requirements

1. Prepare and submit to AcHP, Monitor, and Plaintiffs' Counsel an Audit Report that includes the completed checklist and a written or electronic report of findings, and any recommended corrective actions and/or enforcement actions, within 30 days following each audit of a Housing Development.

2. Beginning June 30, 2021, prepare and submit to AcHP, Court Monitor and Plaintiffs' Counsel a semi-annual report providing statistical evidence regarding compliance (in connection with the City's comprehensive AcHP database) and identifying any trends, concerns, or suggestions for improvement or modification in the MCE Plan, City Monitoring, the Survey and Trigger Audit processes or the Audit Plan, or other related matters.

III. PAYMENT

§301. Compensation and Method of Payment

- A. The City shall pay to the Contractor as compensation for complete and satisfactory performance of the terms of this Agreement, an amount not to exceed **Four Million Eight Hundred Thousand Dollars (\$4,800,000), according to Exhibit C, Professional Fee Schedule**, subject to the availability of funds. The foregoing amount represents the total compensation to be paid by the City to the Contractor for services to be performed as designated by this Agreement.
- B. The Contractor shall submit monthly invoices to Housing and Community Investment Department. Each monthly invoice shall: a) be submitted on the Contractor's letterhead; b) include the name, hours, rate of pay for all personnel to be paid; c) include evidence of the completed project; d) include supporting documentation for all approved purchases of equipment or supplies; and e) be accompanied by a statement detailing the work completed for the month. All expenses for travel must receive prior approval from the City and must be documented and will be paid only in conformance with City policies and procedures. Any and all direct expenses must be documented and will be paid only in conformance with City policy and procedures. Funds shall not be released until the City has approved the work received and is satisfied with the documentation included in the invoice.
- C. Ten percent (10%) of the total compensation shall be withheld by the City until the Contractor has completed the requirements of this Agreement.
- D. It is understood that the City makes no commitment to fund this Agreement beyond the terms set herein.
- E. Invoices and supporting documentation shall be prepared at the sole expense and responsibility of the Contractor. The City will not compensate the contractor for any costs incurred for invoice preparation. The City may request, in writing, changes to the content and format of the invoice and supporting documentation at any time. The City reserves the right to request additional supporting documentation to substantiate costs at any time. All invoices must be signed by an officer of the Contractor under penalty of perjury that the information submitted is true and correct.

- F. Contractor agrees to offer the City any discount terms that are offered to its best customers for the goods and services to be provided hereunder and shall warrant that any applicable discounts have been included in the costs to the City.
- G. Contractor acknowledges that it is aware of liabilities resulting from submitting a false claim for payment by the City under the False Claims Act (Cal. Gov. Code §§12650 *et seq.*), including treble damages, costs of legal actions to recover payments, and civil penalties of up to \$10,000 per false claim.

IV. STANDARD PROVISIONS

§401. Construction of Provisions and Titles Herein

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

§402. Applicable Law, Interpretation and Enforcement

Each party's performance shall comply with all applicable laws of the United States of America, the State of California, and the City, including but not limited to, laws regarding health and safety, labor and employment, wage and hours and licensing. This Contract shall be enforced and interpreted under the laws of the State of California without regard to conflict of law principles. The Contractor shall comply with new, amended, or revised laws, regulations, or procedures that apply to the performance of this Contract with no additional compensation paid to the Contractor.

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

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

§403. Time of Effectiveness

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

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

§404. Integrated Contract

This Contract sets forth all of the rights and duties of the parties with respect to the subject matter of this Contract, and replaces any and all previous contracts or understandings, whether written or oral, relating thereto. This Contract may be amended only as provided for in the provisions of Section 405 herein.

§405. Amendment

All amendments to this Contract shall be in writing and signed and approved pursuant to the provisions of Section 403.

§406. Excusable Delays

Neither party shall be liable for its delay or failure to perform any obligation under and in accordance with this Contract, if the delay or failure arises out of fires, floods, earthquakes, epidemics, quarantine restrictions, other natural occurrences, strikes, lockouts (other than a lockout by the party or any of the party's Subcontractors), freight embargoes, terrorist acts, insurrections or other civil disturbances, or other similar events to those described above, but in each case the delay or failure to perform must be beyond the control and without any fault or negligence of the party delayed or failing to perform (these events are referred to in this provision as "Force Majeure Events").

Notwithstanding the foregoing, a delay or failure to perform by a Subcontractor of the Contractor shall not constitute a Force Majeure Event, unless the delay or failure arises out of causes beyond the control of both the Contractor and Subcontractor, and without any fault or negligence of either of them. In such case, the Contractor shall not be liable for the delay or failure to perform, unless the goods or services to be furnished by the Subcontractor were obtainable from other sources in sufficient time to permit the Contractor to perform timely. As used in this Contract, the term "Subcontractor" means a subcontractor at any tier.

In the event the Contractor's delay or failure to perform arises out of a Force Majeure Event, the Contractor agrees to use commercially reasonable best efforts to obtain the

goods or services from other sources, and to otherwise mitigate the damages and reduce the delay caused by the Force Majeure Event.

§407. Waiver

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

§408. Suspension

At the City's sole discretion, the City may suspend any or all services provided under this Contract by providing the Contractor with written notice of suspension. Upon receipt of the notice of suspension, the Contractor shall immediately cease the services suspended and shall not incur any additional obligations, costs or expenses to the City until the City gives written notice to recommence the services.

§409. Termination

A. Termination for Convenience

The City may terminate this Contract for the City's convenience at any time by providing the Contractor thirty days written notice. Upon receipt of the notice of termination, the Contractor shall immediately take action not to incur any additional obligations, costs or expenses, except as may be necessary to terminate its activities. The City shall pay the Contractor its reasonable and allowable costs through the effective date of termination and those reasonable and necessary costs incurred by the Contractor to effect the termination. Thereafter, the Contractor 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 the City is entitled to, shall become City property upon the date of the termination. The Contractor agrees to execute any documents necessary for the City to perfect, memorialize, or record the City's ownership of rights provided herein.

B. Termination for Breach of Contract

1. Except as provided in Section 406, if the Contractor 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 the Contractor written notice of the default. The City's default notice will indicate whether the default may be cured and the time period to cure the default to the sole satisfaction of the City. Additionally, the City's default notice may offer the Contractor an opportunity to provide the City with a plan to cure the default, which shall be submitted to the City within the time period allowed by the City. At the City's sole discretion, the City may accept or reject the Contractor's plan. If the default cannot be cured or if the

Contractor fails to cure within the period allowed by the City, then the City may terminate this Contract due to the Contractor's breach of this Contract.

2. If the default under this Contract is due to the Contractor's failure to maintain the insurance required under this Contract, the Contractor shall immediately: (1) suspend performance of any services under this Contract for which insurance was required; and (2) notify its employees and Subcontractors of the loss of insurance coverage and Contractor's obligation to suspend performance of services. The Contractor shall not recommence performance until the Contractor is fully insured and in compliance with the City's requirements.
3. If a federal or state proceeding for relief of debtors is undertaken by or against the Contractor, or if the Contractor makes an assignment for the benefit of creditors, then the City may immediately terminate this Contract.
4. If the Contractor engages in any dishonest conduct related to the performance or administration of this Contract or violates the City's laws, regulations or policies relating to lobbying, then the City may immediately terminate this Contract. \
5. Acts of Moral Turpitude
 - a. The Contractor shall immediately notify the City if the Contractor or any Key Person, as defined below, is charged with, indicted for, convicted of, pleads nolo contendere to, or forfeits bail or fails to appear in court for a hearing related to, any act which constitutes an offense involving moral turpitude under federal, state, or local laws ("Act of Moral Turpitude").
 - b. If the Contractor or a Key Person is convicted of, pleads nolo contendere to, or forfeits bail or fails to appear in court for a hearing related to, an Act of Moral Turpitude, the City may immediately terminate this Contract.
 - c. If the Contractor or a Key Person is charged with or indicted for an Act of Moral Turpitude, the City may terminate this Contract after providing the Contractor an opportunity to present evidence of the Contractor's ability to perform under the terms of this Contract.
 - d. Acts of Moral Turpitude include, but are not limited to: violent felonies as defined by Penal Code Section 667.5, crimes involving weapons, crimes resulting in serious bodily injury or death, serious felonies as defined by Penal Code Section 1192.7, and those crimes referenced in the Penal Code and articulated in California Public Resources Code Section 5164(a)(2); in addition to and including acts of murder, rape, sexual assault, robbery, kidnapping, human trafficking, pimping, voluntary manslaughter, aggravated assault, assault on a peace officer, mayhem, fraud, domestic abuse, elderly abuse, and

child abuse, regardless of whether such acts are punishable by felony or misdemeanor conviction.

- e. For the purposes of this provision, a Key Person is a principal, officer, or employee assigned to this Contract, or owner (directly or indirectly, through one or more intermediaries) of ten percent or more of the voting power or equity interests of the Contractor.
 6. In the event the City terminates this Contract as provided in this section, the City may procure, upon such terms and in the manner as the City may deem appropriate, services similar in scope and level of effort to those so terminated, and the Contractor shall be liable to the City for all of its costs and damages, including, but not limited to, any excess costs for such services.
 7. If, after notice of termination of this Contract under the provisions of this section, it is determined for any reason that the Contractor was not in default under the provisions of this section, or that the default was excusable under the terms of this Contract, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Section 409.A "Termination for Convenience".
 8. The rights and remedies of the City provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.
- C. In the event that this Contract is terminated, the Contractor shall immediately notify all employees and Subcontractors, and shall notify in writing all other parties contracted with under the terms of this Contract within five working days of the termination.

§410 Independent Contractor

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

§411 Contractor's Personnel

Unless otherwise provided or approved by the City, Contractor shall use its own employees to perform the services described in this Agreement. The City shall have the right to review and approve any personnel who are assigned to work under this Agreement. Contractor agrees to remove personnel from performing work under this Agreement if requested to do so by the City.

Contractor shall not use Subcontractors to assist in performance of this Agreement without the prior written approval of the City. If the City permits the use of Subcontractors, Contractor shall remain responsible for performing all aspects of this Agreement and

paying all Subcontractors. The City has the right to approve Contractor's Subcontractors, and the City reserves the right to request replacement of Subcontractors. The City does not have any obligation to pay Contractor's Subcontractors, and nothing herein creates any privity of contract between the City and any Subcontractors.

§412. Assignment and Delegation

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

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

§413. Permits

The Contractor and its directors, officers, partners, agents, employees, and Subcontractors shall obtain and maintain all licenses, permits, certifications, and other documents necessary for the Contractor's performance of this Contract. The Contractor shall immediately notify the City of any suspension, termination, lapses, non-renewals or restrictions of licenses, permits, certificates, or other documents that relate to the Contractor's performance of this Contract.

§414. Claims for Labor and Materials

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

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

For the duration of this Contract, the Contractor shall maintain valid Business Tax Registration Certificate(s) as required by the City's Business Tax Ordinance, Section 21.00 et seq. of the Los Angeles Municipal Code ("LAMC"), and shall not allow the Certificate to lapse or be revoked or suspended.

§416. Retention of Records, Audit, and Reports

The Contractor shall maintain all records, including records of financial transactions, pertaining to the performance of this Contract, in their original form or as otherwise approved by the City. These records shall be retained for a period of no less than three years from the later of the following: (1) final payment made by the City, (2) the expiration of this Contract or (3) termination of this Contract. The records will be subject to

examination and audit by authorized the City personnel or the City's representatives at any time. The Contractor shall provide any reports requested by the City regarding performance of this Contract. Any subcontract entered into by the Contractor for work to be performed under this Contract must include an identical provision.

In lieu of retaining the records for the term as prescribed in this provision, the Contractor may, upon the City's written approval, submit the required information to the City in an electronic format, e.g. USB flash drive, at the expiration or termination of this Contract.

§417. Bonds

All bonds required by the City shall be filed with the Office of the City Administrative Officer, Risk Management for its review and acceptance in accordance with Los Angeles Administrative Code ("LAAC") Sections 11.47 et seq., as amended from time to time.

§418. Indemnification

Except for the active negligence or willful misconduct of the City, or any of its boards, officers, agents, employees, assigns and successors in interest, the Contractor shall defend, indemnify, and hold harmless the City and any of its boards, officers, agents, employees, assigns, and successors in interest from and against all lawsuits and causes of action, claims, losses, demands, and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the City, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever, for death or injury to any person, including the Contractor's employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of an act, error, or omission by the Contractor, Subcontractors, or their boards, officers, agents, employees, assigns, and successors in interest. 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. This provision will survive expiration or termination of this Contract.

§419. Intellectual Property Indemnification

The Contractor, at its own expense, shall defend, indemnify, and hold harmless the City, and any of its boards, officers, agents, employees, assigns, and successors in interest from and against all lawsuits 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 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: (1) on or in any design, medium, matter, article, process, method, application, equipment, device, instrumentation, software, hardware, or firmware used by the Contractor, or its Subcontractors, in performing the work under this Contract; or (2) as a result of the City's actual or intended use of any Work Product (as

defined in Section 421) furnished by the Contractor, or its Subcontractors, under this Contract. 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. This provision will survive expiration or termination of this Contract.

§420. Intellectual Property Warranty

The Contractor 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, patent, copyright, trademark, trade secret, right of publicity and proprietary information.

§421. Ownership and License

Unless otherwise provided for herein, all finished and unfinished works, tangible or not, created under this Contract including, without limitation, documents, materials, data, reports, manuals, specifications, artwork, drawings, sketches, blueprints, studies, memoranda, computation sheets, 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 originated and prepared by the Contractor or its Subcontractors under this Contract (each a "Work Product"; collectively "Work Products") shall be and remain the exclusive property of the City for its use in any manner the City deems appropriate. The Contractor hereby assigns to the City all goodwill, copyright, trademark, patent, trade secret and all other intellectual property rights worldwide in any Work Products originated and prepared under this Contract. The Contractor further agrees to execute any documents necessary for the City to perfect, memorialize, or record the City's ownership of rights provided herein.

The Contractor agrees that a monetary remedy for breach of this Contract may be inadequate, impracticable, or difficult to prove and that a breach may cause the City irreparable harm. The City may therefore enforce this requirement by seeking injunctive relief and specific performance, without any necessity of showing actual damage or irreparable harm. Seeking injunctive relief or specific performance does not preclude the City from seeking or obtaining any other relief to which the City may be entitled.

For all Work Products delivered to the City that are not originated or prepared by the Contractor or its Subcontractors under this Contract, the Contractor shall secure a grant, at no cost to the City, for a non-exclusive perpetual license to use such Work Products for any City purposes.

The Contractor shall not provide or disclose any Work Product to any third party without prior written consent of the City.

Any subcontract entered into by the Contractor relating to this Contract shall include this provision to contractually bind its Subcontractors performing work under this Contract

such that the City's ownership and license rights of all Work Products are preserved and protected as intended herein.

§422 Data Protection

- A. The Contractor shall protect, using the most secure means and technology that is commercially available, the City-provided data or consumer-provided data acquired in the course and scope of this Contract, including but not limited to customer lists and customer credit card or consumer data, (collectively, the "City Data"). The Contractor shall notify the City in writing as soon as reasonably feasible, and in any event within twenty-four hours, of the Contractor's discovery or reasonable belief of any unauthorized access of City Data (a "Data Breach"), or of any incident affecting, or potentially affecting City Data related to cyber security (a "Security Incident"), including, but not limited to, denial of service attack, and system outage, instability or degradation due to computer malware or virus. The Contractor shall begin remediation immediately. The Contractor shall provide daily updates, or more frequently if required by the City, regarding findings and actions performed by the Contractor until the Data Breach or Security Incident has been effectively resolved to the City's satisfaction. The Contractor shall conduct an investigation of the Data Breach or Security Incident and shall share the report of the investigation with the City. At the City's sole discretion, the City and its authorized agents shall have the right to lead or participate in the investigation. The Contractor shall cooperate fully with the City, its agents and law enforcement.
- B. If the City is subject to liability for any Data Breach or Security Incident, then the Contractor shall fully indemnify and hold harmless the City and defend against any resulting actions.

§423. Insurance

During the term of this Contract and without limiting the Contractor's obligation to indemnify, hold harmless and defend the City, the Contractor shall provide and maintain at its own expense a program of insurance having the coverages and limits not less than the required amounts and types as determined by the Office of the City Administrative Officer of Los Angeles, Risk Management (template Form General 146 in Exhibit A hereto). The insurance must: (1) conform to the City's requirements; (2) comply with the Insurance Contractual Requirements (Form General 133 in Exhibit A hereto); and (3) otherwise be in a form acceptable to the Office of the City Administrative Officer, Risk Management. The Contractor shall comply with all Insurance Contractual Requirements shown on Exhibit A hereto. Exhibit A is hereby incorporated by reference and made a part of this Contract.

§424. Best Terms

Throughout the term of this Contract, the Contractor, shall offer the City the best terms, prices, and discounts that are offered to any of the Contractor's customers for similar goods and services provided under this Contract.

§425. Warranty and Responsibility of Contractor

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

§426. Mandatory Provisions Pertaining to Non-Discrimination in Employment

Unless otherwise exempt, this Contract is subject to the applicable non-discrimination, equal benefits, equal employment practices, and affirmative action program provisions in LAAC Section 10.8 et seq., as amended from time to time.

- A. The Contractor shall comply with the applicable non-discrimination and affirmative action provisions of the laws of the United States of America, the State of California, and the City. In performing this Contract, the Contractor shall not discriminate in any of its hiring or employment practices against any employee or applicant for employment because of such person's race, color, religion, national origin, ancestry, sex, sexual orientation, gender, gender identity, age, disability, domestic partner status, marital status or medical condition.
- B. The requirements of Section 10.8.2.1 of the LAAC, the Equal Benefits Ordinance, and the provisions of Section 10.8.2.1(f) are incorporated and made a part of this Contract by reference (https://bca.lacity.org/Uploads/ebo/EB_Ordinance.pdf).
- C. The provisions of Section 10.8.3 of the LAAC are incorporated and made a part of this Contract by reference and will be known as the "Equal Employment Practices" provisions of this Contract (http://clkrep.lacity.org/onlinedocs/2015/15-0817_ORD_184292_6-27-16.pdf).
- D. The provisions of Section 10.8.4 of the LAAC are incorporated and made a part of this Contract by reference and will be known as the "Affirmative Action Program" provisions of this Contract (http://clkrep.lacity.org/onlinedocs/2015/15-0817_ORD_184292_6-27-16.pdf).

Any subcontract entered into by the Contractor for work to be performed under this Contract must include an identical provision.

§427. Child Support Assignment Orders

The Contractor shall comply with the Child Support Assignment Orders Ordinance, Section 10.10 of the LAAC, as amended from time to time. Pursuant to Section 10.10(b)

of the LAAC, the Contractor shall fully comply with all applicable State and Federal employment reporting requirements. Failure of the Contractor to comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignment or Notices of Assignment, or the failure of any principal owner(s) of the Contractor to comply with any Wage and Earnings Assignment or Notices of Assignment applicable to them personally, shall constitute a default by the Contractor under this Contract. Failure of the Contractor or principal owner to cure the default within 90 days of the notice of default will subject this Contract to termination for breach. Any subcontract entered into by the Contractor for work to be performed under this Contract must include an identical provision (http://clkrep.lacity.org/onlinedocs/1997/97-2162_ORD_172401_02-13-1999.pdf).

§428. Living Wage Ordinance

The Contractor shall comply with the Living Wage Ordinance, LAAC Section 10.37 et seq., as amended from time to time. The Contractor further agrees that it shall comply with federal law proscribing retaliation for union organizing. Any subcontract entered into by the Contractor for work to be performed under this Contract must include an identical provision.

§429. Service Contractor Worker Retention Ordinance

The Contractor shall comply with the Service Contractor Worker Retention Ordinance, LAAC Section 10.36 et seq., as amended from time to time. Any subcontract entered into by the Contractor for work to be performed under this Contract must include an identical provision (http://clkrep.lacity.org/onlinedocs/1995/95-0654-S2_ORD_171004_05-18-1996.pdf).

§430. Access and Accommodations

The Contractor represents and certifies that:

- A. The Contractor shall comply with the Americans with Disabilities Act, as amended, 42 U.S.C. Section 12101 et seq., the Rehabilitation Act of 1973, as amended, 29 U.S.C. Section 701 et seq., the Fair Housing Act, and its implementing regulations and any subsequent amendments, and California Government Code Section 11135;
- B. The Contractor shall not discriminate on the basis of disability or on the basis of a person's relationship to, or association with, a person who has a disability;
- C. The Contractor shall provide reasonable accommodation upon request to ensure equal access to the City-funded programs, services and activities;
- D. Construction will be performed in accordance with the Uniform Federal Accessibility Standards (UFAS), 24 C.F.R. Part 40; and

- E. The buildings and facilities used to provide services under this Contract are in compliance with the federal and state standards for accessibility as set forth in the 2010 ADA Standards, California Title 24, Chapter 11, or other applicable federal and state law.

The Contractor understands that the City is relying upon these certifications and representations as a condition to funding this Contract. Any subcontract entered into by the Contractor for work to be performed under this Contract must include an identical provision.

§431. Contractor Responsibility Ordinance

The Contractor shall comply with the Contractor Responsibility Ordinance, LAAC Section 10.40 et seq., as amended from time to time.

§432. Business Inclusion Program

Unless otherwise exempted prior to bid submission, the Contractor shall comply with all aspects of the Business Inclusion Program as described in the Request for Proposal/Qualification process, throughout the duration of this Contract. The Contractor shall utilize the Business Assistance Virtual Network (“BAVN”) at <https://www.labavn.org/>, to perform and document outreach to Minority, Women, and Other Business Enterprises. The Contractor shall perform subcontractor outreach activities through BAVN. The Contractor shall not change any of its designated Subcontractors or pledged specific items of work to be performed by these Subcontractors, nor shall the Contractor reduce their level of effort, without prior written approval of the City.

§433. Slavery Disclosure Ordinance

The Contractor shall comply with the Slavery Disclosure Ordinance, LAAC Section 10.41 et seq., as amended from time to time. Any subcontract entered into by the Contractor for work to be performed under this Contract must include an identical provision (<https://bca.lacity.org/uploads/sdo/Slavery%20Disclosure%20Ordinance.pdf>).

§434. First Source Hiring Ordinance

The Contractor shall comply with the First Source Hiring Ordinance, LAAC Section 10.44 et seq., as amended from time to time. Any subcontract entered into by the Contractor for work to be performed under this Contract must include an identical provision (<https://bca.lacity.org/Uploads/fsho/First%20Source%20Hiring%20Ordinance.pdf>).

§435. Local Business Preference Ordinance

The Contractor shall comply with the Local Business Preference Ordinance, LAAC Section 10.47 et seq., as amended from time to time. Any subcontract entered into by the

Contractor for work to be performed under this Contract must include an identical provision ([https://bca.lacity.org/Uploads/contracting/LBP Ordinance 181910.pdf](https://bca.lacity.org/Uploads/contracting/LBP_Ordinance_181910.pdf)).

§436. Iran Contracting Act

In accordance with California Public Contract Code Sections 2200-2208, all contractors entering into, or renewing contracts with the City for goods and services estimated at \$1,000,000 or more are required to complete, sign, and submit the "Iran Contracting Act of 2010 Compliance Affidavit."

§437. Restrictions on Campaign Contributions and Fundraising in City Elections

Unless otherwise exempt, if this Contract is valued at \$100,000 or more and requires approval by an elected the City office, the Contractor, the Contractor's principals, and the Contractor's Subcontractors expected to receive at least \$100,000 for performance under the Contract, and the principals of those Subcontractors (the "Restricted Persons") shall comply with Charter Section 470(c)(12) and LAMC Section 49.7.35. Failure to comply entitles the City to terminate this Contract and to pursue all available legal remedies. Charter Section 470(c)(12) and LAMC Section 49.7.35 limit the ability of the Restricted Persons to make campaign contributions to and engage in fundraising for certain elected City officials or candidates for elected City office for twelve months after this Contract is signed. Additionally, a Contractor subject to Charter Section 470(c)(12) is required to comply with disclosure requirements by submitting a completed and signed Ethics Commission Form 55 and to amend the information in that form as specified by law. Any Contractor subject to Charter Section 470(c)(12) shall include the following notice in any contract with any Subcontractor expected to receive at least \$100,000 for performance under this Contract:

"Notice Regarding Restrictions on Campaign Contributions and Fundraising in City Elections

You are a subcontractor on City of Los Angeles Contract #_____. Pursuant to the City of Los Angeles Charter Section 470(c)(12) and related ordinances, you and your principals are prohibited from making campaign contributions to and fundraising for certain elected City of Los Angeles ("City") officials and candidates for elected City office for twelve months after the City contract is signed. You are required to provide the names and contact information of your principals to the CONTRACTOR and to amend that information within ten business days if it changes during the twelve month time period. Failure to comply may result in termination of this Contract and any other available legal remedies. Information about the restrictions may be found online at ethics.lacity.org or by calling the Los Angeles City Ethics Commission at (213) 978-1960."

§438 Contractors' Use of Criminal History for Consideration of Employment Applications

The Contractor shall comply with the City Contractors' Use of Criminal History for Consideration of Employment Applications Ordinance, LAAC Section 10.48 et seq., as amended from time to time. Any subcontract entered into by the Contractor for work to be performed under this Contract must include an identical provision.

§439 Limitation of City's Obligation to Make Payment to Contractor

Notwithstanding any other provision of this Contract, including any exhibits or attachments incorporated therein, and in order for the City to comply with its governing legal requirements, the City shall have no obligation to make any payments to the Contractor unless the City shall have first made an appropriation of funds equal to or in excess of its obligation to make any payments as provided in this Contract. The Contractor agrees that any services provided by the Contractor, purchases made by the Contractor or expenses incurred by the Contractor in excess of the appropriation(s) shall be free and without charge to the City and the City shall have no obligation to pay for the services, purchases or expenses. The Contractor shall have no obligation to provide any services, provide any equipment or incur any expenses in excess of the appropriated amount(s) until the City appropriates additional funds for this Contract.

§440 Compliance with Identity Theft Laws and Payment Card Data Security

The Contractor shall comply with all identity theft laws including without limitation, laws related to: (1) payment devices; (2) credit and debit card fraud; and (3) the Fair and Accurate Credit Transactions Act ("FACTA"), including its requirement relating to the content of transaction receipts provided to Customers. The Contractor also shall comply with all requirements related to maintaining compliance with Payment Card Industry Data Security Standards ("PCI DSS"). During the performance of any service to install, program or update payment devices equipped to conduct credit or debit card transactions, including PCI DSS services, the Contractor shall verify proper truncation of receipts in compliance with FACTA.

§441 Compliance with California Public Resource Code Section 5164

California Public Resources Code Section 5164 prohibits a public agency from hiring a person for employment or as a volunteer to perform services at any park, playground, or community center used for recreational purposes in a position that has supervisory or disciplinary authority over any minor, if the person has been convicted of certain crimes as referenced in the Penal Code, and articulated in California Public Resources Code Section 5164(a)(2).

If applicable, the Contractor shall comply with California Public Resources Code Section 5164, and shall additionally adhere to all rules and regulations that have been adopted or that may be adopted by the City. The Contractor is required to have all employees, volunteers and Subcontractors (including all employees and volunteers of any Subcontractor) of the Contractor working on premises to pass a fingerprint and background

check through the California Department of Justice at the Contractor's sole expense, indicating that such individuals have never been convicted of certain crimes as referenced in the Penal Code and articulated in California Public Resources Code Section 5164(a)(2), if the individual will have supervisory or disciplinary authority over any minor.

§442 Possessory Interest Tax

Rights granted to the Contractor by the City may create a possessory interest. The Contractor agrees that any possessory interest created may be subject to California Revenue and Taxation Code Section 107.6 and a property tax may be levied on that possessory interest. If applicable, the Contractor shall pay the property tax. The Contractor acknowledges that the notice required under California Revenue and Taxation Code Section 107.6 has been provided.

§443 Confidentiality

All documents, information and materials provided to the Contractor by the City or developed by the Contractor pursuant to this Contract (collectively "Confidential Information") are confidential. The Contractor shall not provide or disclose any Confidential Information or their contents or any information therein, either orally or in writing, to any person or entity, except as authorized by the City or as required by law. The Contractor shall immediately notify the City of any attempt by a third party to obtain access to any Confidential Information. This provision will survive expiration or termination of this Contract.

§444. Conflict Of Interest

A. No City-funded Employees as Board Members

The City will not execute any Agreements and/or Amendments with Contractors where an employee (an individual who is paid or receives any financial benefit from funds from the Agreement with the City), is a member of the Board of Directors. The Board minutes must reflect this requirement.

B. Code of Conduct

1. The City requires that all Contractors/Sub-Contractors adopt a Code of Conduct which at minimum reflects the constraints discussed in HCID Directive FY12-0001. No Agreements and/or Amendments will be executed without City approval of this Code of Conduct.
2. Further, the City requires compliance with the following conflict of interest requirements for all City funded contractors.

C. Conflict of Interest

1. Prior to obtaining the City's approval of any subcontract, the Contractor shall disclose to the City any relationship, financial or otherwise, direct or indirect, of the Contractor or any of its officers, directors or employees or their immediate family with the proposed subcontractor and its officers, directors or employees.
2. The Contractor covenants that none of its directors, officers, employees, or agents shall participate in selecting, or administrating any subcontract supported (in whole or in part) by City funds (regardless of source) where such person is a director, officer, employee or agent of the subcontractor; or where the selection of subcontractors is or has the appearance of being motivated by a desire for personal gain for themselves or others such as family business, etc.; or where such person knows or should have known that:
 - a. A member of such person's immediate family, or domestic partner or organization has a financial interest in the subcontract;
 - b. The subcontractor is someone with whom such person has or is negotiating any prospective employment; or
 - c. The participation of such person would be prohibited by the California Political Reform Act, California Government Code §87100 et seq. if such person were a public officer, because such person would have a "financial or other interest" in the subcontract.
3. Definitions:
 - a. The term "immediate family" includes, but is not limited to, domestic partner and/or those persons related by blood or marriage, such as husband, wife, father, mother, brother, sister, son, daughter, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, and daughter-in-law.
 - b. The term "financial or other interest" includes, but is not limited to:
 - (1) Any direct or indirect financial interest in the specific contract, including a commission or fee, a share of the proceeds, prospect of a promotion or of future employment, a profit, or any other form of financial reward.
 - (2) Any of the following interests in the subcontractor ownership: partnership interest or other beneficial interest of five percent (5%) or more; ownership of five percent (5%) or more of the stock; employment in a managerial capacity; or membership on the Board of Directors or governing body.
 - c. A subcontract is any agreement entered into by Contractor for the purchase of goods or services with any funds provided by this Agreement.

- D. Minutes of Board Meetings must reflect disclosure of transactions where Board Members may have had a direct or indirect interest/benefit in the action.
- E. No director, officer, employee (or agent) of the Contractor may be on the Board of Directors if they receive any financial benefit provided by any City Agreement.
- F. The Contractor further covenants that no officer, director, employee, or agent shall solicit or accept gratuities, favors, anything of monetary value from any actual or potential subcontractor, supplier, a party to a sub agreement, (or persons who are otherwise in a position to benefit from the actions of any officer, employee, or agent).
- G. The Contractor shall not subcontract with a former director, officer, or employee within a one (1) year period following the termination of the relationship between said person and the Contractor.
- H. For further clarification of the meaning of any terms used herein, the parties agree that references shall be made to the guidelines, rules, and laws of the City of Los Angeles, State of California, and Federal regulations regarding conflict of interest.
- I. The Contractor warrants that it has not paid or given and will not pay or give to any third person, any money or other consideration for obtaining this Agreement.
- J. The Contractor covenants that no member, officer or employee of Contractor shall have interest, direct or indirect, in any contract or subcontract or the proceeds thereof for work to be performed in connection with this project during his/her tenure as such employee, member or officer or for one (1) year thereafter.
- K. The Contractor shall incorporate the foregoing subsections of this Section into every agreement that it enters into in connection with this project, and shall substitute the term "subcontractor" for the term "Contractor" and "sub-subcontractor" for "Subcontractor".
- L. The Contractor warrants that it has adopted and shall comply with the Code of Conduct, as approved by the City that meets the foregoing requirements.

§445 Disclosure of Border Wall Contracting Ordinance

Contractor shall comply with Los Angeles Administrative Code Section 10.50, 'Disclosure of Border Wall Contracting.' The City may terminate this Contract at any time if City determines that Contractor failed to fully and accurately complete the required affidavit and disclose all Border Wall Bids and Border Wall Contracts, as defined in Section 10.50 (<https://bca.lacity.org/Uploads/sdo/Border%20Wall%20Ordinance.pdf>).

§446 City's Additional Remedies

Contractor acknowledges and agrees that nothing contained in this Agreement is, represents, or is intended to be construed as: a release, compromise, settlement, or waiver by City of any cause of action that City may have against Contractor. City reserves its rights in full, including, but not limited to, the right to bring any claim, cause of action, or request for reimbursement against Contractor in relation to this Agreement and other transactions between City and Contractor.

§447 Payment Does Not Imply Acceptance of Work

The granting of any payment by City, or the receipt thereof by Contractor, in no way lessens the liability of Contractor to replace unsatisfactory work, equipment, or materials although the unsatisfactory character of this work, equipment or materials may not have been apparent or detected at the time the payment was made. Materials, equipment, components, or workmanship that do not conform to the requirements of this Agreement may be rejected by City and upon rejection must be replaced by Contractor without delay.

§448 Work Not In Scope of Services

Contractor shall immediately notify HCID in writing of any work that is requested to be performed that is outside of the original scope of work covered by this Agreement and Section 202 above. If it is determined that the request is outside of the scope of work, Contractor shall not perform the requested work unless and until (i) the City's designated contract administrator approves the request in writing and authorizes the use of any contingency funds for the work, and (ii) an amendment providing for an adjustment in Contractor's compensation, and the scope of work, is approved and executed by both parties.

§449 Covid-19 Notification (if applicable)

The Contractor shall immediately notify City in the event that any person who has performed services for Contractor (including, but not limited to, employees, volunteers and contractors) at a site operated by City, on behalf of City, or under this Agreement, (1) has been diagnosed with COVID-19, (2) has been informed by a medical professional that the person is likely to have COVID-19, or (3) meets the criteria for isolation under the most current County of Los Angeles Public Health Officer Order for the Control of COVID-19: Public Health Emergency Isolation Order: http://publichealth.lacounty.gov/media/Coronavirus/docs/HOO/HOO_Coronavirus_Blan ket_Isolation.pdf.

§450 Compliance with Current Applicable Safety Protocols and Laws

The Contractor, and any of its subcontractors, if applicable, shall comply with any and all safety protocols, current laws, regulations, and public health orders related to the COVID-

19 pandemic to ensure the health and safety of both the Contractor's employees, any subcontractors, and the public.

V. ENTIRE AGREEMENT

§501. Complete Agreement

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

§502. Counterparts and Electronic Signatures

This Agreement may be executed in one or more counterparts, and by the parties in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement. The parties further agree that facsimile signatures or signatures scanned into .pdf (or signatures in another electronic format designated by City) and sent by e-mail shall be deemed original signatures.

§503. Number of Pages and Attachments

This Agreement is executed in three (3) duplicate originals, each of which is deemed to be an original. This Agreement includes Thirty (30) pages and Three (3) Exhibits which constitute the entire understanding and agreement of the parties. Alternatively, this Agreement may be executed with electronic signatures, resulting in an electronic final original, which shall be uploaded to the LACityClerk Connect website

[Remainder of page intentionally left blank.]

[Signatures begin on next page.]

VI. SIGNATURE PAGE

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

APPROVED AS TO FORM:
MICHAEL N. FEUER, City Attorney

Executed this ___ day of _____, 2020

By _____
Assistant/Deputy City Attorney

For: THE CITY OF LOS ANGELES

ANN SEWILL
General Manager
Housing and Community Investment
Department

Date: _____

By: _____
Luz C. Santiago
Assistant General Manager

ATTEST:

HOLLY L. WOLCOTT, City Clerk
By: _____

Date: _____

Executed this ___ day of _____, 2020

For: ABT ASSOCIATES, INC.

(Contractor's Corporate Seal)

By: _____
Melissa B. Ashcraft
Vice President,
Contracts and Procurement

City Business License Number _____
Internal Revenue Service ID Number: 04-2347643
Council File/CAO File Number: _____; Date of Approval: _____
Said Agreement is Number _____ of City Contract

EXHIBIT A

Form Gen 146 (Rev. 6/12)

Required Insurance and Minimum Limits

Name: Abt Associates, Inc.

Date: 7/22/2020

Agreement/Reference: AcHP Expert Auditor Services

Evidence of coverages checked below, with the specified minimum limits, must be submitted and approved prior to occupancy/start of operations. Amounts shown are Combined Single Limits (“CSLs”). For Automobile Liability, split limits may be substituted for a CSL if the total per occurrence equals or exceeds the CSL amount.

Limits

<input checked="" type="checkbox"/>	Workers' Compensation – Workers' Compensation (WC) and Employer's Liability (EL)	WC <u>Statutory</u> EL \$ <u>1,000,000</u>
<input type="checkbox"/>	Waiver of Subrogation in favor of City	<input type="checkbox"/> Longshore & Harbor Workers <input type="checkbox"/> Jones Act
<input checked="" type="checkbox"/>	General Liability	\$ <u>1,000,000</u>
<input checked="" type="checkbox"/>	Products/Completed Operations	<input type="checkbox"/> Sexual Misconduct
<input type="checkbox"/>	Fire Legal Liability	<input type="checkbox"/> _____
<input type="checkbox"/>	Automobile Liability (for any and all vehicles used for this contract, other than commuting to/from work)	\$ _____
<input checked="" type="checkbox"/>	Professional Liability (Errors and Omissions) Discovery Period <u>12 Months After Completion of Work or Date of Termination.</u>	\$ <u>1,000,000</u>
<input type="checkbox"/>	Property Insurance (to cover replacement cost of building - as determined by insurance company)	\$ _____
<input type="checkbox"/>	All Risk Coverage	<input type="checkbox"/> Boiler and Machinery
<input type="checkbox"/>	Flood	<input type="checkbox"/> Builder's Risk
<input type="checkbox"/>	Earthquake	<input type="checkbox"/> _____
<input type="checkbox"/>	Pollution Liability	\$ _____
<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	Surety Bonds – Performance and Payment (Labor and Materials) Bonds 100% of the contract price	
<input type="checkbox"/>	Crime Insurance	\$ _____

Other: 1) In the absence of imposed Auto Liability requirements, all contractors using vehicles during the course of their contract must adhere to the financial responsibility laws of the State of California. 2) Professional Liability Insurance is required for any Contractor or Sub-Contractor that requires a Licensed Professional to perform their duties as part of this agreement.

EXHIBIT A
INSTRUCTIONS AND INFORMATION
ON COMPLYING WITH CITY INSURANCE
REQUIREMENTS

NAME	Celene Ross
CITY AGENCY	Housing & Community Investment Dept.
ADDRESS	1200 W. 7 th Street, 4 th Flr Los Angeles, CA 90017
TEL (213) 928-9103	FAX (213) 808-8965

(Share this information with your insurance agent or broker.)

GENERAL INFORMATION

1. **Agreement/Reference** All evidence of insurance should identify the nature of your business with the CITY. Clearly show any assigned number of a bid, contract, lease, permit, etc. or give the project name and the job site or street address to ensure that your submission will be properly credited. Provide the **types of coverage and minimum dollar amounts** specified on the Required Insurance and Minimum Limits sheet (Form Gen. 146) included in your CITY documents.

2. **When to Submit** Normally, no work may begin until a CITY insurance certificate approval number ("CA number") has been obtained, so insurance documents should be submitted as early as practicable. For **As-needed Contracts**, insurance need not be submitted until a specific job has been awarded. **Design Professionals** coverage for new construction work may be submitted simultaneously with final plans and drawings, but before construction commences.

3. **Acceptable Evidence and Approval** Electronic submission is the preferred method of submitting your documents. **KwikComply** is the CITY's online insurance compliance system and is designed to make the experience of submitting and retrieving insurance information quick and easy. The system is designed to be used primarily by insurance brokers and agents as they submit client insurance certificates directly to the City. It uses the standard insurance industry form known as the **ACCORD 25 Certificate of Liability Insurance** in electronic format. KwikComply advantages include standardized, universally accepted forms, paperless approval transactions (24 hours, 7 days per week), and security checks and balances. The easiest and quickest way to obtain approval of your insurance is to have your insurance broker or agent access **KwikComply** at <https://kwikcomply.org/> and follow the instructions to register and submit the appropriate proof of insurance on your behalf.

Contractor must provide City a thirty (30) day notice of cancellation (ten (10) days for nonpayment of premium) AND an Additional Insured Endorsement naming the CITY an additional insured completed by your insurance company or its designee. If the policy includes an automatic or blanket additional insured endorsement, the Certificate must state the CITY is an automatic or blanket additional insured. An endorsement naming the CITY an Additional Named Insured and Loss Payee as Its Interests May Appear is required on property policies. All evidence of insurance must be authorized by a person with authority to bind coverage, whether that is the authorized agent/broker or insurance underwriter.

Additional Insured Endorsements DO NOT apply to the following:

- Indication of compliance with statute, such as Workers' Compensation Law.
- Professional Liability insurance

Verification of approved insurance and bonds may be obtained by checking **KwikComply**, the CITY's online insurance compliance system, at <https://kwikcomply.org/>.

4. **Renewal** When an existing policy is renewed, have your insurance broker or agent submit a new Acord 25 Certificate or edit the existing Acord 25 Certificate through KwikComply at <https://kwikcomply.org/>.

5. **Alternative Programs/Self-Insurance** Risk financing mechanisms such as Risk Retention Groups, Risk Purchasing Groups, off-shore carriers, captive insurance programs and selfinsurance programs are subject to separate approval after the CITY has reviewed the relevant audited financial statements. To initiate a review of your program, you should complete the Applicant's Declaration of Self Insurance form (<http://cao.lacity.org/risk/InsuranceForms.htm>) to the Office of the City Administrative Officer, Risk Management for consideration.

6. **General Liability** insurance covering your operations (and products, where applicable) is required whenever the CITY is at risk of third-party claims which may arise out of your work or your presence or special event on City premises. **Sexual Misconduct** coverage is a required coverage when the work performed involves minors. **Fire Legal Liability** is required for persons occupying a portion of CITY premises. (Information on two CITY insurance programs, the SPARTA program, an optional source of low-cost insurance which meets the most minimum requirements, and the Special Events Liability Insurance Program, which provides liability coverage for short-term special events on CITY premises or streets, is available at (www.2sparta.com), or by calling (800) 420-0555.)

7. **Automobile Liability** insurance is required only when vehicles are used in performing the work of your Contract or when they are driven off-road on CITY premises; it is not required for simple commuting unless CITY is paying mileage. However, compliance with California law requiring auto liability insurance is a contractual requirement.

8. **Errors and Omissions** coverage will be specified on a project-by-project basis if you are working as a licensed or other professional. The length of the claims discovery period required will vary with the circumstances of the individual job.

9. **Workers' Compensation and Employer's Liability** insurance are not required for single-person contractors. However, under state law these coverages (or a copy of the state's Consent To Self Insure) must be provided if you have any employees at any time during the period of this contract. Contractors with no employees must complete a Request for Waiver of Workers' Compensation Insurance Requirement (<http://cao.lacity.org/risk/InsuranceForms.htm>). A Waiver of Subrogation on the coverage is required only for jobs where your employees are working on CITY premises under hazardous conditions, e.g., uneven terrain, scaffolding, caustic chemicals,

toxic materials, power tools, etc. The Waiver of Subrogation waives the insurer's right to recover (from the CITY) any workers' compensation paid to an injured employee of the contractor.

10. **Property** Insurance is required for persons having exclusive use of premises or equipment owned or controlled by the CITY. Builder's Risk/Course of Construction is required during construction projects and should include building materials in transit and stored at the project site.

11. **Surety** coverage may be required to guarantee performance of work and payment to vendors and suppliers. A Crime Policy may be required to handle CITY funds or securities, and under certain other conditions. Specialty coverages may be needed for certain operations. For assistance in obtaining the CITY required bid, performance and payment surety bonds, please see the City of Los Angeles Contractor Development and Bond Assistance Program website address at <http://cao.lacity.org/risk/BondAssistanceProgram.pdf> or call (213) 258-3000 for more information

12. **Cyber Liability & Privacy** coverage may be required to cover technology services or products for both liability and property losses that may result when a CITY contractor engages in various electronic activities, such as selling on the Internet or collecting data within its internal electronic network. Contractor's policies shall cover liability for a data breach in which the CITY employees' and/or CITY customers' confidential or personal information, such as but not limited to, Social Security or credit card information are exposed or stolen by a hacker or other criminal who has gained access to the CITY's or contractor's electronic network. The policies shall cover a variety of expenses associated with data breaches, including: notification costs, credit monitoring, costs to defend claims by state regulators, fines and penalties, and loss resulting from identity theft. The policies are required to cover liability arising from website media content, as well as property exposures from: (a) business interruption, (b) data loss/destruction, (c) computer fraud, (d) funds transfer loss, and (e) cyber extortion.

(Rev. 05/18)

EXHIBIT B
NOTICE OF PROHIBITION AGAINST RETALIATION

An employer subject to the Living Wage Ordinance shall post in a prominent place in an area frequented by employees a copy of the below notice to employees regarding the LWO prohibition against retaliation (also available in English at www.lacity.org/BCA/lwo_retaliation_english.pdf and in Spanish at www.lacity.org/BCA/lwo_retaliation_spanish.pdf). The retaliation notice must be posted by an employer even if the employer has been exempted from the LWO.

NOTICE TO EMPLOYEES
WORKING ON CITY CONTRACTS
RE: LIVING WAGE ORDINANCE AND
PROHIBITION AGAINST RETALIATION

“Section 10.37.5 Retaliation Prohibited” of the Living Wage Ordinance (LWO) provides that any employer that has a contractual relationship with the City **may not** discharge, reduce the pay of, or discriminate against his or her employees working under the City contract for any of the following reasons:

1. Complaining to the City if your employer is not complying with the Ordinance.
2. Opposing any practice prohibited by the Ordinance.
3. Participating in proceedings related to the Ordinance, such as serving as a witness and testifying in a hearing.
4. Seeking to enforce your rights under this Ordinance by any lawful means.
5. Asserting your rights under the Ordinance.

Also, you may not be fired, lose pay or be discriminated against for asking your employer questions about the Living Wage Ordinance, or asking the City about whether your employer is doing what is required under the LWO. If you are fired, lose pay, or discriminated against, you have the right to file a complaint with the Equal Employment Opportunity/Affirmative Action Section, as well as file a claim in court.

For more information, or to obtain a complaint form, please call the Equal Employment/Affirmative Action Section at (213) 847-6480

CITY OF LOS ANGELES
Department of Public Works
Bureau of Contract Administration
Office of Contract Compliance
600 South Spring Street, Suite 1300
Los Angeles, CA 90014
Phone: (213) 847-6480 — Fax: (213) 847-5566

EXHIBIT C
PROFESSIONAL FEE SCHEDULE

Services will be compensated according to the following fee schedule: **TBD**

DRAFT