



DATE: August 28, 2008

TO: Governing Board, Intermodal Container Transfer Facility
Joint Powers Authority

FROM: Sam A Joumblat, Executive Director

SUBJECT: Project Management Services Agreement between the ICTF Joint Powers Authority and Essentia Management Services LLC

SUMMARY

The proposed Agreement with Essentia Management Services LLC (“Essentia”) is for Program Management services which will include overall program management services, facilitation of the preparation and providing specialized environmental technical review of the Intermodal Container Transfer Facility (ICTF) Modernization Project Environmental Impact Report (EIR), to be prepared by the South Coast Air Quality Management District (SCAQMD), and to prepare and implement a public outreach program that includes design, establishment and maintenance of a program specific website. Program Management services will be specifically provided by Mr. Edward Rogan, PE, President & CEO. Mr. Rogan will be supported by other key Essentia personnel. The Agreement provides for review of all environmental documents and liaison with the SCAQMD, consultant for the preparation of the EIR. Essentia has significant experience involving the analysis, review and production of EIRs. This proposed Agreement is not to exceed \$471,605 for a three year term.

The proposed Agreement with Essentia is for outside program management, and environmental documentation support services which will include specialized advice regarding the California Environmental Quality Act (CEQA), the Clean Air Act and other environmental matters as required for the ICTF Modernization Project. Essentia personnel have significant experience involving the analysis and implementation of CEQA, most notably holding current contracts to provide these services on an as-needed basis to both the Port of Los Angeles and the Port of Long Beach.

Mr. Edward Rogan has over 35 years of experience managing complex programs and projects, the last 23 of which have been in Southern California. As President of Essentia, Mr. Rogan is responsible for the continuous improvement and delivery of solutions-based services involving the application of Essentia’s assessment, investigation, engineering, design, construction and operations capabilities and resources on behalf of Essentia’s clients. Drawing on a broad range of experience in the field of civil/environmental engineering, Mr. Rogan focuses on assessing industry-specific business and financial impacts;

remedial technology development; construction management; and project controls expertise. His skill set includes a familiarity with numerous federal, state, and local regulatory requirements.

Mr. Rogan will be supported by other key Essentia personnel including:

- Mr. Dennis Crable
 - Mr. Crable has over 25 years of directly relevant experience. He is the Project Manager for each of the current on-call CEQA/NEPA support services contracts with POLA & POLB. Mr. Crable will lead Essentia's efforts related to the technical review of the SCAQMD deliverables.
- Mr. Greg Alexander
 - Since 2005, Mr. Alexander has supported both POLA & POLB with various environmental programs including the POLB Green Port Program, the Clean Air Action Plan (CAAP), the Clean Truck Program (CTP), the Vessel Speed Reduction Program (VSRP), and miscellaneous Sustainability initiatives. Mr. Alexander will lead Essentia's efforts related to the Community Outreach and the JPA web site.

DISCUSSION:

1. Background: The ICTF JPA has entered into a Memoranda of Agreement (MOA) with the SCAQMD for the drafting of the ICTF Modernization Project EIR. Mr. Rogan assisted in the development of the MOA.
2. The Agreement with Essentia requires a very specific set of skills.
 - a. Expert program/project management skills including extensive and directly relevant project controls expertise (e.g., scope, schedule and cost management) with a primary emphasis on schedule management.
 - b. An important component of program success is community outreach. As a result of numerous prior and current projects with each Port, Essentia personnel have a proven track record in balancing the project drivers with the needs of the community.
 - c. A second important component of program success is liaison between and among the ICTF JPA staff, consultants and the SCAQMD regarding the CEQA and other environmental requirements of the EIR. Essentia's experience and relationship with the SCAQMD and staff from the Port of Los Angeles and the Port of Long Beach is pertinent for the development of the EIR.
3. The Agreement with Essentia will allow Mr. Rogan and his key personnel to oversee the following: preparation of the CEQA EIR documentation; special studies in areas of cultural and historic resources, air quality, traffic and transportation, noise, biological resources, aesthetics, peer review and any other studies deemed appropriate.
4. Sole Source: Essentia has recently successfully participated in a competitive bidding process with the Port of Los Angeles. Essentia was awarded a

contract subject to that process. Essentia was selected by the ICTF JPA staff because of the knowledge and experience in environmental issues and familiarity with processes, personnel, and initiatives at both Port of Los Angeles and Port of Long Beach.

RECOMMENDATION:

It is recommended that the Governing Board of the ICTF JPA authorize the Executive Director to execute and the Board Secretary to attest to the execution of the proposed Agreement with Essentia, for Program Management services for a period of three years, commencing on execution by the Executive Director, for a not-to-exceed contract of \$ 471,605.

ENVIRONMENTAL ASSESSMENT:

The proposed action is an agreement between the ICTF JPA and Essentia to provide program management and environmental documentation support services to the Board of the JPA. As such, the ICTF JPA General Counsel has determined that the proposed action is exempt from the requirements of CEQA under Article II, Section 2(f) of the Los Angeles City CEQA Guidelines.

FINANCIAL IMPACT

Funding for this Agreement in the amount of \$471,605 will be provided through the Reimbursable Work Order (RWO) recently executed with Union Pacific.

GENERAL COUNSEL

The subject Agreement has been reviewed and approved as to form by the ICTF JPA General Counsel.

TRANSMITTAL:

1. Contract



Sam A. Joublat
Executive Director

AGREEMENT BETWEEN THE
INTERMODAL CONTAINER TRANSFER FACILITY JOINT POWERS AUTHORITY
AND
ESSENTIA MANAGEMENT SERVICES, LLC.

THIS AGREEMENT is made and entered into by and between the INTERMODAL CONTAINER TRANSFER FACILITY JOINT POWERS AUTHORITY (“ICTF JPA”), acting by and through its Board of Commissioners (“Board”) and ESSENTIA MANAGEMENT SERVICES, LLC, 5000 East Spring Street, Suite 720, Long Beach, CA 90815 (“Consultant”).

WHEREAS, ICTF JPA has determined the need to obtain environmental services including preparation of California Environmental Quality Act (“CEQA”) and/or National Environmental Policy Act (“NEPA”) documentation and preparation of special environmental studies; and

WHEREAS, Consultant is able and willing to perform professional, expert and technical services required herein for the ICTF JPA in accordance with all applicable federal, state, and local laws, ordinances and regulations and in accordance with this Agreement; and

WHEREAS, because of the temporary nature of the Work and the unavailability of ICTF JPA employees to perform the services required by this Agreement, it is in best interest of City to employ Consultant, as an independent contractor to perform such Work; and

NOW, THEREFORE, in consideration of the covenants, terms and conditions contained herein, the parties agree as follows:

I. SERVICES TO BE PERFORMED BY CONSULTANT

Consultant hereby agrees to render to ICTF JPA, as an independent contractor, certain professional, technical and expert services of a temporary and occasional character as set forth in Exhibit “A,” and as may be required and requested from time to time in writing by the Executive Director or his or her designee.

II. SERVICES TO BE PERFORMED BY ICTF JPA

A. ICTF JPA shall furnish Consultant, upon its request, all documents and papers in possession of ICTF JPA which may lawfully be supplied to Consultant and which are necessary for it to perform its obligations.

B. The Executive Director or his or her designee is designated as the contract administrator for ICTF JPA and shall also decide any and all questions which may arise as to the quality or acceptability of the services performed and the manner

of performance, the interpretation of instructions to Consultant and the acceptable completion of this Agreement and the amount of compensation due. Notwithstanding the preceding, the termination of this Agreement shall be governed by the provisions of Article IX (Termination) hereof.

III. EFFECTIVE DATE AND TERM OF AGREEMENT

A. Subject to the provisions of Los Angeles City Charter Section 245 and the Intermodal Container Transfer Facility Joint Powers Authority Agreement dated October 5, 1983, the effective date of this Agreement shall be the date of its execution by Executive Director upon authorization of the Board.

B. This Agreement shall be in full force and effect commencing from the date of execution and shall continue until the earlier of the following occurs:

1. Three (3) years have lapsed from the effective date of this Agreement; or

2. The Board, in its sole discretion, terminates and cancels all or part of this Agreement for any reason upon giving to Consultant ten (10) days' notice in writing of its election to cancel and terminate this Agreement.

IV. TERMINATION DUE TO NON-APPROPRIATION OF FUNDS

This Agreement is subject to the provisions of the Los Angeles City Charter and the Long Beach City Charter which, among other things, precludes the ICTF JPA from making any expenditure of funds or incurring any liability, including contractual commitments, in excess of the amount appropriated thereof.

The Board, in awarding this Agreement, is expected to appropriate sufficient funds to meet the estimated expenditure of funds through June 30 of the current fiscal year and to make further appropriations in each succeeding fiscal year during the life of the Agreement. However, the Board is under no legal obligation to do so.

The ICTF JPA, its boards, officers, and employees are not bound by the terms of this Agreement or obligated to make payment thereunder in any fiscal year in which the Board does not appropriate funds therefore. The Consultant is not entitled to any compensation in any fiscal year in which funds have not been appropriated for the Agreement by the Board.

Although the Consultant is not obligated to perform any work under the Agreement in any fiscal year in which no appropriation for the Agreement has been made, the Consultant agrees to resume performance of the work required by the Agreement on the same terms and conditions for a period of sixty (60) days after the end of the fiscal year if an appropriation therefore is approved by the Board within that 60 day period. The Consultant is responsible for maintaining all insurance and bonds

during this 60 day period until the appropriation is made; however, such extension of time is not compensable.

If in any subsequent fiscal year funds are not appropriated by the Board for the work required by the Agreement, the Agreement shall be terminated. However, such termination shall not relieve the parties of liability for any obligation previously incurred.

V. COMPENSATION AND PAYMENT

A. As compensation for the satisfactory performance of the services required by this Agreement, ICTF JPA shall pay and reimburse Consultant at the rates set forth in Exhibit "B."

B. The maximum payable under this Agreement, including reimbursable expenses (see Exhibit "A"), shall be Four Hundred Seventy One Thousand Six Hundred Five Dollars (\$471,605).

C. Consultant shall submit invoices in quadruplicate to ICTF JPA monthly following the effective date of this Agreement for services performed during the preceding month. Each such invoice shall be signed by the Consultant and shall include the following certification:

"I certify under penalty of perjury that the above bill is just and correct according to the terms of Agreement and that payment has not been received. I further certify that I have complied with the provisions of the City of Los Angeles' Living Wage Ordinance.

(Consultant's Signature)

D. Consultant must include on the face of each itemized invoice submitted for payment its Business Tax Registration Certificate number, as required at Article VII of this Agreement. No invoice will be processed for payment by ICTF JPA without this number shown thereon. All invoices shall be approved by the Executive Director or his or her designee prior to payment. All invoices due and payable and found to be in order shall be paid as soon as, in the ordinary course of ICTF JPA business, the same may be approved, audited and paid.

Consultant shall submit appropriate supporting documents with each invoice. Such documents may include provider invoices, payrolls, and time sheets. The ICTF JPA may require, and Consultant shall provide, all documents reasonably required to determine whether amounts on the invoice are allowable expenses under this Agreement.

E. For payment and processing, all invoices should be mailed to the following address:

To: Long Beach Harbor Department
Post Office Box 570
Long Beach, CA 90801
Attn: ICTF JPA Secretary

and

To: _____

VI. INDEPENDENT CONTRACTOR

Consultant, in the performance of the work required by this Agreement, is an independent contractor and not an agent or employee of ICTF JPA. Consultant shall not represent itself as an agent or employee of the ICTF JPA and shall have no power to bind the ICTF JPA in contract or otherwise.

VII. BUSINESS TAX REGISTRATION CERTIFICATE

The ICTF JPA has adopted the rules and regulations of the City of Los Angeles' Office of Finance as it applies to Business Tax Registration Certificate. Thus, the City of Los Angeles Office of Finance requires the implementation and enforcement of Los Angeles Municipal Code Section 21.09 et seq. This section provides that every person, other than a municipal employee, who engages in any business within the City of Los Angeles, is required to obtain the necessary Business Tax Registration Certificate and pay business taxes. The City Controller has determined that this Code Section applies to consulting firms that are doing work for the Los Angeles Harbor Department ("Department"). See Exhibit "C."

VIII. INDEMNIFICATION AND INSURANCE

A. Indemnity for General Liability

Except for the sole negligence or willful misconduct of ICTF JPA, Consultant shall at all times indemnify, protect, defend, and hold harmless ICTF JPA and any and all of its boards, officers, agents, or employees from and against all claims, charges, demands, costs, expenses (including counsel fees), judgments, civil fines and penalties, liabilities or losses of any kind or nature whatsoever which may be sustained or suffered by or secured against the ICTF JPA, its boards, officers, agents, and/or employees by reason of any damage to property, injury to persons, or any action that may arise out of the performance of this Agreement that is caused by any act, omission, or negligence of Consultant, its boards, officers, agents, employees, or subconsultants regardless of whether any act, omission, or negligence of ICTF JPA, its boards, officers, agents, or employees contributed thereto; provided that (1) if the

ICTF JPA contributes to a loss, Consultant's indemnification of the ICTF JPA for the ICTF JPA's share of the loss shall be limited to One Million Dollars (\$1,000,000), (2) notwithstanding the limitation in (1), Consultant shall remain responsible for one hundred percent (100%) of any loss attributable to it, and (3) the provisions in (1) and (2) apply on a per-occurrence basis.

B. Indemnity for Professional Liability

Except for the sole negligence or willful misconduct of ICTF JPA, Consultant shall at all times indemnify, protect, defend, and hold harmless ICTF JPA and any and all of its boards, officers, agents, or employees from and against all claims, charges, demands, costs, expenses (including counsel fees), judgments, civil fines and penalties, liabilities or losses of any kind or nature whatsoever which may be sustained or suffered by or secured against the ICTF JPA, its boards, officers, agents, and/or employees by reason of any damage to property, injury to persons, or any action that may arise out of the performance of this Agreement that is caused by any act, omission, or negligence of Consultant, its boards, officers, agents, employees, or subconsultants.

C. General Liability Insurance

Consultant shall procure and maintain in effect throughout the term of this Agreement, without requiring additional compensation from the ICTF JPA, commercial general liability insurance covering personal and advertising injury, bodily injury, and property damage providing contractual liability, independent contractors, products and completed operations, and premises/operations coverages written by an insurance company authorized to do business in the State of California rated VII, A- or better in Best's Insurance Guide (or an alternate guide acceptable to ICTF JPA if Best's is not available) within Consultant's normal limits of liability but not less than One Million Dollars (\$1,000,000) combined single limit for injury or claim. Said limits shall provide first dollar coverage except that Executive Director may permit a self-insured retention or self-insurance in those cases where, in his or her judgment, such retention or self-insurance is justified by the net worth of Consultant. The insurance provided shall contain a severability of interest clause and shall provide that any other insurance maintained by ICTF JPA shall be excess of Consultant's insurance and shall not contribute to it. In all cases, regardless of any deductible or retention, said insurance shall contain a defense of suits provision. Each policy shall contain an additional insured endorsement naming the Intermodal Container Transfer Facility Joint Powers Authority, its boards, officers, agents, and employees and a 30-day notice of cancellation by receipted mail as shown in Exhibit "D."

D. Automobile Liability Insurance

Consultant shall procure and maintain at its expense and keep in force at all times during the term of this Agreement automobile insurance written by an insurance company authorized to do business in the State of California rated VII, A- or better in Best's Insurance Guide (or an alternate guide acceptable to ICTF JPA if Best's is not available) within Consultant's normal limits of liability but not less than One Million Dollars (\$1,000,000) covering injuries or death resulting from each accident or claim arising out of any one claim or accident. Each policy shall contain an additional insured endorsement naming the Intermodal Container Transfer Facility Joint Powers Authority, its board, officers, agents, and employees and a 30-day notice of cancellation by receipted mail as shown in Exhibit "E."

E. Workers' Compensation

Consultant shall certify that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and that the Consultant shall comply with such provisions before commencing the performance of the tasks under this Agreement. Consultant shall submit Workers' Compensation policies, whether underwritten by the state insurance fund or private carrier, which provide that the public or private carrier waives its right of subrogation against the ICTF JPA in any circumstance in which it is alleged that actions or omissions of the ICTF JPA contributed to the accident. See Exhibit "F".

F. Professional Liability Insurance

Consultant certifies that it now has professional liability insurance in the amount of One Million Dollars (\$1,000,000), which covers the work to be performed pursuant to this Agreement and that it will keep such insurance or its equivalent in effect at all times during performance of said Agreement and until two (2) years following acceptance of the completed project by Board. Two (2) executed copies of the special endorsement, Exhibit "G," attached hereto and made a part hereof shall be filed with Executive Director. Alternatively, two (2) certified copies of the full policy containing a 30-calendar-day cancellation notice by receipted mail may be submitted. Notice of occurrences or claims under the policy shall be made to the Executive Director.

G. Carrier Requirements

All insurance which Consultant is required to provide pursuant to this Agreement shall be placed with insurance carriers authorized to do business in the State of California and which are rated A-, VII or better in Best's Insurance Guide. Carriers without a Best's rating shall meet comparable standards in another rating service acceptable to ICTF JPA.

H. Notice of Cancellation

Each insurance policy described above shall provide that it will not be canceled or reduced in coverage until after the Board of the ICTF JPA, Attention: Risk Manager and the General Council for the ICTF JPA, have each been given thirty (30) days' prior written notice by registered mail addressed to the Port of Long Beach, 925 Harbor Plaza, P.O. Box 570, Long Beach, CA 90801.

I. Copies of Policies

Two certified copies of each policy containing the additional insured and 30-day cancellation notice language shall be furnished to Executive Director. Alternatively, two duplicate original additional insured endorsements on forms provided by the ICTF JPA, as indicated above, may be submitted. The form of such policy or endorsement shall be subject to the approval of the Risk Manager of the ICFT JPA.

J. Modification of Coverage

Executive Director, at his or her discretion, based upon recommendation of independent insurance consultants to ICTF JPA, may increase or decrease amounts and types of insurance coverage required hereunder at any time during the term hereof by giving ninety (90) days' prior written notice to Consultant.

K. Renewal of Policies

At least thirty (30) days prior to the expiration of each policy, Consultant shall furnish to Executive Director a renewal endorsement or renewal certificate showing that the policy has been renewed or extended or, if new insurance has been obtained, evidence of insurance as specified above. If Consultant neglects or fails to secure or maintain the insurance required above, Executive Director may, at his or her own option but without any obligation, obtain such insurance to protect ICTF JPA's interests. The cost of such insurance will be deducted from the next payment due Consultant.

L. Right to Self-Insure

Upon written approval by the Executive Director, Consultant may self-insure if the following conditions are met:

1. Consultant has a formal self-insurance program in place prior to execution of this Agreement. If a corporation, Consultant must have a formal resolution of its board of directors authorizing self-insurance.

2. Consultant agrees to protect the ICTF JPA, its boards, officers, agents and employees at the same level as would be provided by full insurance with respect to types of coverage and minimum limits of liability required by this Agreement.

3. Consultant agrees to defend the ICTF JPA, its boards, officers, agents and employees in any lawsuit that would otherwise be defended by an insurance carrier.

4. Consultant agrees that any insurance carried by ICTF JPA is excess of Consultant's self-insurance and will not contribute to it.

5. Consultant provides the name and address of its claims administrator.

6. Consultant submits a Financial Statement or Balance Sheet prior to Executive Director's consideration of approval of self-insurance and annually thereafter evidence of financial capacity to cover the self-insurance.

7. Consultant agrees to inform ICTF JPA in writing immediately of any change in its status or policy which would materially affect the protection afforded ICTF JPA by this self-insurance.

8. Consultant has complied with all laws pertaining to self-insurance.

IX. TERMINATION PROVISION

The Board of ICTF JPA, in his or her sole discretion, shall have the right to terminate and cancel all or any part of this Agreement for any reason upon giving the Consultant ten (10) days' advance, written notice of the Board's election to cancel and terminate this Agreement. It is agreed that any Agreement entered into shall not limit the right of the ICTF JPA to hire additional consultants or perform the services described in this Agreement either during or after the term of this Agreement.

X. PERSONAL SERVICE CONTRACT

During the term hereof, Consultant agrees that it will not enter into other contracts or perform any work without the written permission of the Executive Director where the work may conflict with the interests of the ICTF JPA.

Consultant shall not divulge any information which is proprietary or confidential.

XI. AFFIRMATIVE ACTION

The Consultant, during the performance of this Agreement, shall not discriminate in its employment practices against any employee or applicant for

employment because of employee's or applicant's race, religion, national origin, ancestry, sex, age, sexual orientation, disability, marital status, domestic partner status, or medical condition. The provisions of Section 10.8.4 of the Los Angeles Administrative Code shall be incorporated and made a part of this Agreement. All subcontracts awarded shall contain a like nondiscrimination provision. See Exhibit "H."

XII. CONFLICT OF INTEREST

It is hereby understood and agreed that the parties to this Agreement have read and are aware of the provisions of Section 1090 et seq. and Section 87100 et seq. of the California Government Code relating to conflict of interest of public officers and employees, as well as the Los Angeles Municipal Code (LAMC) Municipal Ethics and Conflict of Interest provisions of Section 49.5.1 et seq. and the Conflict of Interest Codes of the ICTF JPA and Consultant. All parties hereto agree that they are unaware of any financial or economic interest of any public officer or employee of ICTF JPA relating to this Agreement. Notwithstanding any other provision of this Agreement, it is further understood and agreed that if such financial interest does exist at the inception of this Agreement, ICTF JPA may immediately terminate this Agreement by giving written notice thereof.

XIII. COMPLIANCE WITH APPLICABLE LAWS

Consultant shall at all times in the performance of its obligations comply with all applicable laws, statutes, ordinances, rules and regulations, and with the reasonable requests and directions of Executive Director.

XIV. GOVERNING LAW / VENUE

This Agreement shall be governed by and construed in accordance with the laws of the State of California, without reference to the conflicts of law, rules and principles of such State. The parties agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the State or Federal courts located in the County of Los Angeles, State of California, in the judicial district required by court rules.

XV. TRADEMARKS, COPYRIGHTS, AND PATENTS

Consultant agrees to save, keep, hold harmless, protect and indemnify the ICTF JPA and any of its officers or agents from any damages, cost, or expenses in law or equity from infringement of any patent, trademark, service mark or copyright of any person or persons, or corporations in consequence of the use by ICTF JPA of any materials supplied by Consultant in the performance of this Agreement.

XVI. PROPRIETARY INFORMATION

The Consultant may not disclose to any party without ICTF JPA's permission any information developed pursuant to this Agreement. The ICTF JPA will, however, have the right to disclose the information as it determines appropriate considering the nature of the information, its use and the laws applicable to the ICTF JPA.

XVII. CONFIDENTIALITY

The data, documents, reports, or other materials which contain information relating to the review, documentation, analysis and evaluation of the work described in this Agreement and any recommendations made by Consultant relative thereto shall be considered confidential and shall not be reproduced, altered, used or disseminated by Consultant or its employees or agents in any manner except and only to the extent necessary in the performance of the work under this Agreement. In addition, Consultant is required to safeguard such information from access by unauthorized personnel.

XVIII. NOTICES

In all cases where written notice is to be given under this Agreement, service shall be deemed sufficient if said notice is deposited in the United States mail, postage prepaid. When so given, such notice shall be effective from the date of mailing of the same. For the purposes hereof, unless otherwise provided by notice in writing from the respective parties, notice to the ICTF JPA shall be addressed to the ICTF JPA Secretary, Port of Long Beach, Post Office Box 570, Long Beach, CA 90801 and notice to Consultant shall be addressed to it at the address set forth above. Nothing herein contained shall preclude or render inoperative service of such notice in the manner provided by law.

XIX. TAXPAYER IDENTIFICATION NUMBER (TIN)

The Internal Revenue Service (IRS) requires that all consultants and suppliers of materials and supplies provide a TIN to the party that pays them. Consultant declares that its authorized TIN is 04-3632548. No payments will be made under this Agreement without a valid TIN.

XX. WAGE AND EARNINGS ASSIGNMENT ORDERS/NOTICES OF ASSIGNMENTS

The Consultant and/or any subconsultant are obligated to fully comply with all applicable state and federal employment reporting requirements for the Consultant and/or subconsultant's employees.

The Consultant and/or subconsultant shall certify that the principal owner(s) are in compliance with any Wage and Earnings Assignment Orders and Notices of Assignments applicable to them personally. The Consultant and/or subconsultant will fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments in accordance with Cal. Family Code Sections 5230 et seq. The Consultant or subconsultant will maintain such compliance throughout the term of this Agreement.

XXI. INTEGRATION

This document constitutes the entire Agreement between the parties to this Agreement with respect to the subject matter set forth and supersedes any and all prior Agreements or contracts on this subject matter between the parties, either oral or written. This Agreement may not be amended, waived, or extended, in whole or in part, except in writing signed by both parties.

XXII. SEVERABILITY

Should any part of this Agreement be found to be invalid, the remainder of this Agreement is to continue in full force and effect.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date to the left of their signatures.

INTERMODAL CONTAINER TRANSFER
FACILITY JOINT POWERS AUTHORITY

Dated: _____, 2008

By _____
Executive Director

ESSENTIA MANAGEMENT SERVICES, LLC

Dated: _____, 2008

By _____

(Type Name and Title)

Attest _____

(Type Name and Title)

APPROVED AS TO FORM

_____, 2008
ROCKARD J. DELGADILLO, City Attorney

By _____,
THOMAS A. RUSSELL, General Counsel

TAR:JBS:jpr
Attachments
08/20/08

Estimated Cost
 Project Management
 ICTF Modernization Project

| STAFF CATEGORY | TASKS | Task 1: Program Management | | Task 2: Third Party Technical Review of NOP/EIR | | Task 3: Public Outreach/ Website | | TOTAL UNITS/ HRS | TOTAL COST |
|--|----------|-------------------------------|------------------|---|------------------|--|-----------------|---------------------|------------------|
| | RATE | Units/Hrs | Cost | Units/Hrs | Cost | Units/Hrs | Cost | | |
| Principal/Senior Principal (Rogan) | \$165.00 | 1000.0 | \$165,000 | 125.0 | \$20,625 | 25.0 | \$4,125 | 1150.0 | \$189,750 |
| Senior Consulting Professional | \$155.00 | | \$0 | 225.0 | \$34,875 | | \$0 | 225.0 | \$34,875 |
| Consulting Professional | \$145.00 | | \$0 | 225.0 | \$32,625 | | \$0 | 225.0 | \$32,625 |
| Senior Project Professional (Crabbe) | \$135.00 | 100.0 | \$13,500 | 225.0 | \$30,375 | 25.0 | \$3,375 | 350.0 | \$47,250 |
| Project Professional (Kerza) | \$125.00 | 100.0 | \$12,500 | 225.0 | \$28,125 | 25.0 | \$3,125 | 350.0 | \$43,750 |
| Assistant Project Professional (Alexander, Packwood) | \$115.00 | 100.0 | \$11,500 | 225.0 | \$25,875 | 250.0 | \$28,750 | 575.0 | \$66,125 |
| Senior Staff Professional | \$105.00 | | \$0 | | \$0 | 25.0 | \$2,625 | 25.0 | \$2,625 |
| Staff Professional | \$95.00 | | \$0 | | \$0 | 25.0 | \$2,375 | 25.0 | \$2,375 |
| Assistant Staff Professional | \$85.00 | | \$0 | | \$0 | 25.0 | \$2,125 | 25.0 | \$2,125 |
| Drafter / Illustrator | \$85.00 | | \$0 | | \$0 | 25.0 | \$2,125 | 25.0 | \$2,125 |
| Technical Assistant/Word Processor | \$75.00 | 50.0 | \$3,750 | 100.0 | \$7,500 | 25.0 | \$1,875 | 175.0 | \$13,125 |
| Clerk | \$55.00 | 50.0 | \$2,750 | 100.0 | \$5,500 | 25.0 | \$1,375 | 175.0 | \$9,625 |
| Essentia Labor Cost Subtotals | | 1400.0 | \$209,000 | 1450.0 | \$185,500 | 475.0 | \$51,875 | 3325.0 | \$446,375 |
| REIMBURSABLE EXPENSES | | | | | | | | | |
| ITEM | RATE | | | | | | | | |
| Vehicles and Mileage | | | | | | | | | |
| Personal Vehicle (\$/mile) | \$0.50 | 1200.0 | \$600 | 1500.0 | \$750 | 1200.0 | \$600 | 3900.0 | \$1,950 |
| Postcard Notices | \$0.27 | | \$0 | | \$0 | 4000.0 | \$1,080 | 4000.0 | \$1,080 |
| Print Ads | \$600.00 | | | | | 12.0 | \$7,200 | 12.0 | \$7,200 |
| Reimbursable Expenses Cost Subtotal | | | \$600 | | \$750 | | \$8,880 | | \$10,230 |
| SUBCONTRACTOR COSTS | | | | | | | | | |
| SUBCONTRACTOR | | | | | | | | | |
| SUBCONTRACTOR COST SUBTOTALS | | | \$0 | | \$0 | | \$15,000 | | \$15,000 |
| TASK SUBTOTALS | | 1,400 | \$209,600 | 1,450 | \$186,250 | 475 | \$75,755 | | |
| TOTAL COST ESTIMATE TO COMPLETE PROJECT | | | | | | | | | \$471,605 |

SCHEDULE OF FEES AND CHARGES - 2008-2009



PERSONNEL CHARGES

The charge for all time required in the performance of the Scope of Services, including office, field and travel time, will be at the Unit Price Hourly Rates set forth below for the labor classifications indicated.

| <u>Labor Classification</u> | <u>Hourly Rate</u> |
|-------------------------------------|--------------------|
| Clerk* | \$ 50.00 |
| Technical Assistant/Word Processor* | \$ 70.00 |
| Technician* | \$ 80.00 |
| Drafter/Illustrator* | \$ 80.00 |
| Technical Editor* | \$ 80.00 |
| Senior Drafter/Illustrator* | \$ 90.00 |
| Senior Technician* | \$ 90.00 |
| Lab/Field Supervisor* | \$ 90.00 |
| Assistant Staff Professional | \$ 80.00 |
| Staff Professional | \$ 90.00 |
| Senior Staff Professional | \$ 100.00 |
| Assistant Project Professional | \$ 110.00 |
| Project Professional | \$ 120.00 |
| Senior Project Professional | \$ 130.00 |
| Consulting Professional | \$ 140.00 |
| Senior Consulting Professional | \$ 150.00 |
| Principal/Senior Principal | \$ 160.00 |

Charges for contract personnel under Essentia supervision and using Essentia facilities will be made according to the hourly rate corresponding to their classification.

Overtime worked in excess of eight (8) hours per day) by exempt personnel will be charged at the above straight time hourly rate. Non-exempt (*) @ 1.5x rate.

Special project accounting reporting and financial services, including submission of invoice support documentation will be charged accordingly.

When Essentia staff appear as expert witnesses at court trials, mediation, arbitration hearings, and depositions, their time will be charged at 1.5 times the rate schedule. and depositions, will be charged at the above standard hourly rates. Time spent by personnel preparing for such trials, hearings,

Subcontracts and Equipment Rental

The cost of services subcontracted by Essentia to others, including but not limited to: chemical analysis, test borings, speciality contractors, surveyors, consultants, and equipment rental; e.g., backhoes, bulldozers, and test apparatus, etc., will be charged at cost plus 7%.

Computers

The charge for use of Computer Aided Design and Drafting (CADD), Graphics generation, modeling applications and similar technical computing is \$20.00 per hour.

Vehicles and Mileage

Field vehicles (pick-ups, vans, trucks, etc.) used on project assignments will be charged at \$0.55 per mile for vehicles equal to or less than 1 ton and \$0.65 per mile for vehicles greater than 1 ton.

Personal autos will be charged at \$0.45 per mile.

Other

All **other direct costs** not specifically discussed herein will be charged at cost.

Payment

Essentia shall submit progress invoices to Client in duplicate showing the services performed during the invoice period and the charges therefore.

Within thirty (30) days after receipt of an invoice, Client shall pay the full amount of the invoice; however, if Client objects to all or any portion of any invoice, it shall so notify Essentia of the same within fifteen (15) days from date of receipt of invoice and shall pay that portion of the invoice not in dispute. The parties shall immediately make every effort to settle the disputed portion of the invoice.

BUSINESS TAX REGISTRATION CERTIFICATE (BTRC) NUMBER

The City of Los Angeles, Office of Finance requires all firms that engage in any business activity within the City of Los Angeles to pay City business taxes. Each firm or individual (other than a municipal employee) is required to obtain the necessary Business Tax Registration Certification (BTRC) and pay business tax. (Los Angeles Municipal code Section 21.09 et seq.)

All firms and individuals that do business with the City of Los Angeles will be required to provide a BTRC number or an exemption number as proof of compliance with Los Angeles City business tax requirements in order to receive payment for goods or services. Beginning October 14, 1987, payments for goods or services will be withheld unless proof of tax compliance is provided to the City.

The Tax and Permit Division of Los Angeles Office of Finance, has the sole authority to determine whether a firm is covered by business tax requirements. Those firms not required to pay will be given an exemption number.

If you do NOT have a BTRC number contact the Tax and Permit Division at the nearest office listed below, or log on to www.lacity.org/finance to download the business tax registration application.

| | | |
|-----------------------------|-----------------------------|----------------|
| | MAIN OFFICE | |
| LA City Hall | 201 N. Main Street, Rm. 101 | (213) 626-9271 |
| | BRANCH OFFICES | |
| Van Nuys Civic Center | 14401 Erwin Mall | (818) 756-8531 |
| W. LA City Hall | 1828 Sawtelle Blvd. | (310) 575-8888 |
| Hollywood Office | 6501 Fountain Ave. | (213) 485-3935 |
| San Pedro City Hall | 638 S. Beacon St., Rm. 303 | (310) 732-4537 |
| Westchester Municipal Bldg. | 7166 Manchester, Rm. 9 | (213) 473-6750 |
| Watts City Hall | 10221 Compton Ave., Rm. 202 | (213) 473-5109 |

**City of Los Angeles
Los Angeles Harbor Department - Risk Management Section
GENERAL LIABILITY - ADDITIONAL INSURED ENDORSEMENT**

In consideration of the premium charged and notwithstanding any inconsistent statement in the policy to which this endorsement is attached or any endorsement now or hereafter attached thereto, it is agreed as follows:

1. **ADDITIONAL INSURED.** The City of Los Angeles Harbor Department, its officers, agents and employees are included as additional insured's with regard to liability and defense of claims arising from the operations and uses performed by or on behalf of the named insured regardless of whether liability is attributable to the named insured or a combination of the named and the additional insured.
2. **CONTRIBUTION NOT REQUIRED.** Any other insurance maintained by the City of Los Angeles Harbor Department shall be excess of this insurance and shall not contribute with it.
3. **SEVERABILITY OF INTEREST.** This insurance applies separately to each insured against whom claim is made or suit is brought except with respect to the company's limits of liability. The inclusion of any person or organization as an insured shall not affect any right which such person or organization would have as a claimant if not so included.
4. **CANCELLATION NOTICE.** With respect to the interest of the additional insured, the insurance shall not be canceled, changed in coverage, reduced in limits or non-renewed except after thirty (30) days prior written notice by certified mail return receipt requested has been given to both the City Attorney of Los Angeles and the Board of Harbor Commissioners addressed as follows:

City Attorney
Harbor Division
425 South Palos Verdes Street
San Pedro, CA 90731

Board of Harbor Commissioners
425 South Palos Verdes Street
San Pedro, CA 90731
Attn: Risk Manager

5. **APPLICABILITY.** This insurance pertains to the operations and/or tenancy of the named insured under all written agreements and permits in force with the City of Los Angeles Harbor Department unless checked below in which case only the following specific agreements and permits with the City of Los Angeles Harbor Department are covered:

Agreement/Permit Number(s): _____

Except as stated above, nothing herein shall be held to waive, alter or extend any of the limits, conditions, agreements or exclusions of the policy to which this endorsement is attached.

| | | | | | | | | | | | | | | | |
|--|---|--|---|--|--|--|--|--|--|---|---|--------------------------------|--|--------------------------------|--|
| <p>I _____ (print/type name), warrant that I have authority to bind the below-listed insurance company and by my signature hereon do so bind this company.</p> <p>Signature: _____ Authorized Representative (ORIGINAL SIGNATURE required on copy furnished to the Board of Harbor Commissioners)</p> <p>Title: _____</p> <p>Organization: _____</p> <p>Address: _____</p> <p>Telephone: _____</p> | <p>Report claims pursuant to this insurance to:</p> <p>Name: _____</p> <p>Address: _____</p> <p>Telephone: _____</p> | | | | | | | | | | | | | | |
| <p>Includes (check as applicable):</p> <table style="width: 100%; border: none;"> <tr> <td><input type="checkbox"/> Broad Form Property Damage</td> <td><input type="checkbox"/> Contractual Liability</td> </tr> <tr> <td><input type="checkbox"/> Personal Injury</td> <td><input type="checkbox"/> Owned Automobiles</td> </tr> <tr> <td><input type="checkbox"/> Independent Contractors</td> <td><input type="checkbox"/> Non-Owned Automobiles</td> </tr> <tr> <td><input type="checkbox"/> Premises-Operations</td> <td><input type="checkbox"/> Hired Automobiles</td> </tr> <tr> <td><input type="checkbox"/> Explosion-Collapse Hazard</td> <td><input type="checkbox"/> Fire Legal Liability</td> </tr> <tr> <td><input type="checkbox"/> Underground Hazard</td> <td><input type="checkbox"/> _____</td> </tr> <tr> <td><input type="checkbox"/> Products/Completed Operations</td> <td><input type="checkbox"/> _____</td> </tr> </table> | <input type="checkbox"/> Broad Form Property Damage | <input type="checkbox"/> Contractual Liability | <input type="checkbox"/> Personal Injury | <input type="checkbox"/> Owned Automobiles | <input type="checkbox"/> Independent Contractors | <input type="checkbox"/> Non-Owned Automobiles | <input type="checkbox"/> Premises-Operations | <input type="checkbox"/> Hired Automobiles | <input type="checkbox"/> Explosion-Collapse Hazard | <input type="checkbox"/> Fire Legal Liability | <input type="checkbox"/> Underground Hazard | <input type="checkbox"/> _____ | <input type="checkbox"/> Products/Completed Operations | <input type="checkbox"/> _____ | |
| <input type="checkbox"/> Broad Form Property Damage | <input type="checkbox"/> Contractual Liability | | | | | | | | | | | | | | |
| <input type="checkbox"/> Personal Injury | <input type="checkbox"/> Owned Automobiles | | | | | | | | | | | | | | |
| <input type="checkbox"/> Independent Contractors | <input type="checkbox"/> Non-Owned Automobiles | | | | | | | | | | | | | | |
| <input type="checkbox"/> Premises-Operations | <input type="checkbox"/> Hired Automobiles | | | | | | | | | | | | | | |
| <input type="checkbox"/> Explosion-Collapse Hazard | <input type="checkbox"/> Fire Legal Liability | | | | | | | | | | | | | | |
| <input type="checkbox"/> Underground Hazard | <input type="checkbox"/> _____ | | | | | | | | | | | | | | |
| <input type="checkbox"/> Products/Completed Operations | <input type="checkbox"/> _____ | | | | | | | | | | | | | | |
| <p>Type of Coverage</p> | <p>Limits of Liability</p> <p style="text-align: center;">From _____ To _____</p> <p><input type="checkbox"/> Per Claim <input type="checkbox"/> Per Occurrence</p> | <p>Policy Period</p> | <p><input type="checkbox"/> Deductible \$ _____</p> <p><input type="checkbox"/> Self-insured Retention \$ _____</p> <p>For _____ (Coverage)</p> <p><input type="checkbox"/> Per Claim <input type="checkbox"/> Per Occurrence</p> | | | | | | | | | | | | |

Other Conditions:

| | | | |
|---------------------------|---------------|--------------------|-------------------------------|
| Named Insured and Address | | | |
| Insurance Company | Policy Number | Endorsement Number | Effective Date of Endorsement |

**City of Los Angeles
Los Angeles Harbor Department - Risk Management Section
AUTO LIABILITY - ADDITIONAL INSURED ENDORSEMENT**

In consideration of the premium charged and notwithstanding any inconsistent statement in the policy to which this endorsement is attached or any endorsement now or hereafter attached thereto, it is agreed as follows:

1. **ADDITIONAL INSURED.** The City of Los Angeles Harbor Department, its officers, agents and employees are included as additional insureds with regard to liability and defense of claims arising from the operations and uses performed by or on behalf of the named insured regardless of whether liability is attributable to the named insured or a combination of the named and the additional insured.
2. **CONTRIBUTION NOT REQUIRED.** Any other insurance maintained by the City of Los Angeles Harbor Department shall be excess of this insurance and shall not contribute with it.
3. **SEVERABILITY OF INTEREST.** This insurance applies separately to each insured against whom claim is made or suit is brought except with respect to the company's limits of liability. The inclusion of any person or organization as an insured shall not affect any right which such person or organization would have as a claimant if not so included.
4. **CANCELLATION NOTICE.** With respect to the interest of the additional insured, the insurance shall not be canceled, changed in coverage, reduced in limits or non-renewed except after thirty (30) days prior written notice by certified mail return receipt requested has been given to both the City Attorney of Los Angeles and the Board of Harbor Commissioners addressed as follows:

City Attorney
Harbor Division
425 South Palos Verdes Street
San Pedro, CA 90731

Board of Harbor Commissioners
425 South Palos Verdes Street
San Pedro, CA 90731
Attn: Risk Manager

5. **APPLICABILITY.** This insurance pertains to the operations and/or tenancy of the named insured under all written agreements and permits in force with the City of Los Angeles Harbor Department unless checked below in which case only the following specific agreements and permits with the City of Los Angeles Harbor Department are covered:

Agreement/Permit Number(s): _____

Except as stated above, nothing herein shall be held to waive, alter or extend any of the limits, conditions, agreements or exclusions of the policy to which this endorsement is attached.

| | | | |
|---|--|--|--|
| <p>I _____ (print/type name), warrant that I have authority to bind the below-listed insurance company and by my signature hereon do so bind this company.</p> <p>Signature: _____ Authorized Representative (ORIGINAL SIGNATURE required on copy furnished to the Board of Harbor Commissioners)</p> <p>Title: _____</p> <p>Organization: _____</p> <p>Address: _____</p> <p>Telephone: _____</p> | <p>Report claims pursuant to this insurance to:</p> <p>Name: _____</p> <p>Address: _____</p> <p>Telephone: _____</p> <hr/> <p>Includes (check as applicable):</p> <p><input type="checkbox"/> All Autos</p> <p><input type="checkbox"/> Owned Automobile <input type="checkbox"/> Hired Automobile</p> <p><input type="checkbox"/> Non-owned Automobile <input type="checkbox"/> _____</p> | | |
| <p>Type of Coverage</p> | <p>Limits of Liability</p> <p align="center">From _____</p> <p align="center">To _____</p> <p align="center"><input type="checkbox"/> Per Claim <input type="checkbox"/> Per Occurrence</p> | <p>Policy Period</p> <p align="center">From _____</p> <p align="center">To _____</p> | <p><input type="checkbox"/> Deductible \$ _____</p> <p><input type="checkbox"/> Self-insured Retention \$ _____</p> <p>For _____ (Coverage)</p> <p align="center"><input type="checkbox"/> Per Claim <input type="checkbox"/> Per Occurrence</p> |

Other Conditions:

| | | | |
|---------------------------|---------------|--------------------|-------------------------------|
| Named Insured and Address | | | |
| Insurance Company | Policy Number | Endorsement Number | Effective Date of Endorsement |

**City of Los Angeles
Los Angeles Harbor Department - Risk Management Section
WORKERS' COMPENSATION / EMPLOYER'S LIABILITY - SPECIAL ENDORSEMENT**

In consideration of the premium charged and notwithstanding any inconsistent statement in the policy to which this endorsement is attached or any endorsement now or hereafter attached thereto, it is agreed as follows:

1. **APPLICABILITY.** This insurance pertains to the operations and/or tenancy of the named insured unless checked below in which case only the following specific agreements with the City of Los Angeles Harbor Department are covered:

Agreement/Permit Number(s): _____

2. **CANCELLATION NOTICE.** With respect to the interests of the City of Los Angeles Harbor Department, this insurance shall not be canceled, changed in coverage, reduced in limits or non-renewed except after thirty (30) days prior written notice by certified mail return receipt requested has been given to both the City Attorney of Los Angeles and the Board of Harbor Commissioners addressed as follows:

City Attorney
Harbor Division
425 South Palos Verdes Street
San Pedro, CA 90731

Board of Harbor Commissioners
425 South Palos Verdes Street
San Pedro, CA 90731
Attn: Risk Manager

Except as stated above, nothing herein shall be held to waive, alter or extend any of the limits, conditions, agreements or exclusions of the policy to which this endorsement is attached.

| | |
|---|---|
| <p>I _____ (print/type name), warrant that I have authority to bind the below-listed insurance company and by my signature hereon do so bind this company.</p> <p>Signature: _____ Authorized Representative (ORIGINAL SIGNATURE required on copy furnished to the Board of Harbor Commissioners)</p> <p>Title: _____</p> <p>Organization: _____</p> <p>Address: _____</p> <p>Telephone: _____</p> | <p>Includes (check as applicable):</p> <p><input type="checkbox"/> Broad Form All States Endorsement</p> <p><input type="checkbox"/> Voluntary Compensation Endorsement</p> <p><input type="checkbox"/> United States Longshoremens and Harbor Workers Compensation Act</p> <p><input type="checkbox"/> Jones Act</p> <p><input type="checkbox"/> Other Continental Shelf Endorsement</p> <p><input type="checkbox"/> _____</p> <p><input type="checkbox"/> _____</p> |
|---|---|

| Type of Coverage | Limits of Liability | Policy Period |
|------------------------------|---------------------|---------------|
| <i>Workers' Compensation</i> | <i>Statutory</i> | From |
| <i>Employer's Liability</i> | | To |

Other Provisions:

| | | | |
|---------------------------|---------------|--------------------|-------------------------------|
| Named Insured and Address | | | |
| Insurance Company | Policy Number | Endorsement Number | Effective Date of Endorsement |

**City of Los Angeles
Los Angeles Harbor Department - Risk Management Section
PROFESSIONAL LIABILITY - SPECIAL ENDORSEMENT**

In consideration of the premium charged and notwithstanding any inconsistent statement in the policy to which this endorsement is attached or any endorsement now or hereafter attached thereto, it is agreed as follows:

- APPLICABILITY.** This insurance applies to the liability assumed by the insured under all written agreements with the City of Los Angeles Harbor Department provided such liability results from an error, omission or negligent act of the insured or any of its officers agents, employees or subcontractors unless checked below in which case only the following specific agreements with the City of Los Angeles Harbor Department are covered:

Agreement Number(s): _____

- CANCELLATION NOTICE.** With respect to the interests of the City of Los Angeles Harbor Department, this insurance shall not be canceled, changed in coverage, reduced in limits or non-renewed except after thirty (30) days prior written notice by certified mail return receipt requested has been given to both the City Attorney of Los Angeles and the Board of Harbor Commissioners addressed as follows:

City Attorney
Harbor Division
425 South Palos Verdes Street
San Pedro, CA 90731

Board of Harbor Commissioners
425 South Palos Verdes Street
San Pedro, CA 90731
Attn: Risk Manager

- OTHER PROVISIONS:** The following inclusions, exclusions, extensions or specific provisions apply to this coverage:

Except as stated above, nothing herein shall be held to waive, alter or extend any of the limits, conditions, agreements or exclusions of the policy to which this endorsement is attached.

| | |
|---|---|
| <p>I _____ (print/type name), warrant that I have authority to bind the below-listed insurance company and by my signature hereon do so bind this company.</p> <p>Signature: _____ Authorized Representative (ORIGINAL SIGNATURE required on copy furnished to the Board of Harbor Commissioners)</p> <p>Title: _____</p> <p>Organization: _____</p> <p>Address: _____</p> <p>Telephone: _____</p> | <p>Report claims pursuant to this insurance to:</p> <p>Name: _____</p> <p>Address: _____</p> <p>_____</p> <p>Telephone: _____</p> |
|---|---|

| | | |
|--|------------------------|---|
| Type of Coverage | Limits of Liability | Policy Period |
| <i>Professional Liability</i> | From _____ To _____ | <input type="checkbox"/> Deductible \$ _____ <input type="checkbox"/> Self-insured Retention \$ _____ For _____ (Coverage) <input type="checkbox"/> Per Claim <input type="checkbox"/> Per Occurrence |
| <input type="checkbox"/> Per Claim <input type="checkbox"/> Per Occurrence | | <input type="checkbox"/> Per Claim <input type="checkbox"/> Per Occurrence |

Other Conditions:

| | | | |
|---------------------------|---------------|--------------------|-------------------------------|
| Named Insured and Address | | | |
| Insurance Company | Policy Number | Endorsement Number | Effective Date of Endorsement |

AFFIRMATIVE ACTION PROGRAM PROVISIONS**Sec. 10.8.4 Affirmative Action Program Provisions.**

Every non-construction contract with or on behalf of the City of Los Angeles for which the consideration is \$100,000 or more and every construction contract with or on behalf of the City of Los Angeles for which the consideration is \$5,000 or more shall contain the following provisions which shall be designated as the AFFIRMATIVE ACTION PROGRAM provisions of such contract:

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

AFFIRMATIVE ACTION PROGRAM PROVISIONS

authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made except upon a full and fair hearing after notice and an opportunity to be heard has been given to the contractor.

- F. Upon a finding duly made that the contractor has breached the Affirmative Action Program provisions of a City contract, the contract may be forthwith cancelled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the City of Los Angeles. In addition thereto, such breach may be the basis for a determination by the awarding authority or the Board of Public Works that the said contractor is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Los Angeles City Charter. In the event of such determination, such contractor shall be disqualified from being awarded a contract with the City of Los Angeles for a period of two years, or until he or she shall establish and carry out a program in conformance with the provisions hereof.
- G. In the event of a finding by the Fair Employment and Housing Commission of the State of California, or the Board of Public Works of the City of Los Angeles, or any court of competent jurisdiction, that the contractor has been guilty of a willful violation of the California Fair Employment and Housing Act, or the Affirmative Action Program provisions of a City contract, there may be deducted from the amount payable to the contractor by the City of Los Angeles under the contract, a penalty of TEN DOLLARS (\$10.00) for each person for each calendar day on which such person was discriminated against in violation of the provisions of a City contract.
- H. Notwithstanding any other provisions of a City contract, the City of Los Angeles shall have any and all other remedies at law or in equity for any breach hereof.
- I. The Public Works Board of Commissioners shall promulgate rules and regulations through the Office of Contract Compliance and provide to the awarding authorities electronic and hard copy forms for the implementation of the Affirmative Action Program provisions of City contracts, and rules and regulations and forms shall, so far as practicable, be similar to those adopted in applicable Federal Executive Orders. No other rules, regulations or forms may be used by an awarding authority of the City to accomplish this contract compliance program.
- J. Nothing contained in City contracts shall be construed in any manner so as to require or permit any act which is prohibited by law.
- K. The Contractor shall submit an Affirmative Action Plan which shall meet the requirements of this chapter at the time it submits its bid or proposal or at the time it registers to do business with the City. The plan shall be subject to approval by the Office of Contract Compliance prior to award of the contract. The awarding authority may also require contractors and suppliers to take part in a pre-registration, pre-bid, pre-proposal, or pre-award conference in order to develop, improve or implement a qualifying Affirmative Action Plan. Affirmative Action Programs developed pursuant to this section shall be effective for a period of twelve

AFFIRMATIVE ACTION PROGRAM PROVISIONS

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

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

AFFIRMATIVE ACTION PROGRAM PROVISIONS

6. The entry of qualified women, minority and all other journeymen into the industry; and
 7. The provision of needed supplies or job conditions to permit persons with disabilities to be employed, and minimize the impact of any disability.
- N. Any adjustments which may be made in the contractor's or supplier's workforce to achieve the requirements of the City's Affirmative Action Contract Compliance Program in purchasing and construction shall be accomplished by either an increase in the size of the workforce or replacement of those employees who leave the workforce by reason of resignation, retirement or death and not by termination, layoff, demotion or change in grade.
- O. Affirmative Action Agreements resulting from the proposed Affirmative Action Plan or the pre-registration, pre-bid, pre-proposal or pre-award conferences shall not be confidential and may be publicized by the contractor at his or her discretion. Approved Affirmative Action Agreements become the property of the City and may be used at the discretion of the City in its Contract Compliance Affirmative Action Program.
- P. This ordinance shall not confer upon the City of Los Angeles or any Agency, Board or Commission thereof any power not otherwise provided by law to determine the legality of any existing collective bargaining agreement and shall have application only to discriminatory employment practices by contractors or suppliers engaged in the performance of City contracts.
- Q. All contractors subject to the provisions of this section shall include a like provision in all subcontracts awarded for work to be performed under the contract with the City and shall impose the same obligations, including but not limited to filing and reporting obligations, on the subcontractors as are applicable to the contractor. Failure of the contractor to comply with this requirement or to obtain the compliance of its subcontractors with all such obligations shall subject the contractor to the imposition of any and all sanctions allowed by law, including but not limited to termination of the contractor's contract with the City.