

CONTRACT BETWEEN THE  
CITY OF LOS ANGELES AND SIMPSON & SIMPSON MANAGEMENT CONSULTING, INC.  
FOR PROJECT MANAGEMENT AND CONSTRUCTION MANAGEMENT SERVICES AT LOS  
ANGELES INTERNATIONAL AIRPORT AND VAN NUYS AIRPORT

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THIS CONTRACT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2016 at Los Angeles, California, by and between the CITY OF LOS ANGELES, a municipal corporation (hereinafter referred to as "City"), acting by order of and through its Board of Airport Commissioners (hereinafter referred to as "Board"), and SIMPSON & SIMPSON MANAGEMENT CONSULTING, INC., (hereinafter also referred to as "Consultant"),

RECITALS

WHEREAS, City's Department of Airports (hereinafter referred to as "Department" or "LAWA"), by action of the Board; approved and authorized the issuance of a Request for Proposals (hereinafter referred to as "RFP") for on call services entitled Project Management and Construction Management services (hereinafter referred to as "PMCM") desired by LAWA for various Capital Improvement Projects (hereinafter referred to as "Project") at LAWA; and,

WHEREAS, LAWA is responsible for the management and administration of this contract; and,

WHEREAS, in response to said RFPs, Contractor was determined to be a top scoring Proposer for the Project; and,

WHEREAS, Consultant has represented it is engaged and expert in the business of performing such Services; and,

WHEREAS, LAWA will designate its representative(s) to work with Consultant, and thereupon it will be incumbent upon Consultant to, at all times, keep said LAWA representative(s) fully informed of all Services-related activities.

NOW THEREFORE, in consideration of the premises, and of the terms, covenants and conditions hereinafter contained to be kept and performed by the respective parties hereto, IT IS MUTUALLY AGREED AS FOLLOWS:

Section 1.0 Incorporation by Reference.

1.1. It is expressly understood and agreed that the "Scope of Services" ("Services") has been marked Exhibit "A" and is, by this reference, incorporated into and made a material part of this Contract. It is further expressly understood and agreed that the Maximum "Rates", marked Exhibit "B", and "Multiplier and Profit", marked Exhibit "C", applicable to this Contract are, by this reference, incorporated into and made a material part of this Contract. It is further expressly understood and agreed that the Cost Reimbursable Guidelines has been marked Exhibit "D," and is, by this reference, incorporated into and made a material part of this Contract. It is further expressly understood and agreed that the First Source Hiring Program for Airport Employees has been marked Exhibit "E," and is, by this reference, incorporated into and made a material part of this Contract. It is further expressly understood and agreed that, the LAWA's "Request For Proposals" ("RFP") (including its Administrative Requirements and Addendums) is, by this reference, incorporated into and made a material part of this Contract as though fully set

forth herein. Consultant expressly acknowledges that this Contract is based upon the performance requirements contained in the RFP.

#### Section 2.0 Term of Contract.

2.1. The term of this Contract shall be for a period of seven (7) years commencing upon Consultant's receipt from LAWA of a Notice-to-Proceed subject, however, to earlier termination as hereinafter specified in Section 25.0, Abandonment of Program and Cancellation of Contract or Suspension of Services. LAWA may terminate this Contract without cause and without liability for damages, upon giving the Contractor a thirty (30) day advance written notice or as otherwise provided herein.

#### Section 3.0 CEQA Compliance Conditions.

3.1. LAWA and the Consultant acknowledge and agree that the obligations of the parties under this Contract are conditioned on LAWA complying with and completing the California Environmental Quality Act (hereinafter referred to as "CEQA") process in connection with the Projects, and the expiration of the applicable period for any challenge to the adequacy of LAWA's compliance with CEQA without any challenge being filed. LAWA and the Consultant acknowledge that compliance with CEQA may require modifications to the Projects and agree that any modifications made to the Projects as a result of compliance with CEQA may necessitate amendments to this Contract in a mutually acceptable manner. Neither party shall be bound hereby unless and until the CEQA process is completed, and there is no possibility of a challenge pursuant to CEQA.

3.2. Mitigation measures and other potential changes or alternatives to the Projects, required in connection with project level environmental reviews pursuant to CEQA, will be addressed and added to the scope of the Projects as needed. This Contract does not authorize the commencement of any activity on the Project prior to completion of the appropriate environmental review and LAX Plan Compliance approval. No work may commence under the Contract until the Consultant has received a Task Order.

3.3. With respect to the "Project Management/Construction Management Support Services" enumerated in the Scope of Services, this Contract is not legally binding, will not take legal effect, and no services may commence until the Consultant has been given a Task Order.

#### Section 4.0 Services to be Performed by Consultant.

4.1. Scope of Services. Consultant agrees to perform all Services in strict compliance with Exhibit "A", "Scope of Services". All work shall be assigned in written Task Orders issued by LAWA and as may be further described in this Contract including all documents incorporated herein or that may be referenced.

4.2. Incidental Work. It is expressly understood and agreed that Consultant shall perform all incidental work required to complete the Services as described by Task Orders, including work for which no specific proposal item(s) was/were included, and/or including work which is required to furnish final, finished and detailed Work consistent with and fulfilling the intent of the Contract Documents. All such incidental work shall not be considered extra work for which additional compensation can be claimed by Consultant.

4.3. Deliverables. In its performance of the Services, the Consultant agrees to provide any Deliverables defined in specific Task Orders to this Contract, and as may be further described in this Contract.

4.4. During the term of this Contract, Consultant shall, at all times, comply with all applicable laws, rules and regulations, of any and all City, State and Federal agencies, including, but not limited to, the Federal Aviation Administration (hereinafter referred to as "FAA"), Transportation Security Administration (hereinafter referred to as "TSA"), the Department of Transportation (hereinafter referred to as "DOT"), which may have jurisdiction over, or be concerned with, the programming and planning of Project tasks. Consultant shall work with LAWA in resolving any conflicting legal authorities and/or requirements; however, to the extent resolution of conflicts is not possible, LAWA's determination will be final.

4.5. If a change in the applicable laws, rules or regulations causes an increase in the scope of work or services to be performed by Consultant pursuant to this Contract, then the parties hereto shall agree upon additional compensation, if any, to be paid to Consultant therefore, and this Contract shall be amended, if authorized, in writing, by LAWA prior to the performance by Consultant of said increased work or service.

#### Section 5.0 Task Orders.

5.1. Any Services to be provided by Consultant shall only be performed pursuant to Task Orders that provide a detailed description of either the services or tasks to be performed and the personnel to be provided, the time frame for the work to be performed, the not to exceed amount to be charged, and any estimated expenses.

5.2. All personnel to be assigned to work under this Contract shall be authorized through the use of a written Task Order, and compensated according to the guidelines established herein for the services provided.

5.3. Consultant shall provide a complete detailed proposal for each Task Order. The Task Order may be written to cover one or more Consultant employees from the attached list of positions in the Exhibit B, Rates Tables.

5.4. Task Orders and any and all amendments to Task Orders shall be in writing and signed by LAWA and the Consultant.

5.5. This is a non-exclusive Contract and the City and LAWA are only obligated to Consultant for the scope and amount authorized within any given executed Task Order.

#### Section 6.0 Time Periods for Completion of Consultant's Services.

6.1. It is understood and agreed that time is of the essence in the performance of each task(s), and phases within each task(s), under this Contract. The services and any defined deliverables shall be completed and delivered to LAWA in a prompt and timely fashion so as to permit the effective review and employment of the deliverables by LAWA during and throughout the performance of the Project.

6.2. The time during which Consultant is delayed in its work by the acts or neglect of LAWA, or by LAWA's employees or those under it by Contract or otherwise, by court order, by acts or failures to act of local, State and Federal Agencies, and the Airlines, or by acts of God

which Consultant could not reasonably have foreseen and provided for, and which are not caused by, or the continuance of which are not due to, any fault or negligence on the part of Consultant, shall be added to the applicable period for completion of Consultant's services under this Contract, but LAWA shall not be liable to Consultant for any damages on account of any such delay(s).

#### Section 7.0 Payment for Services.

7.1. For all Services rendered under this Contract, all costs, direct or indirect, and all expenses incurred by Consultant pursuant to this Contract, LAWA shall pay Consultant, subject to the maximum hourly rates and cost schedules set forth in "Exhibits B, C, and D," attached hereto and incorporated herein, on either (1) a mutually agreed-upon lump sum basis, (2) a direct time and material basis, or (3) a fixed fee basis.

7.2. For all Services rendered under this Contract, all costs, direct or indirect, and all expenses incurred by Consultant pursuant to this Contract, the total compensation to be paid to the Consultant for all services rendered under this contract shall not exceed the total sum of Ten Million Dollars (\$10,000,000.00) for the term of the contract.

7.3. LAWA, may add to the category(ies) of personnel, and or Sub-Consultants listed on Exhibit "B," indicating corresponding hourly rates for such additional personnel. Any such addition(s) of personnel, and/or of Sub-Consultants, shall not entitle Consultant to any additional compensation beyond what is specified in Subsections 7.1 and 7.2 herein.

7.4. LAWA shall not be required to make payments for work not yet performed, nor for work deemed unsatisfactory by LAWA. The parties agree that LAWA, shall make the final determination as to when Consultant's services, or any part thereof, have been satisfactorily performed or completed to justify release of any given payment to Consultant under this Contract.

7.5. Consultant or subconsultant shall pay to any subconsultant, not later than seven (7) days after receipt of each payment, the respective amounts allowed the Consultant on account of the work performed by the subconsultants, to the extent of each subconsultant's interest therein. In the event that there is a good faith dispute over all or any portion of the amount due on a payment from the Consultant or subconsultant to a subconsultant, the Consultant or subconsultant may withhold no more than 150 percent of the disputed amount. Consultant shall include this provision in all subcontracts.

#### Section 8.0 Payment of Consultant's Fee.

8.1. Consultant shall submit a separate request for payment only on a monthly basis, or as directed by LAWA, for Services completed during the billing period. Each request for payment shall contain a cumulative total of all monthly billings, and shall identify the monthly billing applicable to each task of Consultant's Services. All requests for payments/invoices must be in accordance with Exhibit "D", "Cost Reimbursable Guidelines".

8.2. LAWA reserves the right to request the use of specific billing templates supplied by LAWA and any additional substantiation regarding any request for payment if LAWA considers such additional substantiation to be in the best interests of LAWA. LAWA will process each request for payment, following LAWA's normal procedure, upon approval of the request for payment by LAWA.



8.3. All payment requests submitted by Consultant for Services (performed by Consultant, its sub-consultants or both) shall be certified by a duly authorized and knowledgeable officer of Consultant in a statement containing the following:

"I certify, under penalty of perjury, under the laws of the State of California, that to the best of my knowledge and belief, the above bill/invoice is just, true and correct according to the terms of this Contract, and that payment therefore has not been received."

8.4. Consultant shall perform a thorough Quality Assurance (QA)/Quality Control (QC) of each monthly invoice prior to submitting the same to LAWA. Any errors discovered in the Consultants invoicing will be brought to the Consultant's attention during the review cycle and the Consultant will be given a short time frame of approximately two (2) to three (3) days to correct any issues or provide adequate level of support documentation in order to keep the invoice in process. Should the correction not be made in the time specified, the charges will be removed and the invoices short paid. Should the charges be supported after the deadline, they may be resubmitted in the next month's invoice for consideration; however if deemed in error or unallowable a second time, the charges cannot be billed again.

8.5. Unless otherwise specifically directed by LAWA, Consultant shall submit all pertinent timesheets for itself, and for all Sub-Consultants, that relate to each of its submitted monthly invoice(s). Consultant shall also maintain, in a form subject to audit, and in accordance with generally accepted accounting principles, backup documentation to support all entries in each submitted billing statement. Such documentation shall be readily made available to the LAWA, and to its duly authorized representative(s), upon request by LAWA.

8.6. LAWA, the FAA, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records, of Consultant, and/or of Sub-Consultants, which are directly pertinent to this Contract, for the purpose of making audits, examinations, excerpts and transcriptions. Consultant shall maintain records, including, but not limited to, books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form, sufficient to properly reflect all costs claimed to have been incurred under this Contract. Consultant shall make available to LAWA and to the Comptroller General, upon request and within a reasonable time, such records, materials and other evidence described herein for examination, audit or reproduction. Such records related to this Contract work shall be maintained and made available by Consultant for three (3) years after final payment on, final termination settlement of, or final dispute resolution of, this Contract, whichever is later. To the extent that an audit by the City, City's independent auditors, Program Consultant, or their designees discloses excess charges inaccurately or improperly invoiced or allocated to this Contract by the Consultant or its Sub-Consultants, Consultant agrees to remit the amount of the overpayment to the City upon demand. If such audit discloses an overcharge of two percent (2%) or more of the total amount invoiced to the City for any year audited, and such audit is correct, Consultant shall pay the actual cost of such audit, which cost, in the case of audits conducted by City's auditors or City using in house staff, shall be computed on the basis of two (2) times the direct payroll of the audit staff completing the audit and audit report. Should audit disclose an underpayment to Consultant, City shall promptly remit the amount of the underpayment to the Consultant. The foregoing obligations to pay in the event of an overcharge do not apply to errors discovered in the processing of Applications for Payment in the ordinary course of business or to adjustments in the Consultant's Rate in Exhibit B. Consultant shall include, in any and all Sub-Consultant agreements under this Contract that exceed One Hundred

Thousand Dollars (\$100,000.00), a provision setting forth the record retention requirements specified in this paragraph.

#### Section 9.0 Application for Payment.

9.1. Each Request for Payment shall contain documentation acceptable to LAWA and the City. Such documentation shall include invoices for reimbursable expenses, applicable employee time sheets, identification of the scope of work completed, billing by personnel and job classifications and the applicable billing rates. Costs shall be broken down by direct labor costs, indirect field overhead rate, Fee or home office rate if pre-approved by LAWA, and other direct costs (ODCs). Each Request for Payment shall also contain a cumulative total of all monthly billings, shall identify cost broken down per Task Order, Task Order authorization amount, the monthly billing applicable to each Task Order, and a cumulative total applicable to each Task Order.

9.2. The Consultant shall also submit with each monthly Requests for Payment, a "Subcontractor's Small/Minority/Women/Disadvantaged Business Utilization Form." The failure to submit said Utilization Form with the Request for Payment, will result in delaying the processing of said Request for Payment.

9.3 LAWA reserves the right to require additional substantiation regarding any Request for Payment if LAWA considers such additional substantiation to be in the best interest of LAWA. LAWA shall process the Request for Payment, following LAWA's normal procedure, upon approval of said request by LAWA.

9.4. The parties agree that time is of the essence in the submission of any charge, invoice or Request for Payment and agree that, as a condition precedent to Consultant's right to payment, Consultant shall submit any charge, invoice or Request for Payment no later than one hundred twenty (120) days from the last date of service for which payment is sought. The parties agree that Consultant waives its right to payment for any charge, invoice or Request for Payment submitted more than one hundred twenty (120) days from the last date of services for which payment is sought.

#### Section 10.0 Insurance.

10.1. Consultant shall procure at its expense, and keep in effect at all times during the term of this Contract, the types and amounts of insurance specified in the Administrative Requirements incorporated by reference herein. The specified insurance (except for Workers' Compensation and Professional Liability) shall also, by endorsement to the policies, include and insure City, its Department of Airports, its Board and all of City's officers, employees and agents, their successors and assigns, as additional insureds, against the areas of risk described in the Administrative Requirements, hereof with respect to Consultant's acts or omissions in its operations, use, and occupancy of the Airports owned and operated by the Department (hereinafter referred to as "Airport") or other related functions performed by or on behalf of Consultant in, on or about the Airport.

10.2. Waiver of Subrogation. For commercial general liability insurance, workers' compensation insurance, and employer's liability insurance, the insurer shall agree to waive all rights of subrogation against LAWA for Losses arising from activities and operations of Consultant insured in the performance of Services under this Contract.

10.3. Each specified insurance policy (other than Workers' Compensation and Employers' Liability) shall contain a Severability of Interest (Cross Liability) clause which states, "It is agreed that the insurance afforded by this policy shall apply separately to each insured against whom claim is made, or suit is brought, except with respect to the limits of the company's liability." Additionally, Consultant's Commercial General Liability policy ("Policy") shall provide Contractual Liability Coverage, and such insurance as is afforded by the Policy shall also apply to the tort liability of the City of Los Angeles assumed by the Consultant under this Contract.

10.4. All such insurance shall be primary and noncontributing with any other insurance held by City's Department of Airports where liability arises out of, or results from, the acts or omissions of Consultant, its agents, employees, officers, invitees, assigns, or any person or entity acting for, or on behalf of, Consultant.

10.5. Such policies may provide for reasonable deductibles and/or retentions acceptable to LAWA, based upon the nature of Consultant's operations and the type of insurance involved.

10.6. LAWA shall have no liability for any premiums charged for such coverage(s). The inclusion of City, its Department of Airports, its Board, and all of its officers, employees and agents, and their agents and assigns, as additional insureds, is not intended to, and shall not, make them, or any of them, a partner or joint venture of Consultant in its operations at the Airport.

10.7. In the event Consultant fails to furnish LAWA evidence of insurance, or to maintain the insurance as required under this Section, LAWA, upon ten (10) days' prior written notice to Consultant of its intention to do so, shall have the right to secure the required insurance at the cost and expense of Consultant, and Consultant agrees to promptly reimburse LAWA for the cost thereof, plus fifteen percent (15%) for administrative overhead.

10.8. At least ten (10) days prior to the expiration date of any of the above policies, documentation showing that the insurance coverage has been renewed or extended shall be filed with the LAWA. If any such coverage is cancelled or reduced, Consultant shall, within fifteen (15) days of such cancellation or reduction of coverage, file with LAWA evidence that the required insurance has been reinstated, or is being provided through another insurance company or companies.

10.9. Consultant shall provide proof of all specified insurance and related requirements to LAWA either by production of the actual insurance policy(ies), by use of LAWA's own endorsement form(s), by broker's letter acceptable to LAWA in both form and content in the case of foreign insurance syndicates, or by other written evidence of insurance acceptable to LAWA. The documents evidencing all specified coverages shall be filed with LAWA prior to the Consultant performing the Services hereunder. Such documents shall contain the applicable policy number(s), the inclusive dates of policy coverage(s), the insurance carrier's name(s), and they shall bear an original or electronic signature of an authorized representative of said carrier(s), and they shall provide that such insurance shall not be subject to cancellation, reduction in coverage or non-renewal, except after the carrier(s) and the Consultant provide actual, written notice (by Certified Mail) to the City Attorney of the City of Los Angeles at least thirty (30) days prior to the effective date thereof.

10.10. LAWA and Consultant agree that the insurance policy limits specified in this Section shall be reviewed for adequacy annually throughout the term of this Contract by LAWA,

who may thereafter require Consultant to adjust the amount(s) of insurance coverage(s) to whatever amount(s) LAWA deems to be adequate. LAWA reserves the right to have submitted to it, upon request, all pertinent information about the agent(s) and carrier(s) providing such insurance.

#### Section 11.0 City Held Harmless.

11.1. To the fullest extent permitted by law, Consultant shall defend, indemnify and hold harmless City and any and all of City's Boards, officers, agents, employees, assigns and successors in interest from and against any and all suits, claims, causes of action, liability, losses, damages, demands or expenses (including, but not limited to, attorney's fees and costs of litigation), claimed by anyone (including Consultant and/or Consultant's agents or employees) by reason of injury to, or death of, any person(s) (including Consultant and/or Consultant's agents or employees), or for damage to, or destruction of, any property (including property of Consultant and/or Consultant's agents or employees) or for any and all other losses, founded upon or alleged to arise out of, pertain to, or relate to the Consultant's and/or Sub-Consultant's performance of the Contract, whether or not contributed to by any act or omission of City, or of any of City's Boards, officers, agents or employees; Provided, however, that where such suits, claims, causes of action, liability, losses, damages, demands or expenses arise from or relate to Consultant's performance of a "Construction Contract" as defined by California Civil Code section 2783, this paragraph shall not be construed to require Consultant to indemnify or hold City harmless to the extent such suits, causes of action, claims, losses, demands and expenses are caused by the City's sole negligence, willful misconduct or active negligence; Provided further that where such suits, claims, causes of action, liability, losses, damages, demands or expenses arise from Consultant's design professional services as defined by California Civil Code section 2782.8, Consultant's indemnity obligations shall be limited to allegations, suits, claims, causes of action, liability, losses, damages, demands or expenses arising out of, pertaining to, or relating to the Consultant's negligence, recklessness or willful misconduct in the performance of the Contract.

11.2. In addition, and consistent with the requirements of Section 13.6 below, Consultant agrees to protect, defend, indemnify, keep and hold harmless City, including its Boards, Departments and City's officers, agents, servants and employees, from and against any and all claims, damages, liabilities, losses and expenses arising out of any threatened, alleged or actual claim that the end product provided to LAWA by Consultant violates any patent, copyright, trade secret, proprietary right, intellectual property right, moral right, privacy, or similar right, or any other rights of any third party anywhere in the world. Consultant agrees to, and shall, pay all damages, settlements, expenses and costs, including costs of investigation, court costs and attorney's fees, and all other costs and damages sustained or incurred by City arising out of, or relating to, the matters set forth above in this paragraph of the City's "Hold Harmless" agreement.

11.3 . In Consultant's defense of the City under this Section, negotiation, compromise, and settlement of any action, the City shall retain discretion in and control of the litigation, negotiation, compromise, settlement, and appeals there from, as required by the Los Angeles City Charter, particularly Article II, Sections 271, 272 and 273 thereof.

11.4. Survival of Indemnities. The provisions of this Section 11 shall survive the termination of this Contract.

## Section 12.0. Hazardous Materials and Other Regulated Substances.

12.1. Consultant shall not be held responsible for the presence or remediation of asbestos, asbestos-related materials, or any other hazardous substance, in any form whatsoever, as such materials and substances are defined by the Environmental Protection Agency or any other public authority, found on any property or structure that is the subject of services performed by Consultant under this Contract.

## Section 13.0 Intellectual Property Ownership and Rights.

13.1. Ownership. All Work Products originated and prepared by Consultant or its sub-consultant of any tier under this Contract shall be and remain the property of LAWA for its use in any manner it deems appropriate; provided, however, that any use unintended under this Contract, or modification or alteration of the Work Products without the direct involvement of the Consultant shall be without Liability to Consultant. Work Products are all works, tangible or not, created under this Contract for LAWA including, without limitation, documents, material, data, reports, manuals, specifications, artwork, drawings, sketches, computer programs and databases, schematics, photographs, video and audiovisual recordings, sound recordings, marks, logos, graphic designs, notes, websites, domain names, inventions, processes, formulas matters and combinations thereof, and all forms of intellectual property therein. To the extent applicable under the U.S. Copyright Act, all works created by Consultant under this Contract are work-made-for-hire created for the sole benefit and ownership of LAWA. Consultant hereby assigns, and agrees to assign to LAWA, all goodwill, copyrights and trademarks in all Work Products originated and prepared by Consultant under this Contract. Consultant further agrees to execute any documents necessary for LAWA to perfect, memorialize, or record LAWA's ownership of rights provided herein. This paragraph shall survive expiration or termination of this Contract.

13.2. Obligations on Sub-consultant. Any sub-contract entered into by Consultant relating to this Contract, to the extent allowed hereunder, shall include a like provision (on LAWA's ownership in Work Products) for work to be performed under this Contract to Contractually bind or otherwise oblige its sub-consultants performing work under this Contract such that LAWA's ownership rights of all Work Products are preserved and protected as intended herein. Failure of Consultant to comply with this requirement or to obtain the compliance of its sub-consultant with such obligations shall subject Consultant to all remedies allowed under law and termination of this Contract.

13.3. Use of Work Products by Third Parties. Consultant shall not make available, provide or disclose any Work Product to any third party without prior written consent of LAWA.

13.4. No Transfer of Pre-Existing Intellectual Property. Nothing herein may be construed to transfer to LAWA any ownership, interest or right in any of the Consultant's intellectual property, trade secrets or know-how that is pre-existing before commencement of this Contract, or that is derived independent of Consultant's performance of this Contract.

13.5. Non-Infringement Warranty. Consultant hereby represents and warrants that performance of all obligations under this Contract does not infringe in any way, directly or contributory, upon any third party's intellectual property rights, including, without limitation, patents, copyrights, trademarks, trade secrets, right of publicity and proprietary information. This section shall survive expiration or termination of this Contract.

13.6. Indemnification of Third Party Intellectual Property Infringement Claims. Consultant will defend at its sole expense and hold harmless in any infringement claim, demand, proceeding, suit or action ("Action" hereinafter), LAWA, its commissioners, officers, directors, agents, employees, or affiliates ("LAWA Defendants") for any infringement or violation, actual or alleged, direct or contributory, intentional or otherwise, of any intellectual property rights, including patents, copyrights, trade secrets, trademarks, service marks, ideas, concepts, themes, methods, algorithms and other proprietary information or rights (collectively "Intellectual Property rights" hereinafter), (1) on or in any design, medium, matter, plant, article, process, method, application, equipment, device, instrumentation, software, hardware, or firmware used by the Consultant or Sub-Consultants in performing the work under this Contract; or (2) as a result of LAWA's actual or intended use of any Work Product furnished by Consultant and/or Sub-Consultant under the Contract. Consultant also shall indemnify LAWA against any loss, cost, expense, liability, and damages awarded against LAWA or settlement as a consequence of such Action. Under no circumstances is Consultant liable under this sub-section to defend and hold LAWA harmless, where LAWA licenses or sublicenses for profit any of the intellectual property rights in the Work Product to a third-party whose use of the intellectual property gives rise to the alleged infringement and whose use is not in any way part of the intended use for the benefit of LAWA under this Contract.

13.7. In Consultant's defense of LAWA Defendants, negotiation, compromise, and settlement of any such infringement Action, LAWA shall retain discretion in and control of the litigation, negotiation, compromise, settlement, and appeals there from, as required by the Los Angeles City Charter, particularly Article II, Sections 271, 272 and 273 thereof.

13.8. Where any Work Product furnished by Consultant is in a form of software or firmware ("Vehicle"), and if any part of the such Vehicle (a) becomes the subject of an Action, (b) is adjudicated as infringing a third party's Intellectual Property right, or (c) has its use enjoined or license terminated; Consultant shall, with LAWA's consent, do one of the following immediately. Consultant shall at its expense either:

- i) Procure for LAWA the right to continue using said part of the Vehicle; OR
- ii) Replace the Vehicle with a functionally equivalent, non-infringing product.

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

13.9. Rights and remedies available to LAWA hereinabove shall survive the expiration or other termination of this Contract. Further, the rights and remedies are cumulative of those provided for elsewhere in this Contract and those allowed under the laws of the United States, the State of California, and the City of Los Angeles. This Paragraph shall survive the expiration or other termination of this Contract.

13.10. Consultant's Trade Secrets. Trade Secrets, as used in this Contract, are defined in California Government Code Section 6254.7 and California Evidence Code Section 1061(a)(1) and may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or a service having commercial value and which gives its user an opportunity to obtain a business advantage over competitors who do not

know or use it. No Work Products or deliverables created and delivered to LAWA under this Contract may constitute Trade Secrets of Consultant.

13.11. Consultant hereby stipulates that LAWA is not nor expected to be in possession of any of Consultant's Trade Secrets. In the unlikely event that Consultant reveals any of its Trade Secrets (that is so marked conspicuously on every page) to LAWA to further the intent and purpose of this Contract and so notifies LAWA in writing that it has revealed its Trade Secrets to LAWA, then LAWA agrees to notify Consultant of any request made pursuant to the California Public Records Act, Cal. Gov. Code, § 6250 et seq., (hereinafter referred to as "CPRA") that includes Consultant's Trade Secrets. LAWA may disclose any of Consultant's Trade Secrets if Consultant does not object in writing to LAWA after ten (10) calendar days from the notice mailing date by LAWA to Consultant of the CPRA request.

13.12. Unless expressly stated otherwise, for all pre-existing third-party and Consultant's intellectual property (if any), including software, required to operate or use any Work Product delivered by Consultant, Consultant hereby grants and will cause others to grant LAWA (including its agents and consultants) a royalty-paid, perpetual, irrevocable license to use such pre-existing intellectual property internally by LAWA (including its agents and consultants).

#### Section 14.0 Standard of Care.

14.1. Consultant's services rendered in the performance of this Contract shall conform to the generally accepted professional standards of a specialist who provides project management and construction management support services for major international airports and Capital Improvements programs of the type, scope, quality and complexity described in the Scope of Services.

14.2. Consultant shall assure the standard of care provided for is met by providing effective supervision and peer review as necessary to provide for quality control and quality assurance of the design.

14.3. Consultant shall, at its own expense, promptly correct each and every design error and/or omission for which it is responsible, whether or not the result of failure to meet the standard of care, and whether committed by it or a subconsultant or sub-subconsultant of it. Consultant's obligation in this regard is in addition to all other legal and contractual obligations of Consultant.

#### Section 15.0 Independent Contractor.

15.1 In furnishing the services provided for herein, Consultant is acting as an independent contractor, is to furnish such services in its own manner and method, and is in no respects to be considered an officer, employee, servant or agent of LAWA.

#### Section 16.0 Nondiscrimination and Affirmative Action Program.

16.1. Consultant, in the performance of this Contract, agrees and obligates itself not to discriminate in its employment practices against any employee or applicant for employment because of the employees or applicant's race, religion, national origin, ancestry, sex, sexual orientation, age, physical handicap, marital status, domestic partner status, or medical condition. Consultant further agrees to abide by the provisions of Section 10.8.4 of City's Administrative Code, printed on the CERTIFICATION FOR CONTRACTS OF MORE THAN \$5,000, which

Certification City acknowledges Consultant has previously submitted along with a copy of its Affirmative Action Plan. Said Plan, having been approved by City, shall remain valid for one (1) year from the date of approval and, with said Certification, shall be incorporated by reference in and become part of this Contract. Consultant agrees that, prior to the expiration of said Plan, Consultant will again submit to City its revised and/or updated Affirmative Action Plan for approval as well as another completed Certification.

16.2. All subcontracts awarded under this Contract shall contain similar provisions and Consultant shall require each of its Subcontractor/Sub-consultants to complete a like CERTIFICATION, and to submit to it an Affirmative Action Plan acceptable to City.

16.3. Consultant also agrees to comply with the provisions of Article 3 of Chapter 1, Part 7, Division 2 of the Labor Code of the State of California and all other applicable statutes, ordinances and regulations relative to employment, wages and hours of labor.

Section 17.0 First Source Hiring Program for Airport Employers (LAX Only).

17.1. Consultant shall comply with the applicable provisions of the First Source Hiring Program adopted by the Board. The rules, regulations, requirements, and penalties of the First Source Hiring Program are attached hereto as Exhibit "E" and made a material term of this Contract. Consultant shall be an "Airport Employer" under the First Source Hiring Program.

Section 18.0 Small Business Enterprises (SBE).

18.1. Contractor hereby agrees and obligates itself to utilize the services of the Small Business Enterprise (hereinafter referred to as "SBE") firms designated in its proposal on the level designated in its bid (specifically, a ~~100%~~ <sup>30% KS</sup> SBE Subcontractor level of participation for the required Project designated Work).

18.2. Contractor hereby further agrees and obligates itself to strictly comply with all of the Rules and Regulations (hereinafter referred to as "Rules") of LAWA's Small Business Enterprise Pilot Program (hereinafter referred to as "Program").

18.3. Failure to comply with any of the Program's requirements shall subject the Contractor to the penalties set forth in the Program's Rules.

18.4. Contractor shall submit, on a monthly basis, together with its invoice for payment the SBE Utilization Form listing the SBE Subcontractors utilized during the reporting period. Contractor shall cooperate with LAWA personnel in providing such information as shall be requested by LAWA in order to ensure compliance with the provisions of this section. LAWA will not process or pay Contractor's subsequent invoices if the SBE Utilization Forms are not timely submitted or if the Contractor fails to cooperate with LAWA personnel by promptly providing any and all information related to SBE participation requested by LAWA.

18.5. Failure to comply with any of the terms of this Section (or the terms of this Contract) shall constitute a material breach of contract and may result in the Contractor being deemed "Non-Responsible" (Section 10.40 et seq. of the Los Angeles Administrative Code).



## Section 19.0 Living Wage and Service Contract Worker Retention Requirements.

19.1. Living Wage Ordinance. Consultant expressly agrees, as a part of its obligations under this Contract, to comply with the terms of the Living Wage Ordinance as set forth in Los Angeles Administrative Code Section 10.37, et seq., including any future amendments thereto.

19.2. Service Contractor Worker Retention Ordinance. Consultant expressly agrees, as part of its obligations under this Contract, to comply with the terms of the Service Contract Worker Retention Ordinance as set forth in the Los Angeles Administrative Code Section 10.36, et seq., including any future amendments thereto.

19.3. No Retaliation. Consultant shall not retaliate against any employee lawfully asserting noncompliance with the provisions of either the Living Wage Ordinance or the Service Contract Worker Retention Ordinance.

19.4. City Remedies. Consultant's violation of the Living Wage Ordinance or Service Contract Worker Retention Ordinance shall be deemed to be a breach of this Contract, for which LAWA shall be entitled to pursue all remedies available under law, including, but not limited to, termination of this Contract.

19.5. Pledge of Consultant. Consultant hereby pledges, and shall require each of its subcontractors/sub-consultants within the meaning of the Living Wage Ordinance as respects this Contract, to pledge to and to comply with the terms of Federal law proscribing retaliation for union organizing. Consultant shall deliver the executed pledges from each such subcontractor/sub-consultant to LAWA within ninety (90) days of the execution of this Contract. Consultant's delivery of executed pledges from each such subcontractor/sub-consultant shall fully discharge Consultant's obligations with respect to such pledges, and shall fully discharge the obligation of the Consultant and the Subcontractor/Sub-consultants to comply with the provisions in the Living Wage Ordinance, contained in Section 10.37.6(c), concerning compliance with such Federal law.

19.6. Subcontractor/Subconsultant Compliance. Consultant agrees to include, in every subcontract entered into between Consultant and any Subcontractor/Subconsultant under this Contract, a provision pursuant to which such Subcontractor/Subconsultant: (1) agrees to comply with the Living Wage Ordinance and the Service Contract Worker Retention Ordinance with respect to this Contract; (2) agrees not to retaliate against any employee lawfully asserting noncompliance on the part of the Subcontractor/Subconsultant with the provisions of either the Living Wage Ordinance or the Service Contract Worker Retention Ordinance; and (3) agrees and acknowledges that LAWA, as the intended third party beneficiary of this provision may (a) enforce the Living Wage Ordinance and Service Contract Worker Retention Ordinance directly against the Subcontractor/Subconsultant with respect to this Contract, and (b) invoke, directly against the Subcontractor/Subconsultant with respect to the Contract, all the rights and remedies available to LAWA under Section 10.37.5 of the Living Wage Ordinance and Section 10.36.3 of the Service Contract Worker Retention Ordinance, as same may be amended from time to time.

## Section 20.0 Assignment of Anti-Trust Claims.

20.1. Pursuant to California Government Code Sections 4550 et seq. regarding Anti-Trust Claims, it is the policy of the City of Los Angeles to inform each Bidder that in submitting a bid/proposal to LAWA the Bidder offers and agrees to assign LAWA all rights, title and interest in and to all causes of action it may have under the Clayton Act or Cartwright Act, arising from

purchases of goods, services or materials. This assignment is made and becomes effective at the time LAWA tenders final payment to the Bidder.

#### Section 21.0 Equal Benefits Ordinance (EBO).

21.1. Unless otherwise exempt in accordance with the provisions of the Equal Benefits (hereinafter referred to as "EBO") Ordinance, this Contract is subject to the applicable provisions of EBO Section 10.8.2.1 of the Los Angeles Administrative Code, as amended from time to time.

21.2. During the term of this Contract, Consultant certifies and represents that the Consultant will comply with the EBO. Furthermore, Consultant agrees to post the following statement in conspicuous places at its place of business available to employees and applicants for employment:

"During the term of a Contract with the City of Los Angeles, the Consultant will provide equal benefits to employees with spouses and its employees with domestic partners. Additional information about the City of Los Angeles' Equal Benefits Ordinance may be obtained from the Department of Public Works, Bureau of Contract Administration, Office of Contract Compliance at (213) 847-6480."

#### Section 22.0 Child Support Orders.

22.1 Consultant expressly agrees, as part of its obligations under this Contract, to comply with the terms of the Child Support Assignment Orders Ordinance as set forth in Los Angeles Administrative Code Section 10.10, et seq., Ordinance No. 172,401, including any future amendments thereto.

#### Section 23.0 Contractor Responsibility Program.

23.1 Pursuant to Resolution No. 21601 adopted by the Board, effective May 20, 2002, it is the policy of LAWA to ensure that all LAWA contractors have the necessary quality, fitness and capacity to perform the work set forth in this Contract. LAWA shall award contracts only to entities and individuals it has determined to be Responsible Contractors. The provisions of this Program apply to leases and contracts for construction, for services, and for purchases of goods and products that require Board approval.

#### Section 24.0 Failure to Provide Prompt, Efficient and Thorough Services.

24.1. If, in the opinion of LAWA, Consultant fails to provide prompt, efficient and thorough services, or if Consultant fails to complete the several portions of its work within the time limits provided, LAWA shall have the right to cancel this Contract, and pay Consultant therefore in accordance with the provisions of Section 25.0, "Abandonment of Program and Cancellation of Contract or Suspension of Services".

#### Section 25.0 Abandonment of Program and Cancellation of Contract or Suspension of Services.

25.1. If, at any time, Board, for any reason, decides to terminate the Program, or any part thereof, or Consultant's services, or any part thereof, Board may: 1) require Consultant to terminate the performance of all, or a portion, of its services; and/or 2) terminate this Contract, or any part thereof, upon giving Consultant a thirty (30) day written notice prior to the effective date

of such termination, which date shall be specified in such notice. Upon receipt of the Notice, Consultant shall immediately cease all activity except for that activity expressly authorized by the Notice.

25.2. In the event this Contract, or any portion hereof, and/or Consultant's services, or any portion thereof, is terminated by LAWA, LAWA shall only pay Consultant the amount due to the Consultant for services provided up to the termination date.

25.3. LAWA shall not be liable for the cost of work performed, nor for expenses incurred, subsequent to the date specified by LAWA in the thirty (30) day written notice to terminate. Such payments shall be made by LAWA within a reasonable time following receipt of Consultant's invoice(s) therefore.

25.4. LAWA may, at any time, upon written order to Consultant, require Consultant to stop all, or any part, of the services called for by this Contract for a period of thirty (30) days. Said thirty (30) day period shall commence on the day the written order is delivered to Consultant, and shall further be extended for any period to which the parties may agree. Any such order shall be specifically identified as a "Stop Work Order" issued pursuant to this clause. Upon receipt of such an Order, Consultant shall forthwith comply with its terms. Within a period of thirty (30) days after a Stop Work Order is delivered to Consultant, or within any extension of that period to which the parties have agreed, LAWA shall either:

- (a) Cancel the Stop Work Order; or
- (b) Terminate the services as provided in Section 25.1 hereof.

25.5. If a Stop Work Order issued under this Section is cancelled or expires, or the period of any extension thereof is cancelled or expires, Consultant shall not resume work until the Stop Work Order has been retracted in writing by LAWA. Upon retrieval of the Stop Work Order an equitable adjustment will thereafter be made for Consultant's time of performance, Consultant's compensation, or both, consistent with the provisions of Section 7.0 of this Contract, if:

- (a) The Stop Work Order results in an increase in the time required for, or in Consultant's cost properly allocable to, the performance of services under this Contract; and
- (b) Consultant asserts a claim for such adjustment within thirty (30) days after the end of the period of work stoppage; provided, however, that LAWA may investigate any facts relating to any such claim.

25.6. If a Stop Work Order is not cancelled or retracted, and the services covered by such order are terminated for the convenience of LAWA, no costs resulting from said Stop Work Order shall be allowed.

25.7. It is understood and agreed that should LAWA decide that any portion of Program and/or Consultant's services shall be suspended or terminated, this Contract shall continue to apply to that portion or those portions not suspended or terminated, and that such suspension or termination of a portion of Program or services shall in no way make void or invalid this Contract as to that portion, or those portions, not suspended or terminated.

25.8. All finished or unfinished documents and materials produced or procured under this Contract, including all intellectual property rights thereto, shall become LAWA property upon date of such termination. Consultant agrees to execute any documents necessary for LAWA to perfect, memorialize, or record LAWA's ownership of rights provided herein. The section shall survive termination of this Contract.

**Section 26.0 Assignment or Transfer Prohibited.**

26.1. Consultant shall not, in any manner, directly or indirectly, by operation of law or otherwise, hypothecate, assign, transfer or encumber this Contract, or any portion thereof or any interest therein, in whole or in part, without the prior written consent of LAWA. The names of Subcontractor/Subconsultants or others whom Consultant intends to employ to perform services as part of the Program shall be submitted to LAWA for prior approval.

26.2. For purposes of this Contract, the terms "transfer" and "assign" shall include, but not be limited to, the following: (i) if Consultant is a partnership or limited liability company, the transfer of fifty percent (50%) or more of the partnership interest or membership or the dissolution of the Consultant; and, (ii) if Consultant is a corporation, any cumulative or aggregate sale, transfer, assignment, or hypothecation of fifty percent (50%) or more of the voting shares of Consultant.

**Section 27.0 Business Tax Registration.**

27.1. Consultant represents that it has registered its business with the City Clerk of the City of Los Angeles and has obtained and presently holds from that Office a Business Tax Registration Certificate, or a Business Tax Exemption Number, required by City's Business Tax Ordinance (Article 1, Chapter 2, Sections 21.0 and following, of City's Municipal Code).

27.2. Consultant shall maintain, or obtain as necessary, all such Certificates required of it under said Ordinance and shall not allow any such Certificate to be revoked or suspended during the Term hereof.

**Section 28.0 Confidentiality of Information.**

28.1. Unless expressly agreed otherwise by LAWA in writing, all Deliverables (including but not limited to all drawings, documents, specifications, plans, reports, statistics and data) and any other information in any form prepared by or provided to Consultant in connection with this Contract (collectively, "Program Data") are property of LAWA and are confidential. Consultant expressly agrees that, except as specifically authorized by LAWA in writing or as may be required by law, Program Data will be made available only to LAWA, and, on a need-to-know basis, Consultant's employees and subcontractors. Consultant acknowledges that Program Data may contain information vital to the security of the Airports. Consultant shall take utmost precaution/measures while sharing information with its Subconsultants, and shall do so on a need-to-know basis only, even while working on the Program. If Consultant fails to comply with this section, Consultant will be liable for the reasonable costs of actions taken by LAWA, the airlines, the FAA, or the TSA that the applicable entity reasonably incurs in good faith as a result of such failure, including, without limitation, the design and construction of improvements, procurement and installation of security devices, and posting of guards. Consultant and its Subconsultants shall store all the information gathered as part of this Program in a secure and safe place during and/or after the performance of this Contract.

28.2. Except as authorized in writing by LAWA, Consultant must not issue any publicity news releases or grant press interviews, and except as may be required by law during or after the performance of this Contract, disseminate any information regarding its Services or the tasks/projects to which the Services pertain.

28.3. If Consultant is presented with a subpoena or a request by an administrative agency regarding any Program Data which may be in Consultant's possession by reason of this Contract, Consultant must immediately give notice to LAWA and to the City Attorney for the City of Los Angeles, with the understanding that LAWA will have the opportunity to contest such process by any means available to it before any Program Data are submitted to any court, administrative agency, or other third party. Consultant, however, is not obligated to withhold the delivery beyond the time ordered by the court or administrative agency, unless the subpoena or request is quashed or the time to produce is otherwise extended.

#### Section 29.0 Appropriation of Funds.

29.1. Notwithstanding any other provision of this Contract, including any exhibits or attachments incorporated herein, and in order for LAWA to comply with its governing legal requirements, LAWA shall have no obligation to make any payments to Consultant unless LAWA shall have first made an appropriation of funds equal to, or in excess of, its obligation to make any payments as provided in this Contract. Consultant agrees that any services provided by Consultant, purchases made by Consultant, or expenses incurred by Consultant, in excess of said appropriation(s), shall be free and without charge to LAWA, and LAWA shall have no obligation to pay for any of said services, purchases or expenses. Consultant shall have no obligation to provide services, nor to incur any expenses, in excess of the appropriated amount(s) until LAWA appropriates additional funds for this Contract.

29.2. If LAWA does not appropriate additional funds in an amount equal to, or in excess of, its obligation to make any payments as provided in this Contract, either party may terminate the Contract by providing thirty (30) days written notice to the other party. The parties agree that this termination provision shall have no force or effect on either of the parties' respective rights to terminate this Contract under any other provision thereof.

#### Section 30.0 Compliance With Applicable Laws.

30.1. Consultant shall, at all times during the performance of its obligations under this Contract, comply with all then currently enacted local, Department of Airports, State and Federal laws, statutes, ordinances, rules, regulations, restrictions and/or orders, including the hazardous waste and hazardous materials regulations, and the Americans With Disabilities Act of 1990 (collectively "Laws"), to the extent such Laws are applicable to the Program. Consultant shall be solely responsible for any and all damages caused, and/or penalties levied, as the result of Consultant's noncompliance with such enactments. Further, Consultant agrees to cooperate fully with LAWA in its efforts to comply with the Americans With Disability Act of 1990 and CA Title Section 24, and any amendments thereto, or successor statutes.

#### Section 31.0 Waiver.

31.1. The waiver by LAWA of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of any other term, covenant, or condition, or of any subsequent breach of the same term, covenant, or condition.

Section 32.0 Entire Agreement.

32.1. It is expressly understood and agreed by the parties that this Contract, Exhibits A, B, C, D, and E hereto, and all other materials referenced herein, constitute the entire agreement between the parties hereto and supersedes any and all prior written or oral agreements between them concerning the subject matter contained herein. There are no representations, agreements, or understandings, oral or written, between and among the parties relating to the subject matter contained in this Contract which are not fully set forth herein. This is an integrated agreement. Any amendment(s) or changes(s) to this Contract shall be in writing, and effective only when such amendment(s) or change(s) are executed by the parties hereto.

Section 33.0 Miscellaneous.

33.1. It is the intention of the parties hereto that if any provision of this Contract is capable of different constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

33.2. In the event that any of the provisions, or portions or applications thereof, of this Contract are held to be unenforceable or invalid by any court of competent jurisdiction, LAWA and Consultant shall endeavor to negotiate an equitable adjustment in the provisions of this Contract with a view toward effecting the purpose of this Contract, and the validity and enforceability of the remaining provisions, portions or applications thereof shall not be affected thereby.

33.3. This Contract, and every question arising hereunder, shall be construed, determined and enforced in accordance with the laws of the State of California. Venue shall be at the Southwest District of the Superior Court of the State of California for the County of Los Angeles.

33.4. The Section headings appearing herein shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of this Contract.

Section 34.0 Notices.

34.1. All notices shall be in writing and addressed as follows:

Notices to City, LAWA, and to the City Attorney of the City of Los Angeles shall, until Consultant's receipt of written notice otherwise from these parties, be addressed to said parties at:

City of Los Angeles Department of Airports,  
Airports Development Group  
7301 World Way West, 10<sup>th</sup> Floor  
Los Angeles CA, 90045,

And

Los Angeles City Attorney  
1 World Way  
Los Angeles, CA 90045.

Notices to Consultant shall, until LAWA's receipt of written notice otherwise from Consultant, be addressed to Consultant at

Simpson & Simpson Management Consulting, Inc.  
1000 South Fremont Avenue  
Unit 64  
Building A10  
Suite 10215  
Alhambra, California 91803

34.2. All such notices may either be delivered personally to LAWA or to the Office of the City Attorney, Airports Division, in the one case, or to Consultant in the other case, or may be deposited in the United States mail, properly addressed as aforesaid with postage fully prepaid for delivery by certified or registered mail, and shall be effective upon receipt.

34.3. The execution of any such notice(s) by LAWA shall be as effective as to Consultant as if it were executed by Board, or by Resolution or Order of said Board, and Consultant shall not question the authority of LAWA to execute any such notice(s).

Section 35.0 Vendor Discount.

35.1. Consultant agrees to offer LAWA any discount terms that are offered to its best customers for the goods and services to be provided herein, and apply such discount to payments made under this Contract which meet the discount term.

Section 36.0 Compliance With Los Angeles City Charter Section 470(c)(12) and 609(E).

36.1. The Consultant, other underwriting firm members of the underwriting syndicate, Subcontractors, and their Principals are obligated to fully comply with City of Los Angeles Charter Sections 470(c)(12), 609(e) and related ordinances, regarding limitations on campaign contributions and fundraising to certain elected City officials or candidates for elected City office. Gifts to elected officials and certain City officials are also limited. Additionally, Consultant and other underwriting firm members of the underwriting syndicate are required to provide and update certain information to the City as specified by law. Any Consultant and other underwriting firm members of the underwriting syndicate subject to Charter Section 470(c)(12) and 609(e), shall include the following notice in any contract with a subcontractor expected to receive at least One Hundred Thousand Dollars (\$100,000) for performance under this contract:

Notice Regarding City of Los Angeles Campaign Contribution and Fundraising Restrictions

As provided in Charter Sections 470(c)(12), 609(e) and related ordinances, you are subcontractor or underwriting firm on City of Los Angeles Contract/Resolution #\_\_\_\_\_. Pursuant to City Charter Section 470(c)(12) and 609(e), underwriting firm, subcontractor and 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 City contract is signed. Additionally, gifts are limited to elected officials and certain City officials. Subcontractor is required to provide to contractor names and addresses of the subcontractor's principals and contact information and shall update that information if it changes during the 12 month time period. Subcontractor's information

included must be provided to contractor within 10 business days. Failure to comply may result in termination of contract 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.

36.2. Consultant, underwriting firms, Subcontractors, and their Principals shall comply with these requirements and limitations. Violation of this provision shall entitle LAWA to terminate this Agreement and pursue any and all legal remedies that may be available.

IN WITNESS WHEREOF, City has caused this Contract to be executed on its behalf by LAWA, and Consultant has caused the same to be executed by its duly authorized officers, and its corporate seal to be hereunto affixed, all as of the day and year first hereinabove written.

APPROVED AS TO FORM:

Michael N. Feuer,  
City Attorney

Date: September 21, 2016  
By: J. Timothy J.  
Deputy/Assistant City Attorney

CITY OF LOS ANGELES

By: \_\_\_\_\_  
Chief Executive Officer  
Department of Airports

APPROVED:

By: \_\_\_\_\_  
Ryan Yakubik  
Deputy Executive Director  
Chief Financial Officer

ATTEST:

By: Ken Schumann  
Secretary (Signature)  
Ken Schumann  
Print Name

[SEAL]

SIMPSON & SIMPSON MANAGEMENT  
CONSULTING, INC.

By: Hamid Taheri  
Signature  
HAMID TAHERI  
Print Name

CFO

Print Title



## **EXHIBIT A**



## EXHIBIT A

### SCOPE OF SERVICES

The Contractor shall provide LAWA with complete Professional Services to support the proposed capital improvements for various Airfield, Landside, Utility and Infrastructure projects at LAX and VNY. Tasks under this contract include planning/sequencing efforts and life cycle cost analysis and providing project controls services and construction logistics. The Consultant shall provide expert and specialized staffing resources as required by LAWA. The Consultant's staff will typically be located on site in LAWA facilities with LAWA staff. Depending on space availability, the Consultant may be asked to provide supplemental work space, hardware, software, and connectivity.

#### 1. Types of Services

##### 1.1. Project/Construction Management Services

Firms proposing on management services shall provide expert assistance to LAWA in the management of projects throughout the construction phase. These services shall consist of, but not be limited to the following:

##### 1.2.1. Project/Construction Management (PM/CM)

These services include, but are not limited to:

- Project Management
- Document Controls
- Closeout
- Construction Impact Analysis
- Staff Training/Development
- LAWA Divisional Support
- Stakeholder Coordination
- Construction Management
- Design Management
- Environmental Reporting
- Constructability
- Change Management
- Peer Review

## **EXHIBIT B**



## EXHIBIT B MAXIMUM BILLABLE RATES (PM/CM)

**Maximum Billable Rates** – The Consultant and all Sub-Consultants shall be paid for services at the actual hourly rates paid to employees, not to exceed the maximum billable rates by position allowed by this Contract as outlined in the table below. The Specialty Services position is based on a negotiated rate, as described in Exhibit D, Section A.3. The positions of Consultant's staff members providing services must match one of the categories outlined below unless previously approved in writing by LAWA.

Title/Category	Maximum Billable Hourly Rates				
	Year 1	Year 2	Year 3	Year 4	Year 5
Administrative Assistant I	\$ 27.00	\$ 27.68	\$ 28.37	\$ 29.08	\$ 29.80
Administrative Assistant II	\$ 38.00	\$ 38.95	\$ 39.92	\$ 40.92	\$ 41.94
Administrative Assistant, Sr	\$ 46.00	\$ 47.15	\$ 48.33	\$ 49.54	\$ 50.78
Architect I	\$ 40.00	\$ 41.00	\$ 42.03	\$ 43.08	\$ 44.15
Architect II	\$ 45.00	\$ 46.13	\$ 47.28	\$ 48.46	\$ 49.67
Architect, Sr	\$ 60.00	\$ 61.50	\$ 63.04	\$ 64.61	\$ 66.23
BIM Administrator I	\$ 30.00	\$ 30.75	\$ 31.52	\$ 32.31	\$ 33.11
BIM Administrator II	\$ 35.00	\$ 35.88	\$ 36.77	\$ 37.69	\$ 38.63
BIM Administrator, Sr	\$ 45.00	\$ 46.13	\$ 47.28	\$ 48.46	\$ 49.67
CADD Drafter I	\$ 30.00	\$ 30.75	\$ 31.52	\$ 32.31	\$ 33.11
CADD Drafter II	\$ 35.00	\$ 35.88	\$ 36.77	\$ 37.69	\$ 38.63
CADD Drafter, Sr	\$ 45.00	\$ 46.13	\$ 47.28	\$ 48.46	\$ 49.67
Construction Manager I	\$ 45.00	\$ 46.13	\$ 47.28	\$ 48.46	\$ 49.67
Construction Manager II	\$ 70.00	\$ 71.75	\$ 73.54	\$ 75.38	\$ 77.27
Construction Manager, Sr	\$ 105.00	\$ 107.63	\$ 110.32	\$ 113.07	\$ 115.90
Design Manager I	\$ 32.00	\$ 32.80	\$ 33.62	\$ 34.46	\$ 35.32
Design Manager II	\$ 52.00	\$ 53.30	\$ 54.63	\$ 56.00	\$ 57.40
Design Manager, Sr	\$ 72.00	\$ 73.80	\$ 75.65	\$ 77.54	\$ 79.47
Engineering Intern	\$ 30.00	\$ 30.75	\$ 31.52	\$ 32.31	\$ 33.11
Engineering Manager	\$ 130.00	\$ 133.25	\$ 136.58	\$ 140.00	\$ 143.50
Field Engineer I	\$ 42.00	\$ 43.05	\$ 44.13	\$ 45.23	\$ 46.36
Field Engineer II	\$ 62.00	\$ 63.55	\$ 65.14	\$ 66.77	\$ 68.44
Field Engineer, Sr	\$ 82.00	\$ 84.05	\$ 86.15	\$ 88.31	\$ 90.51
GIS Database Architect	\$ 60.00	\$ 61.50	\$ 63.04	\$ 64.61	\$ 66.23
IT Specialist I	\$ 40.00	\$ 41.00	\$ 42.03	\$ 43.08	\$ 44.15
IT Specialist II	\$ 60.00	\$ 61.50	\$ 63.04	\$ 64.61	\$ 66.23
IT Specialist, Sr	\$ 80.00	\$ 82.00	\$ 84.05	\$ 86.15	\$ 88.31
LEED Administrator I	\$ 45.00	\$ 46.13	\$ 47.28	\$ 48.46	\$ 49.67
LEED Administrator II	\$ 55.00	\$ 56.38	\$ 57.78	\$ 59.23	\$ 60.71
LEED Administrator, Sr	\$ 65.00	\$ 66.63	\$ 68.29	\$ 70.00	\$ 71.75
Logistics Communications Manager I	\$ 45.00	\$ 46.13	\$ 47.28	\$ 48.46	\$ 49.67



Program Management, Project Management, Construction Management  
and Project Controls Support Services

Logistics Communications Manager II	\$ 65.00	\$ 66.63	\$ 68.29	\$ 70.00	\$ 71.75
Logistics Communications Manager, Sr	\$ 90.00	\$ 92.25	\$ 94.56	\$ 96.92	\$ 99.34
Logistics Coordinator I	\$ 40.00	\$ 41.00	\$ 42.03	\$ 43.08	\$ 44.15
Logistics Coordinator II	\$ 50.00	\$ 51.25	\$ 52.53	\$ 53.84	\$ 55.19
Logistics Coordinator, Sr	\$ 60.00	\$ 61.50	\$ 63.04	\$ 64.61	\$ 66.23
Office Engineer I	\$ 42.00	\$ 43.05	\$ 44.13	\$ 45.23	\$ 46.36
Office Engineer II	\$ 62.00	\$ 63.55	\$ 65.14	\$ 66.77	\$ 68.44
Office Engineer, Sr	\$ 82.00	\$ 84.05	\$ 86.15	\$ 88.31	\$ 90.51
Office Manager I	\$ 50.00	\$ 51.25	\$ 52.53	\$ 53.84	\$ 55.19
Office Manager II	\$ 60.00	\$ 61.50	\$ 63.04	\$ 64.61	\$ 66.23
Planner I	\$ 45.00	\$ 46.13	\$ 47.28	\$ 48.46	\$ 49.67
Planner II	\$ 60.00	\$ 61.50	\$ 63.04	\$ 64.61	\$ 66.23
Planner, Sr	\$ 85.00	\$ 87.13	\$ 89.30	\$ 91.54	\$ 93.82
Project Management Admin Assistant (Limited)	\$ 35.00	\$ 35.88	\$ 36.77	\$ 37.69	\$ 38.63
Project Management Business Administrator (Limited)	\$ 55.00	\$ 56.38	\$ 57.78	\$ 59.23	\$ 60.71
Project Management Principal (Limited)	\$ 100.00	\$ 102.50	\$ 105.06	\$ 107.69	\$ 110.38
Project Manager I	\$ 50.00	\$ 51.25	\$ 52.53	\$ 53.84	\$ 55.19
Project Manager II	\$ 70.00	\$ 71.75	\$ 73.54	\$ 75.38	\$ 77.27
Project Manager, Sr	\$ 100.00	\$ 102.50	\$ 105.06	\$ 107.69	\$ 110.38
Quality Assurance Coordinator I	\$ 40.00	\$ 41.00	\$ 42.03	\$ 43.08	\$ 44.15
Quality Assurance Coordinator II	\$ 50.00	\$ 51.25	\$ 52.53	\$ 53.84	\$ 55.19
Quality Assurance Coordinator, Sr	\$ 65.00	\$ 66.63	\$ 68.29	\$ 70.00	\$ 71.75
Safety, Asst. Program Manager	\$ 68.96	\$ 70.68	\$ 72.45	\$ 74.26	\$ 76.12
Safety Manager	\$ 80.00	\$ 82.00	\$ 84.05	\$ 86.15	\$ 88.31
Safety Technician I	\$ 45.00	\$ 46.13	\$ 47.28	\$ 48.46	\$ 49.67
Safety Technician II	\$ 60.00	\$ 61.50	\$ 63.04	\$ 64.61	\$ 66.23
Security Inspector	\$ 25.00	\$ 25.63	\$ 26.27	\$ 26.92	\$ 27.60
Subject Matter Expert	\$ 150.00	\$ 153.75	\$ 157.59	\$ 161.53	\$ 165.57
Survey Party Chief	\$ 55.00	\$ 56.38	\$ 57.78	\$ 59.23	\$ 60.71
Surveyor	\$ 45.00	\$ 46.13	\$ 47.28	\$ 48.46	\$ 49.67
Technical Specialist I	\$ 40.00	\$ 41.00	\$ 42.03	\$ 43.08	\$ 44.15
Technical Specialist II	\$ 70.00	\$ 71.75	\$ 73.54	\$ 75.38	\$ 77.27
Technical Specialist, Sr	\$ 90.00	\$ 92.25	\$ 94.56	\$ 96.92	\$ 99.34
Utility Coordinator I	\$ 35.00	\$ 35.88	\$ 36.77	\$ 37.69	\$ 38.63
Utility Coordinator II	\$ 50.00	\$ 51.25	\$ 52.53	\$ 53.84	\$ 55.19
Utility Coordinator, Sr	\$ 65.00	\$ 66.63	\$ 68.29	\$ 70.00	\$ 71.75
Speciality Services	As Negotiated				

**Please Note:** The consultant and their subconsultants may be required to submit a letter of verification to LAWA certifying the positions above are not included in the company's indirect labor calculations. LAWA reserves the right to conduct a certified payroll review at any time during the term of the contract for auditing purposes.





### **Types of Positions**

Staff is expected to have high work standards, conduct themselves in an ethical manner, and be self-motivated. In order to support a large scale capital development program, Consultant's Support Services may require, but not be limited to, any or all of the following types of positions:

**Administrative Assistant** – prepares correspondence, maintains calendars, sets up and coordinates meetings, takes meeting minutes, copies and scans documents, logs information, tracks documents, handles phone calls, greets and assists visitors

**Architect** – Provides support on design review, planning, project definition, conceptual development, managing CAD standards, drawings and additional duties as assigned.

**BIM Administrator** - Responsible for the overall management, direction and implementation of the BIM Process, facilitates the successful implementation of BIM technology and the related processes

**CADD Drafter** – Manages and edits engineering drawings, documents existing conditions, performs various surveys for incorporation into various documents, drawings and/or databases, and supports project definition.

**Construction Manager** – Monitors execution of project's construction technical requirements, manages construction projects, including resolution of field issues, the Request for Information (RFI) process, etc. and other tasks as needed during construction.

**Design Manager** – Ensures compliance with program/project design criteria requirements, coordinates with all stakeholders to assure design accuracy and quality.

**Engineering Intern** – Provides engineering support to construction managers, design managers, project managers, and field engineers overseeing PDG projects.

**Engineering Manager** – Responsible for leading and supervising a team of engineers in the development of requirements and standards, and overseeing the Contractor in the planning, design and construction of the program or project.

**Field Engineer** – Monitors and assists in field construction coordination efforts, coordinates with contractors, terminal and airfield operations divisions, and other stakeholders as needed, documents field construction activities, etc., and other duties as needed.

**GIS Database Architect** – Responsible for GIS Database development, oversees GIS CAD staff assigned to Airports development.

**IT Specialist** – Follows established procedures to troubleshoot, coordinate and resolve IT systems related issues, performs hardware/software installations, provides training and orientation to new staff, coordinates with LAWA IT and others as needed.

**LEED Administrator/Green Building Expert** - Reviews submittals for compliance with the project's specifications as well as with LEED requirements or the Green Building Code.

**Logistics Communications Manager** - Makes recommendations for procedural adjustments to mitigate future logistics construction adverse impacts affecting airport customers. Compiles data on scope, location, and schedule of future projects for use in resource scheduling, and



construction packaging and sequencing. Builds and updates Central Terminal Area (CTA) plans, showing areas of construction, barricades, materials delivery routes, alternate passenger routes, curb and road closures, rubbish removal, contractor parking, etc.

**Logistics Coordinator** – Identifies areas of conflict between different but adjacent projects and facilitates their resolution with appropriate LAWA staff. Attends weekly design and/or project construction meetings for projects within a given area. Develops comprehensive plans for ramp use, construction areas within terminals, road and curb impacts. Extracts look-ahead data for barricades, utility shutdowns, and other public area activities that would affect airport customers.

**Materials Testing Engineer** – Performs soils testing, non-destructive tests on structural steel and welds, concrete, asphalt, and various other materials testing services (registration as a Professional Engineer is required).

**Materials Testing Technician** – Performs a variety of materials testing as needed. Personnel shall possess at least three (3) years of experience in their materials testing areas of expertise and be certified at NICET Level II or higher.

**Office Manager** – manages administrative staff, maintains office facilities, supports staff with facility, equipment, and supply needs

**Planner** – Provides support on various aviation planning assignments including development of project definition documents, and other tasks as needed.

**Project Management Admin Assistant** – Provide assistance in contract administration and recruitment/onboarding support requested by LAWA that is above that required by industry standards and not covered by firm's overhead rate.

**Project Management Business Administrator** – Provide contract administration and recruitment/onboarding support requested by LAWA that is above that required by industry standards and not covered by firm's overhead rate. This may include, but not limited to, expenditure analyses and forecasts, recruiting and onboarding support, coordinate hiring process with subconsultants, and SBE tracking.

**Project Management Principal** – Provide limited project management services requested by LAWA that is above that required by industry standards and not covered by firm's overhead rate. This may include, but not limited to, interviewing high-level and specialized potential candidates, conflict/issue resolution, and participation in management meetings.

**Project Manager** – Leads the successful development and implementation of a LAWA Capital Project or work package. Provides direction and input on projects from design development stage through construction. Acts as LAWA primary representative on a project, establishes standards for meeting minutes, records, etc. and ensures Designers and Contractors are meeting LAWA quality standards. Facilitates coordination with other LAWA divisions and regulatory agencies (Inspection, Planning, CMS, Ops, Police, TSA, FAA etc.) as appropriate. Coordinates construction barricade and messaging plan, Utility Shutdown requests, impact notices, disruption notices, contingency planning and other tasks as needed.

**Quality Assurance Coordinator** - Provides ongoing support to the Construction Inspection Division (CID) in the review, evaluation and development of quality assurance (QA) standards and procedures manual documents; assists in identifying problems/deficiencies, coordinates



with LAWA inspection managers and professional staff to obtain input/feedback and prepares summary reports with recommendations. The Quality Assurance Coordinator assists with the preparation and implementation of changes and/or updates to the CID standards & procedures manual as appropriate and provides training to PDG staff.

**Safety Asst Program Manager** – Provides support to the Safety Manager and assists in managing the team of safety technicians, and reports back to LAWA management on compliance of those policies.

**Safety Manager** – Manages LAWA's Airports Development safety program and team of safety technicians, assists LAWA management in setting and monitoring safety program policies and goals and reports back to LAWA management on compliance of those policies.

**Safety Technician** - Responsible for safety management including contractor safety enforcement, construction safety programs, developing and implementing new safety training initiatives, insurance risk management and loss

**Security Inspector-** Monitor and inspect all vehicles at AOA points of entry in accordance to LAWA's vehicle inspection procedure and protocol.

**Specialty Services** – May encompass a variety of duties, each position under this category will be defined by LAWA.

**Subject Matter Expert** - Provides professional support and guidance in the Subject Matter Expert's (SME) area of expertise.

**Subject Matter Expert Principal** - Provides professional support and guidance in the Subject Matter Expert's (SME) area of expertise. (Reserved for high level support.)

**Surveyor** - Directs or conducts surveys, prepares data, charts, plots, maps, records, and documents related to surveys, verifies the accuracy of survey data, including measurements and calculations conducted at project sites.

**Survey Party Chief** – Oversees and leads a team of surveyors who conduct surveys, prepare data, charts, plots, maps, records, and documents related to surveys, verify and certify the accuracy of survey data, including measurements and calculations conducted at project sites.

**Technical Specialist** – Performs assignments of moderate to high complexity with limited supervision across a wide range of disciplines, including EDM/GIS services, technical editing, environmental and sustainability, facility planning and management, and other tasks as requested by LAWA

**Utility Coordinator** – Manages all Utility Shutdown Requests (USRs) and Disruption Notices (DONs), extracts current and projected USRs from contractors. Coordinates with TSA, Ops, Police, CDG, IT, Airlines, others to prepare recommendation for approval and timing of shutdown and an Impact Analysis Notice (IANs). Works closely with LAWA CMS and Inspection to anticipate shutdown dates and needed resources.

#### **Paygrades**

LAWA reserves the right to assign paygrade based upon an evaluation of position requirements and responsibilities.



## **EXHIBIT C**



### EXHIBIT C

#### Multiplier and Profit

**Multiplier** – The following proposed multiplier is allowed by the Prime under the terms of this contract. The final contractual multiplier shall be applied to the appropriate direct labor costs only, not on other direct reimbursable costs. It is understood by all parties that this proposed multiplier includes all consideration for the Consultant's Field Office Overhead Costs and profit. The Field Office Overhead is subject to LAWA audit and subsequent LAWA negotiation.

Sample Multiplier Calculation		
Direct Labor	1.00	A
Field Office Overhead Rate (e.g. 103% OH)	1.03	B
Direct Labor + Field Office Overhead Rate	2.03	C [A+B]
Profit (e.g. 5%) ( $2.03 \times 5\% = 0.10$ )	0.10	D [C x Profit%]
Multiplier	2.13	E [C+D]

#### Multiplier Table

Firm Name	Multiplier
Simpson & Simpson Management Consulting, Inc.	2.29

**Profit Percentage** – The following profit percentage, which is a component of the multiplier, is allowed by the Prime Consultant under the terms of this Contract. Profit is applied to direct labor costs only.

#### Profit Percentage Table

PROFIT PERCENTAGE
10%

**Markup of Sub-Consultant's Direct Labor** - The Prime Consultant is allowed to mark up first-tier Sub-Consultant direct labor for the management of Sub-Consultants' work under this contract.

#### Mark-up of Sub-Consultants' Direct Labor

MARK-UP PERCENTAGE
3%

## **EXHIBIT D**



**EXHIBIT D**  
**Cost Reimbursable Guidelines**

**LOS ANGELES WORLD AIRPORTS**

The Consultant shall be reimbursed for the following costs in accordance with City policy, subject to amendments, and the guidelines detailed below:

**A. COMPENSATION FOR PERSONNEL**

LAWA shall compensate the Prime Consultant and Sub-Consultant/Sub-Contractor for personnel costs based upon employees' LAWA-approved hourly rates and actual hours worked. Additionally, the Prime Consultant is allowed a mark-up, per Exhibit C, on first-tier Sub-Consultant/Sub-Contractor direct labor for the management of the Sub-Consultant/Sub-Contractor work.

1. Personnel Hourly Rate Calculation

- a) While directly engaged in the performance of this Contract on an Hourly basis, the Consultant shall be compensated for actual cost of base salaries and wages of professional, technical and support personnel in accordance with Exhibit B, Rates Table, and as authorized via Task Orders.
- b) Base Hourly Rate is defined as either the employees' actual base yearly salary divided by 2,080 hours for salaried employees, or hourly wage rate for hourly employees. LAWA may, at its discretion, allow the use of a basis other than 2,080 hours for Consultants on a non-standard work year.
- c) The Multiplier for this contract is as outlined in Exhibit C.
- d) The Multiplier for any Sub-Consultants/Sub-Contractors providing personnel services shall be based upon an audited Field Office Overhead Rate or a negotiated Field Office Overhead Rate, and must be approved in writing by LAWA prior to addition of said Sub-Consultant/Sub-Contractors to the contract. The Field Office Overhead Rate may be subject to LAWA audit and subsequent negotiation.



- e) If at any time the LAWA Project Management team determines the need to have staff off site, a *Home Office Overhead Rate* will be used.
- f) Time is the sum of actual hours and fractions thereof worked by each employee directly engaged in the performance of this Contract.
- g) The Billable Hourly Rate is the product of the LAWA-approved Base Hourly Rate and the Multiplier.

2. Hourly Rate Schedule and Overtime

- a) The not-to-exceed Maximum Reimbursable Hourly Rates for job classifications of employees directly engaged in performing Work under this Contract are listed in Exhibit B. The Job Classifications and Maximum Reimbursable Hourly Rates may not be changed without prior written approval of LAWA. The actual hourly rates to be applied to specific Consultant personnel must be pre-approved via a Task Order and/or Personnel Authorization. LAWA approval for adjusting the not-to-exceed Maximum Reimbursable Hourly Rate(s) shall not be unreasonably withheld if supported by actual hourly rates which are reflective of the current competitive market. Approved actual hourly rates may only be adjusted with prior LAWA approval and must be made in accordance with the Consultant's current approved salary plan. Prior written approval is required and is effective as of the date indicated on the Task Order. The Consultant shall fully document to LAWA's satisfaction that such proposed salaries are indeed reflective of the current competitive market.
- b) Any and all personnel and associated hourly rates must be approved, in advance, by LAWA. The Consultant shall submit to LAWA the employee's name, job classification (Exhibit B), company, hourly rate (with supporting documents) and exempt or non-exempt status. The individual hourly rates may be re-negotiated for each additional contract year. However, in no event shall the hourly rate be increased by more than three percent (3%) per Contract year without prior written justification and approval by LAWA.



- c) LAWA's approval of additional personnel shall not entitle Consultant to any additional compensation beyond the limit established for the individual Task Order or herein.
- d) LAWA hereby relies upon the Consultant to properly designate its employees as exempt or non-exempt under the Fair Labor Standards Act. LAWA shall not reimburse Consultant for back pay, penalty or interest imposed by the Department of Labor in the event of a dispute regarding the improper designation of its employees.
- e) All overtime must be approved in advance by LAWA. In the event that overtime work is required by non-exempt employees whereby there is an associated premium cost, the overtime shall be compensated as defined by the Fair Labor Standard Act. The premium OT compensation shall be computed as follows:

$$\begin{array}{lll} \text{Regular Hourly Rate Portion of Work} & \text{Premium Portion} & \text{OT Hourly Rate} \\ [(\text{Base hourly rate}) \times (\text{Multiplier})] & + & [(\text{Base hourly rate} \times 0.5) \times (1 + \text{Profit}\%)] \end{array}$$

- f) Personnel time incurred with travel shall not be compensable beyond a normal workday.

### 3. Fully Burdened Rates

LAWA may negotiate fully burdened rates for specialty services. These rates will be approved in writing via task order and will be all inclusive (overhead, fee, other reimbursable expenses deemed appropriate by LAWA, etc.).

## B. REIMBURSABLE TRAVEL EXPENSES

It is the policy of LAWA to allow for the reimbursement of Consultant/Contractor relocation and travel expenses, in accordance with City policy, when it is determined that such reimbursement assists in the furtherance of official city business goals and/or increases revenue for LAWA. Official city business is constituted as and shall demonstrate:

- (1) *A valid City interest to be served or gained thereby;*
- (2) *Relevance to the City operations or the individual's role in such operations;*





*(3) The promotion or development of City programs, methods or administration; or*

*(4) Compliance with instructions or authorization of the Mayor or the City Council.*

It is expected that in each instance the Consultant/Contractor will only incur expenses that a reasonable and prudent person would incur if traveling on personal business.

**Prior written approval by LAWA is required as designated in the contract language.** It is expected that before such authorization is granted, due consideration shall be given to such factors as suitability, level of seniority in the field of expertise, specialty discipline, and nature of the business involved.

For travel to locations other than LAX, prior written authorization is required and reimbursement of expenses shall be computed based upon City policy, subject to amendments, and all conditions as noted herein will apply. Only those Consultants specifically authorized by LAWA may submit travel expenses for reimbursement.

## **1. Travel Expenses Reimbursement Methodologies**

### **a) Travel Related Reimbursement Factor**

This methodology shall be applied when the frequency of travel is known and forecasting of expenditures can be made with a certain level of predictability. Utilizing this methodology, LAWA may negotiate a travel-related reimbursement factor. This factor must be authorized by LAWA and detailed in a Task Order or Travel Authorization, as designated in the contract language. The authorizing document shall specify the time period for which this approval is granted. LAWA reserves the right to periodically review and adjust the travel related reimbursement factor.

Under this methodology, LAWA will not require submission of actual receipts for the reimbursement factor but will require verification of travel status in the form of airfare or transit receipts, or lodging receipt/lease agreement.



**b) Actual Costs for Airfare/Transit Expenses plus Not-to-Exceed Per Diem**

In cases where Consultant travel is required for a limited duration, LAWA may authorize a Consultant to receive reimbursement of airfare and transportation expenses plus a not-to-exceed per diem to cover lodging, meals and incidental expenses for one full day. With the exception of meals which will be covered via a meal allowance, all other travel-related expenses shall be based upon submission of actual receipts.

**i. Air Travel**

Official travel shall be by the most direct routing and Consultant air travel expenses are allowable only for the lowest regular fare available for regularly scheduled airlines for the date and time selected. LAWA will reimburse for the price of a coach class, unrestricted ticket. When possible, economy or special fares are to be used. Consultants, when possible, should make every effort to make the reservation well in advance to be able to get the best price possible. Approved Air Travel must be supported by legible copies of airline tickets. Electronic tickets and boarding passes are acceptable. LAWA shall only reimburse for reservation change fees when the schedule change was requested by LAWA and is supported by documentation confirming LAWA's direction of schedule change. Comfort items such as paying for exit row seats or service upgrades are not allowable. In cases where the traveler is charged for the first checked bag, the City will reimburse for this fee. Baggage fees for additional items will not be automatically reimbursed unless a justification for a business need is provided. Checked baggage fees are considered a separate reimbursement expense and are not included as part of the per diem.

**ii. Ground Transportation**

For consultants approved on travel status, the least expensive and most practical form of public transportation shall continue to be reimbursed taking into consideration such factors as time and availability. Ground transportation is defined as travel from home to airport and back, and from airport to LAWA business location and back.





i) Local Transportation - Local transportation costs incurred by Consultant while in travel status will be reimbursed as follows:

- Taxi/limousine/bus - Reimbursable at actual cost.
- Rental Automobiles - Because of their cost, rental automobiles shall be used only when their use will affect a savings or other advantage, or when the use of other transportation is not feasible. Rental automobiles should be limited to compact models when available. A legible copy of the automobile rental agreement is required. Rental of other than compact automobiles is allowable when compacts are not available or if more than two staff members are in the travel status. All rental cars will be returned with a full tank of gas when possible. Fuel charges will be reimbursed at the market price. Unreasonable or excessive fuel charges by the rental car agency may not be reimbursed.
- Private Automobile - Use of private or Consultant owned or leased automobiles will be reimbursed at the rate permitted under the Internal Revenue Service published rates as applicable to such costs. Prior written approval by LAWA is required before any private automobile will be allowable for reimbursement.
- Tolls and parking charges - for use of ferries, roads, bridges, and tunnels while traveling to and from commercial carriers and parking charges at origination/destination are reimbursable at cost.

ii) Local Travel - Travel to and from the Site for Home Office Staff who are located in any of the Consultant's office locations in the Los Angeles Vicinity is not reimbursable without prior written approval by LAWA.

**iii. Not-to-Exceed Per Diem**

The not-to-exceed per diem rate will be applied as a *meal allowance*, in accordance with the limits established by the City Controller, *plus actual costs for lodging and*



*incidentals*. The combined total amount of the meal allowance, lodging and incidental costs shall be in accordance with City policy.

**Covered Expenses:**

- Lodging to include hotel/motel or corporate housing
- Meal allowance which covers meals, including gratuity
- Incidental expenses which includes:
  - Fees and tips given to porters, baggage carriers, bellhops, hotel maids/servants, stewards or stewardesses, and others

**2. Lodging/Meals Guidelines**

A per diem may be used to reimburse Consultant for overnight accommodations and meals when in travel status on behalf of LAWA as outlined in the City's travel policy and amended from time to time. If Consultant's internal policy is a lower rate, the lower rate will be used. The per diem rate will be applied as a *meal allowance*, in accordance with the limits established by the City Controller, *plus actual costs for lodging and incidental expenses*. Receipts are required for lodging and incidental expenses and will be reimbursed in accordance with City policy. As the per diem is periodically updated by the CAO, reimbursement shall be made based upon the per diem rate published at the time expenses are incurred. In the selection of restaurants and lodging, it is expected that individuals will seek moderately priced establishments of acceptable quality. The Consultant must consider transportation costs, time, and other relevant factors in selecting the most economical and practical accommodations. Consultants will be required to select a hotel/motel within the City of Los Angeles limits. In cases where rates have been negotiated with the hotel properties surrounding its airports, LAWA will make this listing available for the Consultant's consideration. Approval of the properties not on the negotiated list will be evaluated based upon competitive rates. Lodging expenses will be reimbursed only at the single occupancy rate.



For traveling employees assigned to the Site on a regular basis, the Consultant may utilize internal policies, such as use corporate apartments, to determine the most cost effective lodging. Prior to leasing or procuring such lodging, the Consultant shall perform a lease versus per diem analysis and provide to LAWA for review and concurrence.

1. Incidental expenses – The per diem rate includes incidental expenses.
2. Expenses above the per diem rate shall not be reimbursed even if supported by receipts.
3. Meal and incidental allowance will be prorated at 75% of the daily allowance as follows:  
(Prorating of meal and incidental allowance is specified under IRS Publication 463.)
  - On travel days regardless of departure and/or arrival times;
  - When a meal is provided as part of the conference;
  - For travel under the “50-mile” rule exceptions with overnight lodging and pre-approval

Note: No meal allowance will be provided when meals are provided throughout the day by the host or as part of a conference.

4. Meal receipts do not have to be presented to receive the meal allowance per day of business travel except for travel on grant funded projects where the grantor requires complete documentation of travel expenses.
  5. Gratuities are limited to no more than 15% and are included as part of the Meal Allowance. There will be no additional reimbursement for gratuities.
  6. For international travel, meal and incidental allowances will be provided according to City policy.
3. **Non-Reimbursable Travel Costs** (Including but not limited to:)
1. Non-economy class airfare
  2. Non-compact vehicle rental



3. Air flight insurance
  4. Expense of any insurance offered by the auto rental company such as Collision Damage Waiver, Personal Accident Insurance, Liability Insurance Supplement, Personal Effects Coverage, Supplemental Liability Protection, etc. in connection with a rented vehicle.
  5. Auto repairs, replacement or towage to personal vehicle when such use has been authorized.
  6. Valet parking when self parking is available.
  7. Expenses above the meal allowance shall not be reimbursed even if supported by receipts.
  8. Meals and incidental expenses in excess of the set domestic stipend or international federal per diem rate will not be reimbursed.
  9. Reimbursements for LAWA employee's meals are not allowable, except in accordance with City policy.
  10. Alcoholic beverages.
  11. Expenses incurred by a dependent or other person accompanying the Consultant employee on an official business trip are not allowable. Bills indicating multiple occupants are to be adjusted to single occupancy rate and disallowed unless disclosure is made indicating reason, names, and dates.
  12. Expenses of a purely personal nature.
4. **Other Allowable Direct Costs while on travel-status**
1. Telephone - Actual cost of business telephone charges, subject to the limits on E-Mobile charges described below, incurred by Consultant while in travel status is reimbursable. Personal telephone charges are not allowable.
  2. E-Mobile Communication Devices - Unnecessary and/or unreasonable charges such as





roaming fees, except roaming fees incurred while in approved travel status, roadside assistance, home distance, text messaging or any other such feature that is not essential to the individuals job function will not be reimbursed. LAWA reserves the right to limit the number of individuals allowed to bill to mobile communication devices. LAWA will not reimburse for personal calls.

**C. OTHER REIMBURSABLE EXPENSES**

1. Supplies, materials and equipment - At actual cost for items used directly in the furtherance of work and supported by receipts on all individual items. Any equipment, copiers, computer software, intellectual property licenses or any other non-consumable supplies (collectively, "Equipment") purchased or licensed by Consultant for use at the Site and reimbursed by LAWA, shall be LAWA's and title therefore shall vest in LAWA upon such purchase or license. Equipment may also be leased if determined to be cost effective. The Consultant shall provide a lease versus purchase analysis for such proposed leased Equipment. If Equipment is currently owned by the Consultant, it may be leased for exclusive use at the Site and on the Project and reimbursed by LAWA at a fair market rate. No such Equipment may be purchased, leased or licensed without the prior written approval of LAWA.
2. Reproduction - At actual cost of outside reproduction of material and documents required in the furtherance of work.
3. Computer Services - Computers, peripherals and software that are deemed to be standard equipment used in the course of business and as such, shall not receive reimbursement, unless specifically authorized by LAWA.
4. E-Mobile and other Communication Devices - At actual cost for acquisition all devices combined such as cell phones, pagers, radios, etc. in an amount not to exceed \$100 per authorized individual. (Job site radio systems are not included in this limit.) The purchase of all devices to be reimbursed must be pre-approved by LAWA in writing with the device cost and model itemized and the device shall become LAWA's property upon project



completion. Service charges for devices are reimbursable, except unnecessary and/or unreasonable charges such as roaming fees (except roaming fees incurred while in approved travel status), roadside assistance, home long distance, text messaging or any other such feature that are not essential to the individuals job function which will not be reimbursed. The City reserves the right to limit the number of individuals allowed to bill for mobile communication devices.

5. Vehicle and Equipment Costs - Prior to leasing/purchasing major equipment, trailers and/or vehicles, the Consultant shall perform a lease versus purchase analysis. If the job vehicle is currently owned by the Consultant parent company, it may be leased for exclusive use at the Site and on the Project and reimbursed by LAWA at a fair market/comparable lease rate. The analysis shall be approved by LAWA prior to leasing and/or purchasing major equipment and vehicles. Job vehicles and vehicles for Key Personnel will be reimbursed at actual leased cost as long as such lease cost is reasonable. Repairs related to normal wear and tear for such vehicles will be reimbursed at actual cost as long as such costs are reasonable. Reimbursement will not be made for repairs related to abuse or neglect by the Consultant nor will repairs related to items covered by insurance be reimbursed. Task Orders will be reimbursed via a wet lease rate when the Task Order so specifies. This rate will cover all cost related to the operation of the vehicle, which includes but is not limited to the lease, insurance, gasoline, maintenance, and repairs.

6. Training and Seminar Costs - Training and seminar costs for Consultant employees may be reimbursed only if such training or seminar directly benefits the City, and has been approved by LAWA in advance.

7. Office Expenses - Reimbursement for office expenses not covered in the overhead shall be made for the actual costs for purchases, rent, utilities, permit fees, license fees, taxes, if any, improvements to leased office space, electrical or telephone installation or rearranging, security and janitorial services, office supplies or any other costs or expenses related to such rented, purchased or leased facility and required by Consultant



in performance of its Services as well as any non-labor costs expended by the Consultant. Office communication expenses include reimbursement of actual cost for long distance telephone services. Express mail or other forms of communication used on a day to day, ordinary course basis are reimbursable. Mass mailings that are approved in advance in writing by LAWA are a reimbursable cost. Cost for bottled drinking water and coffee at the field office is not reimbursable.

8. Business Meeting Expenses – Subject to LAWA prior approval, reimbursement for business meeting expenses on behalf of LAWA shall be made at actual cost and supported by receipts. A list of attendees and subject of meeting will be required.
9. Other costs that are not included in or covered by the Consultant's Overhead Rate - At actual cost for items used directly in the furtherance of work, subject to the prior written approval of LAWA, and supported by receipts.

#### **D. COSTS NOT REIMBURSABLE**

Include charges for entertainment, non-economy class airfare, bidding and proposal costs associated with obtaining the Contract, contributions, personal telephone charges, dues and subscriptions, alcoholic beverages, expenses for transportation for personal pursuits, gifts, gratuities greater than 15%, microwaves and refrigerators, bottled water, lunches, paper plates, cups, coffee, creamer, wipes and hand sanitizer, and other charges expressly disallowed under the terms of this Contract. Extraordinary expenses require prior LAWA approval.

#### **E. CONSULTANT'S SUBCONSULTANTS**

Consultant Sub-Consultants shall follow the reimbursable expense guidelines set forth for Consultant herein.

## **EXHIBIT E**



## EXHIBIT E

### FIRST SOURCE HIRING PROGRAM FOR AIRPORT EMPLOYEES

- I. Purpose. The purpose of this First Source Hiring Program is to facilitate the employment of Targeted Applicants by Airport Employers. It is a goal of this First Source Hiring Program that this Program benefit Airport Employers by providing a pool of qualified job applicants through a non-exclusive referral system.
- II. Definitions. As used in this Program, the following capitalized terms shall have the following meanings. All definitions include both the singular and plural form.

"Airport" shall mean Los Angeles International Airport.

"Airport Employer" shall mean a party that, through a contract, lease, licensing arrangement, or other arrangement, agrees to comply with this First Source Hiring Program with regard to Airport Jobs. Operators of transportation charter party limousines, non-tenant shuttles, and taxis shall not be considered Airport Employers.

"Airport Job" shall mean a job that either (i) is performed On-Site, or (ii) is directly related to a contract, lease, licensing arrangement, or other arrangement under which the employer is an Airport Employer. Positions for which City's Worker Retention Policy requires hiring of particular individuals shall not constitute Airport Jobs for purposes of this Program.

"City" shall mean the City of Los Angeles.

"Coalition" shall mean the LAX Coalition for Economic, Environmental, and Educational Justice, an unincorporated association comprised exclusively of the following organizations: AGENDA; AME Minister's Alliance; Clergy and Laity United for Economic Justice; Coalition for Clean Air; Communities for a Better Environment; Community Coalition; Community Coalition for Change; Environmental Defense; Inglewood Coalition for Drug and Violence Prevention; Inglewood Democratic Club; Lennox Coordinating



Council; Los Angeles Alliance for a New Economy; Los Angeles Council of Churches; Nation of Islam; Natural Resources Defense Council; Physicians for Social Responsibility Los Angeles; Service Employees International Union Local 347; and Teamsters Local 911.

"Coalition Representative" shall mean the following: The Coalition shall designate one individual as the "Coalition Representative" authorized to speak or act on behalf of the Coalition for all purposes under the Cooperation Agreement. The Coalition Representative may designate one or more assistants to assist the Coalition Representative in speaking or acting on behalf of the Coalition with respect to any specific program or activity or any other matter. The Coalition shall provide LAWA with contact information for the Coalition Representative upon request.

"Cooperation Agreement" shall mean the Cooperation Agreement between LAWA and the LAX Coalition for Economic, Environmental and Educational Justice.

"LAWA" shall mean Los Angeles World Airports.

"Low-Income Individual" shall mean an individual whose household income is no greater than 80% of the median income, adjusted for household size, for the Primary Metropolitan Statistical Area.

"On-Site" shall mean physically located on property owned or leased by LAWA and pertaining to Airport.

"Program" shall mean this First Source Hiring Program.

"Project Impact Area" shall have the meaning set forth in the "Final Environmental Impact Report" for the LAX Master Plan Program, dated April 2004, as supplemented by one or more EIR Addenda prior to certification of the EIR by the City Council.



"Referral System" shall mean the referral system established to provide applicant referrals for the Program.

"Special Needs Individuals" shall mean: (i) individuals who receive or have received public assistance through the [Temporary Assistance for Needy Families Program], within the past 24 months; (ii) individuals who are homeless; (iii) ex-offenders, (iv) chronically unemployed, and (v) dislocated airport workers.

"Targeted Applicants" shall have the meaning set forth in Section IV below.

III. Coverage. This Program shall apply to hiring by Airport Employers for all Airport Jobs, except for jobs for which the hiring procedures are governed by a collective bargaining contract that conflicts with this Program.

IV. Targeted Applicants. Referrals under the Program shall, to the extent permissible by law, be made in the order of priority set forth below.

☐ First Priority: Low-Income Individuals living in the Project Impact Area for at least one year and Special Needs Individuals; and

☐ Second Priority: Low-Income Individuals residing in City.

V. Initial Airport Employer Roles.

A. Liaison. Each Airport Employer shall designate a liaison for issues related to the Program. The liaison shall work with LAWA, the Coalition Representative, the Referral System provider, and relevant public officials to facilitate effective implementation of this Program.

B. Long-Range Planning. Any entity that becomes an Airport Employer at least two (2) months prior to commencing operations related to Airport shall, at least two months prior to commencing operations related to Airport, provide to the



Referral System the approximate number and type of Airport Jobs that it will fill and the basic qualifications necessary.

VI. Airport Employer Hiring Process.

- A. Notification of Job Opportunities. Prior to hiring for any Airport Job, an Airport Employer shall notify the Referral System, by e-mail or fax, of available job openings and provide a description of job responsibilities and qualifications, including expectations, salary, work schedule, duration of employment, required standard of appearance, and any special requirements (e.g., language skills, driver's license, etc.). Job qualifications shall be limited to skills directly related to performance of job duties.
- B. Referrals. After receiving a notification under Section VI.A above, the Referral System shall within five days, or longer time frame agreed to by the Referral System and Airport Employer, refer to the Airport Employer one or more Targeted Applicants who meet the Airport Employer's qualifications.
- C. Hiring.
  1. New Employer Targeted Hiring Period. When making initial hires for the commencement of an Airport Employer's operations related to Airport, the Airport Employer shall consider and hire only Targeted Applicants for a two week period following provision of the notification described in Section VI.A. After this period, the Airport Employer shall make good-faith efforts to hire Targeted Applicants, but may consider and hire applicants referred or recruited through any source.
  2. Established Employer Targeted Hiring Period. When making hires after the commencement of operations related to Airport, an Airport Employer shall consider and hire only Targeted Applicants for a five-day period following provision of the notification described in Section VI.A. After





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this period, the Airport Employer shall make good-faith efforts to hire Targeted Applicants, but may consider and hire applicants referred or recruited through any source.

3. Hiring Procedure During Targeted Hiring Periods. During the periods described in Sections VI.C.1 and VI.C.2 above, Airport Employers may hire Targeted Applicants recruited or referred through any source. During such periods Airport Employers shall use normal hiring practices, including interviews, to consider all applicants referred by the Referral System.
4. No Referral Fees. No Airport Employer or referred job candidate shall be required to pay any fee, cost or expense of the Referral System or this Program in connection with referrals.

VIII. Reporting and Recordkeeping.

- A. Reports. During the time that this Program is applicable to any Airport Employer, that Airport Employer shall, on a quarterly basis, notify the Referral System of the number, by job classification, of Targeted Applicants hired by the Airport Employer during that quarter, and the total number of employees hired by the Airport Employer for Airport Jobs during that quarter. Any Airport Employer who has not had hiring activity for the quarter, shall also notify the Referral System of such inactivity.
- B. Recordkeeping. During the time that this Program is applicable to any Airport Employer, that Airport Employer shall retain records sufficient for monitoring of compliance with this Program with regard to each Airport Job, including records of notifications sent to the Referral System, referrals from the Referral System, job applications received from any source, number of Targeted Applicants hired, and total number of employees hired for Airport Jobs. To the extent allowed by



law, and upon reasonable notice, these records shall be made available to LAWA and to the Referral System for inspection upon request. The Coalition Representative may request that LAWA provide such records at any time. Records may be redacted so that individuals are not identified by name and so that information required by law to remain confidential is excluded.

- C. Complaints. If LAWA, the Coalition, or the Referral System believes that an Airport Employer is not complying with this Program, then the designated LAWA office shall be notified to ensure compliance with this program.
- D. Liquidated Damages. Each Airport Employer agrees to pay to LAWA liquidated damages in the amount of One Thousand Dollars (\$1,000) where LAWA finds that the Airport Employer has violated this Program with regard to hiring for a particular Airport Job. LAWA shall establish procedures providing to Airport Employers notice and an opportunity to present all relevant evidence prior to LAWA's final determination regarding an alleged violation. This liquidated damages provision does not preclude LAWA from obtaining any other form of available relief to ensure compliance with this Program, including injunctive relief.

IX. Miscellaneous.

- A. Compliance with State and Federal Law. This Program shall be implemented only to the extent that it is consistent with the laws of the State of California and the United States. If any provision of this Program is held by a court of law to be in conflict with state or federal law, the applicable law shall prevail over the terms of this Program, and the conflicting provisions of this Program shall not be enforceable.
- B. Severability Clause. If any term, provision, covenant or condition of this Program is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall continue in full force and effect.



- C. Binding on Successors. This Program shall be binding upon and inure to the benefit of the successors in interest, transferees, assigns, present and future partners, subsidiary corporations, affiliates, agents, representatives, heirs, and administrators of any party that has committed to comply with it. Any reference in this Program to a party shall be deemed to apply to any successor in interest, transferee, assign, present or future partner, subsidiary corporation, affiliate, agent, representative, heir or administrator of such party; provided, however, that any assignment, transfer or encumbrance of a lease agreement, permit or contract in which this Program is incorporated shall only be made in strict compliance with the terms of such lease agreement, permit or contract and the foregoing shall not constitute consent to any such assignment, transfer or encumbrance.
- D. Lease Agreements and Contracts. Airport Employers shall not execute any sublease agreement or other contract under which Airport Jobs may occur directly or indirectly, unless the entirety of this Program is included as a material term thereof, binding on all parties.
- E. Assurance Regarding Preexisting Contracts. Each Airport Employer warrants and represents that as of the date of execution of this Program, it has executed no sublease agreement or other contract that would violate any provision of this Program had it been executed after the date of incorporation of this Program into a binding contract.
- F. Intended Beneficiaries. LAWA, the Coalition, and the Referral System are intended third-party beneficiaries of contracts and other agreements that incorporate this Program with regard to the terms and provisions of this Program. However, the parties recognize that only LAWA has the sole responsibility to enforce the provisions of this Program.



- G. Material Terms. All provisions of this Program shall be material terms of any lease agreement or contract in which it is incorporated.
- H. Effective Date. Section VI of this Program shall become effective on the effective date of the contract or agreement into which it is incorporated.
- I. Construction. Any party incorporating this Program into a binding contract has had the opportunity to be advised by counsel with regard to this Program. Accordingly, this Program shall not be strictly construed against any party, and the rule of construction that any ambiguities be resolved against the drafting party shall not apply to this Program.
- J. Entire Contract. This Program contains the entire agreement between the parties on the subjects described herein, and supersedes any prior agreements, whether written or oral. This Program may not be altered, amended or modified except by an instrument in writing signed in writing by all parties to the contract in which it is incorporated.