

AGREEMENT NO. \_\_\_\_\_

AGREEMENT BETWEEN  
THE CITY OF LOS ANGELES AND  
LOS ANGELES AREA CHAMBER OF COMMERCE FOUNDATION

THIS AGREEMENT was made and entered into by and between the CITY OF LOS ANGELES, a municipal corporation ("City"), acting by and through its Executive Director of the Harbor Department ("Executive Director"), and LOS ANGELES AREA CHAMBER OF COMMERCE FOUNDATION, a California domestic nonprofit corporation, 350 S. Bixel Street, Los Angeles, CA 90017 ("Consultant").

WHEREAS, City required professional, expert and technical services on a temporary or occasional basis to assist the City's export-promotion efforts through performance of services, including, but not limited to performing outreach and management tasks, export-related research, and assisting target companies in the Los Angeles Region for export growth; and

WHEREAS, the Harbor Department desired to utilize the services of a Consultant already familiar with the required services; and

WHEREAS, Consultant possessed extensive experience in business promotion and development, outreach, and was well qualified to provide such services to the City; and

WHEREAS, Consultant had sponsored and managed the Los Angeles Area Chamber of Commerce Foundation, a public-private partnership organization composed of regional leaders and experts in export services, charged with administering the Los Angeles Area Chamber of Commerce Foundation Plan to effect the coordination and improvement of the export support services network in the Los Angeles Region; and

WHEREAS, Consultant performed duties within the Los Angeles Area Chamber of Commerce Foundation towards the goal of increasing exports from the Los Angeles Region, which were expected to have a positive effect on the business of the Port of Los Angeles as the region's primary conduit for export shipments, and for which reason the City already engaged in export promotion and support activities; and

WHEREAS, City did not employ personnel with the required expertise, nor was it feasible to do so on a temporary or occasional basis;

WHEREAS, employee(s) of the Harbor Department orally authorized and directed the performance of the above described services, despite lacking the authority to do so; and

WHEREAS, the Executive Director had the authority, at the time of the unauthorized employee conduct, to enter into a properly written contract to provide the above described services; and

WHEREAS, a municipality may ratify the unauthorized acts of employees and improperly formed contracts through the properly performed acts of authorized public officials, thereby making the ratified acts lawful;

NOW, THEREFORE, PURSUANT TO THE DOCTRINE OF RATIFICATION, IT IS MUTUALLY AGREED AS FOLLOWS:

I. SERVICES PERFORMED BY CONSULTANT

A. Consultant represents and warrants that it agreed to render to City, as an independent contractor, certain professional, technical and expert services of a temporary and occasional character as set forth in Exhibit A ("Scope of Work").

B. Consultant further represents and warrants that, at its sole cost and expense, it furnished all services, materials, equipment, subsistence, transportation and all other items necessary to perform the Scope of Work. As between City and Consultant, Consultant was solely responsible for any taxes or fees which may have been 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.

C. Consultant acknowledges and agrees that it lacked authority to perform any services outside the Scope of Work. Consultant further acknowledged and agreed that any services it performed outside the Scope of Work were performed as a volunteer and were not compensable under this Agreement.

D. Consultant represents and warrants that the Scope of Work was performed by personnel qualified and competent in the sole reasonable discretion of the Executive Director or his or her designee, whether performance was undertaken by Consultant or third-parties with whom Consultant had contracted ("Subconsultants"). Obligations of this Agreement, whether undertaken by Consultant or Subconsultants, were the responsibility of Consultant. Consultant acknowledged and agreed that this Agreement created no rights in Subconsultants with respect to City, and that obligations that may have been owed to Subconsultants, including, but not limited to, the obligation to pay Subconsultants for services performed, were those of Consultant alone. Upon Executive Director's written request, Consultant supplied City's Harbor Department ("Department") with all agreements between it and its Subconsultants.

II. SERVICES PERFORMED BY CITY

A. The Executive Director or his or her designee was designated as the contract administrator for City and decided any and all questions which may have arisen

as to the quality or acceptability of the services performed and the manner of performance, the interpretation of instructions to Consultant and the acceptable completion of this Agreement and the amount of compensation due. Notwithstanding the preceding, the termination of this Agreement is governed by the provisions of Article X (Termination) hereof.

### III. TERM OF AGREEMENT

The term of this Agreement shall commence retroactively on January 1, 2017 and shall continue to December 31, 2017.

### IV. TERMINATION DUE TO NON-APPROPRIATION OF FUNDS

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

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

The City, its boards, officers, and employees were not bound by the terms of this Agreement or obligated to make payment thereunder in any fiscal year in which the City did not appropriate funds therefore. The Consultant was not entitled to any compensation in any fiscal year in which funds had not been appropriated for the Agreement by the City.

Although the Consultant was not obligated to perform any work under the Agreement in any fiscal year in which no appropriation for the Agreement had been made, the Consultant agreed to resume performance of the work required by the Agreement on the same terms and conditions for a period of sixty (60) days after the end of the fiscal year if an appropriation therefore was approved by the City within that 60-day period. The Consultant was responsible for maintaining all insurance and bonds during this 60-day period until the appropriation was made; however, such extension of time was not compensable.

If in any subsequent fiscal year funds were not appropriated by the City for the work required by the Agreement, the Agreement will have been terminated. However, such termination would not have relieved the parties of liability for any obligation previously incurred.

### V. COMPENSATION AND PAYMENT

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

B. The maximum payable under this Agreement, including reimbursable expenses, shall be One Hundred Fifty Thousand Dollars (\$150,000).

C. Consultant shall submit an invoice in quadruplicate to City following the effective date of this Agreement for services rendered. The invoice shall be signed by the Consultant and shall include the following certification:

"I certify under penalty of perjury that the above bill is just and correct according to the terms of Agreement 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.

\_\_\_\_\_  
(Consultant's Signature)

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

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

Further, where the Consultant employed Subconsultants under this Agreement, the Consultant shall submit to City, with each monthly invoice, a Monthly Subconsultant Monitoring Report Form (Exhibit C) listing SBE/VSBE/MBE/WBE/DVBE/OBE amounts. Consultant shall provide an explanation for any item that does not meet or exceed the anticipated participation levels for this Agreement, with specific plans and recommendations for improved Subconsultant utilization. Invoices will not be paid without a completed Monthly Subconsultant Monitoring Report Form. All invoices are subject to audit. Consultant is not required to submit support for direct costs items of \$25 or less.

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

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

## VI. RECORDKEEPING AND AUDIT RIGHTS

A. Consultant kept and maintained 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, which 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 performed under this Agreement or until all disputes, appeals, litigation or claims arising from this Agreement have been resolved.

B. During the term of this Agreement, City could 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 were (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 had previously been provided to City. Consultant was responsible for obtaining access to and providing writings of Subconsultants. Consultant was to 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 also included inspection at reasonable times of the Consultant's office or facilities which were engaged in the performance of the Scope of Work. Consultant was to have, at no cost to City, furnished reasonable facilities and assistance for such review and audit. Consultant's failure to comply with this Article VI would have constituted a material breach of this Agreement and would have entitled City to withhold any payment due under this Agreement until such breach was cured.

## VII. INDEPENDENT CONTRACTOR

Consultant represents and warrants that, in the performance of the work required by this Agreement, it was an independent contractor and not an agent or employee of City. Consultant was not to represent itself as an agent or employee of the City and had no power to bind the City in contract or otherwise.

## VIII. BUSINESS TAX REGISTRATION CERTIFICATE

The City of Los Angeles Office of Finance required the implementation and enforcement of Los Angeles Municipal Code Section 21.09 et seq. This Code Section provides that every person, other than a municipal employee, who engages in any business within the City of Los Angeles, is required to obtain the necessary Business Tax Registration Certificate and pay business taxes. The City Controller determined that this Code Section applies to consulting firms that perform work for the Department. See Exhibit D.

## IX. 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 undertook and agreed and continues to undertake and agree 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.

## X. TERMINATION PROVISION

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

## XI. PERSONAL SERVICE CONTRACT

A. During the term hereof, Consultant agreed that it would not enter into other contracts or perform any work without the written permission of the Executive Director where the work may have conflicted with the interests of the Department.

B. Consultant acknowledged that it had 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 have been void provided, however, that Consultant may have permitted Subconsultant(s) to perform portions of the Scope of Work in accordance with Article I. All Subconsultants whom Consultant utilized, however, shall have been deemed to be its agents. Subconsultants' performance of the Scope of Work shall not have been 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.

## XII. AFFIRMATIVE ACTION

The Consultant represents and warrants that, during the performance of this Agreement, did 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 were incorporated and made a part of this Agreement. All subcontracts awarded were to contain a like nondiscrimination provision. See Exhibit E.

## XIII. SMALL/VERY SMALL BUSINESS ENTERPRISE PROGRAM AND LOCAL BUSINESS PREFERENCE PROGRAM

It is the policy of the 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 assisted the City in implementing this policy by using its best efforts to afford the opportunity for SBEs, VSBEs, MBEs, WBEs, DVBEs, and OBEs to achieve participation in subcontracts where such participation opportunities presented themselves and attempted to ensure that all available business enterprises, including SBEs, VSBEs, MBEs, WBEs, DVBEs, and OBEs, had equal participation opportunity which might have been presented under this Agreement. See Exhibit F.

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 assisted the City in implementing this policy and used its best efforts to afford the opportunity for Local Business Enterprises to achieve participation in subcontracts where such participation opportunities presented 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>.

## XIV. CONFLICT OF INTEREST

It was understood and agreed that the parties to this Agreement read and were aware of the provisions of Section 1090 et seq. and Section 87100 et seq. of the California Government Code relating to conflict of interest of public officers and employees, as well as the Los Angeles Municipal Code (LAMC) Municipal Ethics and Conflict of Interest provisions of Section 49.5.1 et seq. and the Conflict of Interest Codes of the City and the Department. All parties hereto agreed that they were 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 was further understood and agreed that if such financial interest did exist at the inception of this Agreement, City may have immediately terminated this Agreement by giving written notice thereof.

XV. COMPLIANCE WITH APPLICABLE LAWS

Consultant, at all times in the performance of its obligations, represents and warrants that it complied with all applicable laws, statutes, ordinances, rules and regulations, and with the reasonable requests and directions of Executive Director.

XVI. GOVERNING LAW / VENUE

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

XVII. TRADEMARKS, COPYRIGHTS, AND PATENTS

Consultant agrees to save, keep, hold harmless, protect and indemnify the 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.

XVIII. PROPRIETARY INFORMATION

A. 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 were obtained, generated, compiled or derived in connection with this Agreement (collectively hereafter referred to as "property"), were owned by City as soon as they were 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 warranted and represented 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 did not need to obtain for City the right to use any idea, design, method, material, equipment or other matter which was the subject of a valid patent, unless such patent was owned by Consultant or one of its employees, or its Subconsultant or the Subconsultant's employees, in which case such right will have been obtained without additional compensation. Whether or not Consultant's initial proposal or proposals made during this

Agreement were accepted by City, it was 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, was 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.

B. If research or development was furnished in connection with this Agreement and if, in the course of such research or development, patentable work product was 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 was 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 was 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.

#### XIX. CONFIDENTIALITY

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

#### XX. NOTICES

In all cases where written notice is to be given under this Agreement, service is deemed sufficient if said notice is deposited in the United States mail, postage prepaid. When so given, such notice was to have been effective from the date of mailing of the same. For the purposes hereof, unless otherwise provided by notice in writing from the respective parties, notice to the Department shall be addressed to Executive Director, Los Angeles Harbor Department, P.O. Box 151, San Pedro, California 90733-0151, and notice to Consultant will be addressed to it at the address set forth above. Nothing herein contained precluded or rendered inoperative service of such notice in the manner provided by law.

XXI. 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.

XXII. SERVICE CONTRACTOR WORKER RETENTION POLICY AND LIVING WAGE POLICY REQUIREMENTS

The Board of Harbor Commissioners of the City of Los Angeles adopted Resolution No. 5771 on January 13, 1999, agreeing to adopt the provisions of Los Angeles City Ordinance No. 171004 relating to Service Contractor Worker Retention (SCWR), Section 10.36 et seq. of the Los Angeles Administrative Code, as the policy of the Department. Further, Charter Section 378 required 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 represents and warrants that it complied with the policy wherever applicable. Violation of this provision, where applicable, entitled the City to terminate this Agreement and otherwise pursue legal remedies that may be available, including recovery of all funds paid to Consultant.

XXIII. WAGE AND EARNINGS ASSIGNMENT ORDERS/NOTICES OF ASSIGNMENTS

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

The Consultant and/or Subconsultant certified that the principal owner(s) were in compliance with any Wage and Earnings Assignment Orders and Notices of Assignments applicable to them personally. The Consultant and/or Subconsultant represent and warrant that it/they complied with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments in accordance with Cal. Family Code Sections 5230 et seq. The Consultant or Subconsultant agreed to maintain such compliance throughout the term of this Agreement.

XXIV. EQUAL BENEFITS POLICY

The Board of Harbor Commissioners of the City of Los Angeles 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 the Department. Consultant represents and warrants that it complied 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, including recovery of all funds paid to Consultant. See Exhibit G.

## XXV. COMPLIANCE WITH LOS ANGELES CITY CHARTER SECTION 470(c)(12)

The Consultant, Subconsultants, and their Principals were 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 was valued at \$100,000 or more and required approval of a City elected official. Additionally, Consultant was 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 represent and warrant that it/they complied 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, including recovery of all funds paid to Consultant.

## XXVI. STATE TIDELANDS GRANTS

This Agreement was entered into in furtherance of and as a benefit to the State Tidelands Grant and the trust created thereby. Therefore, this Agreement was and continues to be, 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 agreed that any interpretation

of this Agreement and the terms contained herein were consistent with such limitations, conditions, restrictions and reservations.

#### XXVII. INTEGRATION

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.**

#### XXVIII. 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.

#### XXIX. 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.

#### XXX. TITLES AND CAPTIONS

The parties have inserted the Article titles in this Agreement only as a matter of convenience and for reference, and the Article 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.

**XXXI. 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.

**XXXII. 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.

**XXXIII. EXHIBITS; ARTICLES**

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 Articles are to Articles of this Agreement unless stated otherwise.

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**XXXIV. 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.

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

**THE CITY OF LOS ANGELES  
HARBOR DEPARTMENT**

Dated: \_\_\_\_\_

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

(CONSULTANT'S NAME)

Dated: \_\_\_\_\_

By \_\_\_\_\_

Type Name: \_\_\_\_\_  
Type Title: \_\_\_\_\_

Attest \_\_\_\_\_

Type Name: \_\_\_\_\_  
Type Title: \_\_\_\_\_

APPROVED AS TO FORM AND LEGALITY

\_\_\_\_\_, 2017  
MICHAEL N. FEUER, City Attorney  
JANNA B. SIDLEY, General Counsel

By \_\_\_\_\_  
JUSTIN HOUTERMAN, Deputy

Account #	54290	W.O. #	_____
Ctr/Div #	0270	Job Fac. #	_____
Proj/Prog #	_____		
Budget FY:		Amount:	
	2017		\$150,000
	TOTAL		\$150,000
For Acct/Budget Div. Use Only:			
Verified by:	_____		
Verified Funds Available:	_____		
Date Approved:	_____		

EXHIBIT A  
SCOPE OF WORK

Los Angeles Regional Export Council

Grantee agrees to timely performance of the following services and deliverables for the benefit of the City:

**Continue development of strategic partnerships to promote trade and attract foreign direct investment (FDI) to the Los Angeles Region** – The Los Angeles Regional Export Council (LAREx), coordinating the five County jurisdictions in the greater Los Angeles area, aims to establish a more strategic and effective regional partnership to promote trade and attract foreign direct investment (FDI) to the broader metropolitan region. This region includes the Counties of Los Angeles, Orange, Riverside, San Bernardino, and Ventura.

**Trade and Foreign Direct Investment (FDI) strategies** – These strategies are based upon a set of key initiatives designed to promote the attraction to the five County region of manufacturing businesses and distribution centers, as well as investors from overseas and to assist local exporters in foreign markets. LAREx will develop and manage a unified regional approach to specific markets. The geographic markets will include: Seven Provinces in China, South Korea, Japan, the Pacific Alliance (Mexico, Columbia, Peru, and Chile), ASEAN and the European Union.

There are two primary objectives:

- To promote and facilitate effective cooperation in the areas of trade and investment.
- To expand economic development through international trade with a focus on industry sectors and in cooperation with professional business associations, chambers and government trade organizations.

These strategies are intended to maximize global trade and investment opportunities based upon the following key activities:

**1. Relationship with Seven Provinces in China:**

LAREx is the appointed Secretariat serving the Southern California region for the Memorandum of Understanding (MOU) signed by Governor Jerry Brown and the Chinese Ministry of Commerce of China (MOFCOM). The designated bilateral business activities include introduction of products and technology, merger & acquisitions, joint ventures and government projects.

## **2. Trade Development activities with Key Market Areas, including Japan, Korea, Hong Kong, the Pacific Alliance (Mexico, Columbia, Peru and Chile), ASEAN (10 South East Asian Nations), the European Union and Gulf States:**

LARExC will promote international trade and investment with these strategic markets. Cooperation will also be carried out to promote trade with all local trade commissioners and economic consular officials.

## **3. Regional Trade Coordinator and Convener:**

LARExC coordinates trade and investment leads for five regional Counties, along with Federal, State, and local programs, in a network designed to fill gaps in attracting trade and foreign direct investment, and to avoid losing investors to other regions.

## **4. Regional Trade Missions:**

LARExC will continue organizing and coordinating the participation of regional firms in trade missions and the hosting of incoming foreign buyers and investors.

## **5. Trade Programs:**

The following trade programs and initiatives are also included to achieve the stated objectives:

World Trade Week – The annual May World Trade Week Kickoff Breakfast – attracts more than 600 executives, Consul Generals, Trade Commissioners, elected officials and business leaders – and launches 30-plus trade events highlighting the economic development that global trade and investment bring to our region.

Latin American Business Conference – This international forum, presented in partnership with UCLA Anderson School of Management and the UCLA Anderson Latin American Business Association, is designed to assist regional companies (small to medium enterprise) to identify business opportunities in the region.

Roundtable Discussions – Roundtable discussions are organized with Ambassadors, Trade Ministers, and high-level officials on trade issues and opportunities throughout the year.

Business Matchmaking and Trade Missions – These include participation of small to medium sized firms in international industrial and commercial trade shows. Matchmaking meetings are arranged at these trade shows between foreign executives and our local companies.

Sea & Air Cargo Trade Briefings – These briefings connect local businesses with the services and capabilities of the Port of Los Angeles and Los Angeles World Airport.

Consular and Trade Commissioner Officials in Los Angeles – Working with about 40 Consulates General on a regular basis provides a venue for our regional companies to learn and identify trade and investment opportunities in many countries.

## **6. Partnership Programs:**

The following partnership programs are included in the delivery of services:

California State Trade Export Assistance Promotion (STEP) program – The STEP program combines a network of state, federal, private and non-profit trade promotion organizations in California to facilitate export promotion activities, serving targeted industries, to drive exports for small businesses. STEP is funded by the U.S. Small Business Administration. LARExC directs a substantial portion of STEP assistance for trade missions.

World Bank – Promoting and showcasing many of the programs offered by the World Bank, helps Southern California companies identify and complete for new businesses in several global markets.

Pacific Rim Partners – In addition to cooperation with all regional Trade Commissioners, LARExC also works actively with a number of important trade organizations which have representation in Los Angeles. A selection of these include:

- Korean Trade and Investment Promotion Agency (KOTRA Los Angeles)
- The Japan External Trade Organization (JETRO Los Angeles)
- Hong Kong Trade Development Council (HKTDC Los Angeles)
- ProMexico (Los Angeles)
- ProChile (Los Angeles)

These strategic partners are an excellent source for identification of trade shows, trade missions and investment events.

## EXHIBIT B

### DETAILED COMPENSATION BUDGET

#### Los Angeles Regional Export Council

The total maximum compensation of \$150,000 shall be paid as follows:

\$150,000 – 14 days after execution of this agreement:

The funding will be disbursed to fund the completed Scope of Work (as fully described in Exhibit A and summarized here):

**Development of strategic and coordinated regional partnerships to promote trade and attract foreign direct investment (FDI) to the Los Angeles Region.**

The Los Angeles Regional Export Council (LARExC), coordinating the five jurisdictions in Greater Los Angeles, shall establish a more strategic and effective regional partnership to promote exports and attract foreign direct investment (FDI) to the broader metropolitan area. The region includes the counties of Los Angeles, Orange, Riverside, San Bernardino, and Ventura.

**Export and Foreign Direct Investment (FDI) Strategies** -- These strategies are structured on key initiatives to promote attraction of manufacturing businesses, distribution centers and investors to our region as well as to assist local exporters in foreign markets. LARExC shall develop and manage a unified regional approach to a set of specific markets. The geographic markets include: Seven Provinces in China, Japan, Korea, the Pacific Alliance (Mexico, Colombia, Peru and Chile), ASEAN (10 South East Asian Nations) and the European Union.

Two primary objectives:

- To promote and facilitate effective cooperation in the areas of trade and investment.
- To expand economic development through international trade with a focus on industry sectors and in cooperation with professional associations, chambers and government trade organizations

The Deliverable Report shall include an activity summary and the status of the following key trade development and FDI activities:

**Relationship with Seven Provinces in China:** LARExC is the Secretariat serving the Southern California region for the Memorandum of Understanding (MOU) signed by Governor Jerry Brown and the Chinese Ministry of Commerce of China (MOFCOM). The business goals for both the public and private sector,

include bilateral marketing of products and technology, mergers and acquisitions, joint ventures and government procurement projects.

**Japan, Korea, Hong Kong, the Pacific Alliance (Mexico, Colombia, Peru and Chile), ASEAN (10 South East Asian Nations) and the European Union:** Activities to promote international trade and investment with these strategic partners. Cooperation to promote trade with all local trade commissioners and economic consular officials.

**Regional Trade Coordination for five Southern California Counties:** Cooperation with the five regional counties, as well as with Federal, State and local programs, on a regional network to fill gaps in sharing trade inquiries and in attracting foreign direct investment, in order to minimize losing business and investors to other regions.

**Regional Trade Missions:** Organization of international trade missions and coordinating the participation of regional firms, including the hosting of incoming foreign buyers and investors.

**Trade Programs:** Organization of trade programs and initiatives including World Trade Week, the Latin America Business Conference, Trade Roundtables, International Business Matchmaking, Sea and Air Cargo Trade Briefings and the Trade and Consular Officials Network.

**Partnership Programs:** Activities in connection with the California State Trade Assistance Promotion (STEP) program to assist local companies participate in international trade shows and cooperation with Pacific Rim government trade partners such as KOTRA (Korea), JETRO (Japan), HKTDC (Hong Kong), ProMexico and ProChile.

Expenses: In accordance with the terms of the Agreement, the compensation set forth herein includes payment for labor, travel, per diem, fringe benefits, general and overhead costs, expenses, profits, materials, supplies, transportation and all other direct and indirect expenses incurred by Grantee.

## MONTHLY SUBCONSULTANT MONITORING REPORT

Instructions: Please indicate the 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/DVBE	PROPOSED		ACTUALS	
				Original Proposed Amount	Original Proposed Percentage	Amount Paid to Date	Amount Paid to Date 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)

## EXHIBIT D

### BUSINESS TAX REGISTRATION CERTIFICATE (BTRC) NUMBER

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

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

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

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

#### MAIN OFFICE

LA City Hall

201 N. Main Street, Rm. 101 (213) 473-5901

## AFFIRMATIVE ACTION PROGRAM PROVISIONS

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

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

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

## AFFIRMATIVE ACTION PROGRAM PROVISIONS

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

## AFFIRMATIVE ACTION PROGRAM PROVISIONS

registers to do business with the City. The plan shall be subject to approval by the Office of Contract Compliance prior to award of the contract. The awarding authority may also require contractors and suppliers to take part in a pre-registration, pre-bid, pre-proposal, or pre-award conference in order to develop, improve or implement a qualifying Affirmative Action Plan. Affirmative Action Programs developed pursuant to this section shall be effective for a period of twelve

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

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

## AFFIRMATIVE ACTION PROGRAM PROVISIONS

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

## EXHIBIT F

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

#### (1) SMALL/VERY SMALL BUSINESS ENTERPRISE PROGRAM

The City of Los Angeles 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 subcontractors.**

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 \_\_%, including \_\_% VSBE participation.** The North American Industry Classification System (NAICS) Code for the scope of services is \_\_\_\_\_. 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 \$\_\_ 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.

#### (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.

**EXHIBIT F**

The Harbor Department defines a LBE as:

- (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.

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 Contractor Description Form. The Affidavit and Contractor Description Form will signify the LBE status of the Consultant and subconsultants. Prior to contract award, the Harbor Department will verify the status of all LBEs.

Consultant shall complete, sign, notarize (where applicable) and submit as part of the executed agreement the attached Affidavit and Contractor Description Form. The Contractor Description Form, when signed, will signify the Consultant's intent to comply with the SBE and LBPP requirements. Prior to contract award, the Harbor Department will verify the status of all SBEs. In addition, prior to being awarded a contract with the Harbor Department, all contractors and subcontractors must be registered on LABAVN.

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.

## 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 Contractor Description Form is true and correct and include all material information necessary to identify and explain the operations of

---

Name of Firm

as well as the ownership thereof. Further, the undersigned agrees to provide either through the prime consultant or, directly to the Harbor Department, complete and accurate information regarding ownership in the named firm, any proposed changes of the ownership and to permit the audit and examination of firm ownership documents 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 F**

(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.
- A Non-LBE is any business that does not meet the definition of a LBE

Signature \_\_\_\_\_  
Printed Name \_\_\_\_\_

Title \_\_\_\_\_  
Date Signed \_\_\_\_\_

**NOTARY**

<p>STATE OF CALIFORNIA    )                                           ) ss COUNTY OF LOS ANGELES )</p> <p>Place Notary Seal and/or Stamp Above</p>	<p>Subscribed and sworn to (or affirmed) before me on this _____ day of _____, 20__ by</p> <p>(1) _____                                           Name of Signer (1)</p> <p>Who proved to me on the basis of satisfactory evidence to be the person who appeared before me (,)(,)</p> <p>(and)</p> <p>(2) _____                                           Name of Signer (2)</p> <p>Who proved to me on the basis of satisfactory evidence to be the person who appeared before me.)</p> <p>Signature _____</p>
------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

**OPTIONAL**

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

Title or Type of Document \_\_\_\_\_  
Document Date \_\_\_\_\_ Number of Pages \_\_\_\_\_  
Signers Other than Named Above: \_\_\_\_\_

## Contractor Description Form

### PRIME CONTRACTOR

Contract #: \_\_\_\_\_ Award Date: \_\_\_\_\_ Contract Term: \_\_\_\_\_  
Contract Title: \_\_\_\_\_  
Business Name: \_\_\_\_\_ Award Total: \$ \_\_\_\_\_  
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: \_\_\_\_\_ Average Three Year Gross Revenue: \$ \_\_\_\_\_  
Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Telephone: (    ) \_\_\_\_\_ FAX: (    ) \_\_\_\_\_  
Contact Person/Title: \_\_\_\_\_  
Email Address: \_\_\_\_\_

### SUBCONTRACTOR

Business Name: \_\_\_\_\_ Award Total: \$ \_\_\_\_\_  
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: \_\_\_\_\_ Average Three Year Gross Revenue: \$ \_\_\_\_\_  
Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Telephone: (    ) \_\_\_\_\_ FAX: (    ) \_\_\_\_\_  
Contact Person/Title: \_\_\_\_\_  
Email Address: \_\_\_\_\_

### SUBCONTRACTOR

Business Name: \_\_\_\_\_ Award Total: \$ \_\_\_\_\_  
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: \_\_\_\_\_ Average Three Year Gross Revenue: \$ \_\_\_\_\_  
Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Telephone: (    ) \_\_\_\_\_ FAX: (    ) \_\_\_\_\_  
Contact Person/Title: \_\_\_\_\_  
Email address: \_\_\_\_\_

## Contractor Description Form

### SUBCONTRACTOR

Business Name: \_\_\_\_\_ Award Total: \$ \_\_\_\_\_  
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: \_\_\_\_\_ Average Three Year Gross Revenue: \$ \_\_\_\_\_  
Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Telephone: ( ) \_\_\_\_\_ FAX: ( ) \_\_\_\_\_  
Contact Person/Title: \_\_\_\_\_  
Email Address: \_\_\_\_\_

### SUBCONTRACTOR

Business Name: \_\_\_\_\_ Award Total: \$ \_\_\_\_\_  
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: \_\_\_\_\_ Average Three Year Gross Revenue: \$ \_\_\_\_\_  
Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Telephone: ( ) \_\_\_\_\_ FAX: ( ) \_\_\_\_\_  
Contact Person/Title: \_\_\_\_\_  
Email address: \_\_\_\_\_

### SUBCONTRACTOR

Business Name: \_\_\_\_\_ Award Total: \$ \_\_\_\_\_  
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: \_\_\_\_\_ Average Three Year Gross Revenue: \$ \_\_\_\_\_  
Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Telephone: ( ) \_\_\_\_\_ FAX: ( ) \_\_\_\_\_  
Contact Person/Title: \_\_\_\_\_  
Email address: \_\_\_\_\_

## Equal Benefits Ordinance

### 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.

(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.

(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.