

AGREEMENT NO.  
BETWEEN THE CITY OF LOS ANGELES  
AND  
APEX COMPANIES, LLC

THIS AGREEMENT ("Agreement") is made and entered into by and between the CITY OF LOS ANGELES, a municipal corporation ("City") acting by and through its Board of Harbor Commissioners ("Board"), and APEX COMPANIES, LLC, a Delaware Limited Liability Corporation, whose address is 1962 Freeman Avenue, Signal Hill, CA 90755 ("Consultant").

WHEREAS, City requires professional, scientific, expert or technical services of a temporary and occasional character, including as-needed services to provide environmental site assessments and restoration; and

WHEREAS, Consultant is an organization that provides services, including, but not limited to those services required by the City and, by virtue of training and experience, is well-qualified to provide such services to the City; and

WHEREAS, Consultant was selected through a competitive process; and

WHEREAS, by reason of the nature and length of the services required by City, it is not economical or feasible for City to have such services performed by its own employees;

NOW, THEREFORE, in consideration of the covenants, terms and conditions hereinafter contained to be kept and performed by the respective parties hereto, it is mutually agreed as follows:

1. Incorporation of Recitals.

1.1 The recitals to this Agreement above are incorporated herein and made a part hereof.

2. Services To Be Performed By Consultant.

2.1 All of the services Consultant shall perform for City are set forth in Exhibit "A" hereto and hereinafter shall be referred to as "Scope of Work."

2.2 Consultant's performance of Tasks and, as applicable, Subtasks shall occur as follows:

a. The Director of the Environmental Management Division of City's Harbor Department ("Director") shall issue a written document in the form attached hereto as Exhibit "B" that has been signed by the Deputy Executive Director of Marketing & Customer Relations for the City's Harbor Department and that specifies, without limitation: the Task or Subtask to be performed; the specific services required in connection with such Task or Subtask; the deliverables required in the performance of such Task or Subtask; the schedule

for the performance of such Task or Subtask; authorized personnel who may perform the Task or Subtask; authorized compensation for such Task or Subtask; and MBE/WBE/SBE/VSBE/DVBE/OBE utilization ("Directive").

b. Consultant, to reflect its agreement with all the terms of such Directive, shall sign, date and return such Directive to Director.

c. Following Director's receipt of the Directive signed by Consultant, Director shall issue a written document in the form attached hereto as Exhibit "C" that has been signed by Director and that authorizes Consultant to commence performance of the services contemplated by such Directive ("Notice to Proceed").

2.3 Consultant acknowledges and agrees that it lacks authority to perform and that Director lacks authority to request the performance of any services outside the Scope of Work. Consultant further acknowledges and agrees that any services it performs outside the Scope of Work or a Directive, or in the absence of both a Directive and a Notice to Proceed, are performed as a volunteer and shall not be compensable under this Agreement.

2.4 The Scope of Work shall be performed by personnel qualified and competent in the sole reasonable discretion of Director, whether performance is undertaken by Consultant or third-parties with whom Consultant has contracted on the effective date of this Agreement, whom Director may subsequently approve in writing ("Subconsultants"), or as listed on Project Directives. Obligations of this Agreement, whether undertaken by Consultant or Subconsultants, are and shall be the responsibility of Consultant. Consultant acknowledges and agrees that this Agreement creates no rights in Subconsultants with respect to City and that obligations that may be owed to Subconsultants, including, but not limited to, the obligation to pay Subconsultants for services performed, are those of Consultant alone. Upon Director's written request, Consultant shall supply City's Harbor Department with all agreements between it and its Subconsultants.

2.5 Consultant, at its sole cost and expense, shall furnish all services, materials, equipment, subsistence, transportation and all other items necessary to perform the Scope of Work. As between City and Consultant, Consultant is solely responsible for any taxes or fees which may be assessed against it or its employees resulting from performance of the Scope of Work, whether social security, payroll or other, and regardless of whether assessed by the federal government, any state, the City, or any other governmental entity. City shall pay applicable state or local fees necessary to obtain approval, plan checks, permits and variances for the Project.

2.6 Director shall resolve in his or her sole reasonable discretion any issues or questions which may arise during the term of this Agreement as to the quality or acceptability of Consultant's performance of the Scope of Work, the manner of performance, the interpretation of direction given to Consultant, the acceptable completion of a Directive, and the amount of compensation due. Upon written notice from Director, Consultant shall assign replacement personnel and/or shall remedy any deficient services or work product to Director's reasonable satisfaction and at Consultant's sole cost and expense. Compliance with the requirements of this Section

2.6 is a condition to payment by City of compensation to Consultant pursuant to this Agreement.

2.7 Consultant's representative responsible for administering this Agreement, Neil Irish ("Project Manager"), shall not be changed without Director's written approval. Director may, for any reason in his or her sole reasonable discretion, require Consultant to substitute a new Project Manager. If City requests such a substitution, the substitute Project Manager shall expend whatever time and costs necessary to become familiar with the Project and any portions of the Scope of Work already performed at Consultant's sole cost and expense.

2.8 If the law requires Consultant, in performing the Scope of Work, to follow a different standard of care than the ordinary standard of care applied to a reasonable person, Consultant shall perform such services with the degree of diligence, skill, judgment, and care applicable to Consultant's profession ("professional standard"). Consultants not required to follow a professional standard shall exercise the degree of care required of ordinary persons.

2.9 For portions of the Scope of Work to be performed on a time and material basis, Consultant shall assign personnel, whether employees or Subconsultants, with the lowest applicable hourly rate who are fully competent to provide the services required. If Consultant finds it necessary to have any portion of the Scope of Work, which this Section 2.9 would require to be performed by personnel at a lower rate, to be performed by personnel at a higher rate, Consultant shall, nevertheless, invoice City at the lower rate.

2.10 Consultant shall promptly consider and implement, to the reasonable satisfaction of Director, any written comments of Director.

2.11 Consultant shall review information provided by City's Harbor Department. Any such information reasonably believed by Consultant to be inaccurate, incomplete or inapplicable shall be brought promptly to the attention of Director in writing.

2.12 Consultant shall perform the Scope of Work as expeditiously as possible and at the time or times required by the Director. Time is of the essence in the performance of the Scope of Work. Consultant's failure to conform to the schedule set forth in a project directive shall entitle City to have services completed by others, shall obligate Consultant to pay City City's cost to undertake completion of such services, and shall authorize City to withhold such amounts from any payments otherwise due to Consultant. Consultant's failure to timely perform in accordance with the schedule set forth in a project directive shall result in economic losses to the City, including, but not limited to, the timely bidding and awarding of contracts, completion of the project in connection with which Consultant's services are rendered and the use of such project by City's Harbor Department, its tenants and the public.

### 3. Services To Be Performed By City.

3.1 City's Harbor Department shall provide Consultant with available and/or necessary horizontal and vertical survey data in the form of field notes or electronic format as maintained by City's Harbor Department, access to public records, prints of existing aerial photos, existing planimetric maps, environmental documents, existing

oceanographic studies and existing soil reports in the vicinity, previous specifications and other information which, in the sole reasonable discretion of Director, shall assist in completing the Scope of Work.

3.2 Consultant shall provide Director with reasonable advance written notice if it requires access to premises of City's Harbor Department. Subsequent access rights, if any, shall be granted to Consultant at the sole reasonable discretion of Director, specifying conditions Consultant must satisfy in connection with such access. Consultant acknowledges that such premises may be occupied or used by tenants or contractors of City and that access rights granted by City's Harbor Department to Consultant shall be consistent with any such occupancy or use.

3.3 City shall not be obligated to provide information and/or services except as specified in this Agreement.

#### 4. Effective Date and Term.

4.1 After approval by City in accordance with Section 245 of City's Charter, the effective date of this Agreement shall be the date of its execution by City's Harbor Department Executive Director ("Executive Director"). Consultant acknowledges that Section 245 of City's Charter furnishes to the City Council of City ("Council") the right to review this Agreement and that this Agreement shall not become effective until after the expiration of the fifth Council meeting day after approval of this Agreement by Board, or the date of Council's approval of the Agreement.

4.2 The term of this Agreement shall not exceed three (3) years, commencing on the Agreement's effective date. This Agreement shall be in full force and effect until:

a. Director determines that Consultant has completed the Scope of Work and provides Consultant written notice thereof; or

b. Board, in its sole discretion, terminates this Agreement, which termination shall become effective five (5) calendar days following Executive Director's transmittal of written notice advising Consultant of such action by Board. Upon receipt of such written notice, Consultant shall cease the performance of the Scope of Work. Consultant shall be entitled to compensation only for services actually performed prior to such termination. Director, in his or her sole reasonable discretion, shall determine the amount of services actually performed and shall allocate a portion of the total compensation due Consultant accordingly. If Board so terminates this Agreement, Consultant shall deliver all drawings, specifications, plans, reports, studies, calculations, estimates, documents and other work product produced pursuant to this Agreement to City in an organized, usable form with all items properly labeled to the degree of detail specified by the Director. No compensation shall be due Consultant until it complies with the requirements of this paragraph; or

c. Three (3) years have elapsed from the effective date of the Agreement.

4.3. Notwithstanding the foregoing, this Agreement is subject to the provisions of City's Charter which, among other things, precludes City from making any expenditure of funds or incurring any liability, including contractual commitments, in excess of the amount appropriated therefor. 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, Board is under no legal obligation to do so. City, 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 therefor. Consultant is not entitled to any compensation in any fiscal year in which funds have not been appropriated for the Agreement by Board.

Although Consultant is not obligated to perform any services required by the Scope of Work in any fiscal year in which no appropriation for the Agreement has been made, Consultant shall resume performance of the Scope of Work on the same terms and conditions for a period of sixty (60) days after the end of the fiscal year if an appropriation therefor is approved by Board within that sixty (60) day period. Consultant is responsible for maintaining all insurance and bonds during this sixty (60) day period. The time for performance shall be extended during this 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 Board for this Agreement, this Agreement shall be terminated. However, such termination shall not relieve the parties of liability for any obligation previously incurred.

## 5. Compensation.

5.1 For the full and satisfactory performance of the Scope of Work, City shall pay Consultant and Consultant shall accept a sum not to exceed Four Million Two Hundred Fifty Thousand Dollars (\$4,250,000). The total sum payable under this Agreement shall be determined by Project Directives and Consultant acknowledges that final compensation may not reach the maximum sum allowed for herein.

5.2 Compensation payable under this Agreement for payment for labor, travel, per diem, materials, supplies, transportation, and all other direct and indirect costs and expenses incurred by Consultant ("Expenses") are listed in Exhibit "D." No markups or premiums shall be applied to services performed by Subconsultants unless Exhibit "D" expressly so allows.

5.3 Compensation payable under this Agreement shall be on a (1) Fixed Fee, (2) Time and Materials, (3) Equal Payment or (4) any combination of the three, as may be more particularly specified in a Project Directive.

a. Fixed Fee. Lump sum compensation for satisfactory performance as may be specified in a particular Project Directive.

b. Time and Materials Fee. Consultant shall be paid based on the actual time expended in the performance of Tasks using the applicable rates set forth in

Exhibit "D." Consultant will also be reimbursed for materials and other out-of-pocket expenses at cost. The rates identified in Exhibit "D" state the maximum rates Consultant shall charge under this Agreement. No premium rates, including, but not limited to, overtime or hazardous duty premiums, shall be charged unless authorized in Exhibit "D."

c. Equal Payment Fee. Consultant shall be paid equal amounts over time throughout a particular Project Directive, up to the stated fixed amount.

5.4 Intentionally Blank.

5.5 Each month during the term of this Agreement, as a prerequisite to payment for services, Consultant shall submit a written invoice to City's Harbor Department for services performed during the prior month, accompanied by such records and receipts as may be required by Section 5.6. Each such invoice shall bear a City Business Tax Registration Number and a Taxpayer Identification Number. Each invoice shall identify all services performed by Subconsultants. If payments are to be based on the performance of established milestones, Consultant shall bill as each milestone is completed, but not more often than once a month.

Consultant shall submit one (1) original and three (3) copies of each such invoice for payment in the format that contains the information specified in Exhibit "E." and that includes the following certification:

"I certify under penalty of perjury that the above bill is just and correct according to the terms of Agreement No. \_\_\_\_\_ and that payment has not been received. I further certify that I have complied with the provisions of the City's Living Wage Ordinance.

\_\_\_\_\_  
(signed)

5.6 Consultant shall submit supporting documents with each invoice, which may include, but not be limited to, provider invoices, receipts, payrolls, and time sheets. Consultant is not required to submit support for direct costs items of \$25 or less.

5.7 If Consultant utilizes Subconsultants to perform aspects of the Scope of Work, Consultant shall submit to City, with each monthly invoice, a Monthly Subconsultant Monitoring Report in the form attached hereto as Exhibit "F." Consultant shall provide an explanation for any item that does not meet or exceed the participation levels required by a particular Directive, with specific plans and recommendations for improved subconsultant utilization. Invoices will not be paid without a completed Monthly Subconsultant Monitoring Report form.

5.8 All sums due and payable to Consultant shall be paid as soon as, in the ordinary course of City business, the same may be reviewed and approved.

For payment and processing, all invoices shall be mailed to the following address:

Accounts Payable Section  
Harbor Department, City of Los Angeles  
P.O. Box 191  
San Pedro, CA 90733-0191

6. Recordkeeping and Audit Rights.

6.1 Consultant shall keep and maintain full, complete and accurate books of accounts and records of the services performed under this Agreement in accordance with generally accepted accounting principles consistently applied. Consultant's books and records shall be readily accessible to and open for inspection and copying at the premises by City, its auditors or other authorized representatives. Notwithstanding any other provision of this Agreement, failure to do so shall constitute a conclusive waiver of any right to compensation for such services as are otherwise compensable hereunder. Such books and records shall be maintained by Consultant for a period of three (3) years after completion of services to be performed under this Agreement or until all disputes, appeals, litigation or claims arising from this Agreement have been resolved.

6.2 During the term of this Agreement, City may audit, review and copy any and all writings (as that term is defined in Section 250 of the California Evidence Code) of Consultant and Subconsultants arising from or related to this Agreement or performance of the Scope of Work, whether such writings are (a) in final form or not, (b) prepared by Consultant, Subconsultants or any individual or entity acting for or on behalf of Consultant or a Subconsultant, and (c) without regard to whether such writings have previously been provided to City. Consultant shall be responsible for obtaining access to and providing writings of Subconsultants. Consultant shall provide City at Consultant's sole cost and expense a copy of all such writings within fourteen (14) calendar days of a written request by City. City's right shall also include inspection at reasonable times of the Consultant's office or facilities which are engaged in the performance of the Scope of Work. Consultant shall, at no cost to City, furnish reasonable facilities and assistance for such review and audit. Consultant's failure to comply with this Section 6.2 shall constitute a material breach of this Agreement and shall entitle City to withhold any payment due under this Agreement until such breach is cured.

7. Consultant Is An Independent Contractor.

Consultant, in the performance of the Scope of Work, is an independent contractor and not an agent or employee of City. Consultant shall not represent itself as an agent or employee of the City and shall have no power to bind the City in contract or otherwise.

8. Business Tax Registration Certificate.

City's 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 City, 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 City's Harbor Department. See <https://finance.lacity.org/how-register-btrc>.

9. Indemnification.

Except for the sole negligence or willful misconduct of the City, or any of its Boards, Officers, Agents, Employees, Assigns and Successors in Interest, Consultant undertakes and agrees to defend, indemnify and hold harmless the City and any of its Boards, Officers, Agents, Employees, Assigns, and Successors in Interest from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the City, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever, for death or injury to any person, including Consultant's employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of the negligent acts, errors, omissions or willful misconduct incident to the performance of this Agreement by Consultant or its subcontractors of any tier. Rights and remedies available to the City under this provision are cumulative of those provided for elsewhere in this Agreement and those allowed under the laws of the United States, the State of California, and the City.

10. Insurance.

10.1 Insurance procured by Consultant on Behalf of Consultant

In addition to and not as a substitute for, or limitation of, any of the indemnity obligations imposed by Section 9, Consultant shall procure and maintain at its sole cost and expense and keep in force at all times during the term of this Agreement the following insurance:

(a) Commercial General Liability Insurance

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 coverage 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 City if Best's is not available) within Consultant's normal limits of liability but not less than Five Million Dollars (\$5,000,000) 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 retention or self-insurance provided shall provide that any other insurance maintained by the Harbor Department 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 and a severability of interest clause. Each policy shall name the City of Los Angeles Harbor Department, its officers, agents and employees as Primary additional insureds.



(b) Automobile Liability Insurance

Automobile liability 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 City if Best's is not available) within Consultant's normal limits of liability but not less than One Million Dollars (\$1,000,000) covering damages, injuries or death resulting from each accident or claim arising out of any one claim or accident. Said insurance shall protect against claims arising from actions or operations of the insured, or by its employees. Coverage shall contain a defense of suits provision and a severability of interest clause. Each policy shall name the City of Los Angeles Harbor Department, its officers, agents and employees as Primary additional insureds.

(c) Workers' Compensation and Employer's Liability

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 Consultant shall comply with such provisions before commencing the performance of the tasks under this Agreement. Coverage for claims under U.S. Longshore and Harbor Workers' Compensation Act, if required under applicable law, shall be included. 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 City in any circumstance in which it is alleged that actions or omissions of the City contributed to the accident. Such Worker's Compensation and occupational disease requirements shall include coverage for all employees of Consultant, and for all employees of any subcontractor or other vendor retained by Consultant.

(d) Professional Liability Insurance

Consultant is required to provide Professional Liability insurance with respect to negligent or wrongful acts, errors or omissions, or failure to render services in connection with the professional services to be provided under this Agreement. This insurance shall protect against claims arising from professional services of the insured, or by its employees, agents, or contractors, and include coverage (or no exclusion) for contractual liability.

Consultant certifies that it now has professional liability insurance in the amount of Five Million Dollars (\$5,000,000), which covers 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.

Non-owned disposal site coverage shall also be provided if Consultant is handling, storing or generating hazardous materials or any material/substance otherwise regulated under governmental laws/regulations.

The insurance provided shall contain a severability of interest clause and shall provide that any other insurance maintained by the Harbor Department shall be excess

of Consultant's insurance and shall not contribute with it. In all cases, regardless of any deductible or retention, said insurance shall contain a defense of suits provision and severability of interest clause, have no exclusions for Contractual Liability, have no restrictions for Sole Liability of Consultant, and shall not contain any other exclusions contrary to this Agreement.

Each policy shall name the City of Los Angeles Harbor Department, its officers, agents and employees as Primary and Non-Contributory additional insureds.

#### 10.2 Insurance Procured by Consultant on Behalf of City

In addition to and not as a substitute for, or limitation of, any of the indemnity obligations imposed by Section 9, and where Consultant is required to name the City of Los Angeles Harbor Department, its officers, agents and employees as Primary additional insureds on any insurance policy required by this Agreement, Consultant shall cause City to be named as an additional insured on all policies it procures in connection with this Section 10. Consultant shall cause such additional insured status to be reflected in the original policy or by additional insured endorsement (CG 2010 or equivalent) substantially as follows:

"Notwithstanding any inconsistent statement in the policy to which this endorsement is attached, or any endorsement or certificate now or hereafter attached hereto, it is agreed that City, Board, their officers, agents and employees, are additional insureds hereunder, and that coverage is provided for all contractual obligations, operations, uses, occupations, acts and activities of the insured under Agreement No. \_\_\_\_, and under any amendments, modifications, extensions or renewals of said Agreement regardless of where such contractual obligations, operations, uses, occupations, acts and activities occur.

"The policy to which this endorsement is attached shall provide a 10-days notice of cancellation for nonpayment of premium, and a 30-days notice of cancellation for any other reasons to the Risk Manager.

"The coverage provided by the policy to which this endorsement is attached is primary coverage and any other insurance carried by City is excess coverage;

"In the event of one of the named insured's incurring liability to any other of the named insureds, this policy shall provide protection for each named insured against whom claim is or may be made, including claims by other named insureds, in the same manner as if separate policies had been issued to each named insured. Nothing contained herein shall operate to increase the company's limit of liability; and

"Notice of occurrences or claims under the policy shall be made to the Risk Manager of City's Harbor Department with copies to the City Attorney's Office."

#### 10.3 Required Features of Coverages

Insurance procured by Consultant in connection with this Section 10 shall include the following features:

(a) Acceptable Evidence and Approval of Insurance

Electronic submission is the required method of submitting Consultant's insurance documents. Consultant's insurance broker or agent shall register with the City's online insurance compliance system **KwikComply** at <https://kwikcomply.org/> and submit the appropriate proof of insurance on Consultant's behalf.

Upon request by City, Consultant shall furnish a copy of the binder of insurance and/or a full certified policy for any insurance policy required herein. This obligation is intended to, and shall, survive the expiration or earlier termination of this Agreement.

(b) 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 City.

(c) Notice of Cancellation

For each insurance policy described above, Consultant shall give a 10-day prior notice of cancellation or reduction in coverage for nonpayment of premium, and a 30-day prior notice of cancellation or reduction in coverage for any other reason, by written notice via registered mail and addressed to the City of Los Angeles Harbor Department, Attn: Risk Manager and the City Attorney's Office, 425 S. Palos Verdes Street, San Pedro, California 90731.

(d) Modification of Coverage

Executive Director, at his or her sole reasonable discretion, based upon recommendation of independent insurance consultants to City, 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.

(e) Renewal of Policies

At least thirty (30) days prior to the expiration of any policy required by this Agreement, Consultant shall renew or extend such policy in accordance with the requirements of this Agreement and direct their insurance broker or agent to submit to the City's online insurance compliance system **KwikComply** at <https://kwikcomply.org/> a renewal endorsement or renewal certificate 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 City's interests. The cost of such insurance shall be deducted from the next payment due Consultant.

#### 10.4 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 City, 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 City, 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 Department 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 its most recently filed 10-Q and its 10-K or audited annual financial statements for the three most recent fiscal years prior to Executive Director's consideration of approval of self-insurance and annually thereafter.
7. Consultant agrees to inform Department in writing immediately of any change in its status or policy which would materially affect the protection afforded Department by this self-insurance.
8. Consultant has complied with all laws pertaining to self-insurance.

#### 10.5 Accident Reports

Consultant shall report in writing to Executive Director within fifteen (15) calendar days after it, its officers or managing agents have knowledge of any accident or occurrence involving death of or injury to any person or persons, or damage in excess of Five Hundred Dollars (\$500.00) to property, occurring upon the premises, or elsewhere within the Port of Los Angeles if Consultant's officers, agents or employees are involved in such an accident or occurrence. Such report shall contain to the extent available (1) the name and address of the persons involved, (2) a general statement as to the nature and extent of injury or damage, (3) the date and hour of occurrence, (4) the names and addresses of known witnesses, and (5) such other information as may be known to Consultant, its officers or managing agents.

#### 11. Personal Services Agreement.

11.1 During the term of this Agreement, 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 City's Harbor Department.

11.2 Consultant acknowledges that it has been selected to perform the Scope of Work because of its experience, qualifications and expertise. Any assignment or other transfer of this Agreement or any part hereof shall be void provided, however, that Consultant may permit Subconsultant(s) to perform portions of the Scope of Work in accordance with Section 2.3. All Subconsultants whom Consultant utilizes, however, shall be deemed to be its agents. Subconsultants' performance of the Scope of Work shall not be deemed to release Consultant from its obligations under this Agreement or to impose any obligation on the City to such Subconsultant(s) or give the Subconsultant(s) any rights against the City.

12. Confidentiality.

Consultant shall not disclose any proprietary or confidential information of City to any third party or parties during or after the term of this Agreement without the prior written consent of City. The data, documents, reports, or other materials which contain information relating to the review, documentation, analysis and evaluation of the Scope of Work 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.

13. Affirmative Action.

Consultant 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 are incorporated herein by this reference and made a part of this Agreement. All subcontracts awarded shall contain a like nondiscrimination provision. See Exhibit "G."

14. Small/Very Small Business Enterprise Program and Local Business Preference Program.

It is the policy of City's Harbor Department to provide Small Business Enterprises (SBE), Very Small Business Enterprises (VSBE), and Minority-Owned, Women-Owned, Disabled Veteran Business Enterprises and all Other Business Enterprises (MBE/WBE/DVBE/OBE) an equal opportunity to participate in the performance of all City contracts in all areas where such contracts afford such participation opportunities. Consultant shall assist City's Harbor Department in implementing this policy and shall use its best efforts to afford the opportunity for SBEs, VSBEs, MBEs, WBEs, DVBEs, and OBEs to achieve participation in subcontracts where such participation opportunities present themselves and attempt to ensure that all available business enterprises, including SBEs, VSBEs, MBEs, WBEs, DVBEs, and OBEs, have equal participation opportunities which might be presented under this Agreement. See Exhibit "H."

It is also the policy of the Department to support an increase in local and regional jobs. The Department's Local Business Preference Program aims to benefit the Southern California region by increasing jobs and expenditures within the local and regional private sector. Consultant shall assist the City in implementing this policy and

shall use its best efforts to afford the opportunity for Local Business Enterprises to achieve participation in subcontracts where such participation opportunities present themselves.

NOTE: Prior to being awarded a contract with the City, Consultant and all Subconsultants must be registered on the City's Contracts Management and Opportunities Database, Los Angeles Business Assistance Virtual Network (LABAVN), at <http://www.labavn.org>.

15. Conflict of Interest.

Consultant has reviewed and understands 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 City and City's Harbor Department. All parties hereto agree that they are unaware of any financial or economic interest of any public officer or employee of City 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, City may immediately terminate this Agreement by giving written notice thereof. Consultant's signature of this Agreement constitutes its affirmation that any former employees of City or City's Harbor Department that are employed by Consultant and that assist in performing the Scope of Work shall be free of any conflicts of interest with respect to City and City's Harbor Department.

During the term of this Agreement, Consultant shall inform the Department in writing when Consultant, or any of its Subconsultants, employs or hires in any capacity, and for any length of time, a person who has worked for the Department as a Commissioner, officer or employee. Said notice shall include the individual's name and current position and their prior position and years of employment with the Department. Written notice shall be provided by Consultant to the Department within thirty (30) days of the employment or hiring of the individual.

16. Compliance with Applicable Laws.

Consultant's activities under this Agreement, including its performance of the Scope of Work, shall comply with all federal, state, municipal, local and departmental laws, ordinances, rules, regulations, and orders. If in any instance a City standard is more stringent than a state, federal or other requirement, the City standard shall be followed unless the Director notifies the Consultant otherwise in writing, in which case the requirements of said notification shall apply.

17. Trademarks, Copyrights and Patents.

Consultant shall promptly and fully inform Director in writing of any patents, trademarks or copyrights related to services provided under this Agreement or patent trademark or copyright disputes, existing or potential, which Consultant has knowledge of, relating to any idea, design, method, material, equipment or other matter connected to this Agreement. Consultant agrees to save, keep, hold harmless, protect and indemnify City 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 City of any materials supplied by Consultant in the performance of this Agreement.

18. Proprietary Information.

Writings, as that term is defined in Section 250 of the California Evidence Code (including, without limitation, drawings, specifications, estimates, reports, records, reference material, data, charts, documents, renderings, computations, computer tapes or disks, submittals and other items of any type whatsoever, whether in the form of writing, figures or delineations), which are obtained, generated, compiled or derived in connection with this Agreement (collectively hereafter referred to as "property"), are owned by City as soon as they are developed, whether in draft or final form. City has the right to use or permit the use of property and any ideas or methods represented by such property for any purpose and at any time without compensation other than that provided in this Agreement. Consultant hereby warrants and represents that City at all times owns rights provided for in this section free and clear of all third-party claims whether presently existing or arising in the future, whether or not presently known. Consultant need not obtain for City the right to use any idea, design, method, material, equipment or other matter which is the subject of a valid patent, unless such patent is owned by Consultant or one of its employees, or its Subconsultant or the Subconsultant's employees, in which case such right shall be obtained without additional compensation. Whether or not Consultant's initial proposal or proposals made during this Agreement are accepted by City, it is agreed that all information of any nature whatsoever connected with the Scope of Work, regardless of the form of communication, which has been or may be given by Consultant, its Subconsultants or on either's behalf, whether prior or subsequent to this Agreement becoming effective, to the City, its boards, officers, agents or employees, is not given in confidence. Accordingly, City or its designees may use or disclose such information without liability of any kind, except as may arise under valid patents.

19. Royalty-Free License.

If research or development is furnished in connection with this Agreement and if, in the course of such research or development, patentable work product is produced by Consultant, its officers, agents, employees, or Subconsultants, the City shall have, without cost or expense to it, an irrevocable, non-exclusive royalty-free license to make and use, itself or by anyone on its behalf, such work product in connection with any activity now or hereafter engaged in or permitted by City. Upon City's request, Consultant, at its sole cost and expense, shall promptly furnish or obtain from the appropriate person a form of license satisfactory to the City. It is expressly understood and agreed that, as between City and Consultant, the referenced license shall arise for City's benefit immediately upon the production of the work product, and is not dependent on the written license specified above. City may transfer such license to its successors in the operation or ownership of any real or personal property now or hereafter owned or operated by City.

20. City's Disclosure Obligations.

Consultant acknowledges that City is subject to laws, rules and/or regulations generally requiring it to disclose records upon request, which laws, rules and/or

regulations include, but are not limited to, the California Public Records Act (California Government Code Sections 6250 et seq.) ("Disclosure Laws").

21. 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 purpose hereof, unless otherwise provided by notice in writing from the respective parties, notice to City's Harbor Department shall be addressed to Executive Director, Los Angeles Harbor Department, P.O. Box 151, San Pedro, California 90733-0151, 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.

22. 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 it has an authorized TIN which shall be provided to the Department prior to payment under this Agreement. No payments will be made under this Agreement without a valid TIN.

23. Service Contractor Worker Retention Policy and Living Wage Requirements.

The Board of Harbor Commissioners of the City of Los Angeles adopted Resolution Nos. 19-8419 and 19-8420 on January 24, 2019, adopting the provisions of Los Angeles City Ordinance No. 185356 relating to Service Contractor Worker Retention ("SCWR"), Section 10.36 et seq. of the Los Angeles Administrative Code, as the policy of City's Harbor Department. Further, Charter Section 378 requires compliance with the City's Living Wage requirements as set forth by ordinance, Section 10.37 et seq. of the Los Angeles Administrative Code. Consultant shall comply with the policy wherever applicable. Violation of this provision, where applicable, shall entitle City to terminate this Agreement and otherwise pursue legal remedies that may be available.

24. Wage and Earnings Assignment Orders/Notices of Assignments.

Consultant and Subconsultants shall comply with all applicable state and federal employment reporting requirements for employees.

Consultant and Subconsultants 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. Consultant and Subconsultants shall fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments in accordance with Section 5230 et seq. of the California Family Code.

25. Equal Benefits Policy.

Board adopted Resolution No. 6328 on January 12, 2005, agreeing to adopt the provisions of Los Angeles City Ordinance No. 172,908, as amended, relating to Equal



Benefits, Section 10.8.2.1 et seq. of the Los Angeles Administrative Code, as a policy of City's Harbor Department. Consultant shall comply with the policy wherever applicable. Violation of this policy shall entitle the City to terminate any agreement with Consultant and pursue any and all other legal remedies that may be available. See Exhibit "I."

26. Compliance With Los Angeles City Charter Section 470(c)(12).

The Consultant, Subconsultants, and their Principals are obligated to fully comply with City of Los Angeles Charter Section 470(c)(12) and related ordinances, regarding limitations on campaign contributions and fundraising for certain elected City officials or candidates for elected City office if the agreement is valued at \$100,000 or more and requires approval of a City elected official. Additionally, Consultant is required to provide and update certain information to the City as specified by law. Any Consultant subject to Charter Section 470(c)(12), shall include the following notice in any contract with a subconsultant expected to receive at least \$100,000 for performance under this Agreement:

Notice Regarding Los Angeles Campaign Contribution and Fundraising Restrictions

As provided in Charter Section 470(c)(12) and related ordinances, you are a subconsultant on Harbor Department Agreement No. \_\_\_\_\_. Pursuant to City Charter Section 470(c)(12), subconsultant and its principals are prohibited from making campaign contributions and fundraising for certain elected City officials or candidates for elected City office for 12 months after the Agreement is signed. Subconsultant is required to provide to Consultant names and addresses of the subconsultant's principals and contact information and shall update that information if it changes during the 12 month time period. Subconsultant's information must be provided to Consultant within 10 business days. Failure to comply may result in termination of the Agreement or any other available legal remedies including fines. Information about the restrictions may be found at the City Ethics Commission's website at <http://ethics.lacity.org/> or by calling 213-978-1960.

Consultant, Subconsultants, and their Principals shall comply with these requirements and limitations. Violation of this provision shall entitle the City to terminate this Agreement and pursue any and all legal remedies that may be available.

27. State Tidelands Grants.

This Agreement is entered into in furtherance of and as a benefit to the State Tidelands Grant and the trust created thereby. Therefore, this Agreement is at all times subject to the limitations, conditions, restrictions and reservations contained in and prescribed by the Act of the Legislature of the State of California entitled "An Act Granting to the City of Los Angeles the Tidelands and Submerged Lands of the State Within the Boundaries of Said City," approved June 3, 1929 (Stats. 1929, Ch. 651), as amended, and provisions of Article VI of the Charter of the City of Los Angeles relating to such lands. Consultant agrees that any interpretation of this Agreement and the

terms contained herein must be consistent with such limitations, conditions, restrictions and reservations.

28. Construction of Agreement.

This Agreement shall not be construed against the party preparing the same, shall be construed without regard to the identity of the person who drafted such and shall be construed as if all parties had jointly prepared this Agreement and it shall be deemed their joint work product; each and every provision of this Agreement shall be construed as though all of the parties hereto participated equally in the drafting hereof; and any uncertainty or ambiguity shall not be interpreted against any one party. As a result of the foregoing, any rule of construction that a document is to be construed against the drafting party shall not be applicable.

29. Titles and Captions.

The parties have inserted the section titles in this Agreement only as a matter of convenience and for reference, and the section titles in no way define, limit, extend or describe the scope of this Agreement or the intent of the parties in including any particular provision in this Agreement.

30. Modification in Writing.

This Agreement may be modified only by written agreement of all parties. Any such modifications are subject to all applicable approval processes required by, without limitation, City's Charter and City's Administrative Code.

31. Waiver.

A failure of any party to this Agreement to enforce the Agreement upon a breach or default shall not waive the breach or default or any other breach or default. All waivers shall be in writing.

32. Governing Law.

This Agreement is made and entered into in the State of California and shall in all respects be construed, interpreted, enforced and governed under and by the laws of the State of California, without reference to choice of law rules.

33. Severability.

Should any part, term, condition or provision of this Agreement be declared or determined by any court of competent jurisdiction to be invalid, illegal or incapable of being enforced by any rule of law, public policy, or city charter, the validity of the remaining parts, terms, conditions or provisions of this Agreement shall not be affected thereby, and such invalid, illegal or unenforceable part, term, condition or provision shall be treated as follows: (a) if such part, term, condition or provision is immaterial to this Agreement, then such part, term, condition or provision shall be deemed not to be a part of this Agreement; or (b) if such part, term, condition or provision is material to this Agreement, then the parties shall revise the part, term, condition or provision so as to

comply with the applicable law or public policy and to effect the original intent of the parties as closely as possible.

34. Jurisdiction.

The parties hereto consent to the jurisdiction of the State of California for the enforcement of this Agreement.

35. Integrated Agreement.

This Agreement contains the entire understanding and agreement between the parties hereto with respect to the matters referred to herein. No other representations, covenants, undertakings, or prior or contemporaneous agreements, oral or written, regarding such matters which are not specifically contained, referenced, and/or incorporated into this Agreement by reference shall be deemed in any way to exist or bind any of the parties. Each party acknowledges that it has not been induced to enter into the Agreement and has not executed the Agreement in reliance upon any promises, representations, warranties or statements not contained, referenced, and/or incorporated into the Agreement. **THE PARTIES ACKNOWLEDGE THAT THIS AGREEMENT IS INTENDED TO BE, AND IS, AN INTEGRATED AGREEMENT.**

36. Exhibits; Sections.

All exhibits to which reference is made in this Agreement are deemed incorporated in this Agreement, whether or not actually attached. To the extent the terms of an exhibit conflict with or appear to conflict with the terms of the body of the Agreement, the terms of the body of the Agreement shall control. References to sections are to sections of this Agreement unless stated otherwise.

37. Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute together one and the same instrument.

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

THE CITY OF LOS ANGELES, by its Board of Harbor Commissioners

Date: \_\_\_\_\_

By: \_\_\_\_\_  
EUGENE D. SEROKA  
Executive Director

Attest: \_\_\_\_\_  
Secretary

APEX Companies, LLC

Date: 1-27-2020

By: Darwin L. Nelson

Name: Darwin L. Nelson

Title: Chief Operating Officer

Attest: Neil F. Irish

Name: NEIL F. IRISH

Title: VICE PRESIDENT

APPROVED AS TO FORM AND LEGALITY

1/31, 2020  
MICHAEL N. FEUER, City Attorney  
Janna B. Sidley, General Counsel

By: [Signature]  
Minah Park, Deputy

Account #	_____	W.O. #	_____
Ctr/Div #	_____	Job Fac. #	_____
Proj/Prog #	_____		
Budget FY:		Amount:	
TOTAL			
For Acct/Budget Div. Use Only:			
Verified by:	_____		
Verified Funds Available:	_____		
Date Approved:	_____		

**AGREEMENT**  
**BETWEEN THE CITY OF LOS ANGELES**  
**AND**  
**APEX COMPANIES, LLC**

Account:	54260	21995
Center:	0330	7000
FY 2019/20	63,750	239,821
FY 2020/21	297,500	1,119,167
FY 2021/22	297,500	1,119,167
FY 2022/23	233,750	879,345
<b>Total:</b>	<b>\$892,500</b>	<b>\$3,357,500</b>

Agmt Total:           \$4,250,000

For Acct/Budget Div. Use Only:

Verified by:           Fdh          

Verified Funds Available           \$          

Date Approved           1/31/20

# EXHIBIT A

## Project Scope of Work

Consultants may be asked to perform one or more of the following services on an as-needed basis. A general description of each activity and the minimum requirements to provide these services are provided below.

- A. Phase I Environmental Site Assessments
- B. Phase II Remedial Investigations/Site Characterizations
- C. Site Monitoring and Sampling
- D. Remedial Feasibility Studies and Action Plans
- E. Remedial Actions and Remediation Systems Operation & Maintenance
- F. Site Closure Reports
- G. Environmental Compliance Assessments
- H. Regulatory Agency Coordination and Regulatory Expertise
- I. Technical Expertise and Design Services
- J. Review of Environmental Documents
- K. Litigation Support Services
- L. Environmental Management System (EMS) ISO 14001:2015 Support Services

Some of these services are described in more detail below.

### **A. Phase I Environmental Site Assessments for Property Acquisitions/Divestitures**

As part of the Harbor Department's ongoing property acquisition and divestiture programs, Phase I Environmental Site Assessments, following ASTM E1527 - 13 Standard Practice for Environmental Site Assessments, are required. These assessments must be performed by Environmental Professionals, as defined in ASTM E1527-13, to determine existing environmental conditions as a baseline for new Harbor Department tenants, prior to property acquisition or divestments, and to establish site conditions prior to release of lease from a current tenant. The Harbor Department may also conduct Phase I Site Assessments on parcels slated for development. Phase I may include surveys for lead-based paint and/or asbestos containing material. Based on the findings of these site assessments, further characterization work may be required.

### **B. Phase II- Remedial Investigations/Site Characterizations**

The various activities within the Port which may require remedial investigations/site characterizations include:

- Properties identified in Phase I Site Assessments as having potential contamination.

## EXHIBIT A

- Harbor Department-owned properties involved in lease renewals and/or terminations.
- Harbor Department -owned properties involved in construction projects or site improvements associated with development.

Parcels which may require remedial investigations/site characterizations range in size from as small as 5,000 square feet to 300 acres, with an average size of approximately 5 acres. This work is performed in coordination with one or more divisions of the Harbor Department, such as Engineering, Construction, Real Estate, City Attorney, Risk Management, Port Police, Planning and Economic Development, and Marketing Divisions.

Based on historical land uses within the area, typical contaminants which may be present in soil and/or groundwater are petroleum hydrocarbons, volatile organic compounds including halogenated volatile organics, and heavy metals (primarily lead, copper, arsenic, and cadmium). The groundwater depth varies from approximately 5 to 25 feet below surface. The direction and gradient of groundwater movement at the investigation sites is variable. The groundwater quality is primarily brackish and considered non-potable. The underlying sediments contain formations from the Quaternary-Recent (Alluvium Formation) which consists of river sands and gravels that occur from the surface to a depth of approximately 200 feet. Some sites may be located on historic dredge material.

Consultant services are requested to perform remedial investigations/site characterizations which adequately define and characterize the nature and extent of soil and/or groundwater contamination that may exist at the project site. Investigations and characterizations must meet requirements of both the Harbor Department's site characterization guidelines and the applicable regulatory oversight agencies. The Consultant will coordinate and handle the disposal of all investigation derived waste materials.

Site investigations will be performed using a variety of investigatory techniques including geophysical, soil gas, hand auger, direct push and CPT, soil borings (with concurrent soil logging using USCS protocol), and monitoring well installation and sampling. Field investigations must be designed and directed by either a California licensed Professional Geologist, Professional Engineering Geologist, Certified Hydrogeologist, or Professional Engineer (PG, C.HG, C.E.G. or PE) with demonstrable experience conducting and overseeing such work.

Soil, groundwater, and soil vapor samples may be collected during the site characterization activities. These samples shall be submitted under chain of custody protocol to a laboratory accredited by the State of California, Water Resources Control Board to perform analyses per the Environmental Laboratory Accreditation Program (ELAP). Laboratory results must be

## **EXHIBIT A**

provided in 5 to 7 business days as the normal turn-around time. Please indicate laboratory surcharges for expedited turn-around time (48 hour, and 24 hour).

### **C. Site Monitoring and Sampling**

Scope of work will include, but is not limited to, well maintenance, additional well installation, quarterly sample collections, and reporting. Sampling activities will be conducted by personnel working under the direct supervision of a California Licensed Professional Engineer (Civil) or Professional Geologist. All samples collected that require analysis will be analyzed by a California certified environmental laboratory with a standard turnaround time of no more than 5 to 7 business days. The consultant will follow protocols set by industry and lead agency standards for collection and analysis of samples. In addition, the consultant must demonstrate knowledge and past experience in collecting soil, soil-gas, sediments, water, and groundwater samples.

### **D. Remedial Feasibility Studies and Action Plans**

The Consultant may be requested to develop remedial feasibility studies and action plans to analyze and evaluate the effectiveness and feasibility of clean-up options for particular sites. This may involve, but not be limited to, the following:

- Fate and Transport Studies;
- Pilot Test Workplans and Treatability Studies;
- Evaluation of remedial action alternatives;
- Recommended remedial action with justification;
- Risk Assessments (health-based and ecological);
- Evaluation of public health and environmental concerns; and
- Setting clean-up levels.

Fate and transport studies may include contaminant modeling from soil to groundwater to potential sensitive receptors and from soil to atmosphere to potential sensitive receptors. The Consultant will seek an agreement with the lead agency on the approved modeling approach and software when needed. Using the Conceptual Site Model (CSM), the Consultant will evaluate whether potential risk to human health and/or the environment exists (i.e. whether there is a complete pathway). Objectives of a human health risk assessment include:

- Evaluation of baseline risks to human health and the environment as compared to potential incremental human health risks from the presence of chemicals of concern.
- Estimation of mass concentrations of chemicals that can remain



## EXHIBIT A

on site and not pose a statistical threat to protection of human health and the environment.

- Evaluation of existing/potential future risks to on- and off-site human receptors.
- Evaluation and comparison of the potential reduction in risk to human health and the environment from identified remedial alternatives.

If the CSM suggests a complete exposure pathway to ecological receptors, an ecological assessment may be conducted. The ecological assessment can be either a qualitative and/or quantitative appraisal of the actual or potential effects on the environment.

The remedial feasibility studies and action plans should discuss remedial alternatives for the restoration of a site as well as any associated environmental impacts. The plans must adhere to federal and state protocols and shall include the following elements: executive summary; preliminary remedial technology; development of alternatives; evaluation of alternatives; risk assessment; and a remedial/restoration schedule. The plans may also need to consider the full range of clean-up alternatives available from no action to complete removal of contaminated material to achieve background or non-detectable levels. This detailed evaluation should address technical, environmental, public health, institutional, and cost analyses. Remediation alternatives that may be considered include, but are not limited to:

- In-situ Technologies
  - Bioremediation
  - Capping/Containment
  - Chemical Dehalogenation
  - Dual Phase Extraction
  - In Situ Flushing/Chemical Oxidation
  - In Situ Thermal Treatment Methods
  - Monitored Natural Attenuation
  - Permeable Reactive Barriers
  - Phytoremediation
  - Thermal Desorption/Destruction
  - Soil Vapor Extraction and Air Sparging
- Ex-situ Technologies
  - Activated Carbon Treatment
  - Air Stripping
  - Advanced Chemical Oxidation Processes
  - Ion Exchange
  - Incineration

## **EXHIBIT A**

- Pump and Treat
- Soil Excavation
- Soil Washing

The remedial feasibility studies and action plans will be submitted to the Environmental Management Division for review and comment. In most cases, the Consultant that develops the remediation plan will be precluded from undertaking the actual remediation work, but may have a role in the remediation management and oversight.

### **E. Remedial Actions and Remediation Systems Operation & Maintenance**

In some projects, consultants may be required to conduct removal actions or implement remedial action plans. This may involve excavations, transport and treatment/disposal of contaminated media and/or in-situ treatment of contaminated soil and groundwater.

The consultant must have experience in installation and operations of in-situ soil, groundwater and/or free product remediation systems, and assessment of operation and maintenance (O&M) programs in order to optimize system performance. Experience with implementation of project data management information systems (PDMIS) as applied to remediation systems is desired.

### **F. Site Closure Reports**

A site closure report may need to be developed for submittal to the regulatory agencies. The report should include, but not be limited to, a discussion of the post-closure maintenance and monitoring required to ensure the permanent integrity of the closed site, and a discussion that delineates the specific measures for closing a site in a manner that protects human health and the environment. These reports shall be prepared under the supervision of and signed and stamped by a California licensed PG, C.HG, C.E.G. or PE, or Risk Assessment professional.

### **G. Environmental Compliance Assessments**

The Harbor Department may require environmental compliance assessments to be performed on various facilities. The assessment will include, but not be limited to, the following: identification and documentation of compliance status; review of all facility permits; identification of sources of wastes; sampling and analysis of waste products; onsite inspection of facility conditions and practices; review of pertinent facility documents; compliance with environmental provisions in Harbor Department leases and tariffs; and recommendations and conclusions regarding areas of environmental concern. Environmental Compliance Audits must be

## **EXHIBIT A**

performed under the oversight of a Professional Geologist, Certified Hydrogeologist, or Professional Engineer with at least 10 years of demonstrable environmental experience.

### **H. Regulatory Agency Coordination and Regulatory Expertise**

The Consultant may be requested to identify, meet, and coordinate with local, state, and federal regulatory agencies to procure applicable permits and/or to facilitate the review and approval of remedial investigations/site characterizations, remedial feasibility studies and action plans, risk assessments, site closure reports, waste classifications, and environmental compliance assessments. The Consultant may be requested to provide guidance and expertise regarding applicable environmental rules and regulations pertaining to environmental conditions and issues for a project site, project activity or Port operations. The consultant will demonstrate recent and relevant working experience with EPA, the LA-RWQCB, the DTSC the local CUPA, and the SCAQMD.

### **I. Technical Expertise and Design Services**

The Consultant may be requested to provide technical expertise and design services to address or assess potential environmental technologies, alternatives, or impacts involving a broad spectrum of environmental media, involving air quality, water quality, land use, energy, and natural resources.

Tasks may also include design of remediation systems. The design process will include, but is not limited to:

- Pilot System design and testing;
- Development of design drawings approved by a qualified California Professional Engineer;
- Cost estimation, procurement, and scheduling including applicable permits;
- System Construction and Operation; and
- System Optimization Analysis.

The consultant's technical expertise may be requested to assist in development or enhancement of environmental management systems (EMS), recycling or sustainability programs, and to prepare guidance documents for various Harbor Department environmental programs. The Consultant may also be asked by the Harbor Department to provide defensible estimates of potential site restoration/remediation costs and remediation schedules.

## **EXHIBIT A**

### **J. Review of Environmental Documents**

The Consultant may be requested to review and summarize the findings of reports submitted to the Harbor Department, or obtain and review reports in regulatory agency files, involving remedial investigations/site characterizations, feasibility studies, remedial action plans, risk assessments, site closure reports, environmental compliance assessments, contract bid specifications, and other documents.

### **K. Litigation Support Services**

The Consultant may be requested to provide technical support to attorneys in assessing environmental liability (Phase I Environmental Site Assessments, Regulatory Compliance Audits, Health and Safety Audits), supporting challenging regulatory agency negotiations, and supporting litigation. These tasks may involve: assessing environmental damages; designing cost allocations for multi-party concerns; preparing technical positions and expert reports; participating in mediations; providing deposition and/or trial testimony as a testifying and/or non-testifying expert witness; and in critiquing an opposing side's position for National Contingency Plan (NCP) compliance, relative to standard of practice and scientific merit. Experience working with attorneys representing land owners in transactional issues, providing support during deposition, and expert testimony during deposition and trial phases is desired.

### **L. Environmental Management System ISO 14001:2015 Support**

The overall goal of the EMS is to drive systematic continual environmental improvements through the use of a Plan-Do-Check-Act model where current and planned practices are evaluated based on their potential environmental impact. Improvements are being achieved through an innovative education and communication program that incorporates all levels of staff into the environmental management process. The Consultant may be requested to provide technical support to EMD's Environmental Management System Coordinator and the Construction and Maintenance Division (C&M). This may include the following tasks:

- Implementation of EMS objectives and targets
- Preparation of operational controls
- Addressing and resolving outstanding EMS  
Continual Improvement Forms
- Update and maintain document control systems for EMS
- Prepare materials, provide supplies, attend and facilitate on-site monthly action team and quarterly Core Team meetings

## **EXHIBIT A**

- Assist EMD staff and C&M staff in periodic walk through inspections
- Assist in preparation of internal EMS communications via the EMS newsletter and preparation and participation in the ISO 14001 surveillance audit and external certification audit.

**Exhibit "B"**  
Form of Directive

(Date)  
(Consultant)  
(Consultant address)  
(City, State, Zip)

Attention: (Project Manager)

Subject: Directive No. 1

Project Name

Pursuant to Section 2.2(a) of Agreement No. \_\_\_\_\_, after receipt of a written Notice to Proceed signed by the Director of the Environmental Management Division, Consultant shall proceed with the following:

Task Services	Authorized Amount
---------------	-------------------

Consultant shall provide all required task, services, and deliverables in accordance with Exhibit "A" to Agreement No. \_\_\_\_\_.

Consultant shall complete the work within \_\_\_ calendar days from City's transmittal of its written Notice to Proceed.

Consultant shall undertake the following MBE/WBE/SBE/VSBE/DVBE/OBE utilization in connection with its performance of this Directive No. \_\_\_\_.

Consultant acknowledges that the terms and conditions of Agreement No. \_\_\_\_ govern this Directive and that its signature below reflects its agreement with the terms and conditions of this Directive No. \_\_\_\_.

If you have any questions, please contact \_\_\_\_\_ at (310) 732-\_\_\_\_\_.

ACCEPTED:

(Consultant Name)  
Consultant  
Date:

Michael DiBernardo  
Deputy Executive Director  
Date:

**Exhibit "C"**  
Form of Notice to Proceed

(Date)  
(Consultant)  
(Consultant address)  
(City, State, Zip)

Attention: (Project Manager)

Subject: Notice to Proceed - Directive No. \_\_\_\_  
Project Name

This is to notify and direct you to commence performance of the subject Directive.  
Enclosed is your set of the executed Directive documents.

If you have any questions, please contact \_\_\_\_\_ at (310) 732-\_\_\_\_\_.

Very truly yours,

Director, Environmental Management Division

Enclosure: Directive No. \_\_\_\_

# EXHIBIT D



Apex Companies, LLC  
1962 Freeman Avenue • Signal Hill, CA 90755  
P: (562) 597-1055 • F: (562) 597-1070

## APEX- POLA FEE SCHEDULE

<u>Labor Classifications</u>	<u>Unit Price</u>
<b>Senior Professionals</b>	
Principal II* .....	\$194/hr
Principal I* .....	\$185/hr
Senior III* .....	\$173/hr
Senior II* .....	\$163/hr
Senior I* .....	\$154/hr
Project* .....	\$144/hr
<b>Mid Level Professionals</b>	
Senior Staff* .....	\$130/hr
Staff* .....	\$116/hr
Project Assistant* .....	\$92/hr
<b>Support Staff</b>	
Field Superintendent .....	\$105/hr
Remediation Technician II .....	\$89/hr
Remediation Technician I .....	\$84/hr
Technician .....	\$84/hr
Field Labor Support .....	\$79/hr
CAD Designer .....	\$79/hr
Word Processor .....	\$79/hr
Administrator .....	\$76/hr
Accounting Clerk .....	\$76/hr
Accounting Manager .....	\$133/hr
Contracts Manager .....	\$122/hr
<b>Unit Price and Lump Sum Programs</b>	
Apex will gladly supply quotations for unit priced or lump sum / fixed fee programs. These quotations can be specific to a given task or a comprehensive and detailed scope of work.	
<b>Notes</b>	
* Professional Positions include the following disciplines: Air Quality Scientists; Chemist; Engineer; Environmental Scientist; Geochemist; Geologist; Hydrogeologist; Microbiologists; and Toxicologist.	
<b>Other Direct Charges</b>	
	<b>Unit Price</b>
Fee for General & Administrative Charges – Applied to subcontractors	5%

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**EXHIBIT D**



Apex Companies, LLC  
 1402 Eisenhower Avenue - Fremont Hill, CA 90755  
 P: (902) 997-1055 • F: (562) 997-1070

**APEX – POLA CONSTRUCTION FEE SCHEDULE**

<u>Labor Classifications</u>	<u>Unit Price</u>
<b>CONSTRUCTION CREW- Non-Prevailing Wages Projects</b>	
Construction General Laborer .....	\$70/hr
Construction Skilled Laborer .....	\$75/hr
Heavy Equipment Operator I (equipment under 21,000 lbs).....	\$80/hr
Heavy Equipment Operator II (equipment over 21,000 lbs).....	\$85/hr
Foreman .....	\$105/hr
Site Superintendent .....	\$110/hr
<b>CONSTRUCTION CREW- Prevailing Wages Projects</b>	
Construction General Laborer .....	\$70/hr
Construction Skilled Laborer .....	\$75/hr
Heavy Equipment Operator I (equipment under 21,000 lbs).....	\$100/hr
Heavy Equipment Operator II (equipment over 21,000 lbs).....	\$105/hr
Foreman .....	\$105/hr
Site Superintendent .....	\$110/hr

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## **EXHIBIT D**

### **CITY OF LOS ANGELES, HARBOR DEPARTMENT**

#### **Allowable Expenditures**

##### Subconsultant/Subcontractors

The cost of services rendered by approved subconsultants/subcontractors will be paid at cost plus 5% markup.

##### Equipment Rental

If equipment must be rented for use on the field, the equipment rental will be reimbursed at cost.

##### Travel and Subsistence (Lodging, Meals, Airfare)

To qualify for travel reimbursements, travel destination must be farther than 50 miles from both the traveler's primary residence and their work location. Travel reimbursements will be at cost.

Lodging and Meals & Incidental Expense (M&IE) are reimbursed at the approved Federal rate posted at [www.gsa.gov](http://www.gsa.gov). These rates can change from month to month. M&IE is only reimbursed if lodging expenses are incurred. M&IE are prorated on the first and last day of travel. See federal website for details.

Standard Mileage Rate is reimbursed at the approved IRS rate posted at [www.irs.gov](http://www.irs.gov).

##### Reproduction

All outside reproduction materials and supplies will be charged at cost.

##### Other Direct Charges

Any other direct charges, not explicitly listed in the agreement will be reimbursed at cost, if found to be reasonable and necessary by the Project Manager.

##### Court Appearances

When staff appears as expert witnesses in court trials, mediations, arbitration hearings and depositions, their time will be charged at 1.5 times the individual hourly rate stated in consultant's rate schedule.

#### INVOICE PAYMENTS

All sums due and payable to Consultant shall be paid as soon as, in the ordinary course of City business.

#### CONFLICTS

In the case of conflicting information, the provisions of this page (Allowable Expenditures) supersede any other rate/charge information contained elsewhere in the Agreement.

#### PREVAILING WAGE

Where prevailing wage applies, City shall pay the prevailing wage pursuant to California Labor Code § 1770, et. seq., City of Los Angeles Charter § 377 and Administrative Code § 10.7 regardless of the rates listed on Consultant's rate sheet.

# EXHIBIT E

Company Letterhead

Agreement No.:  
ADP No.:  
BTRC No.:  
TIN:

Invoice Number:  
Date:  
POLA PM:

Task number, Project Title  
Billing Period: Month/Day/Year to Month/Day/Year

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PERSONNEL:	Rate/Hour	Current Hours	Cumulative Hours	Current Total
Name & Title	\$0.00	0	0	\$0.00
"	\$0.00	0	0	\$0.00
"	\$0.00	0	0	\$0.00
"	\$0.00	0	0	\$0.00
"	\$0.00	0	0	\$0.00
"	\$0.00	0	0	\$0.00
<b>Total Labor Cost:</b>				<b>\$0.00</b>

SUBCONSULTANT:	Activity	Current Total
Name of Subconsultant	Work Performed	\$0.00
"		\$0.00
"		\$0.00
"		\$0.00
<b>Total Subconsultant Cost:</b>		<b>\$0.00</b>

REIMBURSABLE EXPENSES:	Current Total	
Mileage, Parking, Car Rentals, Reproduction/Copies, etc.	\$0.00	
"	\$0.00	
"	\$0.00	
"	\$0.00	
"	\$0.00	
<b>Total Other Direct Cost:</b>		<b>\$0.00</b>

REMIT PAYMENT TO: Company Name Address City, ST Zip
--

**TOTAL AMOUNT NOW DUE: \$0.00**

Progress Report: Describe the work undertaken during this billing period. Identify accomplishments and challenges encountered. Provide other info as appropriate.

I certify under penalty of perjury that the above bill is just and correct according to the terms of Agmt # \_\_\_\_\_ and that payment has not been received. I further certify that I have complied with the provisions of the City's Living Wage Ordinance

\_\_\_\_\_  
Consultant Representative Name

Date \_\_\_\_\_  
APPROVED AS TO SCOPE AND  
AMOUNT OF WORK PERFORMED  
\_\_\_\_\_  
POLA PROJECT MANAGER

# EXHIBIT F

## MONTHLY SUBCONSULTANT MONITORING REPORT

Instructions: Please indicate the SBE/SBE/MBE/WBE/OBE/DBE participation levels achieved for the month of \_\_\_\_\_ covered by the referenced contract number.

Contract No. \_\_\_\_\_ Division \_\_\_\_\_ Contractor Administrator \_\_\_\_\_

Contractor \_\_\_\_\_ \*Group \_\_\_\_\_ Contract Title/Project \_\_\_\_\_

Contract Amount \_\_\_\_\_ Start Date \_\_\_\_\_ End Date \_\_\_\_\_

Total Amount Invoiced to Date \_\_\_\_\_

SBE Mandated Participation Percentage \_\_\_\_\_ SBE \_\_\_\_\_ VSBE \_\_\_\_\_

Proposed Subcontractor Percentage \_\_\_\_\_ MBE \_\_\_\_\_ WBE \_\_\_\_\_ OBE \_\_\_\_\_ DVBE \_\_\_\_\_

	Name of Subcontractor	Type of Work Performed	Group SBE/VSBE/MBE/WBE/OBE/DBE	PROPOSED			ACTUALS		
				Original Proposed Amount	Original Proposed Percentage	Amount Paid to Date	Amount Paid to Date Percentage	Contract Amount Percentage	
1									
2									
3									
4									
5									
6									
7									
8									
9									
10									

**Directions:**  
 Original Proposed Percentage: Original Proposed Percentage of Total Contract Amount  
 Amount Paid to Date Percentage: Percentage of Total Amount Invoiced to Date  
 Contract Amount Percentage: Percentage Paid to Date of Total Contract Amount

\* Group = (SBE/VSBE/MBE/WBE/OBE/DVBE/DBE)

## **EXHIBIT G**

### **AFFIRMATIVE ACTION PROGRAM PROVISIONS**

#### **Sec. 10.8.4 Affirmative Action Program Provisions.**

Every non-construction and construction Contract with, or on behalf of, the City of Los Angeles for which the consideration is \$25,000 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 a 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, color, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status, domestic partner status or medical condition.

1. This section 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 shall, 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, color, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status, domestic partner status or medical condition.

C. At the request of the Awarding Authority or the DAA, 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, color, religion, national origin, ancestry, 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 DAA for the purpose of investigation to ascertain compliance with the Affirmative Action Program provisions of City Contracts and, upon 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 a City Contract. The failure shall only be established upon a finding to that effect by the Awarding

## EXHIBIT G

Authority, on the basis of its own investigation or that of the DAA. No 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, the breach may be the basis for a determination by the Awarding Authority or the Board of Public Works that the Contractor is a non-responsible bidder or proposer pursuant to the provisions of Section 10.40 of this Code. In the event of such determination, the 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 for each person for each calendar day on which the 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 DAA 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. By affixing its signature to a Contract that is subject to this article, the Contractor shall agree to adhere to the provisions in this article for the duration 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 Program.

1. The Contractor certifies and agrees to immediately implement good faith effort measures to recruit and employ minority, women and other potential employees in

## **EXHIBIT G**

a non-discriminatory manner including, but not limited to, the following actions as appropriate and available to the Contractor's field of work. The Contractor shall:

(a) Recruit and make efforts to obtain employees through:

(i) Advertising employment opportunities in minority and other community news media or other publications.

(ii) Notifying minority, women and other community organizations of employment opportunities.

(iii) Maintaining contact with schools with diverse populations of students to notify them of employment opportunities.

(iv) Encouraging existing employees, including minorities and women, to refer their friends and relatives.

(v) Promoting after school and vacation employment opportunities for minority, women and other youth.

(vi) Validating all job specifications, selection requirements, tests, etc.

(vii) Maintaining a file of the names and addresses of each worker referred to the Contractor and what action was taken concerning the worker.

(viii) Notifying the appropriate Awarding Authority and the DAA in writing when a union, with whom the Contractor has a collective bargaining agreement, has failed to refer a minority, woman or other worker.

(b) Continually evaluate personnel practices to assure that hiring, upgrading, promotions, transfers, demotions and layoffs are made in a non-discriminatory manner so as to achieve and maintain a diverse work force.

(c) Utilize training programs and assist minority, women and other employees in locating, qualifying for and engaging in the training programs to enhance their skills and advancement.

(d) Secure cooperation or compliance from the labor referral agency to the Contractor's contractual Affirmative Action Program obligations.

(e) Establish a person at the management level of the Contractor to be the Equal Employment Practices officer. Such individual shall have the authority to disseminate and enforce the Contractor's Equal Employment and Affirmative Action Program policies.

(f) Maintain records as are necessary to determine compliance with Equal Employment Practices and Affirmative Action Program obligations and make the records available to City, State and Federal authorities upon request.

## EXHIBIT G

(g) Establish written company policies, rules and procedures which shall be encompassed in a company-wide Affirmative Action Program for all its operations and Contracts. The policies shall be provided to all employees, Subcontractors, vendors, unions and all others with whom the Contractor may become involved in fulfilling any of its Contracts.

(h) Document its good faith efforts to correct any deficiencies when problems are experienced by the Contractor in complying with its obligations pursuant to this article. The Contractor shall state:

- (i) What steps were taken, how and on what date.
- (ii) To whom those efforts were directed.
- (iii) The responses received, from whom and when.
- (iv) What other steps were taken or will be taken to comply and when.
- (v) Why the Contractor has been or will be unable to comply.

2. Every contract of \$25,000 or more which may provide construction, demolition, renovation, conservation or major maintenance of any kind shall also comply with the requirements of Section 10.13 of the Los Angeles Administrative Code.

L. The Affirmative Action Program required to be submitted hereunder and the pre-registration, pre-bid, pre-proposal or pre-award conference which may be required by 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;
6. The entry of qualified women, minority and all other journeymen into the industry; and



## **EXHIBIT G**

7. The provision of needed supplies or job conditions to permit persons with disabilities to be employed, and minimize the impact of any disability.

M. Any adjustments which may be made in the Contractor's work force to achieve the requirements of the City's Affirmative Action Program in purchasing and construction shall be accomplished by either an increase in the size of the work force or replacement of those employees who leave the work force by reason of resignation, retirement or death and not by termination, layoff, demotion or change in grade.

N. 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 engaged in the performance of City Contracts.

O. All Contractors subject to the provisions of this article shall include a similar 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.

## EXHIBIT H

### SMALL/VERY SMALL BUSINESS ENTERPRISE PROGRAM LOCAL BUSINESS PREFERENCE PROGRAM

(1) SMALL/VERY SMALL BUSINESS ENTERPRISE PROGRAM:

The Harbor Department is committed to creating an environment that provides all individuals and businesses open access to the business opportunities available at the Harbor Department in a manner that reflects the diversity of the City of Los Angeles. The Harbor Department's Small Business Enterprise (SBE) Program was created to provide additional opportunities for small businesses to participate in professional service and construction contracts. An overall Department goal of 25% SBE participation, including 5% Very Small Business Enterprise (VSBE) participation, has been established for the Program. The specific goal or requirement for each contract opportunity may be higher or lower based on the scope of work.

It is the policy of the Harbor Department to solicit participation in the performance of all service contracts by all individuals and businesses, including, but not limited to, SBEs, VSBEs, women-owned business enterprises (WBEs), minority-owned business enterprises (MBEs), and disabled veteran business enterprises (DVBEs). The SBE Program allows the Harbor Department to target small business participation, including MBEs, WBEs, and DVBEs, more effectively. It is the intent of the Harbor Department to make it easier for small businesses to participate in contracts by providing education and assistance on how to do business with the City, and ensuring that payments to small businesses are processed in a timely manner. **In order to ensure the highest participation of SBE/VSBE/MBE/WBE/DVBEs, all proposers shall utilize the City's contracts management and opportunities database, the Los Angeles Business Assistance Virtual Network (LABAVN), at <http://www.labavn.org>, to outreach to potential subconsultants.**

The Harbor Department defines a SBE as an independently owned and operated business that is not dominant in its field and meets criteria set forth by the Small Business Administration in Title 13, Code of Federal Regulations, Part 121. Go to [www.sba.gov](http://www.sba.gov) for more information. The Harbor Department defines a VSBE based on the State of California's Micro-business definition which is 1) a small business that has average annual gross receipts of \$3,500,000 or less within the previous three years, or (2) a small business manufacturer with 25 or fewer employees.

The SBE Program is a results-oriented program, requiring consultants who receive contracts from the Harbor Department to perform outreach and utilize certified small businesses. **Based on the work to be performed, it has been determined that the percentage of small business participation will be 25%, including 5% VSBE participation.** The North American Industry Classification System (NAICS) Code for the scope of services is **541620**. This NAICS Code is the industry code that corresponds to at least 51% of the scope of services and will be used to determine the size standard for SBE participation of the Prime Consultant. The maximum SBE size standard for this NAICS Code is \$15 million.

Consultant shall be responsible for determining the SBE status of its subconsultants for purposes of meeting the small business requirement. Subconsultants must qualify as an SBE based on the type of services that they will be performing under the Agreement. All business participation will be determined by the percentage of the total amount of compensation under the agreement paid to SBEs. The Consultant shall not substitute an SBE firm without obtaining prior approval of the City. A request for substitution must be based upon demonstrated good cause. If substitution is permitted, Consultant shall endeavor to make an in-kind substitution for the substituted SBE.

## EXHIBIT H

Consultant shall complete, sign, and submit as part of the executed agreement the attached Affidavit and Consultant Description Form. The Affidavit and Consultant Description Form, when signed, will signify the Consultant's intent to comply with the SBE requirement. All SBE/VSBE firms must be certified by the time proposals are due to receive credit. In addition all consultants and subconsultants must be registered on the LABAVN by the time proposals are due.

### (2) LOCAL BUSINESS PREFERENCE PROGRAM:

The Harbor Department is committed to maximizing opportunities for local and regional businesses, as well as encouraging local and regional businesses to locate and operate within the Southern California region. It is the policy of the Harbor Department to support an increase in local and regional jobs. The Harbor Department's Local Business Preference Program (LBPP) aims to benefit the Southern California region by increasing jobs and expenditures within the local and regional private sector.

Consultants who qualify as a Local Business Enterprise (LBE) will receive an 8% preference on any proposal for services valued in excess of \$150,000. The preference will be applied by adding 8% of the total possible evaluation points to the Consultant's score. Consultants who do not qualify as a LBE may receive a maximum 5% preference for identifying and utilizing LBE subconsultants. Consultants may receive 1% preference, up to a maximum of 5%, for every 10% of or portion thereof, of work that is subcontracted to a LBE. LBE subconsultant preferences will be determined by the percentage of the total amount of compensation proposed under the Agreement.

The Harbor Department defines a LBE as:

- (a) A business headquartered within Los Angeles, Orange, Riverside, San Bernardino, or Ventura Counties. Headquartered shall mean that the business physically conducts and manages all of its operations from a location in the above-named counties; or
- (b) A business that has at least 50 full-time employees, or 25 full-time employees for specialty marine contracting firms, working in Los Angeles, Orange, Riverside, San Bernardino, or Ventura Counties.

In order for Harbor Department staff to determine the appropriate LBE preference, Consultant shall complete, sign, notarize (where applicable) and submit the attached Affidavit and Consultant Description Form. The Affidavit and Consultant Description Form will signify the LBE status of the Consultant and subconsultants.

In the event of Consultant's noncompliance during the performance of the Agreement, Consultant shall be considered in material breach of contract. In addition to any other remedy available to City under this Agreement or by operation of law, the City may withhold invoice payments to Consultant until noncompliance is corrected, and assess the costs of City's audit of books and records of Consultant and its subconsultants. In the event the Consultant falsifies or misrepresents information contained in any form or other willful noncompliance as determined by City, City may disqualify the Consultant from participation in City contracts for a period of up to five (5) years.

**EXHIBIT H**  
**AFFIDAVIT OF COMPANY STATUS**

"The undersigned declares under penalty of perjury pursuant to the laws of the State of California that the following information and information contained on the attached Consultant Description Form is true and correct and includes all material information necessary to identify and explain the operations of

Apex Companies, LLC

Name of Firm

as well as the ownership and location thereof. Further, the undersigned agrees to provide complete and accurate information regarding ownership in the named firm, and all of its domestic and foreign affiliates, any proposed changes of the ownership and to permit the audit and examination of firm ownership documents, and the ownership documents of all of its domestic and foreign affiliates, in association with this agreement."

(1) **Small/Very Small Business Enterprise Program:** Please indicate the ownership of your company. Please check all that apply. At least one box must be checked:

SBE    VSBE    MBE    WBE    DVBE    OBE

- A Small Business Enterprise (SBE) is an independently owned and operated business that is not dominant in its field and meets criteria set forth by the Small Business Administration in Title 13, Code of Federal Regulations, Part 121.
- A Very Small Business Enterprise (VSBE) is 1) a small business that has average annual gross receipts of \$3,500,000 or less within the previous three years, or (2) a small business manufacturer with 25 or fewer employees.
- A Minority Business Enterprise (MBE) is defined as a business in which a minority owns and controls at least 51% of the business. A Woman Business (WBE) is defined as a business in which a woman owns and controls at least 51% of the business. For the purpose of this project, a minority includes:
  - (1) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
  - (2) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
  - (3) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, The Indian Subcontinent, or the Pacific Islands); and
  - (4) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
- A Disabled Veteran Business Enterprise (DVBE) is defined as a business in which a disabled veteran owns at least 51% of the business, and the daily business operations are managed and controlled by one or more disabled veterans.
- An OBE (Other Business Enterprise) is any enterprise that is neither an SBE, VSBE, MBE, WBE, or DVBE.

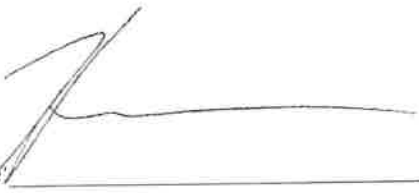
**EXHIBIT H**

(2) **Local Business Preference Program:** Please indicate the Local Business Enterprise status of your company.

Only one box must be checked:

LBE     Non-LBE

- A Local Business Enterprise (LBE) is: (a) a business headquartered within Los Angeles, Orange, Riverside, San Bernardino, or Ventura Counties; or (b) a business that has at least 50 full-time employees, or 25 full-time employees for specialty marine contracting firms, working in Los Angeles, Orange, Riverside, San Bernardino, or Ventura Counties. "Headquartered" shall mean that the business physically conducts and manages all of its operations from a location in the above-named counties.
- A Non-LBE is any business that does not meet the definition of a LBE.

Signature: 

Printed: Herb Clough, PE

Title: Vice President

Date Signed: August 12, 2019



## EXHIBIT H Consultant Description Form

**SUBCONSULTANT:**Business Name: American Integrated Services LABAVN ID#: 13248Award Total: (% or \$): 1Services to be provided: Environmental Remediation/Waste ManagementOwner's Ethnicity: Hispanic Gender M Group: SBE VSBE MBE WBE DVBE OBE (Circle all that apply)Local Business Enterprise: YES  NO (Check only one)Primary NAICS Code: 562910Address: 1502 E Opp StreetCity/State/Zip: Wilmington, CA 90744County: Los AngelesTelephone: (310) 522-1168 FAX: (310) 522-0474Contact Person/Title: Jennifer Sherman, Operations & Technical ServicesEmail Address: jsherman@americanintegrated.com**SUBCONSULTANT:**Business Name: BC2 Environmental LABAVN ID#: 617Award Total: (% or \$) 6Services to be provided: Environmental and geotechnical drilling servicesOwner's Ethnicity: Caucasian Gender M Group: SBE VSBE MBE WBE DVBE OBE (Circle all that apply)Local Business Enterprise: YES  NO (Check only one)Primary NAICS Code: 562910Address: 1150 W Trenton AvenueCity/State/Zip: Orange, CA 92687County: OrangeTelephone: (714) 744-2990 FAX: (714) 744-2991Contact Person/Title: Scott Traub, General ManagerEmail Address: straub@bc2env.com**SUBCONSULTANT:**Business Name: Buell CAD & Design LABAVN ID#: 47669Award Total: (% or \$): 1Services to be provided: Graphic designOwner's Ethnicity: Caucasian Gender M Group: SBE VSBE MBE WBE DVBE OBE (Circle all that apply)Local Business Enterprise: YES  NO (Check only one)Primary NAICS Code: 541330Address: 828 Petit AvenueCity/State/Zip: Ventura, CA 93004County: VenturaTelephone: (805) 701-6526 FAX: ( )Contact Person/Title: Chris Buell, Operations ManagerEmail address: buell.caddesign@gmail.com

**EXHIBIT H**  
Consultant Description Form

**SUBCONSULTANT:**

Business Name: Earth Forensic LABAVN ID#: \_\_\_\_\_

Award Total: (% or \$): 1

Services to be provided: UAV services

Owner's Ethnicity: Caucasian Gender M Group: SBE VSBE MBE WBE DVBE OBE (Circle all that apply)

Local Business Enterprise: YES \_\_\_\_\_ NO X (Check only one)

Primary NAICS Code: 541690

Address: 12532 Vista Panorama

City/State/Zip: North Tustin, CA 92705

County: Orange

Telephone: (714) 771.2260 FAX: ( ) \_\_\_\_\_

Contact Person/Title: Rene Perez, Hydrogeologist/UAV Pilot

Email Address: Rperez@earthforesics.com

**SUBCONSULTANT:**

Business Name: Global Geomatics Engineering LABAVN ID#: 102791

Award Total: (% or \$): 1

Services to be provided: Surveying and Drafting Services

Owner's Ethnicity: Caucasian Gender M Group: SBE VSBE MBE WBE DVBE OBE (Circle all that apply)

Local Business Enterprise: YES \_\_\_\_\_ NO X (Check only one)

Primary NAICS Code: 541370, 541330

Address: 4524 District Blvd.

City/State/Zip: Bakersfield, CA 93313

County: Kern

Telephone: (661) 282-8400 FAX: (661) 282-8401

Contact Person/Title: Kevin Morris

Email Address: KMorris@ggexyz.com

**SUBCONSULTANT:**

Business Name: Gregg Drilling LLC LABAVN ID#: 100832

Award Total: (% or \$): 1

Services to be provided: Environmental drilling & testing services

Owner's Ethnicity: Alaska Native Gender \_\_\_\_\_ Group: SBE VSBE MBE WBE DVBE OBE (Circle all that apply)

Local Business Enterprise: YES X NO \_\_\_\_\_ (Check only one)

Primary NAICS Code: 237110

Address: 2726 Walnut Avenue

City/State/Zip: Signal Hill, CA 90755

County: Los Angeles

Telephone: (562) 427-6899 FAX: (562) 427-3314

Contact Person/Title: Patrick Keating, Division Manager

Email address: Pkeating@greggdrilling.com



**EXHIBIT H**  
Consultant Description Form

**SUBCONSULTANT:**

Business Name: Intrinsyx Technologies LABAVN ID#: \_\_\_\_\_

Award Total: (% or \$): 1

Services to be provided: Environmental Remediation Consulting

Owner's Ethnicity: South Asian Gender F Group SBE VSBE MBE WBE DVBE OBE (Circle all that apply)

Local Business Enterprise: YES \_\_\_\_\_ NO X (Check only one)

Primary NAICS Code: 541330

Address: 725 Viola Place

City/State/Zip: Los Altos

County: Santa Clara

Telephone: (650) 210-9219 FAX: ( ) \_\_\_\_\_

Contact Person/Title: Ahsan Ali, COO

Email Address: ahsan@intrinsyx.com

**SUBCONSULTANT:**

Business Name: J&H Drilling, dba M R Drilling LABAVN ID#: 24570

Award Total: (% or \$): 1

Services to be provided: Environmental and geotechnical drilling services

Owner's Ethnicity: Hispanic Gender M Group SBE VSBE MBE WBE DVBE OBE (Circle all that apply)

Local Business Enterprise: YES \_\_\_\_\_ NO X (Check only one)

Primary NAICS Code: 237110

Address: 7431 Walnut Avenue

City/State/Zip: Buena Park, CA 90620

County: Orange

Telephone: (714) 994-0402 FAX: (714) 994-0408

Contact Person/Title: Terry Smith, General Manager

Email Address: jhdrillco@aol.com

**SUBCONSULTANT:**

Business Name: Millennium Environmental Inc. LABAVN ID#: \_\_\_\_\_

Award Total: (% or \$): 1

Services to be provided: Direct push/hand auger

Owner's Ethnicity: Caucasian Gender M Group SBE VSBE MBE WBE DVBE OBE (Circle all that apply)

Local Business Enterprise: YES X NO \_\_\_\_\_ (Check only one)

Primary NAICS Code: 562910

Address: 2936 E Coronado Street

City/State/Zip: Anaheim, CA 92806

County: Orange

Telephone: (714) 238-1122 FAX: (714) 238-1166

Contact Person/Title: Hayden Morey, Operations Manager

Email address: jjensen@millennium-env.com

## EXHIBIT H Consultant Description Form

**SUBCONSULTANT:**Business Name: OFRS LABAVN ID#: 3541Award Total: (% or \$): 2Services to be provided: Remediation, remedial construction, other environmental support servicesOwner's Ethnicity: Caucasian Gender M Group: SBE VSBE MBE WBE DVBE OBE (Circle all that apply)Local Business Enterprise: YES X NO (Check only one)Primary NAICS Code: 562910,238910,213112Address: 1875 Freeman AvenueCity/State/Zip: Signal Hill, CA 90755County: Los AngelesTelephone: (562) 343-7100 FAX: (562) 343-7177Contact Person/Title: Randy BalikEmail Address: rbalik@ofrsinc.com**SUBCONSULTANT:**Business Name: SIREM Laboratory LABAVN ID#: \_\_\_\_\_Award Total: (% or \$): 1Services to be provided: Laboratory Testing & AnalysisOwner's Ethnicity: N/A Gender \_\_\_\_\_ Group: SBE VSBE MBE WBE DVBE OBE (Circle all that apply)Local Business Enterprise: YES \_\_\_\_\_ NO X (Check only one)Primary NAICS Code: 541380Address: 130 Stone Road WestCity/State/Zip: Guelph, Ontario N1G 3Z2County: CanadaTelephone: (519) 515-0839 FAX: ( ) \_\_\_\_\_Contact Person/Title: Ximena Druar, Laboratory SupervisorEmail Address: Xdruar@siremlab.com**SUBCONSULTANT:**Business Name: Subsurface Surveys LABAVN ID#: 43446Award Total: (% or \$): 3Services to be provided: Geophysical and Utility Locating ServicesOwner's Ethnicity: Caucasian Gender M Group: SBE VSBE MBE WBE DVBE OBE (Circle all that apply)Local Business Enterprise: YES \_\_\_\_\_ NO X (Check only one)Primary NAICS Code: 541360Address: 2075 Corte Del Nogal, Suite WCity/State/Zip: Carlsbad, CA 92011County: San DiegoTelephone: (760) 476-0492 FAX: (760) 476-0493Contact Person/Title: George Herman, CFOEmail address: Gherman@subsurfacesurveys.com

**Consolidated Description Form**

**SUBCONSULTANT:**

Business Name: TestAmerica Laboratories LABAVN ID#: 25627

Award Total: (% or \$): 1 dba Eurofins TestAmerica

Services to be provided: Environmental Testing

Owner's Ethnicity: N/A Gender \_\_\_\_\_ Group: SBE VSBE MBE WBE DVBE OBE (Circle all that apply)

Local Business Enterprise: YES X NO \_\_\_\_\_ (Check only one)

Primary NAICS Code: 541380

Address: 17461 Derian Avenue, Suite 100

City/State/Zip: Irvine, CA 92164

County: Orange

Telephone: ( 949 ) 261-1022 FAX: ( 949 ) 260-3299

Contact Person/Title: Linda Scharpenberg, Ed.D., Laboratory Director

Email Address: Linda.scharpenberg@testamericainc.com

**SUBCONSULTANT:**

Business Name: \_\_\_\_\_ LABAVN ID#: \_\_\_\_\_

Award Total: (% or \$): \_\_\_\_\_

Services to be provided: \_\_\_\_\_

Owner's Ethnicity: \_\_\_\_\_ Gender \_\_\_\_\_ Group: SBE VSBE MBE WBE DVBE OBE (Circle all that apply)

Local Business Enterprise: YES \_\_\_\_\_ NO \_\_\_\_\_ (Check only one)

Primary NAICS Code: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

County: \_\_\_\_\_

Telephone: (949) \_\_\_\_\_ FAX: (949) \_\_\_\_\_

Contact Person/Title: \_\_\_\_\_

Email Address: \_\_\_\_\_

**SUBCONSULTANT:**

Business Name: \_\_\_\_\_ LABAVN ID#: \_\_\_\_\_

Award Total: (% or \$): \_\_\_\_\_

Services to be provided: \_\_\_\_\_

Owner's Ethnicity: \_\_\_\_\_ Gender \_\_\_\_\_ Group: SBE VSBE MBE WBE DVBE OBE (Circle all that apply)

Local Business Enterprise: YES \_\_\_\_\_ NO \_\_\_\_\_ (Check only one)

Primary NAICS Code: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

County: \_\_\_\_\_

Telephone: ( ) \_\_\_\_\_ FAX: ( ) \_\_\_\_\_

Contact Person/Title: \_\_\_\_\_

Email address: \_\_\_\_\_

## **EXHIBIT I**

### **Sec. 10.8.2.1. Equal Benefits Ordinance.**

Discrimination in the provision of employee benefits between employees with domestic partners and employees with spouses results in unequal pay for equal work. Los Angeles law prohibits entities doing business with the City from discriminating in employment practices based on marital status and/or sexual orientation. The City's departments and contracting agents are required to place in all City contracts a provision that the company choosing to do business with the City agrees to comply with the City's nondiscrimination laws.

It is the City's intent, through the contracting practices outlined in this Ordinance, to assure that those companies wanting to do business with the City will equalize the total compensation between similarly situated employees with spouses and with domestic partners. The provisions of this Ordinance are designed to ensure that the City's contractors will maintain a competitive advantage in recruiting and retaining capable employees, thereby improving the quality of the goods and services the City and its people receive, and ensuring protection of the City's property.

#### **(c) Equal Benefits Requirements.**

(1) No Awarding Authority of the City shall execute or amend any Contract with any Contractor that discriminates in the provision of Benefits between employees with spouses and employees with Domestic Partners, between spouses of employees and Domestic Partners of employees, and between dependents and family members of spouses and dependents and family members of Domestic Partners.

(2) A Contractor must permit access to, and upon request, must provide certified copies of all of its records pertaining to its Benefits policies and its employment policies and practices to the DAA, for the purpose of investigation or to ascertain compliance with the Equal Benefits Ordinance.

(3) A Contractor must post a copy of the following statement in conspicuous places at its place of business available to employees and applicants for employment: "During the performance of a Contract with the City of Los Angeles, the Contractor will provide equal benefits to its employees with spouses and its employees with domestic partners." The posted statement must also include a City contact telephone number which will be provided each Contractor when the Contract is executed.

(4) A Contractor must not set up or use its contracting entity for the purpose of evading the requirements imposed by the Equal Benefits Ordinance.

## EXHIBIT I

(d) Other Options for Compliance. Provided that the Contractor does not discriminate in the provision of Benefits, a Contractor may also comply with the Equal Benefits Ordinance in the following ways:

(1) A Contractor may provide an employee with the Cash Equivalent only if the DAA determines that either:

a. The Contractor has made a reasonable, yet unsuccessful effort to provide Equal Benefits; or

b. Under the circumstances, it would be unreasonable to require the Contractor to provide Benefits to the Domestic Partner (or spouse, if applicable).

(2) Allow each employee to designate a legally domiciled member of the employee's household as being eligible for spousal equivalent Benefits.

(3) Provide Benefits neither to employees' spouses nor to employees' Domestic Partners.

(e) Applicability.

(1) Unless otherwise exempt, a Contractor is subject to and shall comply with all applicable provisions of the Equal Benefits Ordinance.

(2) The requirements of the Equal Benefits Ordinance shall apply to a Contractor's operations as follows:

a. A Contractor's operations located within the City limits, regardless of whether there are employees at those locations performing work on the Contract.

b. A Contractor's operations on real property located outside of the City limits if the property is owned by the City or the City has a right to occupy the property, and if the Contractor's presence at or on that property is connected to a Contract with the City.

c. The Contractor's employees located elsewhere in the United States but outside of the City limits if those employees are performing work on the City Contract.

(3) The requirements of the Equal Benefits Ordinance do not apply to collective bargaining agreements ("CBA") in effect prior to January 1, 2000. The Contractor must agree to propose to its union that the requirements of the Equal Benefits Ordinance be incorporated into its CBA upon amendment, extension, or other modification of a CBA occurring after January 1, 2000.

## **EXHIBIT I**

(f) **Mandatory Contract Provisions Pertaining to Equal Benefits.** Unless otherwise exempted, every Contract shall contain language that obligates the Contractor to comply with the applicable provisions of the Equal Benefits Ordinance. The language shall include provisions for the following:

(1) During the performance of the Contract, the Contractor certifies and represents that the Contractor will comply with the Equal Benefits Ordinance.

(2) The failure of the Contractor to comply with the Equal Benefits Ordinance will be deemed to be a material breach of the Contract by the Awarding Authority.

(3) If the Contractor fails to comply with the Equal Benefits Ordinance the Awarding Authority may cancel, terminate or suspend the Contract, in whole or in part, and all monies due or to become due under the Contract may be retained by the City. The City may also pursue any and all other remedies at law or in equity for any breach.

(4) Failure to comply with the Equal Benefits Ordinance may be used as evidence against the Contractor in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40, et seq., Contractor Responsibility Ordinance.

(5) If the DAA determines that a Contractor has set up or used its Contracting entity for the purpose of evading the intent of the Equal Benefits Ordinance, the Awarding Authority may terminate the Contract on behalf of the City. Violation of this provision may be used as evidence against the Contractor in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40, et seq., Contractor Responsibility Ordinance.