

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

1 AGREEMENT

2 **32867**

3 THIS AGREEMENT is made and entered, in duplicate, as of August 29,
4 2012, for reference purposes only, pursuant to a minute order adopted by the City
5 Council of the City of Long Beach at its meeting on August 7, 2012, by and between TSG
6 ENTERPRISES, INC. DBA THE SOLIS GROUP, a California corporation ("Consultant"),
7 with a place of business at 145 Vista Avenue, Suite 104, Pasadena, California 91107,
8 and the CITY OF LONG BEACH, a municipal corporation ("City").

9 WHEREAS, City requires specialized services requiring unique skills to be
10 performed in connection with as-needed professional labor compliancy monitoring
11 services ("Project"); and

12 WHEREAS, City has selected Consultant in accordance with City's
13 administrative procedures and City has determined that Consultant and its employees
14 are qualified, licensed, if so required, and experienced in performing these specialized
15 services; and

16 WHEREAS, City desires to have Consultant perform these specialized
17 services, and Consultant is willing and able to do so on the terms and conditions in this
18 Agreement;

19 NOW, THEREFORE, in consideration of the mutual terms, covenants, and
20 conditions in this Agreement, the parties agree as follows:

21 1. SCOPE OF WORK OR SERVICES.

22 A. Consultant shall furnish specialized services more particularly
23 described in Exhibit "A", attached to this Agreement and incorporated by this
24 reference, in accordance with the standards of the profession, and City shall pay
25 for these services in the manner described below, not to exceed One Hundred
26 Thousand Dollars (\$100,000), at the rates or charges shown in Exhibit "B".

27 B. Consultant may select the time and place of performance for
28 these services; provided, however, that access to City documents, records and the

1 like, if needed by Consultant, shall be available only during City's normal business
2 hours and provided that milestones for performance, if any, are met.

3 C. Consultant has requested to receive regular payments. City
4 shall pay Consultant in due course of payments following receipt from Consultant
5 and approval by City of invoices showing the services or task performed, the time
6 expended (if billing is hourly), and the name of the Project. Consultant shall certify
7 on the invoices that Consultant has performed the services in full conformance
8 with this Agreement and is entitled to receive payment. Each invoice shall be
9 accompanied by a progress report indicating the progress to date of services
10 performed and covered by the invoice, including a brief statement of any Project
11 problems and potential causes of delay in performance, and listing those services
12 that are projected for performance by Consultant during the next invoice cycle.
13 Where billing is done and payment is made on an hourly basis, the parties
14 acknowledge that this arrangement is either customary practice for Consultant's
15 profession, industry or business, or is necessary to satisfy audit and legal
16 requirements which may arise due to the fact that City is a municipality.

17 D. Consultant represents that Consultant has obtained all
18 necessary information on conditions and circumstances that may affect its
19 performance and has conducted site visits, if necessary.

20 E. CAUTION: Consultant shall not begin work until this
21 Agreement has been signed by both parties and until Consultant's evidence of
22 insurance has been delivered to and approved by City.

23 2. TERM. The term of this Agreement shall commence at midnight on
24 June 1, 2012, and shall terminate at 11:59 p.m. on May 31, 2013, unless sooner
25 terminated as provided in this Agreement, or unless the services or the Project is
26 completed sooner.

27 3. COORDINATION AND ORGANIZATION.

28 A. Consultant shall coordinate its performance with City's

1 representative, if any, named in Exhibit "C", attached to this Agreement and
2 incorporated by this reference. Consultant shall advise and inform City's
3 representative of the work in progress on the Project in sufficient detail so as to
4 assist City's representative in making presentations and in holding meetings on
5 the Project. City shall furnish to Consultant information or materials, if any,
6 described in Exhibit "D", attached to this Agreement and incorporated by this
7 reference, and shall perform any other tasks described in the Exhibit.

8 B. The parties acknowledge that a substantial inducement to City
9 for entering this Agreement was and is the reputation and skill of Consultant's key
10 employee, Joseph Carroll. City shall have the right to approve any person
11 proposed by Consultant to replace that key employee.

12 4. INDEPENDENT CONTRACTOR. In performing its services,
13 Consultant is and shall act as an independent contractor and not an employee,
14 representative or agent of City. Consultant shall have control of Consultant's work and
15 the manner in which it is performed. Consultant shall be free to contract for similar
16 services to be performed for others during this Agreement; provided, however, that
17 Consultant acts in accordance with Section 9 and Section 11 of this Agreement.
18 Consultant acknowledges and agrees that (a) City will not withhold taxes of any kind from
19 Consultant's compensation; (b) City will not secure workers' compensation or pay
20 unemployment insurance to, for or on Consultant's behalf; and (c) City will not provide
21 and Consultant is not entitled to any of the usual and customary rights, benefits or
22 privileges of City employees. Consultant expressly warrants that neither Consultant nor
23 any of Consultant's employees or agents shall represent themselves to be employees or
24 agents of City.

25 5. INSURANCE.

26 A. As a condition precedent to the effectiveness of this
27 Agreement, Consultant shall procure and maintain, at Consultant's expense for the
28 duration of this Agreement, from insurance companies that are admitted to write

1 insurance in California and have ratings of or equivalent to A:V by A.M. Best
2 Company or from authorized non-admitted insurance companies subject to
3 Section 1763 of the California Insurance Code and that have ratings of or
4 equivalent to A:VIII by A.M. Best Company, the following insurance:

5 (a) Commercial general liability insurance (equivalent in scope to
6 ISO form CG 00 01 11 85 or CG 00 01 10 93) in an amount not less than
7 \$1,000,000 per each occurrence and \$2,000,000 general aggregate. This
8 coverage shall include but not be limited to broad form contractual liability,
9 cross liability, independent contractors liability, and products and
10 completed operations liability. City, its boards and commissions, and their
11 officials, employees and agents shall be named as additional insureds by
12 endorsement (on City's endorsement form or on an endorsement
13 equivalent in scope to ISO form CG 20 10 11 85 or CG 20 26 11 85 or
14 both CG 20 10 07 04 and CG 20 37 07 04 or both CG 20 33 07 04 and
15 CG 20 37 07 04), and this insurance shall contain no special limitations on
16 the scope of protection given to City, its boards and commissions, and
17 their officials, employees and agents. This policy shall be endorsed to
18 state that the insurer waives its right of subrogation against City, its boards
19 and commissions, and their officials, employees and agents.

20 (b) Workers' Compensation insurance as required by the California
21 Labor Code and employer's liability insurance in an amount not less than
22 \$1,000,000. This policy shall be endorsed to state that the insurer waives
23 its right of subrogation against City, its boards and commissions, and their
24 officials, employees and agents.

25 (c) Professional liability or errors and omissions insurance in an
26 amount not less than \$1,000,000 per claim.

27 (d) Commercial automobile liability insurance (equivalent in scope
28 to ISO form CA 00 01 06 92), covering Auto Symbol 1 (Any Auto) in an

1 amount not less than \$500,000 combined single limit per accident.

2 B. Any self-insurance program, self-insured retention, or
3 deductible must be separately approved in writing by City's Risk Manager or
4 designee and shall protect City, its officials, employees and agents in the same
5 manner and to the same extent as they would have been protected had the policy
6 or policies not contained retention or deductible provisions.

7 C. Each insurance policy shall be endorsed to state that
8 coverage shall not be reduced, non-renewed or canceled except after thirty (30)
9 days prior written notice to City, shall be primary and not contributing to any other
10 insurance or self-insurance maintained by City, and shall be endorsed to state that
11 coverage maintained by City shall be excess to and shall not contribute to
12 insurance or self-insurance maintained by Consultant. Consultant shall notify City
13 in writing within five (5) days after any insurance has been voided by the insurer or
14 cancelled by the insured.

15 D. If this coverage is written on a "claims made" basis, it must
16 provide for an extended reporting period of not less than one hundred eighty (180)
17 days, commencing on the date this Agreement expires or is terminated, unless
18 Consultant guarantees that Consultant will provide to City evidence of
19 uninterrupted, continuing coverage for a period of not less than three (3) years,
20 commencing on the date this Agreement expires or is terminated.

21 E. Consultant shall require that all subconsultants or contractors
22 that Consultant uses in the performance of these services maintain insurance in
23 compliance with this Section unless otherwise agreed in writing by City's Risk
24 Manager or designee.

25 F. Prior to the start of performance, Consultant shall deliver to
26 City certificates of insurance and the endorsements for approval as to sufficiency
27 and form. In addition, Consultant shall, within thirty (30) days prior to expiration of
28 the insurance, furnish to City certificates of insurance and endorsements

1 evidencing renewal of the insurance. City reserves the right to require complete
2 certified copies of all policies of Consultant and Consultant's subconsultants and
3 contractors, at any time. Consultant shall make available to City's Risk Manager
4 or designee all books, records and other information relating to this insurance,
5 during normal business hours.

6 G. Any modification or waiver of these insurance requirements
7 shall only be made with the approval of City's Risk Manager or designee. Not
8 more frequently than once a year, City's Risk Manager or designee may require
9 that Consultant, Consultant's subconsultants and contractors change the amount,
10 scope or types of coverages required in this Section if, in his or her sole opinion,
11 the amount, scope or types of coverages are not adequate.

12 H. The procuring or existence of insurance shall not be
13 construed or deemed as a limitation on liability relating to Consultant's
14 performance or as full performance of or compliance with the indemnification
15 provisions of this Agreement.

16 6. ASSIGNMENT AND SUBCONTRACTING. This Agreement
17 contemplates the personal services of Consultant and Consultant's employees, and the
18 parties acknowledge that a substantial inducement to City for entering this Agreement
19 was and is the professional reputation and competence of Consultant and Consultant's
20 employees. Consultant shall not assign its rights or delegate its duties under this
21 Agreement, or any interest in this Agreement, or any portion of it, without the prior
22 approval of City, except that Consultant may with the prior approval of the City Manager
23 of City, assign any moneys due or to become due Consultant under this Agreement. Any
24 attempted assignment or delegation shall be void, and any assignee or delegate shall
25 acquire no right or interest by reason of an attempted assignment or delegation.
26 Furthermore, Consultant shall not subcontract any portion of its performance without the
27 prior approval of the City Manager or designee, or substitute an approved subconsultant
28 or contractor without approval prior to the substitution. Nothing stated in this Section

1 shall prevent Consultant from employing as many employees as Consultant deems
2 necessary for performance of this Agreement.

3 7. CONFLICT OF INTEREST. Consultant, by executing this
4 Agreement, certifies that, at the time Consultant executes this Agreement and for its
5 duration, Consultant does not and will not perform services for any other client which
6 would create a conflict, whether monetary or otherwise, as between the interests of City
7 and the interests of that other client. And, Consultant shall obtain similar certifications
8 from Consultant's employees, subconsultants and contractors.

9 8. MATERIALS. Consultant shall furnish all labor and supervision,
10 supplies, materials, tools, machinery, equipment, appliances, transportation and services
11 necessary to or used in the performance of Consultant's obligations under this
12 Agreement, except as stated in Exhibit "D".

13 9. OWNERSHIP OF DATA. All materials, information and data
14 prepared, developed or assembled by Consultant or furnished to Consultant in
15 connection with this Agreement, including but not limited to documents, estimates,
16 calculations, studies, maps, graphs, charts, computer disks, computer source
17 documentation, samples, models, reports, summaries, drawings, designs, notes, plans,
18 information, material and memorandum ("Data") shall be the exclusive property of City.
19 Data shall be given to City, and City shall have the unrestricted right to use and disclose
20 the Data in any manner and for any purpose without payment of further compensation to
21 Consultant. Copies of Data may be retained by Consultant but Consultant warrants that
22 Data shall not be made available to any person or entity for use without the prior approval
23 of City. This warranty shall survive termination of this Agreement for five (5) years.

24 10. TERMINATION. Either party shall have the right to terminate this
25 Agreement for any reason or no reason at any time by giving fifteen (15) calendar days
26 prior notice to the other party. In the event of termination under this Section, City shall
27 pay Consultant for services satisfactorily performed and costs incurred up to the effective
28 date of termination for which Consultant has not been previously paid. The procedures

1 for payment in Section 1.B. with regard to invoices shall apply. On the effective date of
2 termination, Consultant shall deliver to City all Data developed or accumulated in the
3 performance of this Agreement, whether in draft or final form, or in process. And,
4 Consultant acknowledges and agrees that City's obligation to make final payment is
5 conditioned on Consultant's delivery of the Data to City.

6 11. CONFIDENTIALITY. Consultant shall keep all Data confidential and
7 shall not disclose the Data or use the Data directly or indirectly, other than in the course
8 of performing its services, during the term of this Agreement and for five (5) years
9 following expiration or termination of this Agreement. In addition, Consultant shall keep
10 confidential all information, whether written, oral or visual, obtained by any means
11 whatsoever in the course of performing its services for the same period of time.
12 Consultant shall not disclose any or all of the Data to any third party, or use it for
13 Consultant's own benefit or the benefit of others except for the purpose of this
14 Agreement.

15 12. BREACH OF CONFIDENTIALITY. Consultant shall not be liable for
16 a breach of confidentiality with respect to Data that: (a) Consultant demonstrates
17 Consultant knew prior to the time City disclosed it; or (b) is or becomes publicly available
18 without breach of this Agreement by Consultant; or (c) a third party who has a right to
19 disclose does so to Consultant without restrictions on further disclosure; or (d) must be
20 disclosed pursuant to subpoena or court order.

21 13. ADDITIONAL COSTS AND REDESIGN.

22 A. Any costs incurred by City due to Consultant's failure to meet
23 the standards required by the scope of work or Consultant's failure to perform fully
24 the tasks described in the scope of work which, in either case, causes City to
25 request that Consultant perform again all or part of the Scope of Work shall be at
26 the sole cost of Consultant and City shall not pay any additional compensation to
27 Consultant for its re-performance.

28 B. If the Project involves construction and the scope of work

1 requires Consultant to prepare plans and specifications with an estimate of the
2 cost of construction, then Consultant may be required to modify the plans and
3 specifications, any construction documents relating to the plans and specifications,
4 and Consultant's estimate, at no cost to City, when the lowest bid for construction
5 received by City exceeds by more than ten percent (10%) Consultant's estimate.
6 This modification shall be submitted in a timely fashion to allow City to receive new
7 bids within four (4) months after the date on which the original plans and
8 specifications were submitted by Consultant.

9 14. AMENDMENT. This Agreement, including all Exhibits, shall not be
10 amended, nor any provision or breach waived, except in writing signed by the parties
11 which expressly refers to this Agreement.

12 15. LAW. This Agreement shall be governed by and construed pursuant
13 to the laws of the State of California (except those provisions of California law pertaining
14 to conflicts of laws). Consultant shall comply with all laws, ordinances, rules and
15 regulations of and obtain all permits, licenses and certificates required by all federal, state
16 and local governmental authorities.

17 16. ENTIRE AGREEMENT. This Agreement, including all Exhibits,
18 constitutes the entire understanding between the parties and supersedes all other
19 agreements, oral or written, with respect to the subject matter in this Agreement.

20 17. INDEMNITY.

21 A. Consultant shall indemnify, protect and hold harmless City, its
22 Boards, Commissions, and their officials, employees and agents ("Indemnified
23 Parties"), from and against any and all liability, claims, demands, damage, loss,
24 obligations, causes of action, proceedings, awards, fines, judgments, penalties,
25 costs and expenses, including attorneys' fees, court costs, expert and witness
26 fees, and other costs and fees of litigation, arising or alleged to have arisen, in
27 whole or in part, out of or in connection with (1) Consultant's breach or failure to
28 comply with any of its obligations contained in this Agreement, or (2) negligent or

1 willful acts, errors, omissions or misrepresentations committed by Consultant, its
2 officers, employees, agents, subcontractors, or anyone under Consultant's control,
3 in the performance of work or services under this Agreement (collectively "Claims"
4 or individually "Claim").

5 B. In addition to Consultant's duty to indemnify, Consultant shall
6 have a separate and wholly independent duty to defend Indemnified Parties at
7 Consultant's expense by legal counsel approved by City, from and against all
8 Claims, and shall continue this defense until the Claims are resolved, whether by
9 settlement, judgment or otherwise. No finding or judgment of negligence, fault,
10 breach, or the like on the part of Consultant shall be required for the duty to defend
11 to arise. City shall notify Consultant of any Claim, shall tender the defense of the
12 Claim to Consultant, and shall assist Consultant, as may be reasonably requested,
13 in the defense.

14 C. If a court of competent jurisdiction determines that a Claim
15 was caused by the sole negligence or willful misconduct of Indemnified Parties,
16 Consultant's costs of defense and indemnity shall be (1) reimbursed in full if the
17 court determines sole negligence by the Indemnified Parties, or (2) reduced by the
18 percentage of willful misconduct attributed by the court to the Indemnified Parties.

19 D. The provisions of this Section shall survive the expiration or
20 termination of this Agreement.

21 18. AMBIGUITY. In the event of any conflict or ambiguity between this
22 Agreement and any Exhibit, the provisions of this Agreement shall govern.

23 19. COSTS. If there is any legal proceeding between the parties to
24 enforce or interpret this Agreement or to protect or establish any rights or remedies under
25 it, the prevailing party shall be entitled to its costs, including reasonable attorneys' fees.

26 20. NONDISCRIMINATION.

27 A. In connection with performance of this Agreement and subject
28 to applicable rules and regulations, Consultant shall not discriminate against any

1 employee or applicant for employment because of race, religion, national origin,
2 color, age, sex, sexual orientation, gender identity, AIDS, HIV status, handicap or
3 disability. Consultant shall ensure that applicants are employed, and that
4 employees are treated during their employment, without regard to these bases.
5 These actions shall include, but not be limited to, the following: employment,
6 upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or
7 termination; rates of pay or other forms of compensation; and selection for training,
8 including apprenticeship.

9 B. It is the policy of City to encourage the participation of
10 Disadvantaged, Minority and Women-Owned Business Enterprises in City's
11 procurement process, and Consultant agrees to use its best efforts to carry out
12 this policy in its use of subconsultants and contractors to the fullest extent
13 consistent with the efficient performance of this Agreement. Consultant may rely
14 on written representations by subconsultants and contractors regarding their
15 status. Consultant shall report to City in May and in December or, in the case of
16 short-term agreements, prior to invoicing for final payment, the names of all
17 subconsultants and contractors hired by Consultant for this Project and information
18 on whether or not they are a Disadvantaged, Minority or Women-Owned Business
19 Enterprise, as defined in Section 8 of the Small Business Act (15 U.S.C. Sec.
20 637).

21 21. EQUAL BENEFITS ORDINANCE. Unless otherwise exempted in
22 accordance with the provisions of the Ordinance, this Agreement is subject to the
23 applicable provisions of the Equal Benefits Ordinance (EBO), section 2.73 et seq. of the
24 Long Beach Municipal Code, as amended from time to time.

25 A. During the performance of this Agreement, the Consultant
26 certifies and represents that the Consultant will comply with the EBO. The
27 Consultant agrees to post the following statement in conspicuous places at its
28 place of business available to employees and applicants for employment:

1 “During the performance of a contract with the City of Long Beach,
2 the Consultant will provide equal benefits to employees with spouses and its
3 employees with domestic partners. Additional information about the City of
4 Long Beach’s Equal Benefits Ordinance may be obtained from the City of
5 Long Beach Business Services Division at 562-570-6200.”

6 B. The failure of the Consultant to comply with the EBO will be
7 deemed to be a material breach of the Agreement by the City.

8 C. If the Consultant fails to comply with the EBO, the City may
9 cancel, terminate or suspend the Agreement, in whole or in part, and monies due
10 or to become due under the Agreement may be retained by the City. The City
11 may also pursue any and all other remedies at law or in equity for any breach.

12 D. Failure to comply with the EBO may be used as evidence
13 against the Consultant in actions taken pursuant to the provisions of Long Beach
14 Municipal Code 2.93 et seq., Contractor Responsibility.

15 E. If the City determines that the Consultant has set up or used
16 its contracting entity for the purpose of evading the intent of the EBO, the City may
17 terminate the Agreement on behalf of the City. Violation of this provision may be
18 used as evidence against the Consultant in actions taken pursuant to the
19 provisions of Long Beach Municipal Code Section 2.93 et seq., Contractor
20 Responsibility.

21 22. NOTICES. Any notice or approval required by this Agreement shall
22 be in writing and personally delivered or deposited in the U.S. Postal Service, first class,
23 postage prepaid, addressed to Consultant at the address first stated above, and to City at
24 333 West Ocean Boulevard, Long Beach, California 90802, Attn: City Manager, with a
25 copy to the City Engineer at the same address. Notice of change of address shall be
26 given in the same manner as stated for other notices. Notice shall be deemed given on
27 the date deposited in the mail or on the date personal delivery is made, whichever occurs
28 first.

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23. COPYRIGHTS AND PATENT RIGHTS.

A. Consultant shall place the following copyright protection on all Data: © City of Long Beach, California _____, inserting the appropriate year.

B. City reserves the exclusive right to seek and obtain a patent or copyright registration on any Data or other result arising from Consultant's performance of this Agreement. By executing this Agreement, Consultant assigns any ownership interest Consultant may have in the Data to City.

C. Consultant warrants that the Data does not violate or infringe any patent, copyright, trade secret or other proprietary right of any other party. Consultant agrees to and shall protect, defend, indemnify and hold City, its officials and employees harmless from any and all claims, demands, damages, loss, liability, causes of action, costs or expenses (including reasonable attorney's fees) whether or not reduced to judgment, arising from any breach or alleged breach of this warranty.

24. COVENANT AGAINST CONTINGENT FEES. Consultant warrants that Consultant has not employed or retained any entity or person to solicit or obtain this Agreement and that Consultant has not paid or agreed to pay any entity or person any fee, commission or other monies based on or from the award of this Agreement. If Consultant breaches this warranty, City shall have the right to terminate this Agreement immediately notwithstanding the provisions of Section 10 or, in its discretion, to deduct from payments due under this Agreement or otherwise recover the full amount of the fee, commission or other monies.

25. WAIVER. The acceptance of any services or the payment of any money by City shall not operate as a waiver of any provision of this Agreement or of any right to damages or indemnity stated in this Agreement. The waiver of any breach of this Agreement shall not constitute a waiver of any other or subsequent breach of this Agreement.

26. CONTINUATION. Termination or expiration of this Agreement shall

1 not affect rights or liabilities of the parties which accrued pursuant to Sections 7, 10, 11,
2 17, 19, 22 and 28 prior to termination or expiration of this Agreement.

3 27. TAX REPORTING. As required by federal and state law, City is
4 obligated to and will report the payment of compensation to Consultant on Form 1099-
5 Misc. Consultant shall be solely responsible for payment of all federal and state taxes
6 resulting from payments under this Agreement. Consultant shall submit Consultant's
7 Employer Identification Number (EIN), or Consultant's Social Security Number if
8 Consultant does not have an EIN, in writing to City's Accounts Payable, Department of
9 Financial Management. Consultant acknowledges and agrees that City has no obligation
10 to pay Consultant until Consultant provides one of these numbers.

11 28. ADVERTISING. Consultant shall not use the name of City, its
12 officials or employees in any advertising or solicitation for business or as a reference,
13 without the prior approval of the City Manager or designee.

14 29. AUDIT. City shall have the right at all reasonable times during the
15 term of this Agreement and for a period of five (5) years after termination or expiration of
16 this Agreement to examine, audit, inspect, review, extract information from and copy all
17 books, records, accounts and other documents of Consultant relating to this Agreement.

18 30. THIRD PARTY BENEFICIARY. This Agreement is not intended or
19 designed to or entered for the purpose of creating any benefit or right for any person or
20 entity of any kind that is not a party to this Agreement.

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OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

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IN WITNESS WHEREOF, the parties have caused this document to be duly executed with all formalities required by law as of the date first stated above.

TSG ENTERPRISES, INC. DBA THE SOLIS GROUP, a California corporation

_____, 2012

By [Signature]
Name TERAN E SOLIS
Title CHAIRMAN & SECY OF THE BOD

_____, 2012

By _____
Name _____
Title _____

"Consultant"

CITY OF LONG BEACH, a municipal corporation

10.30, 2012

By [Signature] **Assistant City Manager**
City Manager

"City"

EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER.

This Agreement is approved as to form on October 18, 2012.

ROBERT E. SHANNON, City Attorney

By [Signature]
Deputy

EXHIBIT “A”

Scope of Work or Services

SCOPE OF PROJECT

SECTION 3 MONITORING REQUIREMENTS

The Consultant shall monitor certain City of Long Beach Contractor(s) and Subcontractor(s) to ensure that best efforts are utilized to comply with Section 3 hiring and requirements, and ensure that qualified Section 3 residents are hired for a minimum of thirty percent (30%) of total new hire construction work hours or total Section 3 new hires, depending on the project. The Consultant shall also monitor the Contractor(s) to ensure it utilizes its best efforts to hire or contract with Section 3 businesses, for a minimum of ten percent (10%) of the total dollar amount of all building trades work financed by or with certain federal dollars or other designated funds, or city mandated projects.

Documentation Related to Searching for Section 3 Employees:

The Consultant shall collect from Contractor(s) documentation demonstrating the Contractor's progress toward fulfilling the City's Section 3 contractual requirements. The following reports shall be obtained by the Consultant from the Contractor(s) and submitted to the City's Section 3 Coordinator prior to the start of work by Contractor(s):

- a) Documentation of the Contractor's intent and efforts to comply with Section 3 requirements and goals.
- b) Workforce Projections for the Contractor and all its Subcontractors
- c) Construction Schedule
- d) A list of the Contractor's current employees and lists of current employees of all Subcontractors.
- e) Proof of public notices announcing Section 3 resident employment and Section 3 business contracting opportunities at the project jobsite.

Section 3 Employment Documentation:

The Consultant will collect from the Contractor Monthly Section 3 Hire reports that cumulatively report each Section 3 employee's name, employer, date hired, employee address, family size, annual income, Section 3 status and hours worked on the project to date.

Section 3 Businesses Contact/Hiring Compliance:

The Consultant shall collect from Contractor (s), each month, documentation demonstrating the Contractor(s) progress toward fulfilling the City's Section 3 policy.

Failure of the Contractor(s) to provide documentation to the consultant could result in a 10% retainage in a progress payment until all required documentation is received.

- a) The Consultant shall collect and document Contractor(s) efforts to identify contract opportunities to facilitate participation by Section 3 businesses.
- b) The Consultant shall collect and document Contractor(s) efforts to contact business outreach agencies to assist in recruiting Section 3 business enterprises.
- c) The Consultant shall collect and document Contractor(s) efforts to post public notices announcing Section 3 business contracting opportunities at the project jobsite.
- d) The Consultant shall collect and document Contractor(s) efforts to advertise for subcontracting opportunities in local newspaper outlets.
- e) The Consultant shall collect and document Contractor(s) efforts to solicit written bids from Section 3 businesses desiring to participate in this project.
- f) The Consultant shall collect and document Contractor(s) efforts to follow up with initial solicitations of interested Section 3 businesses. A copy of telephone logs shall document this effort.
- g) The Consultant shall collect and document Contractor(s) effort to conduct a pre-bid conference to assist Section 3 business enterprises in completing bid documents for subcontracts.
- h) The Consultant shall collect and document Contractor(s) efforts to assist all potential Subcontractors needing assistance in obtaining bonding, line of credit, or financing.

DAVIS BACON MONITORING REQUIREMENTS

The City of Long Beach utilizes Davis-Bacon Prevailing Wage Determinations on all federally funded projects. The City maintains a policy of enforcing the highest wage as between Davis-Bacon Prevailing Wages and California State Prevailing Wages, as determined by the California Department of Industrial Relations, Division of Labor Statistics and Research available from <http://www.dir.ca.gov/dlsr>.

All Davis-Bacon Prevailing Wage Determinations should be obtained from <http://www.access.gpo.gov/davisbacon/>. The Davis-Bacon Wage Determinations contained on this web site are wage determinations issued by the U.S. Department of Labor under the Davis-Bacon and related Acts. The Wage and Hour Division of the U.S. Department of Labor determines prevailing wage rates to be paid on federally funded or assisted construction projects. It is the responsibility of agency to ensure that the proper

Davis-Bacon wage determination(s) is/are applied to federally funded construction contracts(s) (See 29 CFR 1.5 and 1.6(b)).

Each City Department may have a unique protocol the consultant must become familiar with prior to the initiation of work. These issues will be brought to the Consultant's attention by the City's Section 3 Coordinator. For example, the Public Works Department utilizes the Caltrans forms for filing purposes. These forms are found at <http://www.dot.ca.gov/hq/LocalPrograms/public.htm>. Whenever in doubt, Consultant shall seek clarification from the City's coordinator.

- a) The Consultant shall document the Contractor's attendance at the pre-construction conference.
- b) The Consultant shall prepare the appropriate section of the Project Labor Standards Enforcement File (related to payroll data) and shall maintain files for all the phases of the project.
- c) The Consultant shall ensure that the Contractor and Subcontractors shall be provided with the comprehensive packet detailing the Davis-Bacon Requirements and wage posters during the pre-construction meeting.
- d) The Consultant shall supply the necessary Wage Compliance forms to the Contractor(s) and City staff during pre-construction conference.
- e) A copy of the minutes shall be placed in the Project Labor Standard enforcements file, as required by Davis-Bacon regulations.
- f) The Consultant shall again, check each Contractor's eligibility for contract award by reviewing the Services Administration's "List of Parties Excluded from Federal Procurement and Non-Procurement Programs" and the Department of Industrial Relation's debarment list."
- g) The Consultant shall verify that all apprentices have been properly registered (or certified) in an apprenticeship program registered with the Bureau of Apprenticeship and Training, or with a State Apprenticeship Program recognized by the Bureau.
- h) The Consultant shall verify that all Apprenticeships in possession of a formal certification were registered in an approved program. Verification shall be made with the United States Department of Labor, Employment and Training Administration.
- i) Consultant shall provide the City with a letter, on letterhead, stating the Contractor's ability to, or failure to, comply with the Davis-Bacon requirements during the life of the Project. The letter will also state that Consultant has complied with, and has met, all federal and state requirements.

STATE PREVAILING WAGE MONITORING REQUIREMENTS

Basic monitoring, consultation, and technical assistance are requested to satisfy requirements of Davis-Bacon/Prevailing Wage documentation requirements.

All laborers and mechanics employed by Contractor(s) or Subcontractor(s) in the performance of certain construction work financed in whole or in part with federal, state or redevelopment assistance shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon act, as amended, or in accordance with California Prevailing Wage requirements as determined by the California Department of Industrial Relations.

- a) The Consultant shall document the Contractor's attendance at the pre-construction conference.
- b) The Consultant shall prepare the appropriate section of the Project Labor Standards Enforcement File (related to payroll data) and shall maintain files for all the phases of the project.
- c) The Consultant shall ensure that the Contractor and Subcontractors shall be provided with the comprehensive packet detailing the Prevailing wage Requirements and wage posters during the pre-construction meeting:
- d) The Consultant shall supply the necessary Wage Compliance forms to the Contractor(s) and City staff during pre-construction conference.
- e) A copy of the minutes shall be placed in the Project Labor Standard enforcements file, as required by Prevailing Wage regulations.
- f) The Consultant shall again, check each Contractor's eligibility for contract award by reviewing the Services Administration's "List of Parties Excluded from Federal Procurement and Non-Procurement Programs and the Department of Industrial Relations debarment list."
- g) The Consultant shall verify that all apprentices have been properly registered (or certified) in an apprenticeship program registered with the Bureau of Apprenticeship and Training, or with a State Apprenticeship Program recognized by the Bureau.
- h) The Consultant shall verify that all Apprenticeships in possession of a formal certification were registered in an approved program. Verification shall be made With the United States Department of Labor, Employment and Training Administration.

- i) Consultant shall provide the City with a letter, on letterhead, stating the Contractor's ability to, or failure to, comply with the prevailing wage requirements during the life of the Project. The letter will also state that Consultant has complied with, and has met, all federal and state requirements.

DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION MONITORING REQUIREMENTS

Monitor Contracts for DBE Utilization

- a) Collect and review monthly DBE Utilization Reports submitted by prime contractors/consultants; track DBE utilization throughout the life of the contract.
- b) Follow up with contractors and/or the City's Construction Management (CM) staff regarding delinquent/inadequate DBE Utilization Reports and/or under-utilization of DBEs.
- c) Verify payments made to DBEs.
- d) Notify City if contractor/consultant is willfully non-compliant with DBE utilization requirements and/or DBE Utilization Report submittal requirements.
- e) Work with the City's CM staff to evaluate DBE subcontractor substitution requests; evaluate GFE's submitted as proof of contractor's attempt to substitute a DBE with another DBE.
- f) Review final report of DBE utilization submitted by prime contractor at contract closeout; record and report final DBE attainment percentage.

DISADVANTAGED BUSINESS ENTERPRISE ANNUAL GOAL SETTING (if applicable) AND PROJECT BASE GOAL SETTING

Annual Goal Setting:

- a) Collect applicable information from various databases to be in compliance with Title 49 CFR, part 26.
- b) Assist the City in completing the Annual Exhibit 9-B DBE Form

Project Base Goal Setting:

- a) Collect applicable information from various DBE databases to determine an appropriate goal
- b) Work with the City's project staff to evaluate the applicability of the goals per project

Conduct DBE and Prevailing Wage Compliance Training Workshops for Contractors:

Workshop invitees will include large contractors, DBE prime contractors, and DBE subcontractors interested in bidding on City projects. The workshops can be held at a City of Long Beach facility. Each workshop will be 3-4 hours in duration, and will include a PowerPoint presentation, handouts, and valuable information on critical aspects of contract compliance with State and Federal regulations applicable to contracts subject to the DBE Program, including the new, race-conscious DBE Program requirements for FHWA-assisted contracts. Training topics will include:

- A. DBE Program elements, definitions, and documentation submittal requirements
- B. How to locate/search for DBEs to meet DBE contract goals
- C. How to obtain DBE certification
- D. How to conduct and document a Good Faith Effort
- E. How to comply with prevailing wage requirements

EXHIBIT “B”

Rates or Charges



CITY OF LONG BEACH

DEPARTMENT OF FINANCIAL MANAGEMENT
BUSINESS RELATIONS BUREAU

333 WEST OCEAN BOULEVARD 7TH FLOOR • LONG BEACH, CA 90802 • (562) 570-6200

June 28, 2012

The Solis Group
Attn: Terri Solis
145 Vista Avenue, # 104
Pasadena, CA 91107

RECEIVED
by The Solis Group

JUL - 3 2012

Forwarded To: *GAL*

Comments:

RE: RFP-FM11-005 HUD SECTION 3, LABOR COMPLIANCE, and DBE MONITORING

Dear Ms: Solis:

Thank you for patience with the Request for Proposal above. The City of Long Beach requests that you extend the pricing through December 31, 2015. If you will hold your pricing, please sign below indicating agreement with this request, and return as requested.

If you submit alternative pricing, please attach and sign the new schedule, indicating that the new pricing will be held through December 31, 2015.

Thank you,

Erik Sund
Business Relations Bureau Manager

The Solis Group

~~Comprehensive Housing Services, Inc~~ agrees to hold pricing for RFP-FM11-005 for HUD Section 3, labor compliance, and DBE monitoring, through December 31, 2015.

AUTHORIZED SIGNATURE AND DATE

PRINTED NAME AND TITLE

Terry E. Solis

Chairman & Secretary of The Board of Directors

Please return signed document to: City of Long Beach, Business Relations Bureau., 7th Floor, Attn: Patrice Martin, Long Beach, CA 90802

The Solís Group (TSG) Cost Proposal

TSG's rates cover all direct labor, overhead, fringe benefits and profit, as well as associated expenses and costs for providing labor compliance services such as such as travel (mileage, parking, etc.) and communication (postage, reports, telephone, etc.). TSG will provide fixed-fee cost estimates for the provision of services based upon task orders with known durations and construction value estimates.

Our standard billing rates are presented in the table below.

The Solís Group Standard Rate Schedule					
	2011	2012	2013	2014	2015
Principal	\$240	\$245	\$245	\$250	\$250
VP Ops	\$190	\$195	\$195	\$200	\$200
Senior Project Manager	\$180	\$185	\$185	\$190	\$190
Project Manager	\$175	\$175	\$175	\$180	\$180
Assistant Project Manager	\$150	\$150	\$150	\$155	\$155
Senior Analyst	\$125	\$130	\$130	\$135	\$135
Analyst	\$95	\$100	\$100	\$105	\$105

The following services **will be included** in the proposed fee for each task order for labor compliance, Section 3 monitoring, and DBE monitoring or goal setting services:

In the event that an investigation and informal settlement conference with the affected contractor(s) fails to resolve an apparent violation, TSG will prepare the following on the City's behalf:

- A. All audits;
- B. Summary of findings and investigations;
- C. Notice of withholding of contract payments;
- D. Notice to the California Labor Commissioner Requesting Approval of Forfeitures; and,
- E. Transmittal of Notice of Forfeitures to the affected contractor(s).



EXHIBIT “C”

City’s Representative:

Erik Sund, Business Relations Manager

EXHIBIT “D”

Materials/Information Furnished: None