

Members of the public may address the City Council on any item shown on the agenda or matter of the Council's authority after completion of "Request to Address the Council Form" available in the lobby of the Council Chambers or in the City Clerk's office. This form must be completed 15 minutes prior to the scheduled meeting time. Pursuant to Section 54957.5 of the California Government Code, Any writings (Except for those writings which are exempt from disclosure) which are distributed to all or a majority of the members of the City Council are available for public inspection in the lobby of the City Council Chambers and in the office of the City Clerk during regular business hours.

COMPTON CITY COUNCIL

AGENDA

09/10/2019

5:30 PM

HEARING

5:50 P.M. - PUBLIC HEARING - TO CONSIDER A REDUCTION IN THE UTILITY USER FEE FOR PLENTY UNLIMITED INC. AS AN INCENTIVE TO LOCATE A STATE-OF-THE-ART INDOOR FARM WITHIN THE CITY OF COMPTON (Item #12)

OPENING

MOMENT OF SILENCE

PLEDGE OF ALLEGIANCE

ROLL CALL

INTRODUCTION OF SPECIAL GUESTS

COMMENDATORY RESOLUTIONS/PRESENTATIONS

PUBLIC COMMENTS ON AGENDA ITEMS AND NON-AGENDA MATTERS

CONSENT AGENDA

Consent items are routine and expected to be non-controversial. They will be acted upon by the Council at one time without discussion unless a Council Member requests an item be removed or discussed.

CITY FIRE DEPARTMENT

1. A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMPTON AUTHORIZING THE CITY MANAGER TO ISSUE A PURCHASE ORDER WITH THE CITY OF DOWNEY FOR FIRE AND EMERGENCY MEDICAL DISPATCHING SERVICES (\$800,000.00)

GENERAL SERVICES

2. A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMPTON AUTHORIZING THE CITY MANAGER TO ENTER INTO A TWELVE (12) MONTH AGREEMENT WITH VOLUNTEERS OF AMERICA OF LOS ANGELES FOR THE LEASE OF CITY-OWNED PROPERTY LOCATED AT 700 BULLIS ROAD

PLANNING AND ECONOMIC DEVELOPMENT

3. A RESOLUTION OF THE CITY COUNCIL OF THE CITY COMPTON DENYING ZONE TEXT AMENDMENT NO. 18-02, A REQUEST OF ELECTRIC GUARD DOG LLC, TO AMEND SECTION 30-44.3 OF THE COMPTON MUNICIPAL CODE (FENCING ORDINANCE) TO ALLOW ELECTRIFIED FENCING IN THE LIMITED COMMERCIAL, COMMERCIAL MANUFACTURING, LIMITED AND HEAVY MANUFACTURING ZONES CITYWIDE
4. A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMPTON AUTHORIZING THE CITY MANAGER TO ENTER INTO A TWO YEAR CONTRACT (FISCAL YEARS 2019-2020 AND 2020-2021) WITH ROTH AND ASSOCIATES FOR PROPERTY APPRAISAL SERVICES ON AN AS-NEEDED BASIS FOR HOUSING SUCCESSOR AGENCY PROPERTIES AND TO OPEN A PURCHASE ORDER FOR FISCAL YEAR 2019-2020 IN AN AMOUNT NOT TO EXCEED NINE THOUSAND DOLLARS (\$9,000)

PUBLIC WORKS DEPARTMENT

5. A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMPTON AUTHORIZING THE CITY MANAGER TO ENTER INTO THE 2016 FEDERAL TRANSPORTATION EARMARK EXCHANGE PROGRAM LOCAL FUND AGREEMENT WITH THE LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY (LACMTA) TO PROVIDE FUNDING FOR THE DEVELOPMENT AND REHABILITATION OF THE COMPTON CREEK BIKEWAY PROJECT

RISK MANAGEMENT

6. A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMPTON AUTHORIZING THE CITY MANAGER TO RENEW THE SOFTWARE LICENSE AND MAINTENANCE AGREEMENT WITH VENTIV TECHNOLOGY, INC. FOR PROVISION OF THE RISK MANAGEMENT IVOS DATABASE

WATER DEPARTMENT

7. A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMPTON AUTHORIZING THE CITY MANAGER TO ACCEPT THE BID OF H2O SOLUTIONS, LLC FOR THE TANK DIVING, CLEANSING AND INSPECTION PROJECT (\$14,347.52)

REGULAR AGENDA

CITY MANAGER'S REPORT

8. ORAL REPORT - PUBLIC SAFETY
9. ORAL REPORT - STREET MAINTENANCE
10. A REQUEST TO SCHEDULE A PUBLIC HEARING TO CONSIDER AND ADOPT A RESOLUTION RECOMMENDING THE CITY COUNCIL'S APPROVAL OF AN AMENDMENT TO CHAPTER 30, ZONING, OF THE COMPTON MUNICIPAL CODE TO: 1) CREATE A NEW CHAPTER REGULATING EMERGENCY SHELTERS AND 2) AMEND THE USE REGULATIONS TO SPECIFICALLY ALLOW TRANSITIONAL AND SUPPORTIVE HOUSING IN RESIDENTIAL ZONES (September 24, 2019 at 5:45 p.m.)
11. ACTION ITEM – REQUEST FOR CITY COUNCIL RATIFICATION TO WAIVE FACILITY FEES FOR USE OF DOLLARHIDE COMMUNITY CENTER FOR MARGIE GARRETT REPAST HELD ON AUGUST 3, 2019 (\$750.00)

NEW BUSINESS

12. A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMPTON AUTHORIZING THE CITY MANAGER TO EXECUTE AN INCENTIVE AGREEMENT WITH PLENTY UNLIMITED, INC. TO LOCATE A STATE OF THE ART INDOOR FARM WITH THE CITY OF COMPTON
13. A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMPTON AUTHORIZING THE CITY MANAGER TO ISSUE A PURCHASE ORDER TO METROLOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA (MWD) IN THE AMOUNT OF \$300,000.00 TO PURCHASE IMPORTED WATER FOR THE 2019-2020 FISCAL YEAR
14. A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMPTON AUTHORIZING THE CITY MANAGER TO ENTER INTO A SCHEDULE LS-1 OPTION E, LED FIXTURE REPLACEMENT RATE AGREEMENT WITH SOUTHERN CALIFORNIA EDISON
15. AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COMPTON AMENDING SECTION 4-11 (PURCHASING SYSTEM)) OF CHAPTER IV OF THE COMPTON MUNICIPAL CODE (First Reading)

COUNCIL COMMENTS

ADJOURNMENT

NEXT REGULAR MEETING: 9/17/2019 @ 5:30 PM

Visit our website at <http://www.comptoncity.org>

September 10, 2019

TO: HONORABLE MAYOR AND CITY COUNCIL MEMBERS

FROM: FIRE CHIEF

**SUBJECT: A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMPTON
AUTHORIZING THE CITY MANAGER TO ISSUE A PURCHASE ORDER WITH
THE CITY OF DOWNEY FOR FIRE AND EMERGENCY MEDICAL
DISPATCHING SERVICES (\$800,000.00)**

SUMMARY

Adoption of this resolution by City Council will authorize the City Manager to establish a purchase order for Eight Hundred Thousand Dollars (\$800,000.00) for the City of Downey to provide Fire and Emergency Medical dispatching services for the Compton Fire Department during Fiscal Year 2019-2020. The purchase order will provide funds to cover anticipated invoices for Fire and Emergency dispatching services for Fiscal Year 2019-2020.

BACKGROUND

911 Fire and Emergency Medical dispatching services are required to properly manage and direct responding units to an emergency and while on the scene of an emergency. This service is best delivered to the citizens of Compton through the Joint Powers Association ("JPA") where all the needed aspects of a communications center are best done through shared processes.

STATEMENT OF ISSUE

The Compton Fire Department ("Department") has been a member of the JPA for a number of years. Through the JPA, each member entity (i.e. the cities of Downey, Santa Fe Springs and Compton) contract to share in the costs of the infrastructural and operational services required to provide emergency communication and dispatch services. On January 17, 2017, the City Council authorized Compton's continued participation in this cooperative by adoption of Resolution No. 24,509, which approved a three (3) year (i.e. July 1, 2016 through June 30, 2019) agreement with automatic renewal for consecutive one (1) year terms until terminated by one of the parties by providing six (6) months advance written notice thereof with the City of Downey, which provides, through its Communication Center, communication and dispatch services for emergency fire and medical response to the member cities.

City Council approval is needed because the expenditure is in excess of \$25,000.00 Dollars.

FISCAL IMPACT

Funds for this expenditure will be available in the 2019-2020 Fiscal Year budget in Account No. 1001-690-000-4269.

RECOMMENDATION

Staff recommends that Council adopt the attached Resolution.

**RONERICK SIMPSON, FIRE CHIEF
COMPTON FIRE DEPARTMENT**

APPROVED FOR FORWARDING:

**CRAIG J. CORNWELL
CITY MANAGER**

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMPTON
AUTHORIZING THE CITY MANAGER TO ISSUE A PURCHASE ORDER
WITH THE CITY OF DOWNEY FOR FIRE AND EMERGENCY MEDICAL
DISPATCHING SERVICES (\$800,000.00)**

WHEREAS, 911 Fire and Emergency Medical dispatching services are required to properly manage and direct responding units to an emergency and while on the scene of an emergency; and

WHEREAS, the Compton Fire Department ("Department") has been a member of the Joint Powers Association ("JPA") for a number of years, which provides each member entity (i.e. the cities of Downey, Santa Fe Springs and Compton) with the ability to share in the costs of the infrastructural and operational services required to provide emergency communication and dispatch services; and

WHEREAS, on January 17, 2017, the City Council authorized Compton's continued participation in this cooperative by adoption of Resolution No. 24,509, which approved a three (3) year (i.e. July 1, 2016 through June 30, 2019) agreement with automatic renewal for a consecutive one (1) year term until terminated by one of the parties by providing six (6) months advance written notice thereof with the City of Downey, which provides, through its Downey Communication Center, communication and dispatch services for emergency fire and medical response to the JPA member cities; and

WHEREAS, in accordance with the terms of the agreement, the City will be billed for its share of the costs quarterly, forty-five (45) days after each of the following intervals: September 31st, December 31st, March 31st and June 30th; and

WHEREAS, funds for this expenditure has been appropriated in the Department's 2019-2020 Fiscal Year budget.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COMPTON DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. That the City Manager is hereby authorized to establish a purchase order to the City of Downey in the amount of Eight Hundred Thousand Dollars and Zero Cents (\$800,000.00) to cover the anticipated invoices for Fire and Emergency Medical Services communication and dispatching services that are generated during Fiscal Year 2019-2020.

Section 2. That the funds for this expenditure will be available in the Fire Department's 2019-2020 Fiscal Year budget in Account No. 1001-690-000-4269.

Section 3. That a copy of this Resolution shall be filed in the offices of the City Manager, City Controller and the Fire Department.

Section 4. That the Mayor shall sign and the City Clerk shall attest to the adoption of this Resolution.

ADOPTED this _____ day of _____, 2019

MAYOR OF THE CITY OF COMPTON

ATTEST:

CITY CLERK OF THE CITY OF COMPTON

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
CITY OF COMPTON: ss

I, Alita Godwin, City Clerk of the City of Compton, hereby certify that the foregoing Resolution was adopted by the City Council, signed by the Mayor, and attested to by the City Clerk at a regular meeting thereof held on the _____ day of _____, 2019.

That this Resolution was adopted by the following vote, to wit:

AYES: COUNCIL MEMBERS-
NOES: COUNCIL MEMBERS-
ABSTAIN: COUNCIL MEMBERS-
ABSENT: COUNCIL MEMBERS-

CITY CLERK OF THE CITY OF COMPTON

**AGREEMENT BETWEEN THE CITY OF DOWNEY
AND THE CITY OF COMPTON FOR
COMMUNICATION AND DISPATCH SERVICES**

This Agreement ("Agreement") is made on this _____, day of _____, 2016 by and between the CITY OF DOWNEY ("DOWNEY") a California municipal corporation and charter city, and the CITY OF COMPTON ("CITY"), a California municipal corporation and collectively referred to herein as the "Parties".

WHEREAS, DOWNEY, to minimize the effect of fire and disaster and to provide the basis for effective mobilization and dispatch of all available firefighting and emergency medical resources, DOWNEY provides fire communication and dispatch services ("DOWNEY SYSTEM") to CITY;

WHEREAS, CITY desires to contract with DOWNEY to provide communication and dispatch services for emergency fire and medical response pursuant to the terms and conditions of this Agreement; and

WHEREAS, the Parties acknowledge that DOWNEY has substantial operational experience providing communication and dispatch services to local fire agencies and wishes to provide the services as described herein.

NOW, THEREFORE, the Parties agree as follows:

- A. RESPONSIBILITIES OF DOWNEY.** It shall be the responsibility of DOWNEY to operate the DOWNEY SYSTEM and to do all of the following:
1. Receive 911 and wireless emergency calls;
 2. Transfer 911 and wireless emergency calls to other agencies as appropriate;
 3. Receive 7-digit emergency and direct connect (ring-down,) calls on numbers/circuits maintained by Downey (if applicable);
 4. Provide Teletypewriter Device (TTY) and foreign language translation;
 5. Provide Emergency Medical Dispatch pre-arrival and life-saving protocols as established by the Priority Dispatch Corporation;
 6. Enter incident information into computer aided dispatch system (CAD), including verified incident address/location, specific location information, informant's location, informant's telephone number, source code for call, basic EMD information, appropriate text and incident type codes;
 7. Time stamp receipt of 911 calls, enter information into CAD, dispatch, and track status changes from mobile units. Electronically document all incident and pertinent non-incident information;
 8. Review CAD recommended quantity and type of equipment and alert fire stations by electronic transmission;
 9. Provide incident information via a hard copy printout (Rip-Run Printer), over mobile data system, over the voice system inside of the fire station, and broadcast vocal dispatch on designated frequency(ies);
 10. Provide routine and emergency voice communications;
 11. Track and record equipment status, location and availability;

12. Coordinate Area, Regional and specific agency Mutual Aid, Initial Action and Automatic Aid agreements for dispatch purposes only;
13. Formulate, dispatch and track Strike Team responses;
14. Provide CAD database, Records Management System (RMS), storage and standard reports;
15. Provide access to CAD information;
16. Provide access to unit histories;
17. Request and coordinate incident resources;
18. Coordinate station move-ups in accordance with Automatic and Mutual Aid agreements.
19. Provide staff notification by alarm level and/or incident type via wireless device;
20. Coordinate with other city departments and outside agencies as required;
21. Provide recording and retention of radio and telephone transmissions consistent with California law;
22. Provide management and supervision of the Downey Dispatch staff and system in the performance of this Agreement;
23. Provide an Annual Report of operations;
24. Provide access to the ReddiNet hospital status system;
25. Provide one Rip Run Printer at each fire station;
26. Provide privileges to the Area "E" web site;
27. Provide a cost per incident estimate for the following fiscal year to CITY by March 31st of each calendar year, including any Annual Contract Increase, if applicable.

B. RESPONSIBILITIES OF CITY. It shall be the responsibility of CITY to do all of the following:

1. Provide equipment and software which interface with the DOWNEY SYSTEM, (unless otherwise agreed to by all Parties), which include but are not limited to:
 - (a) Telephone numbers and routing coordination with features consistent with the DOWNEY SYSTEM (9-1-1 and seven digit lines). Voice radio system comprised of a sufficient number of channels which adequately covers area of operation, using reliable equipment and sites.
 - (b) Voice radio system comprised of a sufficient number of channels which adequately covers area of operation, using reliable equipment and sites.
 - (c) Dispatching resources in all fire stations which receive and transmit voice and data signals with features consistent with the DOWNEY SYSTEM.
 - (d) Reliable voice and data mobile radios and terminals in all fire apparatus, with capabilities and features consistent with the DOWNEY SYSTEM.
 - (e) Reliable voice portable radios for all personnel, with the capabilities and features consistent with the DOWNEY SYSTEM.
 - (f) Geographic file information suitable for entry into DOWNEY SYSTEM CAD, including street location data, including plot, city maps and other landmark/common place addresses, high value or brush areas, freeway information, and target hazards.
 - (g) CITY may install special or extra telephone and/or electronic equipment in addition to the standard equipment required by this Agreement. CITY shall

be responsible for obtaining prior approval from DOWNEY for such installations. CITY shall pay for all installations in their entirety.

2. Provide listing of all apparatus, including radio designations, cross-staffed manned units and special response vehicles.
3. Provide dispatch tables, algorithms, file protocols, dispatch recommendations, and move-ups to formulate dispatch recommendations.
4. Provide Fire Department personnel list including titles, radio call signs, office and home phone numbers, and cellular telephone numbers.
5. Provide a list of key City personnel and telephone directory.
6. Provide a list of receiving hospitals and access method for paramedics.
7. Provide copies of mutual aid, automatic aid, initial action or other inter-agency agreements.
8. Provide initial and ongoing DOWNEY SYSTEM training to all radio users.
9. Provide copies of FCC licenses, if applicable.
10. Comply with DOWNEY SYSTEM Policies.
11. Use DOWNEY SYSTEM incident type codes, priorities and categories.

C. INFORMATION TECHNOLOGY SUPPORT

RESPONSIBILITIES OF DOWNEY. It shall be the responsibility of DOWNEY to do all of the following:

1. Provide technical assistance to CITY with connectivity to the DOWNEY Maintain and secure all critical hardware and software providing services to the DOWNEY SYSTEM. This includes, but is not limited to, regularly scheduled maintenance of routers, switches, servers, and firewalls. CITY will be given prior notice of all scheduled maintenance via email or phone.
2. Provide I.T. assistance by phone, remote assistance, or onsite if needed. All I.T. related service request(s) shall be submitted to: ITSupport@areaefire.org. Urgent or emergency requests can be initiated by calling (562) 904-7266 during regular business hours, M-F 7:30am - 5:30pm. After hours support or emergency I.T requests can be arranged if work cannot be completed during regular business hours.
3. Provide Terminal Services access to FDM software.
4. Provide VPN access from Mobile Data Computer (MDC) to Mobile-CAD and Mobile-RMS.
5. Provide Rip and Run printer network connectivity.
6. Provide network connectivity to Pre-Alert System.

RESPONSIBILITIES OF CITY. It shall be the responsibility of CITY to do all of the following:

1. CITY shall maintain and secure its computer equipment that provides connection to the DOWNEY SYSTEM with industry standard levels of security. This includes but is not limited to: anti-virus software which is maintained and updated regularly, regular updating of security patches and

“hotfixes” to agency computer and operating systems such as: Adobe, Flash, Java, Silverlight, Office suite, Internet browser, and any application used on the device to connect to the DOWNEY SYSTEM. CITY staff shall be responsible for proper operation of all connected computer equipment to the DOWNEY SYSTEM. Equipment and devices shall be checked for errors and Internet connectivity prior to contacting DOWNEY for support. Such equipment includes Mobile Devices, Laptops, Desktop workstations and/or any equipment connecting to the DOWNEY SYSTEM.

2. Approved mobile devices requiring access to the DOWNEY SYSTEM (Mobile Data Computer, laptops, tablets) shall be assigned a static IP address. Failure to comply will result in denial of access to the DOWNEY SYSTEM.

3. Notify DOWNEY of any changes to Mobile device IP address assignments or ISP carrier change(s) prior to implementation. Submit all information to ITSupport@areaefire.org

4. Provide VLAN and IP subnet(s) including topology drawings of your Agencies network(s) in order to meet and comply with the DOWNEY SYSTEMS’ security standards and protocols.

5. CITY shall allow the DOWNEY SYSTEM access to the following systems: RipRun printers, Pre-Alert System, Fire Station computer workstations for Terminal Services (FDM) access, network printers and network share folders.

6. Maintain consumable supplies (paper, ink, toners, etc.) and provide regular maintenance of assigned RipRun Printers at each Fire station.

7. Notify DOWNEY regarding any disruption of services or scheduled maintenance of communications equipment or software upgrades.

D. TERM

This Agreement shall become effective on July 1, 2016, or on the date that the dispatching begins, whichever is earlier, (“EFFECTIVE DATE”). The Agreement shall remain operative and effective for three (3) years from the EFFECTIVE DATE, (“INITIAL TERM”) or until terminated in accordance with the termination provisions herein, whichever occurs earlier. Unless terminated earlier, after the expiration of the INITIAL TERM, this Agreement shall thereafter be automatically renewed for consecutive one year terms for an indefinite period of time, without further action by the Parties hereto, until or unless terminated in accordance with the termination provisions herein.

E. TERMINATION

1. DOWNEY, acting by majority vote, may terminate this Agreement with CITY by giving written notice of such intent to CITY at least six (6) months prior to the effective date of such termination.

2. CITY may terminate this Agreement by giving written notice of such intent to DOWNEY at least six (6) months prior to the effective date of such termination.

F. COSTS AND BILLING STRUCTURE

1. **Per Incident Charge.** Beginning with the EFFECTIVE DATE and until July 1, 2019, CITY shall be charged on a per incident cost formula. Per Incident Costs for Fiscal Year (FY) 2016-17 is \$63.00. Cost per Incident includes all dispatched incidents within the CITY and any mutual and automatic aid responses outside of the DOWNEY SYSTEM.

2. **Annual Contract Increase Calculation.** Each year the Cost per Incident fee may be increased by an amount not to exceed 5%. DOWNEY will include any annual contract increase in its proposed budget for the following fiscal year.

3. **Billing Cycle.** CITY shall be billed by written invoice for the services provided in this Agreement on a quarterly basis no later than forty five (45) days after the end of each fiscal quarter. All invoices shall be payable within thirty (30) days after receipt. The billing schedule is as follows:

4. **Fiscal Year Billing Quarters**

FY 1st Quarter (July 1 – September 31)

- Billed 45 days after end of quarter

FY 2nd Quarter (October 1 – December 31)

- Billed 45 days after end of quarter

FY 3rd Quarter (January 1 – March 31)

- Billed 45 days after end of quarter

FY 4th Quarter (April 1 – June 30)

- Billed 45 days after end of quarter

5. **No Cost to DOWNEY.** Nothing in this Agreement shall be construed to require DOWNEY to incur any non-reimbursable cost and/or expense for the purpose of implementing this Agreement, or any of its provisions, or to require the DOWNEY SYSTEM to modify, alter, add to, remove or transform any of its existing equipment, system or facilities to implement any of the provisions of this Agreement. It is the intent of this Agreement, and the Parties acknowledge and agree, that any such changes, modifications or alterations shall be at the sole cost of CITY.

6. **Annual Budget Projection.** By March 31st of each calendar year, DOWNEY will provide CITY with a cost per incident estimate for the following fiscal year to CITY, including the Annual Contract Increase, if applicable.

G. INDEMNITY

1. **Assumption of Risk.** Each Party to this Agreement assumes full and sole responsibility for all risks of injury and damages, including damage to all operating equipment, arising from its own operation and use of, and its own

repairs and maintenance performed on the equipment and each shall be solely responsible for all claims, liability, loss, suits, damages, costs, and expenses (including attorneys, fees and costs of litigation) and personal injuries (including death at any time) resulting directly or indirectly from, or arising out of, its own operation and use of, and its own repairs and maintenance performed on the equipment and accessories. Each Party shall bear the full legal and financial responsibility for its own conduct, actions and omissions carried out in the performance of that Party's obligations and responsibilities under this Agreement.

2. Worker's Compensation. Worker's Compensation claims shall be paid by the employer of any injured worker, and subrogation rights against all Parties are expressly waived.

3. Liability for Mutual/Automatic Aid. Notwithstanding any other provisions of this Agreement and with respect to Section A.12, above, CITY shall indemnify, defend and hold harmless DOWNEY, and its officers, officials, employees, volunteers and any other public service provider, from and against any claims, damages, losses, expenses or liability, including death, injury or property damage, and including the costs of defense, arising out of the making of any calls, initiating any contract, or other actions or omissions relating to Area, Regional and/or specific agency mutual aid and/or automatic aid whenever such aid is contacted or otherwise summoned to respond from outside of the jurisdiction of CITY. The Parties acknowledge and agree that whenever such mutual aid and/or automatic aid is contacted or otherwise summoned by DOWNEY, such contact is made as a courtesy in order to facilitate the implementation of such mutual aid and/or automatic aid and is not intended to create any liability on the part of DOWNEY or any public service provider which provides such mutual aid or automatic aid.

H. INSURANCE.

a. CITY's Insurance.

(1) Minimum Scope of Coverage.

CITY shall procure and maintain for the duration of the Agreement insurance or comparable coverage through a Joint Powers Authority (JPA) against claims for injuries to persons or damages to property which may arise from or in connection with the performance of this Agreement and the results of that work by CITY, its officials, officers, employees, agents and volunteers.

Coverage shall be at least as broad as:

- **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$5,000,000 per occurrence.
- **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, covering hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$5,000,000 per accident for bodily injury and property damage.

- **Workers' Compensation:** as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease.
- **Professional Liability (Errors and Omissions):** Insurance appropriate to the Contractor's profession, with limit no less than **\$1,000,000** per occurrence or claim, **\$2,000,000** aggregate.

If CITY maintains broader coverage and/or higher limits than the minimums shown above, DOWNEY shall be entitled to the broader coverage and/or higher limits maintained by CITY.

(2) Other Insurance Provisions.

The coverages provided are to contain, or be endorsed to contain, the following provisions:

i. Additional Insured/ Additional Covered Party Status

DOWNEY, its officers, officials, employees, agents and volunteers are to be covered as additional insureds/covered parties on the CGL policy or Liability Memorandum of Coverage with respect to liability arising out of work or operations performed in accordance with this Agreement, including materials, parts or equipment furnished in connection with such work or operations. This coverage can be provided in the form of an endorsement to the CITY coverage (at least as broad as ISO Form CG 20 10 11 85 or **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 forms, if later revisions used).

ii. Primary Coverage

For any claims related to this Agreement, CITY's coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 as respects to DOWNEY, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by DOWNEY, its officers, officials, employees, agents or volunteers shall be excess of CITY's coverage and shall not contribute with it.

(3) Notice of Cancellation

Coverage shall not be canceled, except with notice to DOWNEY.

(4) Waiver of Subrogation

CITY hereby grants to DOWNEY a waiver of any right to subrogation which any insurer or JPA providing liability coverage to DOWNEY which said CITY may acquire against DOWNEY by virtue of the payment of any loss under such insurance or liability coverage. CITY agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not DOWNEY has received a waiver of subrogation endorsement from CITY or the insurer/ coverage provider.

(5) Self-Insured Retentions

Self-insured retentions must be declared.

(6) Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to DOWNEY. Coverage placed through a JPA must be with a JPA that has been accredited with excellence by the California Association of Joint Powers Authorities (CAJPA) or equivalent.

(7) Verification of Coverage

CITY shall furnish DOWNEY with original certificates and amendatory endorsements or copies of the applicable coverage language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by DOWNEY before performance of this Agreement commences. However, failure to obtain the required documents prior to the work beginning shall not waive CITY's obligation to provide them. DOWNEY reserves the right to require complete, certified copies of all required insurance policies, or JPA coverage memoranda including endorsements required by these specifications, at any time.

(8) Special Risks or Circumstances

DOWNEY reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, coverage, or other special circumstances.

b. DOWNEY's Insurance.

(1) Minimum Scope of Coverage.

DOWNEY shall procure and maintain for the duration of the Agreement insurance or comparable coverage through a Joint Powers Authority (JPA) against claims for injuries to persons or damages to property which may arise from or in connection with the performance of this Agreement and the results of that work by DOWNEY, its officials, officers, employees, agents and volunteers.

Coverage shall be at least as broad as:

- **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$5,000,000** per occurrence.
- **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, covering hired, (Code 8) and non-owned autos (Code 9), with limit no less than **\$5,000,000** per accident for bodily injury and property damage.
- **Workers' Compensation:** as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease.
- **Professional Liability (Errors and Omissions):** Insurance appropriate to the Contractor's profession, with limit no less than **\$1,000,000** per occurrence or claim, **\$2,000,000** aggregate.

If DOWNEY maintains broader coverage and/or higher limits than the minimums shown above, CITY shall be entitled to the broader coverage and/or higher limits maintained by DOWNEY.

(2) Other Insurance Provisions.

The coverages provided are to contain, or be endorsed to contain, the following provisions:

i. ***Additional Insured/ Additional Covered Party Status***

CITY, its officers, officials, employees, agents and volunteers are to be covered as additional insureds/covered parties on the CGL policy or Liability Memorandum of Coverage with respect to liability arising out of work or operations performed in accordance with this Agreement, including

materials, parts or equipment furnished in connection with such work or operations. This coverage can be provided in the form of an endorsement to the DOWNEY coverage (at least as broad as ISO Form CG 20 10 11 85 or **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 forms, if later revisions used).

ii. Primary Coverage

For any claims related to this Agreement, DOWNEY's coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 as respects to CITY, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by CITY, its officers, officials, employees, agents or volunteers shall be excess of DOWNEY's coverage and shall not contribute with it.

(3) Notice of Cancellation

Coverage shall not be canceled, except with notice to CITY.

(4) Waiver of Subrogation

DOWNEY hereby grants to CITY a waiver of any right to subrogation which any insurer or JPA providing liability coverage to DOWNEY which said DOWNEY may acquire against CITY by virtue of the payment of any loss under such insurance or liability coverage. DOWNEY agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not CITY has received a waiver of subrogation endorsement from DOWNEY or the insurer/ coverage provider.

(5) Self-Insured Retentions

Self-insured retentions must be declared.

(6) Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to CITY. Coverage placed through a JPA must be with a JPA that has been accredited with excellence by the California Association of Joint Powers Authorities (CAJPA) or equivalent.

(7) Verification of Coverage

DOWNEY shall furnish CITY with original certificates and amendatory endorsements or copies of the applicable coverage language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by CITY before performance of this Agreement commences. However, failure to obtain the required documents prior to the work beginning shall not waive DOWNEY's obligation to provide them. CITY reserves the right to require complete, certified copies of all required insurance policies, or JPA coverage memoranda including endorsements required by these specifications, at any time.

(8) Special Risks or Circumstances

CITY reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, coverage, or other special circumstances.

I. EQUIPMENT

1. Purchase and Maintenance of Equipment. CITY shall purchase, install, test and maintain the following equipment and hardware: Fire Alerting System; Mobile Data Computers (MDC), Mobile Radios, Portable Radios, Personnel Alerting, and any

other Downey approved systems. In addition to the equipment, CITY shall be solely responsible for the cost of any additional or related equipment or hardware needed to implement this Agreement. This includes, but is not limited to, installation, testing, light/audio relays, shipping, insurance, taxes, antennas, coax, public address systems, speakers, power supplies or any other Downey approved equipment.

2. Radio Backbone Ownership. Title and ownership of the radio backbone including, but not limited to, base stations, repeaters, microwave and related equipment shall belong to DOWNEY.

J. GENERAL PROVISIONS

1. Entire Agreement. This Agreement supersedes any and all other Agreements, either oral or in writing, between the Parties hereto with respect to the subject matter hereof, and no other Agreement, statement, or promise relating to the subject matter of the Agreement which is not contained herein shall be valid or binding. In interpreting this Agreement and resolving any ambiguities, this Agreement will take precedence over any cover page or attachments.

2. Interpretation. This Agreement is the product of negotiation and compromise on each Party's part. Every provision in this Agreement shall be interpreted as though the Parties equally participated in its drafting. Therefore, notwithstanding the provisions in California *Civil Code* Section 1654 to the contrary, if this Agreement's language is uncertain, the Agreement shall not be construed against the Party causing the uncertainty to exist.

3. Governing Law. The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the Parties hereunder, shall be governed by the laws of the State of California.

4. Severability. Should any part, term or provision of this Agreement or any document required herein to be executed be declared invalid, void or unenforceable, all remaining parts, terms and provisions hereof shall remain in full force and effect and shall in no way be invalidated, impaired or affected thereby.

5. Attorneys' Fees. If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which he/she/it may be entitled. "Prevailing party" means a party who dismisses the action or proceeding in exchange for payment of a sum(s) allegedly due; performance of the term(s) or covenant(s) allegedly breached or violated; or consideration substantially equal to the relief sought in the action.

6. Waiver of Breach. The waiver of either Party of any breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach of the same or any other provision.

7. **Assignment.** Nothing under this Agreement shall be construed to give any rights or benefits to any party other than DOWNEY and CITY. All duties and responsibilities under this Agreement shall be for the sole and exclusive benefit of DOWNEY and CITY, and not for the benefit of any other party. CITY shall not assign any right or interest in this Agreement, and shall not delegate any duty owed, without DOWNEY's prior written consent. Any attempted assignment or delegation shall be void and totally ineffective for all purposes, and shall constitute a material breach upon which DOWNEY may immediately terminate or suspend this Agreement. In the event DOWNEY consents to an assignment or delegation, the assignee, delegate, or its legal representative shall agree in writing to personally assume, perform and be bound by this Agreement's covenants, conditions, obligations and provisions.

8. **Successors and Assigns.** Subject to the provisions regarding assignment, this Agreement shall be binding on the heirs, executors, administrators, successors and assigns of the respective parties.

9. **Time is of the Essence.** Whenever a task is to be performed by CITY herein, the same shall be performed consistent with any time constraints set forth hereunder, including exhibits, time being considered of essence of this Agreement. Unless otherwise specified in this Agreement, all references to "days" refer to calendar days.

10. **Force Majeure.** None of the Parties shall be considered in default in the performance of their obligations hereunder or any of them, if such obligations were prevented or delayed by any cause, existing or future beyond the reasonable control of such Party which include but are not limited to acts of God, labor disputes or civil unrest. Any delays beyond the control of the Parties shall automatically extend the time schedule as set forth in this Agreement by the period of any such delay.

11. **Notices.** Notices hereunder must be in writing and, unless otherwise provided herein, shall be deemed validly given on the date either personally delivered to the address indicated below; or on the third (3rd) business day following deposit, postage prepaid, using certified mail, return receipt requested, in any U.S. Postal mailbox or at any U.S. Post Office; or when sent via facsimile to a Party at the facsimile number set forth below or to such other or further facsimile number provided in the notice sent under the terms of this paragraph, on the date of transmission of that facsimile. Should any of the Parties have a change of address, they shall immediately notify the other Parties in writing of such change, provided, however, that each address for notice must include a street address and not merely a post office box. All notices, demands or requests shall be given to the following addresses:

City of Downey:
11111 Brookshire Avenue
Downey, CA 90241
ATTN: Fire Chief
(562) 299-5400

City of Compton:
201 S. Acacia
Compton, CA, 90221
ATTN: Chief Bryan Batiste
(310)605-6500

12. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be an original, but all of which shall constitute one and the same document. Each of the Parties shall sign a sufficient number of counterparts, so that each Party will receive a fully executed original of this Agreement.

13. **Prior Agreements.** This Agreement supersedes all prior agreements between DOWNEY AND CITY for Dispatch Services.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed the day and year opposite each of their respective signatures.

CITY OF DOWNEY

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

CITY OF COMPTON

Sanchez 2/9/17

City Manager

ATTEST:

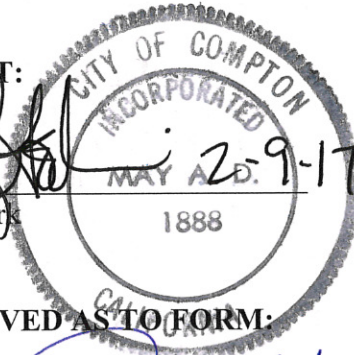
[Signature] 2-9-17

City Clerk

APPROVED AS TO FORM:

[Signature] 2/9/17

City Attorney



RESOLUTION NO. 24,509

1 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
2 COMPTON AUTHORIZING THE CITY MANAGER TO ENTER INTO
3 AN AGREEMENT WITH THE CITY OF DOWNEY FOR PROVISION
4 OF COMMUNICATION AND DISPATCH SERVICES AND
5 ESTABLISH A PURCHASE ORDER IN THE AMOUNT OF \$500,000
6 FOR SERVICES RENDERED IN FISCAL YEAR 2016-2017

7 WHEREAS, the City of Compton has utilized the fire and emergency medical
8 communication and dispatch services from the Joint Powers Communication Center
9 ("JPCC"), operated by the City of Downey, for many years; and

10 WHEREAS, currently the JPCC provides dispatching services for three (3) fire
11 agencies, including Downey, Santa Fe Springs and Compton; and

12 WHEREAS, 911-fire and emergency medical services dispatching services
13 are required to properly manage and direct emergency units to an emergency and
14 while on the scene of an emergency and this service is best delivered to the citizens
15 of Compton through the JPCC where all the needed aspects of a communications
16 center are best done through shared processes; and

17 WHEREAS, the Fire Chiefs of the current three (3) JPCC participating fire
18 agencies developed a new cost sharing formula and negotiated a new contract with
19 the City of Downey that provides a more equitable distribution of costs for the various
20 cities based on their direct use of the JPCC. This new formula will cost the City of
21 Compton \$63.00 a call; and

22 WHEREAS, funds for this expenditure for Fiscal Year 2016-2017 are currently
23 budgeted in the Fire Department budget and funding for the remaining years of the
24 agreement shall be appropriated in future City budgets.

25 NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COMPTON
26 DOES HEREBY RESOLVE AS FOLLOWS:

27 Section 1. That the City Manager, on the advice and approval of the City
28 Attorney is hereby authorized to enter into a three (3) year agreement (i.e. July 1,
29 2016 through June 30, 2019) with the City of Downey for provision of emergency fire
30 and medical response communication and dispatch services for the City of
31 Compton, which agreement may be automatically renewed for consecutive one (1)
32 year terms until terminated by one of the parties by providing six (6) months
advance written notice thereof.

Section 2. That a purchase order is authorized to be established in the
amount of Five Hundred Thousand Dollars (\$500,000.00) to cover invoices for the
City's anticipated share of the communication and dispatching services that are
generated quarterly for the Fiscal Year 2016-2017.

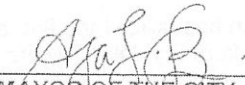
Section 3. That funds for this expenditure are available in the 2016-2017
Fiscal Year budget in Account No. 1001-69- 0000-4269. Funding for the remaining
years of the agreement shall be appropriated in future City budgets.

Section 4. That a certified copy of this Resolution shall be filed with the
offices of the City Manager, City Attorney, City Controller and the Fire Department.

Resolution No. 24,509
Page 2

Section 5. That the Mayor shall sign and the City Clerk shall attest to the adoption of this Resolution.

ADOPTED this 17th day of January, 2017.


MAYOR OF THE CITY OF COMPTON

ATTEST:

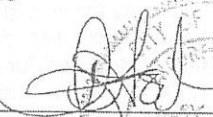

CITY CLERK OF THE CITY OF COMPTON

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
CITY OF COMPTON: ss

I, Alita Godwin, City Clerk of the City of Compton, do hereby certify that the forgoing Resolution was adopted by the City Council, signed by the Mayor, and attested to by the City Clerk at a regular meeting thereof held on 17th day of January, 2017.

That said Resolution was adopted by the following vote, to wit:

AYES: COUNCIL MEMBERS- Zurita, Galvan, McCoy, Sharif, Brown
NOES: COUNCIL MEMBERS- None
ABSTAIN: COUNCIL MEMBERS- None
ABSENT: COUNCIL MEMBERS- None


CITY CLERK OF THE CITY OF COMPTON

September 10, 2019

TO: HONORABLE MAYOR AND COUNCIL MEMBERS

FROM: GENERAL SERVICES DIRECTOR

SUBJECT: A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMPTON AUTHORIZING THE CITY MANAGER TO ENTER INTO A TWELVE (12) MONTH AGREEMENT WITH VOLUNTEERS OF AMERICA OF LOS ANGELES FOR THE LEASE OF CITY-OWNED PROPERTY LOCATED AT 700 NORTH BULLIS ROAD

SUMMARY

City Council will consider a request from Volunteers of America of Los Angeles ("Volunteers of America") to enter into a one (1) year (i.e. July 1, 2019 through June 30, 2020) lease agreement, for use of approximately 378 square feet of dedicated indoor space at 700 North Bullis Road, Compton, commonly known as the "Careerlink" facility ("Careerlink").

BACKGROUND

The City of Compton owns certain real property located at 700 North Bullis Road, commonly known as the "Careerlink" facility. This property is used as a "shared occupancy" facility, offering indoor space for leasing to outside agencies, organizations, and individuals.

Pursuant to guidance of the City Council, in November 2012, the City Manager implemented a City-wide leasing policy which mandates that City-owned facilities and/or property *shall not* be leased without first obtaining proper authorization from the City Council (i.e. an adopted resolution) and execution of a written lease agreement [City of Compton Standard Operating Manual, Policy 4.17(A)]. In addition to other matters, the Policy specifies that lease rates shall be based on the square footage of the area(s) subject to the exclusive use/occupation of the Lessee and that the standard leasing rate for indoor floor space in a City-owned facility shall be **at least One Dollar (\$1.00) per square foot.**

In addition to the base minimum rental rate of \$1.00 per square foot for indoor space, proposed lease agreements are to address the costs incurred by the City for utilities, maintenance and repairs, etc. At the Careerlink location, staff has identified that cost to be ninety-seven cents (\$0.97) per square foot.

Thus, the cost to the City will be recovered in a recommended minimal monthly rental rate based on a square footage charge of \$1.97 (i.e. \$1.00 per square foot base rental rate plus \$0.97 per square foot for utilities, maintenance, custodial and security).

STATEMENT OF THE ISSUE

According to the prospective Lessee, Volunteers of America is a non-profit human services organization committed to serving people in need, strengthening families and building communities as a faith-based organization with a broad scope of support and services for all regardless of race, gender, age or religious preference. In their second century of service, Volunteers of America is one of the nation's largest and most comprehensive human services organizations, touching the lives of more than 2 million people each year in hundreds of communities across the United States.

This proposed lease agreement will provide Volunteers of America with exclusive use of the following indoor space at the Careerlink facility:

Indoor square footage

Classroom 9B	14'x15'	210 square feet
Classroom 11B	14'x12'	168 square feet

Total Exclusive Indoor Square Footage

378 square feet

Volunteers of America needs a location for its California Intervention and Prevention (CALVIP) Program and seeks City Council approval to enter into a one (1) year lease agreement with the City of Compton, beginning July 1, 2019 through June 30, 2020, for exclusive occupation of the above-indicated indoor space located at Annex section of the Careerlink site. Volunteer of America is interested in leasing the subject property for the purpose of developing and implementing programming for at-risk transition-aged youth between 18-25 years old. The program would include a comprehensive employment and life skills training program to prepare youth for stable, independent lives outside of gang involvement and will service approximately 300 youth.

Volunteers of America requests that the Council authorize leasing rate provisions different than required by the City's Leasing Policy; more specifically, a lesser rental amount of only One Dollar (\$1.00) per square foot of indoor space for the term of the lease agreement. Therefore, the proposed lease will be at the rental rate of \$1.00 per square feet per month for indoor space for a total monthly lease rate of \$378.00.

FISCAL IMPACT

If the minimum leasing rate specified within the City's Leasing Policy is followed; that is, \$1.97 per sq. ft. for indoor space; the estimated total fiscal impact of this proposed lease will amount to the collection of Seven Hundred Forty Four Dollars and Sixty Six Cents (\$744.66) per month. If the request for a reduced lease rate is approved, the fiscal gain will be Three Hundred Seventy-Eight Dollars (\$378.00) per month.

ALTERNATIVE

The City Council has discretion to choose among a number of options.

1. Authorize the City Manager to enter into a lease agreement with Volunteers of America, Los Angeles:
 - a. For the minimally recommended City policy rates (i.e. \$1.97 per square foot per month = \$744.66 per month for the indoor space) or for some other rental rate for the 1-year term.
 - b. For the requested lease rate of \$1.00 per square foot per month = \$378.00 per month for the 1-year term.
2. Deny the request to enter into a lease agreement for this space by Volunteers of America, Los Angeles.

RECOMMENDATION

Staff is not authorized to offer to lease City-owned property wherein the terms sought by the prospective Lessee may vary from the requirements of the City's Leasing Policy. Thus, staff makes no recommendation concerning this request. The decision is within the discretion of the City Council.

**VAN WILSON, DIRECTOR
GENERAL SERVICES DEPARTMENT**

APPROVED FOR FORWARDING:

**CRAIG J. CORNWELL
CITY MANAGER**

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMPTON
AUTHORIZING THE CITY MANAGER TO ENTER INTO A TWELVE (12)
MONTH AGREEMENT WITH VOLUNTEERS OF AMERICA OF LOS
ANGELES FOR THE LEASE OF CITY-OWNED PROPERTY LOCATED AT
700 BULLIS ROAD**

WHEREAS, the City of Compton owns certain real property located at 700 Bullis Road; and

WHEREAS, pursuant to guidance of the City Council, in November 2012, the City Manager implemented a City-wide leasing policy [Standard Operating Manual, Policy 4.17(A)], which mandates that City-owned facilities and/or property shall not be leased without first obtaining proper authorization from the City Council (i.e. an adopted resolution) and execution of a written lease agreement; and

WHEREAS, the Policy specifies that lease rates shall be based on the square footage of the area(s) subject to the exclusive use/occupation of the Lessee and that the standard leasing rate for indoor floor space in a City-owned facility shall be at least One Dollar (\$1.00) per square foot; and

WHEREAS, in addition to this required minimum base rental rate, the leasing policy addresses recovery of the costs incurred by the City for the provision of the following services: utilities (e.g. gas, electricity, water, trash, etc.), routine maintenance and minor repairs, custodial services and City security. At Careerlink location, that cost has been identified to be Ninety-Seven Cents (\$0.97) per square foot; and

WHEREAS, Volunteers of America of Los Angeles, a non-profit organization, seeks City Council approval to enter into a twelve (12) month lease agreement with the City, beginning July 1, 2019 through June 30, 2020, for shared occupation of the property – 378 square feet of indoor space – located at 700 Bullis Road, for the purpose of administrative offices and support services for their organization; and

WHEREAS, Volunteers of America of Los Angeles requests that the Council authorize leasing rental rate provisions different than required by the City's Leasing Policy; more specifically, a lesser rental amount of One Dollar (\$1.00) per square foot, or Three Hundred and Seventy-Eight Dollars (\$378.00) per month, for the term of the lease agreement as opposed to the Seven Hundred Forty-Four Dollars and Sixty-Six Cents (\$744.66) that would be received at the standard rate of \$1.97 per square foot; and

WHEREAS, the decision to revise, reduce or waive certain provisions of the City's Leasing Policy rests solely within the discretion of the City Council.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COMPTON DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. That the City Manager, upon the approval of the City Attorney, is authorized to enter into a twelve (12) month lease agreement, effective July 1, 2019 through June 30, 2020, with Volunteers of America of Los Angeles for the shared use of approximately 378 square feet of space within the City-owned building located at 700 Bullis Road, Compton for purposes of administrative offices and support services.

Section 2. That the rental rate for the twelve (12) month term of the lease agreement shall be _____ Dollars (\$) per _____.

Section 3. That Account No. 1001-000-000-3420 has been established to receive all facility lease payments.

Section 4. That a certified copy of this Resolution shall be filed in the offices of the City Manager (City Security), City Clerk, City Controller, General Services and the City Attorney.

Section 5. That the Mayor shall sign and the City Clerk shall attest to the adoption of this Resolution.

ADOPTED this _____ day of _____, 2019.

MAYOR OF THE CITY OF COMPTON

ATTEST:

CITY CLERK OF THE CITY OF COMPTON

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss
CITY OF COMPTON)

I, Alita Godwin, City Clerk of the City of Compton, hereby certify that the foregoing Resolution was adopted by the City Council of the City of Compton, signed by the Mayor and attested by the City Clerk at a regular meeting thereof held on the _____ day of _____, 2019.

That said Resolution was adopted by the following vote, to wit:

AYES: COUNCIL MEMBERS-
NOES: COUNCIL MEMBERS-
ABSTAIN: COUNCIL MEMBERS-
ABSENT: COUNCIL MEMBERS-

CITY CLERK OF THE CITY OF COMPTON

SEPTEMBER 10, 2019

TO: HONORABLE MAYOR AND COUNCIL MEMBERS

FROM: DIRECTOR OF COMMUNITY DEVELOPMENT

SUBJECT: A RESOLUTION OF THE CITY COUNCIL OF THE CITY COMPTON DENYING ZONE TEXT AMENDMENT NO. 18-02, A REQUEST OF ELECTRIC GUARD DOG LLC, TO AMEND SECTION 30-44.3 OF THE COMPTON MUNICIPAL CODE (FENCING ORDINANCE) TO ALLOW ELECTRIFIED FENCING IN THE LIMITED COMMERCIAL, COMMERCIAL MANUFACTURING, LIMITED AND HEAVY MANUFACTURING ZONES CITYWIDE

SUMMARY

City Council is to consider a request by Electric Guard Dog LLC to amend Section 30-44 of the Compton Municipal Code (Zoning - Fencing Ordinance) to allow electrified fencing in the limited commercial, commercial manufacturing, light and heavy manufacturing zones citywide.

BACKGROUND

On May 15, 2019, the Planning Commission completed a public hearing on the proposed changes to the fencing ordinance. After due consideration, the Planning Commission recommended that City Council deny Zone Text Amendment Case No. 18-02.

On September 3, 2019, the City Council completed a public hearing on the proposed changes to the fencing ordinance and approved a motion directing staff to prepare a resolution to deny Zone Text Amendment Case No. 18-02.

STATEMENT OF THE ISSUE

On September 3, 2019, the City Council determined the following about the proposed text amendment:

- That the proposed zone text amendment to allow electrified fencing in commercial and manufacturing/industrial areas would be in conflict with the General Plan's objective to positively enhance the City's physical appearance and that the proposed electrified fencing requires that it extend beyond the height of the perimeter fence along with unsightly auxiliary equipment that cannot easily be screened.

- That the proposed zone text amendment to allow electrified fencing in commercial and manufacturing/industrial areas would be in conflict with the General Plan's objective to positively enhance the City's image since electrified fencing create an uninviting and inhospitable appearance of a security barrier. Additionally, electrified fencing is typically associated with securing livestock or high security facilities such as prisons, which further perpetuates an unwanted, negative perception of Compton.
- That the proposed zone text amendment would be out of compliance with other sections of the Municipal Code as the electrified fencing would need to extend beyond the height limits currently established in the zoning ordinance.
- The proposed zone text amendment would not positively enhance the City's image or physical appearance therefore, as a Charter City, will utilize its land use authority to oppose such zone text amendment.
- The proposed zone text amendment to allow electrified fencing in commercial and manufacturing/industrial areas is incompatible with existing patterns of land use and development because many of the applicable zones are located along or adjacent to major streets, adjacent to residential neighborhoods or sensitive land uses such as schools, medical facilities, office or retail businesses.

Pursuant to California Government Code Section 65090 the public hearing was advertised in the *Compton Bulletin* on both August 21, 2019 and August 28, 2019.

FISCAL IMPACT

There is no direct fiscal impact.

RECOMMENDATION

The Planning Commission and Staff recommended that City Council deny Zone Text Amendment Case No. 18-02 and adopt the attached resolution.

RICHARD A. ROJAS, JR., AICP
DIRECTOR OF COMMUNITY DEVELOPMENT DEPARTMENT

APPROVED FOR FORWARDING:

CRAIG J. CORNWELL
CITY MANAGER

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY COMPTON DENYING ZONE TEXT AMENDMENT NO. 18-02, A REQUEST OF ELECTRIC GUARD DOG LLC, TO AMEND SECTION 30-44.3 OF THE COMPTON MUNICIPAL CODE (FENCING ORDINANCE) TO ALLOW ELECTRIFIED FENCING IN THE LIMITED COMMERCIAL, COMMERCIAL MANUFACTURING, LIMITED AND HEAVY MANUFACTURING ZONES CITYWIDE

WHEREAS, the City of Compton is authorized by Article XI, Section 7 of the California Constitution to make and enforce within its limits all local, police, sanitary and other ordinances and regulations not in conflict with general laws; and

WHEREAS, Section 30-44 of the Compton Municipal Code (Fencing Ordinance) explicitly prohibits electrified fences within the city limits of Compton; and

WHEREAS, Electric Guard Dog LLC., filed an application for a zone text amendment (Zone Text Amendment Case No. 18-002), a formal request to modify Section 30-44 of the Compton Municipal Code (Fencing Ordinance) to allow electrified fencing in the Limited Commercial, Commercial Manufacturing, Limited and Heavy Manufacturing zones citywide; and

WHEREAS, on May 15, 2019, at an advertised public hearing, the Planning Commission recommended that City Council deny Zone Text Amendment (ZTA) Case No. 18-02; and

WHEREAS, the aforementioned zone text amendment is exempt from CEQA review, pursuant to Section 15061(b)(3) of the California Environmental Quality Act (CEQA) Guidelines, which refers to the general rule that CEQA applies only to projects which have significant effect on the environment and accessory perimeter fencing have little to no impact on the environment; and

WHEREAS, pursuant to California Government Code Section 65090, the City Council public hearing was adequately advertised in the Compton Bulletin on August 21, 2019 and August 28, 2019; and

WHEREAS, a public hearing upon said request for the zone text amendment was held before the City Council on September 3, 2019 and the City Council approved a motion for staff to prepare a resolution to deny Zone Text Amendment (ZTA) Case No. 18-02; and

WHEREAS, evidence was heard from all persons interested in the zone text amendment and all persons protesting same; and

WHEREAS, the City Council being fully informed,

FINDS

1. That the proposed zone text amendment to allow electrified fencing in commercial and manufacturing/industrial areas would be detrimental to the public welfare in that, electrified fencing would delay the response time from law enforcement or emergency personnel by having to de-energize the electrified fence. Additionally, having to bypass a second layer of security fencing, in an emergency will not only slow down response time but presents an added safety hazard and liability for City personnel.
2. That the proposed zone text amendment to allow electrified fencing in commercial and manufacturing/industrial areas would be in conflict with the General Plan's objective to positively enhance the City's physical appearance and that the proposed electrified fencing requires that it extend beyond the height of the

perimeter fence along with unsightly auxiliary equipment that cannot easily be screened.

3. That the proposed zone text amendment to allow electrified fencing in commercial and manufacturing/industrial areas would be in conflict with the General Plan's objective to positively enhance the City's image since electrified fencing create an uninviting and inhospitable appearance of a security barrier. Additionally, electrified fencing is typically associated with securing livestock or high security facilities such as prisons, which further perpetuates an unwanted, negative perception of Compton.
4. That the proposed zone text amendment would be out of compliance with other sections of the Municipal Code as the electrified fencing would need to extend beyond the height limits currently established in the zoning ordinance.
5. The proposed zone text amendment would not positively enhance the City's image or physical appearance therefore, as a Charter City, will utilize its land use authority to oppose such zone text amendment.
6. The proposed zone text amendment to allow electrified fencing in commercial and manufacturing/industrial areas is incompatible with existing patterns of land use and development because many of the applicable zones are located along or adjacent to major streets, adjacent to residential neighborhoods or sensitive land uses such as schools, medical facilities, office or retail businesses.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COMPTON DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. That Zone Text Amendment (ZTA)18-02, a request to modify Section 30-44 of the Compton Municipal Code (Fencing Ordinance) to allow electrified fencing in the Limited Commercial, Commercial Manufacturing, Limited and Heavy Manufacturing zones citywide is denied.

Section 2. That copies of this Resolution shall be filed in the Offices of the City Clerk, and the Community Development Department.

Section 3. That the Mayor shall sign and the City Clerk shall attest to the adoption of this Resolution.

ADOPTED this _____ day of _____, 2019.

MAYOR OF THE CITY OF COMPTON

ATTEST:

CITY CLERK OF THE CITY OF COMPTON

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
CITY OF COMPTON: ss

I, Alita Godwin, City Clerk of the City of Compton, do hereby certify that the foregoing Ordinance was adopted by the City Council of the City of Compton, signed by the Mayor and attested by the City Clerk at a regular meeting thereof held on the _____ day of _____, 2019.

That said Resolution was adopted by the following vote, to wit:

AYES:	COUNCILMEMBERS-
NOES:	COUNCILMEMBERS-
ABSENT:	COUNCILMEMBERS-
ABSTAIN:	COUNCILMEMBERS-

CITY CLERK OF THE CITY OF COMPTON

SEPTEMBER 10, 2019

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: DIRECTOR OF COMMUNITY DEVELOPMENT

SUBJECT: A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMPTON AUTHORIZING THE CITY MANAGER TO ENTER INTO A TWO-YEAR CONTRACT (FISCAL YEARS 2019-2020 AND 2020-2021) WITH ROTH AND ASSOCIATES FOR PROPERTY APPRAISAL SERVICES ON AN AS-NEEDED BASIS FOR HOUSING SUCCESSOR AGENCY PROPERTIES AND TO OPEN A PURCHASE ORDER FOR FISCAL YEAR 2019-2020 IN AN AMOUNT NOT TO EXCEED NINE THOUSAND DOLLARS (\$9,000)

SUMMARY

Staff requests approval from the Mayor and City Council to authorize the City Manager to enter into a two year (Fiscal Year 2019-20 and 2020-21) professional services agreement with Roth and Associates, for the provision of appraisal services for City owned Housing Successor Agency properties on an as-needed basis and open a purchase order for Fiscal Year 2019-20 for \$9,000.

BACKGROUND

Pursuant to AB XI 26 ("Dissolution Act"), the Compton Redevelopment Agency was dissolved as of February 1, 2012, and the Housing Successor Agency to the Community Redevelopment Agency of the City of Compton ("Housing Successor Agency") was established to wind down the affairs of the former Redevelopment Agency. To ensure orderly disposition of Housing Successor Agency assets in accordance with the Dissolution Act, it is necessary for the City to procure the assistance of a property appraisal firm.

STATEMENT OF THE ISSUE

Currently, the Housing Successor Agency has six (6) properties to sell to wind down its activities. It is anticipated that 6 transactions will be completed for Fiscal Year 2019-20. The law requires appraisals to establish the fair market value of the subject property within six months of its sale.

On May 1, 2019, staff issued a Request for Proposal for Appraisal Services for the Successor Agency owned properties and City owned Housing Successor Agency properties. The City Clerk sent a Public Notice for the RFP to the Compton Bulletin and it was published on May 1, 2019. The RFP was due on May 15, 2019 by 3:00 pm. Staff also sent e-mails of the RFP to various appraisers. Five RFPs were received by the due date and time from DMD Appraisals, Inc.; Nagasaki and Associates; Roth and Associates; R.P. Laurain & Associates; and Curtis-Rosenthal, Inc. The criteria upon which review of these firms was based were experience, certifications, delivery time and price.

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When requesting appraisals, staff often requests for more than one property at a time. In the RFP, interested firms were asked to provide a cost and delivery time estimate for three separate properties. Below is a summary of the costs and delivery times of each firm.

<u>Name</u>	<u>Amount</u>	<u>Delivery Time</u>
1. Roth & Associates, MAI	\$ 5,700	21 days
2. DMD Appraisals	\$ 7,500	14-21 days
3. Nagasaki & Associates, MAI	\$ 7,840	21 days
4. Curtis-Rosenthal, Inc, MAI	\$ 9,500	30 days
5. R. P. Laurain & Associates, MAI	\$12,400	30-35 days

Staff recommends Roth and Associates, MAI to provide appraisal services for City owned Housing Successor Agency properties. They are the most competitive as it relates to qualification, cost, and delivery time. They have also completed thirteen (13) appraisals for the Successor Agency and City of Compton for Fiscal Year 2018-19.

ALTERNATIVE

The City Council may select another appraiser from the list of proposals if it deems one or more of them to be more desirable.

FISCAL IMPACT

Funds in the amount of \$9,000 are available in the Low-Cost Housing Fund for appraisal services. Additionally, the adopted City Budget for Fiscal Year 2019-20 allocates \$9,000 for this expense in Account No. 1205-910-000-4262.

RECOMMENDATION

Staff recommends the City Council adopt the attached Resolution, which authorizes the City Manager to enter into a two-year Professional Services Agreement with Roth & Associates for provision of appraisal services and to issue a Purchase Order for Fiscal Year 2019-20 not to exceed \$9,000.

RICHARD A. ROJAS, JR., AICP
DIRECTOR OF COMMUNITY DEVELOPMENT

APPROVED FOR FORWARDING:

CRAIG J. CORNWELL
CITY MANAGER

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMPTON AUTHORIZING THE CITY MANAGER TO ENTER INTO A TWO-YEAR CONTRACT (FISCAL YEARS 2019-20 AND 2020-21) WITH ROTH AND ASSOCIATES FOR PROPERTY APPRAISAL SERVICES ON AN AS-NEEDED BASIS FOR HOUSING SUCCESSOR AGENCY PROPERTIES AND TO OPEN A PURCHASE ORDER FOR FISCAL YEAR 2019-2020 IN AN AMOUNT NOT TO EXCEED NINE THOUSAND DOLLARS (\$9,000)

WHEREAS, pursuant to AB XI 26 ("Dissolution Act"), the Compton Redevelopment Agency ("Former Agency") was dissolved as of February 12, 2012 and the Successor Agency to the Redevelopment Agency of the City of Compton ("Successor Agency") was established to wind down the affairs of the Former Agency; and

WHEREAS, in order to ensure orderly disposition of Housing Successor Agency assets in accordance with the Dissolution Act, it is necessary for the City to procure the assistance of a property appraisal firm that can assist the City in the determined fair market value of the Housing Successor Agency properties; and

WHEREAS, the Housing Successor Agency has six remaining City-owned properties for sale pursuant to the Dissolution Act; and

WHEREAS, sale of City-owned Housing Successor Agency properties requires property appraisals be conducted and dated within six (6) months of the date of the closing date of sale; and

WHEREAS, On May 1, 2019, staff issued a Request for Proposal (RFP) for Appraisal Services for the Successor Agency owned properties and City-owned Housing Successor Agency properties; and

WHEREAS, Roth & Associates was deemed the most qualified appraiser by staff out of the five firms that submitted RFPs based on a review of their qualifications including experience, price, delivery time and certifications; and

WHEREAS, the City estimates six Housing Successor Agency property transactions will occur during the 2019-20 fiscal year; and

WHEREAS, funds for this expenditure are proposed in the Housing Successor Agency 2019-20 fiscal year budget in Account Number 1205-910-000-4262.

NOW THEREFORE, THE CITY COUNCIL DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. That the City Manager, on advice and approval of the City Attorney, is hereby authorized to enter into the Appraisal Services Agreement, substantially in the form attached to this Resolution as Attachment "A", for Fiscal Years 2019-20 and 2020-21 (i.e. July 1, 2019 through June 30, 2021) with Roth and Associates to perform appraisal services on City-owned Housing Successor Agency properties on an as needed basis.

SECTION 2. That a purchase order in the amount of \$9,000 is authorized for Roth and Associates for provision of appraisal services of City-owned Housing Successor Agency properties for Fiscal Year 2019-20.

SECTION 3. That funds in the amount of \$9,000 will be available in the Housing Successor Agency 2019-20 Fiscal Year Budget in Account Number 1205-910-000-4262.

SECTION 4. That certified copies of this resolution shall be filed in the offices of the City Controller, City Clerk, City Manager, City Attorney and Housing Successor Agency.

SECTION 5. That the Mayor shall sign and the City Clerk shall attest to the adoption of this Resolution.

ADOPTED this _____ day of _____, 2019.

MAYOR OF THE CITY OF COMPTON

ATTEST:

CITY CLERK OF THE CITY OF COMPTON

**STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
CITY OF COMPTON:**

I, Alita Godwin, City Clerk, do hereby certify that the foregoing resolution was adopted by the City Council, signed by the Mayor, and attested by the City Clerk on the _____ day of _____, 2019.

That said resolution was adopted by the following vote, to wit:

**AYES: COUNCIL MEMBERS-
NOES: COUNCIL MEMBERS-
ABSENT: COUNCIL MEMBERS-
ABSTAIN: COUNCIL MEMBERS-**

CITY CLERK OF THE CITY OF COMPTON

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
CITY OF COMPTON ACTING AS
HOUSING SUCCESSOR AGENCY
TO THE COMMUNITY REDEVELOPMENT AGENCY
AND
ROTH AND ASSOCIATES**

This **AGREEMENT** is entered by and between the **City of Compton**, a municipal corporation of the State of California (hereinafter referred to as "**CITY**") located at 205 South Willowbrook Avenue, Compton, California 90220, and **ROTH AND ASSOCIATES** (hereinafter referred to as "**CONSULTANT**"), located at 329 Pacific Coast Hwy Hermosa Beach, CA 90254-4833.

RECITALS:

WHEREAS, in order to ensure orderly disposition of Housing Successor Agency assets in accordance with the Dissolution Act, it is necessary for the City to procure the assistance of a property appraisal firm that can assist the City in determined the fair market value of the Housing Successor Agency properties; and

WHEREAS, the Housing Successor Agency has 6 City owned remaining properties for sale pursuant to the Dissolution Act; and

WHEREAS, the City Council has determined that Roth and Associates, Inc. submitted the lowest cost and most responsive RFP out of five RFPs submitted based on experience, track record and price.

WHEREAS, by **Resolution No.**, adopted on the, **2019** the City of Compton authorized the City Manager to accept the proposal of the Consultant and enter into a contract to provide the necessary services; and

WHEREAS, Consultant warrants that it is specifically trained, experienced, competent, and has the resources to provide property appraisal services; and

WHEREAS, Consultant is willing to render such professional services subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, Consultant and City, for the consideration, terms and conditions herein described, mutually agree as follows:

AGREEMENT:

1. Services to be rendered by Consultant. It is the mutual understanding of the parties that the Consultant shall perform property appraisal services in a manner consistent with real estate industry standards.

Consultant acknowledges that in entering into this Agreement the City is relying on Consultant's special skills and experience to do and perform the services in accordance with best standards of professional practice. While performing the services, Consultant agrees to perform all the said work and furnish all the necessary materials at its own cost and expense necessary to complete said services in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances and to the reasonable satisfaction of the City.

Consultant services hereunder shall be performed in good, workmanlike and professional manner. Consultant shall be responsible for correcting and completing all errors and omissions related to the services provided by the Consultant for this Agreement at no additional cost to the City. "Errors" and "Omissions" for purposes of this paragraph are defined to mean a failure by the Consultant to meet the standards of its profession as set forth in the preceding paragraph. The acceptance of the services by City does not release Consultant from these obligations.

Consultant will be responsible for employing or engaging all persons necessary to perform the services. All of Consultant's staff will be qualified by training and experience to perform their assigned tasks. Consultant will give its personal attention to the fulfillment of the provisions of this Agreement by all of its employees and subcontractors, if any, and will keep the services under its control. On demand of City, if any employee or subcontractor of Consultant fails or refuses to carry out the provisions of this Agreement or appears to be incompetent or to act in a disorderly or improper manner, he or she will be discharged immediately from the services rendered pursuant to this Agreement.

Tim Roth, Owner of Consultant shall be primarily responsible for representing Consultant in performance of this Agreement.

2. Duration of Contract. Consultant agrees to commence the services provided for herein upon written upon the execution of this agreement until June 30, 2021.

3. Compensation. The method of payment for this Contract will be on a flat fee basis ranging from \$1,800 - \$2,500 per property for a total amount not-to-exceed \$9,000 for Fiscal Year 2019-20. It is further understood that the maximum compensation payable for Fiscal Year 2020-21 will be determined by the approved Housing Successor Agency Budget for Fiscal Year 2020-2021 which will be added to this contract as an Amendment.

In the event of termination, the Consultant shall be entitled to compensation for the undisputed reasonable value of services performed to the effective date of termination, including any noncancelable obligations incurred prior to termination; provided, however,

that the City may condition payment of such compensation upon the Consultant's delivery to the City of any and all City property, documents, reports, records, materials and work product associated with the performance of this Agreement.

4. Ownership of Materials. All product produced by Consultant or its agents, employees, and subcontractors pursuant to this Agreement (the "Work Product") is the property of City. In the event this Agreement is terminated, all Work Product produced by Consultant or its agents, employees and subcontractors pursuant to this Agreement will be delivered to City pursuant to the termination clause of this Agreement.

The Work Product may be used by City and its agents, employees, representatives, and assigns, in whole or in part, or in modified form, for all purposes City may deem advisable, without further employment of or payment of any compensation to Consultant; provided, however, that if this Agreement is terminated for any reason prior to completion of the Project and if under such circumstances City uses, or engages the services of and directs another consultant to use the Work Product, City agrees to hold Consultant harmless from any and all liability, costs, and expenses relative to claims arising out of matters and/or events which occur subsequent to the termination of this Agreement as a result of causes other than the fault or negligence of Consultant, or anyone for whose acts it is responsible, in preparation of the Work Product. Consultant will not be responsible for deficiencies solely attributable to modifications of the Work Product performed by others, or that arise from use of the Documents in connection with a project or site other than that shown in the Work Product.

5. Independent Contractor Status. Consultant, its officers, employees, subconsultants, subcontractors, agents and volunteers (collectively hereinafter the "Consultant"), will perform the services in Consultant's own way and pursuant to this Agreement as an independent contractor and in pursuit of Consultant's independent calling, and not as an employee of City. The persons used by Consultant to provide the services under this Agreement will not be considered employees of City for any purposes. Neither the City nor any of its officers, employees, agents or volunteers shall have any control over the conduct of the Consultant, except as expressly set forth in this Agreement. Consultant expressly warrants that while engaged in carrying out and complying with any terms and conditions of this Agreement that Consultant shall not at any time or in any manner, represent that Consultant is in any manner officers, employees, agents or volunteers of the City. Consultant shall obtain no rights to retirement, health care or any other benefit that accrue to City officials, officers, or employees. Consultant expressly waives any claim to such rights.

The payment(s) made to Consultant pursuant to the Agreement will be the full and complete compensation to which Consultant is entitled. City will not make any federal or state tax withholdings on behalf of Consultant or its agents, employees or subcontractors. City will not pay any workers' compensation insurance, retirement contributions or unemployment contributions on behalf of Consultant or its employees or subcontractors. Consultant agrees to indemnify and pay City within thirty (30) days for any tax, retirement contribution, social security, overtime payment, unemployment payment or workers'

compensation payment which City may be required to make on behalf of Consultant or any agent, employee, or contractor of Consultant for work done under this Agreement. At the City's election, City may deduct the amounts paid pursuant to this Section, from any balance owing to Consultant.

6. Successors, Assignment and Delegation. City and the Consultant each binds themselves, their partners, successors, assigns and legal representatives to the other hereto and to partners, successors, assigns and legal representatives of such other party in respect to all covenants, agreements and obligations contained in this Agreement.

The expertise and experience of Consultant are material considerations for this Agreement. Consultant shall not assign or transfer any interest in this Agreement or the performance of any of Consultant's obligations under this Agreement without the prior written consent of the City. Any attempted assignment or transfer of any of Consultant's rights, duties or obligations arising under this Agreement shall be null and void.

7. Nondiscriminatory Employment Practices. During the performance of this Agreement, the Consultant agrees not to discriminate against any employee or applicant for employment because of race, sex, creed, color, religion, age, sexual orientation, marital status, national origin, political affiliation, handicap or belief in accordance with requirements of City, State or Federal laws and regulations. Consultant will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, sex, creed, color, religion, age, sexual orientation, marital status, national origin, political affiliation, handicap or belief in accordance with requirements of City, State or Federal laws and regulations. Such actions shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoffs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Consultant agrees to post in conspicuous places, available to employees, applicants and subcontractors for employment, notices setting forth the provisions of this non-discrimination clause.

In the event of the Consultant's non-compliance with the non-discrimination clause of this Agreement, this Agreement may be immediately canceled, terminated or suspended in whole or in part.

8. Subcontracting. Consultant's services are unique and personal. Except as may be specified in Consultant's Proposal and agreed to by the City, Consultant will not subcontract any portion of the services without prior written approval of City Manager or his/her designee. If Consultant subcontracts any of the services, Consultant will be fully responsible to City for the acts, errors and omissions of Consultant's subcontractor and of the persons either directly or indirectly employed by the subcontractor, as Consultant is for the acts and omissions of persons directly employed by Consultant. Nothing contained in this Agreement will create any contractual relationship between any subcontractor of Consultant and City. Consultant will be responsible for payment of

subcontractors. Consultant will bind every subcontractor and every subcontractor of a subcontractor by the terms of this Agreement applicable to Consultant's work unless specifically noted to the contrary in the subcontract and approved in writing by City.

9. Other Consultants. The City reserves the right to employ other consultants in connection with the services.

10. Indemnification. Consultant shall indemnify and save harmless the City, its officials, officers, employees, agents and volunteers (collectively hereinafter the "City"), against any and all damages to property or injuries to or death of any person or persons, including property and employees or agents of the City and shall indemnify and save the City from any and all liability and expense including reimbursement of reasonable defense costs and legal fees, and claims, demands, suits, actions or proceedings of any kind or nature, including Workers' Compensation claims, of or by anyone whomsoever to the extent resulting from or arising out of the negligent, reckless or willful misconduct for the Consultant, its officers, employees, subconsultants, subcontractors or agents in the performance of the duties undertaken by Consultant pursuant to this Agreement.

This indemnification and hold harmless obligation does not extend to claims arising out of the negligence or willful misconduct of the City.

11. Insurance. Without limiting the Consultant's indemnification of the City, Consultant shall obtain and maintain, at its cost and expense, for the duration of the Agreement and any and all amendments, insurance against claims for injuries to persons or damage to property which may arise out of or in connection with performance of the services by Consultant or Consultant's agents, representatives, employees or subcontractors. The insurance will be obtained from an insurance carrier admitted and authorized to do business in the State of California. Such evidence shall specifically identify this Agreement and shall contain express conditions that the City is to be given written notice at least thirty (30) days in advance of any termination or implementation of a reduction of limits or material change of insurance coverage as specified herein. Failure on the part of the Consultant to procure or maintain insurance shall constitute a material breach upon which the City may immediately terminate this Agreement. All insurance required hereunder shall be primary with respect to any insurance maintained by the City.

11.1 Coverages and Limits. Consultant will maintain the types of coverages and minimum limits indicated below, unless the Risk Manager or City Manager, in consultation with the City Attorney approves a lower amount. These minimum amounts of coverage will not constitute any limitations or cap on Consultant's indemnification obligations under this Agreement. City, its officers, agents, volunteers and employees make no representation that the limits of the insurance specified to be carried by Consultant pursuant to this Agreement are adequate to protect Consultant. The coverage will contain no special limitations on the scope of its protection to the below-designated insured's except for Workers Compensation and errors and omissions insurance. Consultant will obtain occurrence coverage, excluding Professional Liability, which will be written as

claims-made coverage. If Consultant believes that any required insurance coverage is inadequate, Consultant will obtain such additional insurance coverage, as Consultant deems adequate, at Consultant's sole expense.

11.2 Commercial General Liability Insurance. \$1,000,000 combined single-limit per occurrence for bodily injury, personal injury and property damage. If the submitted policies contain aggregate limits, general aggregate limits will apply separately to the work under this Agreement or the general aggregate will be twice the required per occurrence limit.

11.3 Automobile Liability. \$1,000,000 combined single-limit per accident for bodily injury and property damage.

11.4 Workers' Compensation and Employer's Liability. Workers' Compensation limits as required by the California Labor Code and Employer's Liability limits of \$1,000,000 per accident for bodily injury. Workers' Compensation and Employer's Liability insurance will not be required if Consultant has no employees and provides, to City's satisfaction, a declaration stating this.

11.5 Professional Liability. Errors and omissions liability appropriate to Consultant's profession with limits of not less than \$1,000,000 per claim.

11.6 Endorsements. For Commercial General Liability Insurance and Automobile Liability Insurance, Consultant will ensure that the policies are endorsed to name the City of Compton and its respective elected and appointed officers, officials, employees, agents and volunteers as “**additional insureds**” with respect to liability arising out of the activities of the Consultant. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City. ***Prior to City's execution of this Agreement, Consultant will furnish certificates of insurance and endorsements to City.***

11.7 Waiver of Subrogation. The policies shall contain a waiver of subrogation for the benefit of City.

12. Permits and Licenses. Consultant, at its own expense, during the term of this Agreement, shall obtain and maintain all appropriate business and professional permits, licenses and certificates that may be required in connection with the performance of services by the Consultant. Upon execution of this Agreement, the Consultant shall show evidence of a business license permit in conformance with *Section 9-1.2* of the *Compton Municipal Code*.

13. Maintenance of Records. Consultant will maintain complete and accurate records with respect to costs incurred under this Agreement. All records will be clearly identifiable. Consultant will allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of records and any other documents

created pursuant to this Agreement. Consultant will allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years, or longer if required by law, from the date of final payment under this Agreement.

14. Warranties. Consultant represents and warrants (i) that Consultant has no obligations, legal or otherwise, inconsistent with the terms of this Agreement or with Consultant's undertaking this relationship with City, (ii) that the performance of the services called for by this Agreement do not and will not violate any applicable law, rule or regulation or any proprietary or other right of any third party, (iii) that Consultant will not use in the performance of his responsibilities under this Agreement any confidential information or trade secrets of any other person or entity and (iv) that Consultant has not knowingly entered into or will enter into any agreement (whether oral or written) in conflict with this Agreement.

15. General Compliance with Laws. Consultant will keep fully informed of federal, state and local laws and ordinances and regulations which in any manner affect those employed by Consultant, or in any way affect the performance of the services by Consultant. Consultant will at all times observe and comply with these laws, ordinances, and regulations and will be responsible for the compliance of the services with all applicable laws, ordinances and regulations.

16. Termination. In the event of the Consultant's failure to prosecute, deliver, or perform the services, after giving written notice of default and two (2) days to correct the same, then, in addition to any other remedies, City may terminate this Agreement for nonperformance by notifying Consultant in writing. Consultant has five (5) business days to deliver any documents owned by City and all work in progress to City address contained in this Agreement. City will make a determination of fact based upon the work product delivered to City and of the percentage of work that Consultant has performed which is usable and of worth to City in having the Agreement completed. Based upon that finding City will determine the final payment of the Agreement. In the event City elects to terminate, City will have the right to immediate possession of all Work Product and work in progress prepared by Consultant, whether located at the project site, at Consultant's place of business, or at the offices of a subconsultant.

Either Party, upon tendering fifteen (15) calendar days written notice to the other Party, may terminate this Agreement for convenience. In this event and upon request of City, Consultant will assemble the work product without charge and put it in order for proper filing and closing and deliver it to City. Consultant will be paid for work performed to the termination date; however, the total will not exceed the lump sum fee payable under this Agreement. City will make the final determination as to the portions of tasks completed and the compensation to be made.

17. Force Majeure. In the event that performance by either party is rendered impossible (permanently or temporarily) due to acts of war, acts of terrorism, fires, floods, epidemics, quarantine restrictions, or other natural occurrences, strikes, work slowdowns, lockouts (other than lockout by Consultant), or other similar acts to those described above

or other causes beyond the reasonable control of such party, and without fault or negligence, said event shall excuse performance by such party, or in the case of temporary impossibility, shall excuse performance only for a period commensurate with the period of impossibility. Notwithstanding the foregoing, City shall have the right to terminate this Agreement upon any event that renders performance impossible. In such case, City shall be responsible for payment of compensation for the reasonable value of services rendered to the point at which this Agreement is terminated, but in no event to exceed the total lump sum fee payable under this Agreement.

18. Covenants Against Contingent Fees. Consultant warrants that Consultant has not employed or retained any company or person, other than a bona fide employee working for Consultant, to solicit or secure this Agreement, and that Consultant has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon, or resulting from, the award or making of this Agreement. For breach or violation of this warranty, City will have the right to terminate this Agreement for nonperformance, or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of the fee, commission, percentage, brokerage fees, gift, or contingent fee.

19. Certifications. The Consultant, under penalty of perjury, certifies that, except as noted below, he/she or any other person associated therewith in the capacity of owner, partner, director, officer, manager:

- is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any Federal, State or local City;
- has not been suspended, debarred, voluntarily excluded or determined ineligible by any Federal, State or local City within the past 3 years;
- does not have a proposed debarment pending; and
- has not been indicted, convicted, or had a civil judgment rendered against he/she/it by a court of competent jurisdiction in any matter involving fraud or official misconduct in connection with obtaining, attempting to obtain, or performing a public (Federal, state or local) transaction or contract under a public transaction; violation of Federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property within the past 3 years; and
- are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in the preceding paragraph; and
- have not had one or more public transactions (Federal, State or local) terminated for cause or default within the past 3 years.

If there are any exceptions to this certification, insert the exceptions in the following space.

[Supply exceptions on separate page]

For any exception noted above, indicate below to whom it applies, initiating City, and dates of action.

[Attach separate page]

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction. The above certifications are part of this contract. Signing this agreement on the signature portion thereof shall also constitute signature of the above Certifications.

Name
Owner

(Date)

20. Jurisdiction, Venue and Governing Law. Any action at law or in equity brought by either of the Parties for the purpose of enforcing a right or rights provided for by this Agreement will be tried in a court of competent jurisdiction in the County of Los Angeles, State of California, and the Parties waive all provisions of law providing for a change of venue in these proceedings to any other county. This agreement will be governed by the laws of the State of California.

21. Testimony. Consultant will testify at City's request if litigation is brought against City in connection with Consultant's services under this agreement. Unless the action is brought by Consultant, or is based upon Consultant's actual or alleged negligence or other wrongdoing, City, upon prior written agreement with Consultant will compensate Consultant for time spent in preparation for testimony, testimony, and travel at Consultant's standard hourly rates at the time of actual testimony.

22. Waivers. The waiver by either Party of any breach or violation of any term, covenant, or condition of this Agreement or of any applicable law will not be deemed to be a waiver of such term, covenant, condition or law or of any subsequent breach or violation of same or of any other term, covenant, condition or law. The acceptance by either Party of any fee or other payment which may become due under this Agreement will not be deemed to be a waiver of any preceding breach or violation by the other Party of any term, covenant, or condition of this Agreement or any applicable law.

23. Authority. The individuals executing this Agreement and the instruments referenced in it on behalf of Consultant each represent and warrant that they have the legal power, right and actual authority to bind Consultant to the terms and conditions of this Agreement.

24. Severability. If any term, provision, condition or covenant of this Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

25. Amendments. This Agreement may be modified or amended only be written document executed by both Consultant and City's City Manager and approved as to form by the City Attorney. Such document shall expressly state that it is intended by the parties to amend the terms and conditions of this Agreement.

26. Confidentiality. All documents, reports, information, data, and exhibits prepared or assembled by Consultant in connection with the performance of the services pursuant to the Agreement are confidential until released by the City to the public, and the Consultant will not make any of these documents or information available to any individual or organization not employed by the Consultant or the City without the written consent of the City before any such release.

27. Entire Agreement. This Agreement, together with any other written document referred to or contemplated by it embody the entire Agreement and understanding between the parties relating to the subject matter of it. The City Manager is authorized, in consultation with the City Attorney, to agree to non-material amendments to this Agreement. Neither this Agreement nor any of its provisions may be amended, modified, waived or discharged except in a writing signed by both parties.

28. Notices. Any notices required or permitted under this Agreement shall be effective when delivered in person; and effective one (1) business day after delivery by facsimile transmission; and effective five (5) days after mailing by U.S. Mail, postage prepaid and properly addressed as follows:

To Consultant:

**Roth and Associates
329 Pacific Coast Hwy
Hermosa Beach, CA 90254
Attn: Tim Roth
(310) 798-6561**

To City:

**City of Compton
205 South Willowbrook Avenue
Compton, California 90220
Attn: Executive Director
(310) 605-5585**

In the event of any change of address, the moving party is obligated to notify the other party of the change of address in writing. Each party may amend, supplement and

update the notice list to add, delete or replace any listed individuals; however, the amendment must be in writing.

29. Miscellaneous. No provision of this Agreement is to be interpreted for or against either party because that party or that party's legal representative drafted such provision.

Should either party hereto, or any representative, successor or assign of either party hereto, resort to litigation to enforce the provisions of this Agreement, the party or parties prevailing in such litigation shall be entitled, in addition to such other relief as may be granted, to recover its or their reasonable attorney's fees and costs in such litigation from the party or parties against whom enforcement is sought.

IN WITNESS WHEREOF, CONSULTANT has executed this Agreement, and the **CITY**, by its Executive Director, who is authorized to do so, has executed this Agreement.

**ROTH AND ASSOCIATES,
CONSULTANT**

Dated: _____

By _____
Tim Roth, MAI, SRA Real Estate Appraiser

Approved by:

Dated: _____

By _____
Craig Cornwell, City Manager

Approved as to Form:

Dated: _____

By _____
Damon Brown, City Attorney

ATTEST:

Dated: _____

By _____
Alita Godwin, City Clerk

September 10, 2019

TO: MAYOR AND CITY COUNCIL

**FROM: WENDELL E. JOHNSON, P.E., DIRECTOR
PUBLIC WORKS DEPARTMENT**

**SUBJECT: A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMPTON
AUTHORIZING THE CITY MANAGER TO ENTER INTO THE 2016
FEDERAL TRANSPORTATION EARMARK EXCHANGE PROGRAM
LOCAL FUND AGREEMENT WITH THE LOS ANGELES COUNTY
METROPOLITAN TRANSPORTATION AUTHORITY (LACMTA) TO
PROVIDE FUNDING FOR THE DEVELOPMENT AND REHABILITATION
OF THE COMPTON CREEK BIKEWAY PROJECT**

SUMMARY

This Resolution authorizes the City Manager to enter into the 2016 Federal Transportation Earmark Exchange Program Local Fund Agreement with the Los Angeles County Metropolitan Transportation Authority (LACMTA) to provide funding for the Development and Rehabilitation of the Compton Creek Bikeway Project.

BACKGROUND

The 2016 Consolidated Appropriation Act allowed the City of Compton to transfer its Federal Transportation Earmarks to the Los Angeles County Metropolitan Transportation Authority (LACMTA).

On May 26, 2016, the Metro Board of Directors approved the creation of the Metro Federal Transportation Earmark Exchange Program (the "Program"). This program allows local agencies to exchange their remaining federal transportation earmark dollar amounts with Metro for local funds, less a three percent administration fee. In doing so, local agencies and Metro were able to strategically repurpose unused federal transportation earmarks, provide local agencies more flexible local funds, and accelerate critical transportation investments. As of April 13, 2017, the City of Compton's Federal Transportation Earmark Exchange Fund Balance of \$6,809,993 was transferred to LACMTA.

Eligible Activities

To facilitate the exchange of federal transportation funds for local measure transportation funds, the proposed project or program must support transit and/or decrease single occupancy vehicle trips. In all cases, transit service must be provided on the street or road on which the project or program is proposed. The following projects and programs are eligible for this funding source:

2016 Federal Transportation Earmark Exchange Program Local Fund Agreement

September 10, 2019

Page 2

- Arterial/transitway lanes and arterials capacity enhancing projects
- Transportation Demand Management (TDM)
- Incident Management Programs
- Park and Ride Lots
- Freeway/arterial Transportation Systems Management
- Regional Bikeways

As of March 6, 2018, the City of Compton has requested to exchange \$361,290 of the City's Federal Transportation Earmark Funds for a like amount of LACMTA Proposition C 25% per the 2016 Federal Transportation Earmark Exchange Program Agreement 920000000F9530, Project "Central Avenue Regional Commuter Bikeway Project."

On July 24, 2018, pursuant to Resolution No. 24,821, City Council authorized the City Manager to enter into a Local Transportation Funding Agreement with the LACMTA to provide funding for the Central Avenue Regional Commuter Bikeway project. The project includes key bicycle enhancements and safety features such as installing striped protective buffered bike lanes, traffic separators, bike boxes at busy signalized intersections, sidewalk installations, pedestrian level lighting, and improving intersection crossing of approximately 3.2 miles from Kona Drive on the south to El Segundo Boulevard on the north.

STATEMENT OF THE ISSUE

The City of Compton now desires to exchange \$2,340,206 of the City's Federal Transportation Earmark Funds for a like amount of LACMTA Proposition C 25% ("LACMTA Funds") for the Development and Rehabilitation of the Compton Creek Regional Bikeway.

The Compton Creek Regional Bikeway will be developed from just north of El Segundo Boulevard to Greenleaf Boulevard on the south. The project will include the development and rehabilitation of Compton Creek Regional Bike Path including the installation of solar powered path and security lighting, striping, wayfinding and directional signage and safety street crossing equipment. LACMTA is willing to exchange \$2,340,206 in LAMTA Funds for a like amount of the City's Federal Transportation Earmark Funds, subject to the terms and conditions contained in the agreement.

An exchange of the City's Federal Transportation Earmark Funds with LACMTA Funds is beneficial to and in the general interest of the City of Compton and the Los Angeles County Metropolitan Transportation Authority. By allowing local agencies to exchange Federal dollars for more flexible, easier to administer local dollars, Metro and local agencies should see faster delivery of projects to the counties transportation system users.

Therefore, in order for the City Manager to enter into the 2016 Federal Transportation Earmark Exchange Program Local Fund Agreement with the Los Angeles County Metropolitan Transportation Authority (LACMTA) for the Development and Rehabilitation of the Compton Creek Bikeway Project, City Council's authorization is necessary.

ALTERNATIVE

The City of Compton and LACMTA desires to execute this funding agreement. Therefore, no other alternative is being proposed.

FISCAL IMPACT

No direct costs will be incurred by the City of Compton. LACMTA shall reimburse the City for all eligible design and engineering review time and project management costs. All costs incurred by the City after the effective date of this agreement will be eligible for reimbursement.

STAFF RECOMMENDATION

Staff recommends that the City Council authorize the City Manager to enter into the 2016 Federal Transportation Earmark Exchange Program Local Fund Agreement with the Los Angeles County Metropolitan Transportation Authority (LACMTA) for the Development and Rehabilitation of the Compton Creek Bikeway Project.

WENDELL E. JOHNSON, P.E.,
PUBLIC WORKS DIRECTOR

APPROVED FOR FORWARDING:

CRAIG J. CORNWELL
CITY MANAGER

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMPTON
AUTHORIZING THE CITY MANAGER TO ENTER INTO THE 2016 FEDERAL
TRANSPORTATION EARMARK EXCHANGE PROGRAM LOCAL FUND
AGREEMENT WITH THE LOS ANGELES COUNTY METROPOLITAN
TRANSPORTATION AUTHORITY (LACMTA) TO PROVIDE FUNDING FOR
THE DEVELOPMENT AND REHABILITATION OF THE COMPTON CREEK
BIKEWAY PROJECT**

WHEREAS, the 2016 Consolidated Appropriation Act allowed the City of Compton to transfer its Federal Transportation Earmarks to the Los Angeles County Metropolitan Transportation Authority (LACMTA); and

WHEREAS, on May 26, 2016, the Metro Board of Directors approved the creation of the Metro Federal Transportation Earmark Exchange Program (the “Program”); and

WHEREAS, this program allows local agencies to exchange their remaining federal transportation earmark dollar amounts with Metro for local funds, less a three percent administration fee; and

WHEREAS, in doing so, local agencies and Metro were able to strategically repurpose, unused federal transportation earmarks, provide local agencies more flexible local funds, and accelerate critical transportation investments; and

WHEREAS, as of April 13, 2017, the City of Compton’s Federal Transportation Earmark Exchange Fund Balance of \$6,809,993 was transferred to LACMTA; and

WHEREAS, to facilitate the exchange of federal transportation funds for local measure transportation funds, the proposed project or program must support transit and/or decrease single occupancy vehicle trips; and

WHEREAS, in all cases, transit service must be provided on the street or road on which the project or program is proposed and the following projects and programs are eligible for this funding source:

- Arterial/transitway lanes and arterials capacity enhancing projects
- Transportation Demand Management (TDM)
- Incident Management Programs
- Park and Ride Lots
- Freeway/arterial Transportation Systems Management
- Regional Bikeways; and

WHEREAS, as of March 6, 2018, the City of Compton has requested to exchange \$361,290 of the City’s Federal Transportation Earmark Funds for a like amount of LACMTA Proposition C 25% per the 2016 Federal Transportation Earmark Exchange Program Agreement 920000000F9530, Project “Central Avenue Regional Commuter Bikeway Project.”; and

WHEREAS, on July 24, 2018, pursuant to Resolution No. 24,821, City Council authorized the City Manager to enter into a Local Transportation Funding Agreement with the LACMTA to provide funding for the Central Avenue Regional Commuter Bikeway project; and

WHEREAS, the project includes key bicycle enhancements and safety features such as installing striped protective buffered bike lanes, traffic separators, bike boxes at busy signalized intersections, sidewalk installations, pedestrian level lighting, and improving intersection crossing of approximately 3.2 miles from Kona Drive on the south to El Segundo Boulevard on the north; and

WHEREAS, the City of Compton now desires to exchange \$2,340,206 of the City's Federal Transportation Earmark Funds for a like amount of LACMTA Proposition C 25% ("LACMTA Funds") for the Development and Rehabilitation of the Compton Creek Regional Bikeway; and

WHEREAS, the Compton Creek Regional Bikeway will be developed from just north of El Segundo Boulevard to Greenleaf Boulevard on the south and the project will include the development and rehabilitation of Compton Creek Regional Bike Path including the installation of solar powered path and security lighting, striping, wayfinding and directional signage and safety street crossing equipment; and

WHEREAS, LACMTA is willing to exchange \$2,340,206 in LAMTA Funds for a like amount of the City's Federal Transportation Earmark Funds, subject to the terms and conditions contained in the agreement; and

WHEREAS, an exchange of the City's Federal Transportation Earmark Funds with LACMTA Funds is beneficial to and in the general interest of the City of Compton and the Los Angeles County Metropolitan Transportation Authority and by allowing local agencies to exchange Federal dollars for more flexible, easier to administer local dollars, Metro and local agencies should see faster delivery of projects to the counties transportation system users; and

WHEREAS, no direct costs will be incurred by the City of Compton; and

WHEREAS, LACMTA shall reimburse the City for all eligible design and engineering review time and project management costs; and

WHEREAS, all costs incurred by the City after the effective date of this agreement will be eligible for reimbursement; and

WHEREAS, in order for the City Manager to enter into the 2016 Federal Transportation Earmark Exchange Program Local Fund Agreement with the Los Angeles County Metropolitan Transportation Authority (LACMTA) for the Development and Rehabilitation of the Compton Creek Bikeway Project, City Council's authorization is necessary.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COMPTON DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. That the City Manager, upon the advice and approval of the City Attorney, is hereby authorized to enter into the 2016 Federal Transportation Earmark Exchange Program Local Fund Agreement with the Los Angeles County Metropolitan Transportation Authority (LACMTA) to provide funding for the Development and Rehabilitation of the Compton Creek Bikeway Project.

SECTION 2. That a copy of this Resolution shall be filed in the offices of the City Manager, City Controller, City Clerk, City Attorney and Public Works Department.

SECTION 3. That the Mayor shall sign and the City Clerk shall attest to the adoption of this Resolution.

ADOPTED this ____ day of _____, 2019.

MAYOR OF THE CITY OF COMPTON

ATTEST:

CITY CLERK OF THE CITY OF COMPTON

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
CITY OF COMPTON: ss

I, Alita Godwin, City Clerk of the City of Compton, hereby certify that the foregoing Resolution was adopted by the City Council, signed by the Mayor and attested by the City Clerk at a regular meeting thereof held on the ____ day of _____, 2019.

That said Resolution was adopted by the following vote to wit:

AYES: COUNCIL MEMBERS-
NOES: COUNCIL MEMBERS-
ABSENT: COUNCIL MEMBERS-
ABSTAIN: COUNCIL MEMBERS-

CITY CLERK OF THE CITY OF COMPTON

**2016 FEDERAL TRANSPORTATION EARMARK EXCHANGE PROGRAM
LOCAL FUNDS**

This Exchange Agreement ("AGREEMENT"), is made and entered into as of June 26, 2019, by and between the City of Compton ("CITY") and the Los Angeles County Metropolitan Transportation Authority ("LACMTA").

RECITALS:

- A. The 2016 Consolidated Appropriation Act allowed the CITY to transfer its Federal Transportation Earmark(s) to LACMTA.
- B. LACMTA Board of Directors approved the Federal Transportation Earmark Exchange Program on May 25, 2016.
- C. As of April 13, 2017, CITY's Federal Transportation Earmark Exchange Fund Balance of \$6,809,993 was transferred to LACMTA.
- D. As of March 6, 2018, CITY has requested to exchange \$361,290 CITY's Federal Transportation Earmark Funds for a like amount of LACMTA Proposition C 25% per 2016 Federal Transportation Earmark Exchange Program Agreement 920000000F9530, Project "Central Ave Regional Commuter Bikeway Project."
- E. As of June 26, 2019, CITY has requested to exchange \$2,270,000 CITY's Federal Transportation Earmark Funds for a like amount of LACMTA Proposition C 25% per 2016 Federal Transportation Earmark Exchange Program Agreement 920000000E1706A, Project "Development and Rehabilitation of the Compton Creek Bikeway."
- F. CITY desires to exchange **\$1,422,680** of CITY's Federal Transportation Earmark Funds for a like amount of LACMTA Proposition C 25% ("LACMTA Funds").
- G. LACMTA is willing to exchange **\$1,422,680** in LACMTA Funds for a like amount of CITY's Federal Transportation Earmark Funds, subject to the terms and conditions contained herein.
- H. An exchange of CITY's Federal Transportation Earmark Funds with LACMTA Funds is beneficial to and in the general interest of CITY and LACMTA.

NOW THEREFORE, in consideration of the mutual benefits to be derived by CITY and LACMTA, and of the promises contained herein, it is hereby agreed as follows:

AGREEMENT:

- 1. Title of the Project (the "Project"): Development of the Wilmington Avenue Regional Bikeway Corridor. LACMTA Federal Transportation Earmark Exchange Program ID# E1706B; and FTIP # LA0G1711.
- 2. CITY hereby assigns to LACMTA **\$1,422,680** of CITY's Federal Transportation Earmark Funds. This assignment shall be automatically effective upon full execution of this AGREEMENT without the necessity of the execution, delivery or recording of any further instrument whatsoever.

**2016 FEDERAL TRANSPORTATION EARMARK EXCHANGE PROGRAM
LOCAL FUNDS**

Notwithstanding the foregoing, at LACMTA's request, CITY shall execute and deliver such documents and instruments as may be required to evidence such assignment of Federal Transportation Earmark Funds.

3. LACMTA hereby accepts CITY's assignment of CITY's Federal Transportation Earmark Funds for use on Proposition C 25% eligible project, to be determined by LACMTA in its sole and absolute discretion.

4. On September 26, 2002, the LACMTA Board of Directors required that prior to receiving Proposition C 10% or 25% funds, CITY must meet a Maintenance of Effort (MOE) requirement consistent with the State of California's MOE as determined by the State Controller's office. With regard to enforcing the MOE, LACMTA will follow the State of California's MOE requirement, including, without limitation, suspension and re-implementation. As a participant in the Federal Transportation Earmark Exchange Program receiving Proposition C 25% funds, CITY is subject to MOE requirements.

5. Upon receipt of (i) a fully executed AGREEMENT, (ii) CITY's written certification of the amount of CITY's Federal Transportation Earmark Exchange Fund Balance, as defined herein, which CITY's Federal Transportation Earmark Exchange Fund Balance shows that CITY has sufficient Federal Transportation Earmark Funds to meet its obligations hereunder, and (iii) LACMTA's deduction of CITY's Federal Transportation Earmark Funds as provided in paragraph 3 above, LACMTA shall pay CITY \$1,380,000 of LACMTA Funds which includes the deduction for the processing fee described in paragraph 9 below. For purposes of this AGREEMENT, CITY's "Federal Transportation Earmark Exchange Fund Balance" shall mean the amount of funds CITY transferred to LACMTA as of April 19, 2017. CITY is prohibited from requesting any amount of funding above the amount exchanged with LACMTA, inclusive of the processing fee described in paragraph 9 below.

6. The "FTIP PROJECT SHEET (PDF)" is attached as Attachment F and is required to ensure that the Project is programmed correctly in the most up-to-date FTIP document. The FTIP PROJECT SHEET (PDF) can be found in ProgramMetro FTIP database under the reports section at <https://program.metro.net>. All projects that receive funding through the LACMTA Call for Projects must be programmed into the FTIP which includes locally funded regionally significant projects for information and air quality modeling purposes. GRANTEE shall review the Project in ProgramMetro each year and update or correct the Project as necessary during a scheduled FTIP amendment or adoption to be consistent with the terms of this Agreement, as amended from time to time. GRANTEE will be notified of amendments and adoptions to the FTIP via e-mail. Changes to the FTIP through ProgramMetro should be made as soon as possible after GRANTEE is aware of any changes to the Project, but no later than October 1 of the year the change or update is effective. Should GRANTEE fail to meet this date, it may affect GRANTEE'S ability to access funding, delay the Project and may ultimately result in the Funds being lapsed. LACMTA shall review and approve any changes GRANTEE makes to the FTIP prior to incorporating such changes in to the TIP.

7. Unless otherwise stated in this Agreement, the Quarterly Progress/Expenditure Report, with supporting documentation of expenses and Project progress as described in paragraph 8 of this

**2016 FEDERAL TRANSPORTATION EARMARK EXCHANGE PROGRAM
LOCAL FUNDS**

Agreement, and other documents as required by LACMTA, shall satisfy LACMTA invoicing requirements.

Submit invoice with supporting documentation to:
ACCOUNTSPAYABLE@METRO.NET (preferable)

Or mail to:
Los Angeles County Metropolitan Transportation Authority
Accounts Payable
P. O. Box 512296
Los Angeles, CA 90051-0296

All invoice material must contain the following information:
Re: LACMTA Project ID# E1706B and FA# 920000000E1706B
LACMTA Project Manager Keira Thompson; Mail Stop 99-23-3

8. CITY will be reimbursed on a quarterly basis subject to satisfactory compliance to schedule as demonstrated in a quarterly progress/expense report supported by a detailed invoice demonstrating the staff and hours charged to the project, any consultant hours, materials, etc. An amount equal to five percent (5%) of each invoice will be retained until final completion of the project and audit. In addition, final retention payment will be withheld until the project is complete and approved by LACMTA and all audit requirements including before and after photographs have been satisfied. All quarterly progress/expense reports will be due on the last day of the months of November, February, May and August. Attachments B and C contain Reporting and Expenditure Guidelines and Quarterly Progress/Expenditure Report template.

9. CITY shall pay LACMTA a three-percent (3%) processing and administrative fee ("the Processing Fee") in connection with the exchange contemplated by this AGREEMENT. The Processing Fee shall be assessed against the total amount of LACMTA Funds payable to CITY. CITY hereby authorizes LACMTA to deduct the Processing Fee from the amount LACMTA is to pay CITY hereunder.

10. The Project Budget report documents all sources of funds programmed for the Project as approved by LACMTA and is attached as Attachment C. The Project Budget report includes the total programmed budget for the Project, including the funds exchanged under this AGREEMENT and any CITY funds. The Project Budget also includes the fiscal years in which all the funds for the Project are programmed.

11. The Project Schedule report, included here as Attachment D, documents Project schedule performance measurements. The Project Schedule report identifies Project activity purchases, milestones, sequence, duration, and deliverable dates.

12. CITY shall complete the Project as described in the Scope of Work. The Scope of Work for the Project is attached to this AGREEMENT as Attachment E. The Scope of Work includes a description of the Project, a detailed description of the work to be completed by CITY including, without limitation, Project milestones consistent with the lapsing policy and the schedule

**2016 FEDERAL TRANSPORTATION EARMARK EXCHANGE PROGRAM
LOCAL FUNDS**

identified in the Project Schedule report. Work shall be delivered in accordance with that schedule unless otherwise agreed to by the parties in writing. If CITY is consistently behind schedule in meeting milestones or in delivering the Project, then LACMTA will have the option to terminate this Agreement for default as described in paragraph 15.

13. The "FTIP PROJECT SHEET (PDF)" is attached as Attachment F and is required to ensure that the Project is programmed correctly in the most up-to-date FTIP document. The FTIP PROJECT SHEET (PDF) can be found in ProgramMetro FTIP database under the reports section at <https://program.metro.net>. All projects that receive funding through the LACMTA Call for Projects must be programmed into the FTIP which includes locally funded regionally significant projects for information and air quality modeling purposes. GRANTEE shall review the Project in ProgramMetro each year and update or correct the Project as necessary during a scheduled FTIP amendment or adoption to be consistent with the terms of this Agreement, as amended from time to time. GRANTEE will be notified of amendments and adoptions to the FTIP via e-mail. Changes to the FTIP through ProgramMetro should be made as soon as possible after GRANTEE is aware of any changes to the Project, but no later than October 1 of the year the change or update is effective. Should GRANTEE fail to meet this date, it may affect GRANTEE'S ability to access funding, delay the Project and may ultimately result in the Funds being lapsed. LACMTA shall review and approve any changes GRANTEE makes to the FTIP prior to incorporating such changes in to the TIP.

14. CITY shall expend the LACMTA Funds on the Project by the Lapsing Date. For the purposes of this AGREEMENT, "the Lapsing Date" shall mean the date that is three (3) years from the date that this AGREEMENT is fully executed. Expenses shall be invoiced no later than 60 days after the LAPSING DATE.

A. For the purposes of this AGREEMENT, the term "Proposition C 25%-Eligible Project" shall mean any transportation project or program that supports transit and/or decreases single-occupancy vehicle trips. In all cases, transit service must be provided on the road street on which the project or program is proposed.

B. The term "expend" as used in paragraph 14 shall mean "encumbered by an awarded contract".

15. A Default under this Agreement is defined as any one or more of the following: (i) CITY fails to comply with the terms and conditions contained herein or in the Guidelines; (ii) CITY is consistently behind schedule in meeting milestones or in delivering the Project; or (iii) CITY fails to perform satisfactorily or makes a material change, as determined by LACMTA at its sole discretion, to the Financial Plan, the Scope of Work, or the Project Funding without LACMTA's prior written consent or approval as provided herein.

16. After project is final vouchered and closed, any cost savings funds greater than \$1,000 not expended, will be eligible for use on Proposition C 25%-Eligible Project, to be determined by LACMTA in its sole and absolute discretion.

17. CITY must use the LACMTA Funds in the most cost-effective manner. If CITY intends to use a consultant or contractor to implement all or part of the Proposition C 25%-Eligible Project,

**2016 FEDERAL TRANSPORTATION EARMARK EXCHANGE PROGRAM
LOCAL FUNDS**

LACMTA requires that such activities be procured in accordance with CITY's contracting procedures and be consistent with State law as appropriate. CITY will also use the LACMTA Funds in the most cost-effective manner when the LACMTA Funds are used to pay "in-house" staff time. CITY staff or consultants with project oversight roles may not award work to companies in which they have a financial or personal interest. This effective use of funds provision will be verified by LACMTA through on-going project monitoring and through any LACMTA interim and final audits.

18. LACMTA, and/or its designee, shall have the right to conduct audits of CITY's use of the LACMTA Funds, as deemed appropriate, such as financial and compliance audits; interim audits; pre-award audits, performance audits, and final audits. CITY agrees to establish and maintain proper accounting procedures and cash management records and documents in accordance with Generally Accepted Accounting Principles (GAAP). CITY's records shall include, without limitation, any supporting evidence deemed necessary by LACMTA to substantiate CITY's use of LACMTA Funds. These records must be retained by CITY for five years following CITY's last use of the LACMTA Funds. CITY shall reimburse LACMTA for any expenditure not in compliance with the Scope of Work and/or not in compliance with other terms and conditions of this AGREEMENT. The allowability of costs for CITY's own expenditures submitted to LACMTA for the Proposition C 25%-Eligible Project shall be in compliance with Federal Transportation Earmark Exchange Program Guidelines. The allowability of costs for CITY's contractors, consultants, and suppliers expenditures submitted to LACMTA through CITY's Monthly Progress Reports and Quarterly Expenditures shall be in compliance with Federal Transportation Earmark Exchange Program Guidelines. Findings of the LACMTA audit are final. When LACMTA audit findings require CITY to return monies to LACMTA, CITY agrees to return the monies within thirty (30) days after the final audit is sent to CITY.

19. The terms of this AGREEMENT shall commence on the date that this AGREEMENT is fully executed and shall terminate once CITY has expended all the LACMTA Funds and all LACMTA audit and reporting requirements have been satisfied.

20. CITY shall fully indemnify, defend and hold LACMTA and its officers, agents, and employees harmless from and against any liability and expenses, including, without limitation, defend costs, any costs or liability on account of bodily injury, death or personal injury of any person, or for damages of any nature whatsoever arising out of (i) a breach of CITY's obligations under this AGREEMENT; or (ii) any act or omission of CITY or its officers, agents, employees, contractors, or subcontractors in the use of the LACMTA Funds.

21. LACMTA shall fully indemnify, defend and hold CITY and its officers, agents, and employees harmless from and against any liability and expenses, including, without limitation, defend costs, any costs or liability on account of bodily injury, death or personal injury of any person, or for damages to or loss of risk of property, any environmental obligations, any legal fees and any claims for damages of any nature whatsoever arising out of (i) a breach of LACMTA's obligations under this AGREEMENT; or (ii) any act or omission of LACMTA or its officers, agents, employees, contractors, or subcontractors in the use of CITY's Federal Transportation Earmark Funds.

**2016 FEDERAL TRANSPORTATION EARMARK EXCHANGE PROGRAM
LOCAL FUNDS**

22. This AGREEMENT may be amended or modified only by mutual written consent of LACMTA and CITY.

23. Any correspondence, communication, or contact concerning this AGREEMENT shall be directed to the following:

City of Compton

John Strickland
Project Manager, Department of Public Works
205 S. Willowbrook Avenue
Compton, CA 90220
Email: jstrickland@comptoncity.org
Phone: 310.761.1422

LACMTA:
Los Angeles County Metropolitan Transportation
Authority
One Gateway Plaza
Los Angeles, California 90012

Attn: Keira Thompson [Mail Stop 99-23-3]
Administrative Analyst, Countywide Planning and Development
Grants Management and Oversight
PH 213.922.2445 W
Email: thompsonke@metro.net

24. This AGREEMENT shall be interpreted and governed by the laws of the State of California.

25. This AGREEMENT constitutes the entire understanding between the parties with respect to the subject matter herein.

Attachment A – Reporting and Expenditure Guidelines

Attachment B – Quarterly Progress/Expenditure Report

Attachment C – Project Budget

Attachment D – Project Schedule

Attachment E – Scope of Work

Attachment F – Federal Transportation Improvement Program (FTIP)

**2016 FEDERAL TRANSPORTATION EARMARK EXCHANGE PROGRAM
LOCAL FUNDS**

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed by their respective officers as of the date stated below.

**LOS ANGELES COUNTY
METROPOLITAN TRANSPORTATION
AUTHORITY**

CITY OF COMPTON

By: _____

Phillip A. Washington
Chief Executive Officer

By: _____

Cecil W. Rhambo
City Manager

APPROVED AS TO FORM:

MARY C. WICKHAM
County Counsel

APPROVED AS TO FORM:

CRAIG J. CORNWELL

By:  _____
Deputy

By: _____
City Attorney

ATTACHMENT A
FEDERAL TRANSPORTATION EARMARK EXCHANGE AGREEMENT
REPORTING & EXPENDITURE GUIDELINES

REPORTING PROCEDURES

- Quarterly Progress/Expenditure Report (**Attachment B**) is required for all projects. The Grantee shall be subject to and comply with all applicable requirements of the funding agency regarding project-reporting requirements. In addition, Grantee will submit a quarterly report to the LACMTA at **P.O. Box 512296, Los Angeles, CA 90051-0296**. Please note that letters or other forms of documentation may **not** be substituted for this form.
- The Quarterly Progress/Expenditure Report covers all activities related to the project and lists all costs incurred. It is essential that Grantee provide complete and adequate response to all the questions. The expenses listed must be supported by appropriate documentation with a clear explanation of the purpose and relevance of each expense to the project. Expenses must reflect the proportionate share of local match, including in-kind, charged to the grant.
- In cases where there are no activities to report, or problems causing delays, clear explanation, including actions to remedy the situation, must be provided.
- Grantees are required to track and report on the project schedule. LACMTA will monitor the timely use of funds and delivery of projects. Project delay, if any, must be reported each quarter. If CITY is consistently behind schedule in meeting milestones or in delivering the Project, then LACMTA will have the option to terminate this Agreement for default as described in paragraph 15.
- The Quarterly Progress/Expenditure Report is due to the LACMTA as soon as possible after the close of each quarter, but no later than the following dates for each fiscal year:

<i>Quarter</i>	<i>Report Due Date</i>
July –September	November 30
October - December	February 28
January - March	May 31
April - June	August 31

Upon completion of the Project a final report that includes project's final evaluation must be submitted.

EXPENDITURE GUIDELINES

- Any activity or expense charged above and beyond the approved Scope-of-Work (Attachment F) **is considered ineligible** and will not be reimbursed by the LACMTA unless **prior written authorization** has been granted by the LACMTA Chief Executive Officer or designee.

ATTACHMENT A
FEDERAL TRANSPORTATION EARMARK EXCHANGE AGREEMENT
REPORTING & EXPENDITURE GUIDELINES

- Any expense charged to the grant or local match, including in-kind, must be clearly and directly related to the project.
- Any activity or expense charged as local match cannot be applied to any other LACMTA-funded or non-LACMTA-funded projects; activities or expenses related to a previously funded project cannot be used as local match for the current project.
- Administrative cost is the ongoing expense incurred by the Grantee for the duration of the project and for the direct benefit of the project as specified in the Scope-of-Work (Attachment E). Examples of administrative costs are personnel, office supplies, and equipment. As a condition for eligibility, all costs must be necessary for maintaining, monitoring, coordinating, reporting and budgeting of the project. Additionally, expenses must be reasonable and appropriate to the activities related to the project.
- LACMTA is not responsible for, and will not reimburse any costs incurred by the Grantee prior to the execution of the FA, unless **written authorization** has been granted by the LACMTA Chief Executive Officer or her designee.
- The FA is considered executed when the LACMTA Chief Executive Officer or designee signs the document.

DEFINITIONS

- Local Participation: Where local participation consists of “in-kind” contributions rather than funds, the following contributions may be included:
 - Costs incurred by a local jurisdiction to successfully complete the project. Examples include engineering, design, rights-of-way purchase, and construction management costs.
 - Donations of land, building space, supplies, equipment, loaned equipment, or loaned building space dedicated to the project.
 - Donations of volunteer services dedicated to the project.
 - A third-party contribution of services, land, building space, supplies or equipment dedicated to the project.
- Allowable Cost: To be allowable, costs must be reasonable, recognized as ordinary and necessary, consistent with established practices of the organization, and consistent with industry standard of pay for work classification.
- Excessive Cost: Any expense deemed “excessive” by LACMTA staff would be adjusted to reflect a “reasonable and customary” level. For detail definition of “reasonable cost”, please refer to the Federal Register *OMB Circulars A-87 Cost Principles for State and Local Governments; and A-122 Cost Principles for Nonprofit Organizations*.
- Ineligible Expenditures: Any activity or expense charged above and beyond the approved Scope-of-Work is considered ineligible.

LACMTA-EARMARK EXCHANGE ATTACHMENT B QUARTERLY PROGRESS / EXPENSE REPORT

Grantee To Complete	
Invoice #	
Invoice Date	
FA#	
Quarterly Report #	

**GRANTEES ARE REQUESTED TO MAIL THIS REPORT TO
P.O. Box #512296, Los Angeles, CA 90051-0296 after the close**

of each quarter, but no later than November 30, February 28, May 31 and August 31. Please note that letters or other forms of documentation may not be substituted for this form. Refer to the Reporting and Expenditure Guidelines (Attachment C) for further information.

SECTION 1: QUARTERLY EXPENSE REPORT

Please itemize grant-related charges for this Quarter on Page 5 of this report and **include totals in this Section.**

	PC25 - Earmark Exchange \$	Other Funds \$	Total \$
Project Quarter Expenditure			
This Quarter Expenditure			
Retention Amount			
Net Invoice Amount (Less Retention)			
Project-to-Date Expenditure			
Funds Expended to Date (Include this Quarter)			
Total Project Budget			
% of Project Budget Expended to Date			
Balance Remaining			

SECTION 2: GENERAL INFORMATION

PROJECT TITLE: _____

FA #: _____

QUARTERLY REPORT SUBMITTED FOR:

Fiscal Year : ☐ 2017-2018 ☐ 2018-2019 ☐ 2019-2020
 ☐ 2020-2021 ☐ 2021-2022

Quarter : ☐ Q1: Jul - Sep ☐ Q2: Oct - Dec
 ☐ Q3: Jan - Mar ☐ Q4: Apr - Jun

DATE SUBMITTED: _____

LACMTA Project Mgr.	Name:	Keira Thomspen
	Phone Number:	213.922.2445
	e-mail:	thompsonke@metro.net
Project Sponsor Contact / Project Manager	Contact Name:	John Strickland
	Job Title:	Project Manager
	Department:	Department of Public Works
	City / Agency:	City of Compton
	Mailing Address:	205 S. Willowbrook Avenue, Compton, CA 90220
	Phone Number:	310-761-1422
	e-mail:	jstrickland@comptoncity.org

SECTION 3 : QUARTERLY PROGRESS REPORT

1. DELIVERABLES & MILESTONES

List all deliverables and milestones as stated in the FA, with start and end dates. Calculate the total project duration. **DO NOT CHANGE THE ORIGINAL FA MILESTONE START AND END DATES SHOWN IN THE 2ND AND 3RD COLUMNS BELOW.**

Grantees must make every effort to accurately portray milestone dates in the original FA Scope of Work, since this will provide the basis for calculating any project delay. If milestone start and/or end dates change from those stated in the Original FA Scope of Work, indicate the new dates under Actual Schedule below and re-calculate the project duration. However, this does not change the original milestones in your FA. PER YOUR FA AGREEMENT, ANY CHANGES TO THE PROJECT SCHEDULE MUST BE FORMALLY SUBMITTED UNDER SEPARATE COVER TO LACMTA FOR WRITTEN CONCURRENCE.

FA Milestones	Original FA Schedule in Scope of Work		Actual Schedule	
	Start Date	End Date	Start Date	End Date
Environmental Clearance				
Design Bid & Award				
Design				
Right-of-Way Acquisition				
Construction Bid & Award				
Ground Breaking Event				
Construction				
Ribbon Cutting Event				
Total Project Duration (Months)				

2. PROJECT COMPLETION

A. Based on the comparison of the original and actual project milestone schedules above, project is (select only one) :

- ☐ On schedule per original FA schedule ☐ Less than 12 months behind original schedule
- ☐ Between 12-24 months behind original schedule ☐ More than 24 months behind original schedule

B. Was the project design started within 6 months of the date originally stated in the FA?

- ☐ Yes ☐ No ☐ Not Applicable

C. Was a construction contract or capital purchase executed within 9 months after completion of design / specifications?

- ☐ Yes ☐ No ☐ Not Applicable

3. TASKS / MILESTONES ACCOMPLISHED

List tasks or milestones accomplished and progress made this quarter.

4. PROJECT DELAY

If project is delayed, describe reasons for delay (this quarter). Pay particular attention to schedule delays. If delay is for the same reason as mentioned in previous quarters, please indicate by writing "Same as Previous Quarter".

5. ACTION ITEMS TO RESOLVE DELAY

If the project is delayed (as described in #4), include action items that have been, or will be, undertaken to resolve the delay.

SECTION 4: ITEMIZED LISTING OF EXPENSES AND CHARGES THIS QUARTER

All expenses and charges, including grant and local match, must be itemized and listed below. Each item listed must be verifiable by an invoice and/or other proper documentation. The total amounts shown here must be equal to this quarter's expenditures listed on page 1 of this report. All expenses and charges must be reflective of the approved budget and rates as shown in the FA Attachment B, Scope of Work. Use additional pages if needed.

ITEM	INVOICE #	TOTAL EXPENSES / CHARGES	\$ CHARGED TO PC 25-EARMARK EXCHANGE	\$ CHARGED TO OTHER FUNDS
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
TOTAL				

Notes:

1. Local match spent in each quarter, must be in the appropriate proportion to LACMTA grant.
2. All receipts, invoices, and time sheets, attached and included with this Expense Report must be listed and shown under the Invoice Number column of the Itemized Listing (above).

Invoice Payment Information:

LACMTA will make all disbursements electronically unless an exception is requested in writing.

ACH Payments require that you complete an ACH Request Form and fax it to Accounts Payable at 213-922-6107.

ACH Request Forms can be found at www.metro.net/callforprojects.

Written exception requests for Check Payments should be completed and faxed to Accounts Payable at 213-922-61

I certify that I am the responsible Project Manager or fiscal officer and representative of _____
_____ and that to the best of my knowledge and belief the information
stated in this report is true and correct.

Signature

Date

Name

Title

ATTACHMENT C - PROJECT BUDGET 2016 FEDERAL EARMARK EXCHANGE

PROJECT TITLE: Development of the Wilmington Avenue Regional Bikeway Corridor
GRANTEE/ PROJECT SPONSOR: City of Compton

9200000000E1706B

FTIP ID:

(\$ in Actual Dollars)

PROGRAMMED FUNDS	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22	TOTAL BUDGET
LACMTA PROGRAMMED FUNDING: Proposition C 25% 2016 Earmark Exchange						
LACMTA SUBTOTAL	\$0.00	\$0.00	\$45,000.00	\$1,335,000.00	\$0.00	\$1,380,000.00
GRANTEE/SPONSOR FUND CONTRIBUTION:						
SELECT:						
Other - specify type(s):						
GRANTEE /SPONSOR SUBTOTAL	\$0	\$0	\$0	\$0	\$0	\$0
TOTAL PROJECT BUDGET						\$1,380,000

Signature: _____

Date: _____

ATTACHMENT D - PROJECT SCHEDULE 2016 FEDERAL EARMARK EXCHANGE

9200000000E1706B

FTTP ID:

PROJECT TITLE: Development of Wilmington Avenue Regional Bikeway Corridor

GRANTEE/ PROJECT SPONSOR: City of Compton

No.	Milestone Name/Phase	Milestone Definition and Status	Start Date	End Date
1	PA&ED	In development. (3 months)	Jan-20	Mar-20
2	PS&E	Begin upon completion of PA&ED (8 months)	Jun-20	Jan-21
3	Construction	Begin upon completion of PS&E (7 months)	Apr-21	Mar-22
4				
5				
6				
7				
8	<i>(insert more rows/attach additional sheets if necessary)</i>			

Signature: _____

Date: _____

ATTACHMENT E
Metro Federal Transportation Earmark Exchange Program
SCOPE OF WORK

Project ID: LA0G1711

Project Title: Wilmington Avenue Regional Bikeway Corridor

Project Limits: This project is located on Wilmington Avenue between Rosecrans Avenue on the north to Walnut Avenue on the south to access the Metro Artesia Blue Line Station. The project will include the development of Class II Bike lanes, close the pedestrian gaps, install pedestrian-level lighting, wayfinding signage, intersection improvements and bicyclist and pedestrian safety features.

Project Description: Development of the Wilmington Avenue Regional Bikeway Corridor. This corridor connects existing bikeways and lanes at Rosecrans Avenue on the north and continue south to Victoria Street. This project will provide bicycle elements including Class II bike lanes, pedestrian lighting and missing sidewalks gaps in order provide safe travels for pedestrians and bicyclists.

Project Funding:

PROJECT ITEM	Grant funds (LACMTA)	LOCAL AGENCY	TOTAL
Planning, Design, Engineering	\$135,000	\$0	\$135,000
Project Management	\$200,000	\$0	\$200,000
Construction	\$1,045,000	\$0	\$1,045,000
TOTAL BUDGET COST	\$1,380,000	\$0	\$1,380,000

SCOPE:

	Start Date	Completion Date
DESIGN:		
• PA&ED	01/2020	03/2020
• PS&E	06/2020	01/2021
RIGHT-OF-WAY:	NA	NA
CONSTRUCTION:	04/2021	03/2022
CLOSE -Out	04/2022	06/2022

Project Map:

See attached file for project map.

Wilmington Avenue Regional Bikeway Corridor

Project ID: LA0G1711

COMPTON

Legend

- Compton Boundary
- Bikeway Corridor

Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community



Los Angeles Metropolitan Transportation Authority

2019 Federal Transportation Improvement Program (\$000)

TIP ID LA0G1711		Implementing Agency Compton, City of																																																																																																																																													
Project Description: This Wilmington Avenue Regional Bikeway Corridor connects existing bikeways and lanes at Rosecrans Ave on the north and continues south to Victoria St. This project will provide bicycle elements including Class II bike lanes, pedestrian lighting, and missing sidewalks gaps to provide safe travels for pedestrians and bicyclists. This corridor will eventually connect the Compton Creek bike path at El Segundo with the Metro Blue Line Artesia Station. Project is 2.5 miles long.										SCAG RTP Project #: 1NL04 Study: N/A Is Model: Model #: LS: N LS GROUP#: Conformity Category: TCM																																																																																																																																					
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Last Revised Amendment 19-09 - Submitted						Change reason: New Project			Total Cost \$1,380																																																																																																																																						

September 10, 2019

TO: HONORABLE MAYOR AND COUNCIL MEMBERS

**FROM: RISK MANAGER
CITY ATTORNEY'S OFFICE**

**SUBJECT: A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF COMPTON AUTHORIZING THE CITY MANAGER TO
RENEW THE SOFTWARE LICENSE AND MAINTENANCE
AGREEMENT WITH VENTIV TECHNOLOGY, INC. FOR
PROVISION OF THE RISK MANAGEMENT IVOS
DATABASE**

SUMMARY

The City Council will consider adopting a Resolution authorizing the City Manager to renew the Software License and Maintenance Agreement with Ventiv Technology for the provision of the Risk Management database for workers' compensation and general liability claims.

BACKGROUND

Ventiv Technology currently provide the computer database used by the Risk Management Division of the City Attorney's Office to administer workers' compensation and liability claims. All medical, legal, financial, confidential and statistical data for claims filed, whether workers' compensation or liability, are supported by the Ventiv Technology "iVOS" system.

STATEMENT OF ISSUE

Use of the state-of-the-art "iVOS" web-based program provided by Ventiv Technology has had an invaluable impact on the Risk Management Division's ability to provide more efficient, effective and accountable service to the City as concerns workers' compensation and liability issues. Thus, continued utilization of this program and service is highly recommended.

The agreement with Ventiv for "iVOS" database services expired on December 17, 2018, and as a result of several delays during the negotiation process, a new contract has not yet been executed. Nonetheless, Ventiv has continued to provide iVOS database services and support to the City. Both parties are aware that uninterrupted provision of these services is crucial to Staff's ability to access pertinent information necessary to input and process all workers' compensation and liability claims, and to comply with the City's obligations under state law to

issue mandated notices as well as the required payments to claimants, attorneys, medical facilities, courts, and various other vendors. Despite tenacious efforts by Staff to negotiate an 18-month term in its contract so that the City may seek competitive bids from other potential providers, Ventiv has insisted upon a minimum three-year term.

Upon further inquiry, Staff learned there are potentially only two other technology providers with comparable infrastructure and capabilities that can provide the type of system needed to manage and process the City’s self-insured claims. If Staff were to seek competitive proposals from these providers, it is possible they could offer comparable services at an equal or lower rate. However, Staff also learned that the costs of converting from Ventiv’s iVOS system to another provider’s system would likely cost the City hundreds of thousands of dollars, thus, eliminating any potential savings resulting from selection of another provider offering lower rates.

For this reason, Staff recommends entering into a new agreement with Ventiv to continue to provide iVOS database services for the City for a total of thirty-six (36) months (December 18, 2018 through December 17, 2021), during which time the City can explore other options that would not be cost-prohibitive and allow the City to explore competitive bids for these services.

FINANCIAL IMPACT

Fees for provision of the iVOS claims system are as follows:

<u>Year</u>	<u>Total Fees Payable</u>	<u>Non-Recurring</u>	<u>Annual Recurring</u>
*1	\$ 118,054.44	\$36,700.00	\$81,354.44
*2	\$ 85,422.16		\$85,422.16
3	\$ 89,693.27		\$89,693.27

*(Years 1 and 2 equal \$203,476.60, see Section 3. of Resolution)

Funds in the amount of \$203,476.60 are available in the 2019-2020 Fiscal Year budget of the City Attorney’s Department Account No. 6300-420-000-4262 (\$148,172.00) and 6400-420-000-4269 (\$55,304.60). Funds in the amount of \$89,693.27 shall be funded in the 2020-2021 Fiscal Year budget of the City Attorney’s Office in Account No. 6300-420-000-4262 and 6400-420-000-4269, Exact amounts are to be determined in the Fiscal Year 2020-2021 Budget.

RECOMMENDATION

It is recommended that the City Council adopt the attached Resolution.

**MONICA TURNER
RISK MANAGER**

**DAMON M. BROWN
CITY ATTORNEY**

APPROVED FOR FORWARDING:

**CRAIG J. CORNWELL
CITY MANAGER**

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
COMPTON AUTHORIZING THE CITY MANAGER TO RENEW THE
SOFTWARE LICENSE AND MAINTENANCE AGREEMENT WITH
VENTIV TECHNOLOGY, INC. FOR PROVISION OF THE RISK
MANAGEMENT IVOS DATABASE**

WHEREAS, the City of Compton is self-insured for workers' compensation and general liability claims; and

WHEREAS, the City's self-insured program is administered through the Ventiv Technology, Inc. "iVOS" database; and

WHEREAS, use of the state-of-the-art "iVOS" web-based program provided by Ventiv Technology, Inc. has had an invaluable impact on the Risk Management Division's ability to provide efficient, effective and accountable service to the City as concerns workers' compensation and liability claims management and processing; and

WHEREAS, continued utilization of this program and service is critical and highly recommended; and

WHEREAS, the current agreement with Ventiv Technology, Inc. expired on December 17, 2018, and staff recommends that the Amended and Restated Software As A Service Agreement with Ventiv Technology, Inc. be executed for a period of three (3) years for the provision of the City's self-insured database for uninterrupted and continued administration of its Workers' Compensation and General Liability programs; and

WHEREAS, funds for this expenditure are available in the Fiscal Year 2019-2020 annual budget.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COMPTON
RESOLVES AS FOLLOWS:**

SECTION 1. That the City Manager, on the advice of the City Attorney, is authorized to execute the Amended and Restated Software As A Service Agreement with Ventiv Technology, Inc. for provision of the City's self-insured iVOS database.

SECTION 2. That said agreement shall be for a term of thirty-six (36) months (December 18, 2018 through December 17, 2021).

SECTION 3. That funds in the amount of \$203,476.60 are available in the 2019-2020 Fiscal Year budget of the City Attorney's Department in Account Nos. 6300-420-000-4262 (\$148,172.00) and 6400-420-000-4269 (\$55,304.60).

SECTION 4. That a purchase order in the amount of \$203,476.60 is authorized to be issued for Ventiv Technology, Inc.

SECTION 5. That funds in the amount of \$89,693.27 shall be funded in the 2020-2021 Fiscal Year budget of the City Attorney Office in Account No. 6300-420-000-4262 and Account No. 6400-420-000-4269, exact amounts are to be determined in the Fiscal Year 2020-2021 Budget.

SECTION 6. That a certified copy of this resolution will be filed in the offices of the City Manager, City Attorney, City Controller and the City Clerk.

SECTION 7. That the Mayor shall sign and the City Clerk shall attest to this Resolution.

ADOPTED this _____ day of _____, 2019.

MAYOR OF THE CITY OF COMPTON

ATTEST:

CITY CLERK OF THE CITY OF COMPTON

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss
CITY OF COMPTON)

I, Alita Godwin, City Clerk of the City of Compton, hereby certify that the foregoing Resolution was adopted by the City Council, signed by the Mayor, and attested by the City Clerk at a regular meeting thereof held on the ____ day of _____, 2019.

That said Resolution was adopted by the following vote:

AYES: COUNCIL MEMBERS-
NOES: COUNCIL MEMBERS-
ABSENT: COUNCIL MEMBERS-
ABSTAINS: COUNCIL MEMBERS-

CITY CLERK OF THE CITY OF COMPTON

THIS CONTRACT OFFER, INCLUDING THE SOW, WILL EXPIRE ON THE LAST DAY OF THE CURRENT CALENDAR QUARTER
DATE CONTRACT OFFER ISSUED: [_____]

AMENDED AND RESTATED SOFTWARE AS A SERVICE AGREEMENT

This Amended and Restated Software as a Service Agreement (“**Agreement**”) is made effective as of this 18th day of December , 2018 (“**Effective Date**”) by and between Ventiv Technology Inc., and its Affiliates (“**Ventiv**”) with main offices located at 3350 Riverwood Parkway, Suite #2000, 20th Floor, Atlanta, GA 30339, and City of Compton (“**Customer**”) with offices located at 205 South Willowbrook Avenue, Compton, California 90220.

This Agreement consists of this signature page, the attached Terms and Conditions (“**Terms and Conditions**”) and the following attached schedules (“**Schedules**”) that are listed below:

Schedule A: Software Schedule (Ventiv Claims Enterprise)

Schedule B: Initial Order Form

Schedule C: Support Schedule and Service Levels (SaaS)

Attachment 1: Statement of Work

The parties previously entered into a Software License Agreement dated December 7, 2016 (“**Previous Agreement**”) whereby Customer licensed the rights to Ventiv’s proprietary software, iVOS®, supported by Ventiv and hosted by Customer. The Previous Agreement will expire on its terms, and the parties wish to renew the previous arrangement under new terms and conditions as detailed in this Agreement. Once executed, this Agreement will supersede the Previous Agreement in its entirety. By executing this Agreement, both parties acknowledge that they have reviewed the terms and conditions incorporated into this Agreement and agree to be legally bound by the same. The parties hereby cause this Agreement to be executed by their respective duly authorized representatives effective as of the Effective Date.

Accepted and Agreed:

CITY OF COMPTON

By: _____

Name: _____

Title: _____

Date: _____

Address:

Telephone: _____

Fax: _____

VENTIV TECHNOLOGY INC.

By: _____

Name: David J. Evans

Title: Senior Corporate Counsel

Date: _____

Address:

3350 Riverwood Parkway
Suite #2000, 20th Floor
Atlanta, GA 30339
Telephone: 770-308-5425
Fax: 770-308-5601

TERMS AND CONDITIONS

1. **GENERAL.** The following terms and conditions (“**Terms and Conditions**”) govern this Agreement. To the extent there is a conflict between the Terms and Conditions and any Schedule, Exhibit or Statement of Work, the order of precedence of documents constituting this Agreement will be as follows: (a) Terms and Conditions; (b) Schedules; (c) Statements of Work, if any; (d) attachments or exhibits to Schedules; and (e) any other document incorporated herein.
2. **DEFINITIONS.** As used in this Agreement, and in addition to any other terms defined in this Agreement, the following terms will have the following meanings:
 - 2.1 **“Affiliate”** means any entity that controls, is controlled by, or is under common control with Ventiv. For purposes of the Agreement, “control” means possessing, (i) directly or indirectly, the power to direct or cause the direction of the management, policies or operations of an entity, whether through ownership of voting securities, by contract or otherwise; or (ii) the ownership of, or the power to vote, at least fifty percent (50%) of the voting stock, shares or interests of such entity.
 - 2.2 **“Business Day”** collectively means Monday through Friday of each week, other than days on which banks in Marietta, Georgia, U.S.A., are closed for banking and any other date designated by Ventiv as a holiday to Customer from time-to-time as such in advance in writing (because different holidays may be recognized on different days each year). Not later than December 1 of each year, Ventiv shall provide Customer a written list of holidays to be recognized for the upcoming new year;
 - 2.3 **“Change Request”** has the meaning set forth in Section 8.2;
 - 2.4 **“Confidential Information”** means any information or material in tangible or intangible form that: (i) is confidential and proprietary to the disclosing party, possesses an element of value to the disclosing party, is not generally known to the disclosing party's competitors, and would damage the disclosing party if disclosed; or (ii) the disclosing party obtains from any third party which the disclosing party treats as proprietary whether or not owned by the disclosing party;
 - 2.5 **“Customer Data”** means any and all data and information related to the data (including text, graphics, photographs, audio visual elements, music, illustrations, video or other content) provided to Ventiv by or on behalf of Customer for processing, and any and all updates or modifications thereto or Derivative Works thereof made by Customer. Other than for the reports and analyses provided to Customer pursuant to this Agreement, under no circumstances may Ventiv make any derivative work that relies upon Customer Data;
 - 2.6 **“Customer Support Services”** has the meaning set forth in Section 8.1(d);
 - 2.7 **“Deliverables”** means those Services detailed in the Statement of Work to be performed during implementation of the System to enable Production Use of the System, including without limitation, (i) Project Management – managing the project delivery; (ii) Business Analysis – requirements gathering, specifications, QA testing; (iii) Configuration – setup of Customer database including custom fields and custom business rules; (iv) Data Conversion – convert source data into format used by the Software; (v) Reporting – deploy standard templates, complete custom report development, as applicable, (vi) Training – training for Customer testing and go-live;
 - 2.8 **“Derivative Works”** means any suggestions, contributions, enhancements, improvements, modifications or changes to the referenced materials;
 - 2.9 **“Documentation”** means the user documentation and any other operating, training, and reference manuals relating to the use of the Software, as supplied by Ventiv to Customer, as well as any Derivative Works thereto;
 - 2.10 **“Intellectual Property Rights”** means all rights in and to any of the following, however constituted: trade secrets, patents, copyrights, trademarks, service marks, URLs, trade dress, brand features, know-how, moral rights, contract rights, code (executable, source and other) and similar rights of any type under the laws of any applicable governmental authority, or international treaty, including, without limitation, all applications and registrations relating to any of the foregoing;
 - 2.11 **“Order Form”** means the initial order form set forth in Schedule C as well as subsequent order forms, which will serve as the mechanism by which Customer may purchase additional software and services following the Effective Date that incorporates the terms and conditions of this Agreement;
 - 2.12 **“Production Use”** means the capability to use, or the actual use of, the System in a live environment;
 - 2.13 **“Project”** means the scope of work to be performed by Ventiv as set forth in the Statement of Work;
 - 2.14 **“Project Plan”** means the methodology for completing the Project to be agreed by the parties at the initial requirements meeting following execution of the Agreement;
 - 2.15 **“Services”** is the collective reference to all services Ventiv performs for Customer under this Agreement and includes without limitation, the services specifically described in Section 8 as well as any new services purchased under an Order Form;
 - 2.16 **“Software”** means the object code to Ventiv's proprietary software products listed in the Order Form, and any modified, updated or enhanced versions of, or additional modules related to, such software products that Ventiv provides to Customer either pursuant to the maintenance and support provisions or pursuant to an Order Form, as well as the Software Configurations and Documentation for such software products, including any Derivative Works of such software and documentation;
 - 2.17 **“Software Configurations”** means any of the Deliverables set forth in the SOW related to configuration or modification of the Software or of the standard reports or templates within the Software or the creation of business rules using the Software;
 - 2.18 **“Specifications”** means the software specifications set forth in the Documentation and in the Statement of Work for the relevant Software product;
 - 2.19 **“Statement of Work” or “SOW”** means the statement of work set forth in Attachment 1 to this Agreement as well as any changes or amendment to such SOW or any new SOWs that may be attached to a new Order Form;
 - 2.20 **“System”** is the collective reference to the Software, Software Configurations, Documentation, Ventiv Server, and other technology that together comprises the software as a service offered to Customer under this Agreement;
 - 2.21 **“Term”** has the meaning set forth in Section 13.1 of this Agreement;
 - 2.22 **“Ventiv Content”** means any information, data, materials, software, files, text, graphics, photographs, audio visual elements, music, illustrations, video or other content available through the System which is proprietary to Ventiv, its licensors, or Ventiv's affiliates; and
 - 2.23 **“Ventiv Server”** means those computer servers that Ventiv owns, leases or otherwise controls whether in its own data center or the data center of another entity with which Ventiv has a contractual relationship.
3. **LICENSE GRANT & LIMITATIONS.**
 - 3.1 **License Grant.** Subject to the terms and conditions of this Agreement, including, but not limited to, payment by Customer of the applicable fees set forth on the Order Form, Ventiv grants to Customer a limited, non-exclusive, non-transferable (except as permitted under Section 15.4 of the Terms and Conditions) license, without the right to sublicense (except as permitted under Section 3.2 below), to remotely access and use the System in accordance with the terms of this Agreement for the length of the Term solely for Customer's internal business purposes. Use of the System is limited to employees of Customer for whom Ventiv has received notification and those parties specifically authorized in Section 3.2 below, such notification provided when requesting passwords for such users. Use of the System is further limited to the number of users designated in the Order Form. Users may be divided into user type describing the level of access granted to such user (such access rights detailed in Schedule A); users may not exceed the access granted to them by the user type they have been assigned. Ventiv authorizes Customer to use, copy and distribute Ventiv Content provided that (1) the use and distribution of Ventiv Content is limited to Customer, its representatives, and/or its clients, and (2) all copies of Ventiv Content will retain all copyright or proprietary notices. Any other use or distribution of Ventiv Content, unless authorized in writing by Ventiv, is prohibited.
 - 3.2 **Other Authorized Users.**
 - (a) **Third-Party Vendors.** Ventiv acknowledges and agrees that Customer may use certain third-party vendors for purposes of performing some of Customer's internal business processes (“**Third-Party Vendors**”). Customer may allow its Third-Party Vendors (other than Ventiv's direct competitors) to access and use the System subject to the terms and conditions of this Agreement solely for Customer's internal business processing services, subject to the following conditions: (i) Customer agrees to be fully responsible for all use of the System by its Third-Party Vendors; (ii) Customer will ensure compliance by Third-Party Vendors of the terms and conditions of this Agreement, including without limitation, Section 6 of this Agreement (Confidential Information); (iii) Customer will notify Ventiv of any such Third-Party Vendors (such notification provided when requesting passwords for such Third Party Vendors) and will ensure that each such Third-Party Vendor uses its own

unique password as detailed in Section 4 below; and (iv) upon termination of its relationship with such Third-Party Vendors or of this Agreement, Customer will ensure that all access to the System by such Third-Party Vendors ceases immediately.

(b) *[Reserved for Customers who have clients requiring access to the System.]*

3.3 Limitations.

(a) *Use Restrictions.* Unless otherwise expressly authorized in this Agreement, Customer will not, and will ensure that its end-users will not: (i) modify, adapt, alter, translate, or create derivative works from the System; (ii) merge the System (or any part thereof) with any other software, products or services (other than Ventiv-provided interfaces); (iii) sublicense, resell, redistribute, lease, rent, loan, disclose or otherwise transfer the System (or any part thereof) or any other associated products and services to any third party; (iv) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source or object code of the System (or any part thereof); (v) use the System (or any part thereof) to provide any facility management, service bureau or similar services to third parties, permit unauthorized third parties to remotely access and use the System (or any part thereof) or use the System (or any part thereof) to develop a product line that is similar to the Software or System; (vi) publish or share with any third party, except for Customer's experts and consultants retained for such reviews, any results of any benchmark or performance tests run on the System (or any part thereof); (vii) otherwise use or copy the System (or any part thereof) except as expressly allowed under this Agreement or (viii) alter, distort, or remove any confidential, proprietary, copyright, trademark, trade secret, or patent legends from any copy of the System (or any part thereof).

(b) *Unauthorized Actions.* In addition, Customer agrees that it will not use the System to take any action that: (i) violates any applicable law or regulation or is legally libelous, defamatory, indecent, obscene or pornographic; (ii) would violate copyright, trademark, trade secret or other property right of any third party; (iii) involves the addition, removal or modification of identifying network header information in an effort to deceive; (iv) uses the System to access, or attempt to access, the accounts of others, or to penetrate, or attempt to penetrate, security measures of Ventiv's or another entity's computer software or hardware, electronic communications system, or telecommunications system, whether or not the intrusion results in access to or the corruption or loss of data; (v) uses the System to collect, or attempt to collect, personal information about third parties without their valid consent.

(c) *Removal of Files.* Ventiv reserves the right to remove from the Ventiv Server(s) any files that may damage the System or any files that are in violation of Section 3.3(b), provided that Ventiv agrees to give Customer written notice within two (2) Business Days after removing such files. The removed files will be placed in a temporary quarantined area until both parties mutually agree how to handle the files. Customer consents to such removal and waives any claim arising out of any such file removal.

3.4 Additional Software. To the extent Customer wishes to purchase additional Ventiv software products other than that set forth in Schedule A, Customer and Ventiv will execute an Order Form to purchase such additional software.

3.5 Proprietary Rights. As between the parties, and subject to the terms and conditions of this Agreement and the applicable Statement of Work, Ventiv and its third-party suppliers will retain ownership of all Intellectual Property Rights in the System, and any and all Derivative Works made to the System or any part thereof, as well as all Work Product provided to Customer ("**Ventiv Proprietary Technology**"). Customer acquires no rights to Ventiv Proprietary Technology except for the licensed interests granted under this Agreement or any SOW. The term "**Work Product**" means all other materials, reports, manuals, visual aids, documentation, ideas, concepts, techniques, inventions, processes, or works of authorship developed, provided or created by Ventiv or its employees or contractors during the course of performing work for Customer (excluding any Customer Data or Derivative Works thereof and excluding any output from the System generated by Customer's use of the System, including without limitation, reports, graphs, charts, modified Customer Data, etc., but expressly including any form templates of such reports, graphs or charts by themselves that do not include Customer Data). Customer also acknowledges that the Ventiv Proprietary Technology contains Confidential Information belonging to Ventiv and its third-party suppliers, and that nothing herein gives Customer any right, title or interest in such Ventiv Proprietary Technology except as otherwise expressly set forth in this Agreement or in any SOW. Customer acknowledges and agrees that Ventiv may use, without restriction, all suggestions, improvements and ideas concerning any part of the System (including without limitation any Beta Versions as defined in Section 16 below) or Intellectual Property Rights therein that may be communicated to Ventiv by

Customer. Customer agrees to inform Ventiv immediately of any infringement or other improper action with respect to Ventiv's Confidential Information, the System or the Intellectual Property Rights therein that comes to Customer's attention.

3.6 Rights Reserved. Title, ownership rights, and all Intellectual Property Rights in and to the System will remain the sole property of Ventiv or its suppliers. Customer acknowledges that the Software in source code form remains Confidential Information or a trade secret of Ventiv and/or its suppliers that the source code is not covered by any license hereunder and will not be provided by Ventiv. Except as set forth in this Agreement, no right or implied license or right of any kind is granted to Customer, regarding the System or any part thereof. Nothing in this Agreement confers upon either party any right to use the other party's trade names and trademarks, except for permitted license use in accordance with this Agreement. All use of such marks by either party will inure to the benefit of the owner of such marks, use of which will be subject to specifications controlled by the owner, and as set forth in Section 15.1 below.

4. PASSWORDS.

4.1 Customer's Obligations. Customer will be given all applicable passwords to use in connection with the System and will ensure that each user is given their own individual user ID and password, which may not be shared with another individual for any reason. Customer will be responsible for changing such passwords immediately upon first use of the System. Customer is entirely responsible for maintaining the confidentiality of such passwords and of its accounts (including, if applicable, the passwords and accounts of each of the Customer personnel accessing the System by means of an account established by Customer). Customer is responsible for all access to and use of the System through Customer's passwords.

4.2 Unauthorized Access. Ventiv is not responsible for any unauthorized access and/or use by any third party who independently gains access to Customer's instance of the Software on the System and/or related information, provided that such access is not caused or contributed to by Ventiv. Customer will notify Ventiv promptly of any unauthorized use of any user accounts or of any other breach of security occurring as a result of any activities of any of Customer's end-users or of any vulnerabilities that Customer believes are contained in or caused by the System such that Ventiv may take or recommend appropriate remedial measures. Ventiv will have no liability for any loss or damage arising from Customer's failure to comply with the provisions of this Section 4.

4.3 Ventiv and Customer agree (a) to maintain and update an industry standard anti-virus program within their respective computer systems and (b) to use commercially reasonable efforts to check attachments to e-mail messages that a party receives before saving such attachments to their respective organization's hard drives or servers.

5. FEES AND PAYMENT TERMS.

5.1 Payments. Customer will pay to Ventiv all fees due to Ventiv under this Agreement, including without limitation, any Expenses (as defined below) incurred, as set forth on the Order Form in U.S. dollars (collectively "**Fees**"). Unless otherwise set forth in this Agreement, all Fees will be due within thirty (30) days after the date of the invoice for same. All Fees payable under this Agreement are fully earned, non-cancelable and the sums paid are non-refundable, unless otherwise outlined herein. If any amounts are withheld by Customer, Customer will, within fifteen (15) days from receipt of invoice ("**Dispute Period**"), provide Ventiv a reasonably detailed written explanation of the nature of the dispute, which explanation will set forth the dollar amounts withheld and the reasons for withholding such amounts. If Customer does not dispute the applicable invoice during the Dispute Period, any such dispute will be deemed waived. For clarity, Customer remains obligated to pay Ventiv for all portions of the applicable invoice that are not under reasonable and good faith dispute.

Ventiv shall send all invoices to Customer's billing contact at:

Monica Turner
City of Compton
205 South Willowbrook Ave.
Compton, CA 90220

5.2 Expenses. Customer will reimburse Ventiv for all expenses, including travel-related expenses reasonably incurred in rendering Services to fulfill this Agreement and further detailed in an Order Form or any SOW ("**Expenses**").

5.3 Overdue Accounts. A late fee may be charged by Ventiv on all undisputed Fees and Expenses not paid to Ventiv by Customer within thirty (30) days after receipt of the invoice for same at the lesser of the maximum amount chargeable by law or one and one half percent (1.0 ½ %) per month

commencing with the date payment was due. Customer will be liable for all costs of collection of such undisputed, overdue amounts including, without limitation, all court costs and attorneys' fees reasonably incurred by Ventiv. Fees and Expenses due from Customer under this Agreement may not be withheld or offset by Customer against other amounts for other agreements between the Parties for any reason.

5.4 Taxes. The Fees and other charges do not include any applicable sales, use, and other taxes (including value added tax) and all applicable export and import fees, customs duties and similar charges, and Customer will also be responsible for the payment of all such taxes (other than taxes based on Ventiv's income), fees, duties, and charges, and any related penalties and interest, which will be above and beyond, and in addition to, the Fees, arising from the payment of the Fees and from the delivery or license of the Software and Services to Customer, whether such taxes are assessed before or retroactively following the issue of any invoice by Ventiv. If Customer is required by law to deduct or withhold any tax or other amount from any sum payable to Ventiv, then the sum payable by Customer will be increased to the extent necessary to ensure that after such tax or other amount has been deducted, withheld or paid, Ventiv receives on the due date and retains (free from any liability in respect of any such deduction, withholding or payment) a net sum equal to what it would have received and so retained had no such deduction, withholding or payment been required or made.

6. CONFIDENTIAL INFORMATION.

6.1 Disclosure of Confidential Information. Neither party may use or disclose any Confidential Information of the other party, except on a need-to-know basis for purposes of performing its obligations under this Agreement. This Agreement and its terms are Confidential Information. Disclosure of Confidential Information to employees of the parties hereto will be limited to those who have a need to know such information in connection with carrying out the obligations of that party pursuant to this Agreement. Customer acknowledges that the all parts of the System are the Confidential Information of Ventiv and/or Ventiv's licensors, and Customer agrees to treat such information as Confidential Information in accordance with the terms of this Agreement. A "party" (as used in this Section 6) will be deemed to include each party's respective subsidiaries, affiliates and sister companies or any other organization in which such party has an ownership stake or over which such party can exert control, each of which such party will cause to observe the confidentiality requirements of this Agreement with respect to the information disclosed by the other party under this Agreement. The receiving party will only allow its independent contractors to receive the Confidential Information if such contractors execute nondisclosure agreements with Confidential Information restrictions no less protective than those of this Agreement; provided that the receiving party will not under any circumstances provide access to such Confidential Information to competitors of the other party.

A Party shall immediately notify the other Party of any actual or suspected unauthorized access, disclosure, or use of the Confidential Information and will assist in remedying any unauthorized access, use or disclosure of the Confidential Information and take immediate steps to prevent further unauthorized use or disclosure, including, without limitation, investigation of the circumstances of the disclosure and monitoring for further unauthorized access. Ventiv will provide Customer with the full details of the issue, root cause, and mitigation steps.

6.2 Legally Required Disclosures. If a receiving party is presented with legal process under which it could be legally compelled to disclose any Confidential Information of the disclosing party (whether by oral question, deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process or by rule, regulation or other applicable law), such receiving party will promptly notify the disclosing party of the same before any disclosure is made so that the disclosing party may, at its discretion, seek a protective order or other appropriate remedy or may waive compliance with the confidentiality terms of this Agreement. If such protective order or other remedy is not obtained, or if the disclosing party waives compliance with the provisions hereof, then only that portion of the Confidential Information that it is legally required to be disclosed (as advised by a written opinion of counsel) may be disclosed.

6.3 Exclusions to Confidential Information. For purposes of this Agreement, "Confidential Information" will not include information or material which (a) enters the public domain (other than as a result of a breach of this Agreement); (b) was in the receiving party's possession prior to its receipt from the disclosing party and not otherwise subject to an obligation of confidentiality; (c) is independently developed by the receiving party without the use of Confidential Information; or (d) is obtained by the receiving party

from a third party under no obligation of confidentiality to the disclosing party. The receiving party will be entitled to use for any purpose any Residual Information obtained as a result of this Agreement, provided that the receiving party will not disclose Confidential Information of the disclosing party except as expressly permitted pursuant to the terms of this Agreement. The term "Residual Information" means the ideas, know-how and techniques retained in the unaided memories of the receiving party's personnel who have had access to the Confidential Information of the disclosing party in the course of this Agreement. The receiving party will not have any obligation to limit or restrict the assignment of such persons or to pay royalties for any work resulting from the use of Residual Information. However, this sub-paragraph will not be deemed to grant to the receiving party a license under the disclosing party's copyrights or patents. Section 7 of this Agreement and any business associate agreement Customer requires Ventiv to execute will govern all use and protection of Customer Data.

6.4 Duration and Injunctive Relief. The confidentiality obligations set forth in this Section 6 will continue indefinitely following termination or expiration of this Agreement for as long as the Confidential Information remains a Trade Secret under applicable law and will continue for three (3) years following termination or expiration of this Agreement with respect to Confidential Information that does not rise to the level of a trade secret. The receiving party acknowledges that disclosure of any Confidential Information or trade secret by it or its employees will give rise to irreparable injury to the disclosing party or the owner of such information, not adequately compensated by damages. Accordingly, the disclosing party will be entitled to seek equitable relief, including injunctive relief and specific performance against the breach or threatened breach of the undertakings in this Section 6, in addition to any other legal remedies which may be available.

7. CUSTOMER DATA AND SECURITY.

7.1 Customer Data Generally. Customer is the sole and exclusive owner of all Customer Data and all Intellectual Property Rights in the foregoing, whether or not provided to any other party under this Agreement. Customer Data will be governed under this section of the Agreement. Ventiv will not use Customer Data for any purpose other than that of providing the Software or rendering the Services under this Agreement, nor sell, assign, lease, or dispose of Customer Data. Customer assumes full responsibility for its employees, vendors, representatives, agents, and its clients ("Customer Representatives") with respect to the transmission of Customer Data sent directly by Customer to Ventiv. Customer must ensure that all Customer Representatives provide such Customer Data to Ventiv via either an encryption process or a secure transport mechanism. Customer assumes full responsibility to safeguard against unauthorized access and provide appropriate protection of its Customer Data prior to and during the transmission or transfer of its Customer Data to Ventiv. Customer and Ventiv acknowledge that the accuracy of delivering the Software and Services depends upon the accuracy and completeness of the Customer Data and/or business requirements needed to deliver the Software and Services by Ventiv. Customer accepts sole responsibility for errors in the Software or Services to the extent resulting from inaccurate or incomplete Customer Data supplied to Ventiv by Customer or Customer Representatives. Ventiv has the right to use the Customer Data for benchmarking purposes provided that Ventiv completely de-identifies all such Customer Data.

Ventiv acknowledges that computers, devices, data files, and Work Product created or utilized by Ventiv in the performance of Work under this Agreement may be subject to subpoena and litigation holds. Customer may require Ventiv to produce these items and Ventiv shall cooperate with providing such information.

If Customer informs Ventiv that a subpoena or litigation hold is in effect, then Ventiv shall take appropriate actions to prevent the identified information from being deleted or otherwise removed from the computers, devices, data files and Work Product, wherever housed or residing, including for any such resources engaged by Ventiv with other service providers for the duration of the litigation hold period. Ventiv shall facilitate the retrieval and return to Customer for all such Customer data requested by Customer; including any such data stored or retained by Ventiv's service providers engaged in relation to the services under this Agreement.

7.2 Security Generally. Ventiv represents and warrants that Ventiv, its partners, and/or its vendors, will maintain the Customer Data in a manner that conforms to applicable laws, utilizing generally accepted industry standard data management practices and no less than reasonable measures in the circumstances as it concerns environmental stability, data backup, backup frequency, media retention, data loss prevention, data/system security, and contingency plans/disaster recovery in accordance with the Information Security Protocols set forth below in Section 7.4. Access to Customer Data will

be restricted to Ventiv employees who have been properly trained and instructed as to security and privacy policies, controls and procedures.

Ventiv represents and warrants that all Ventiv-owned computer systems and resources to be utilized in providing Services under this Agreement are owned and managed by Ventiv and physically in the control of Ventiv, unless otherwise agreed to by Customer. Ventiv further warrants that all customer data shall be stored in Data Centers located in the continental United States, and that no Customer Data at any time will be processed, transferred, or stored by any foreign country or to any portable or laptop computing device or any portable storage medium, unless that device or storage medium is in use as part of Ventiv's designated backup and recovery processes and encrypted in accordance with generally recognized industry standards and this Agreement.

Should Ventiv seek to outsource these computer systems or resources, then Ventiv shall provide not less than sixty (60) days prior notice to Customer and Customer reserves the right to re-evaluate and/or request different arrangements with respect to this Agreement. In all events, Ventiv remains solely responsible for the security and protection of Customer Confidential Information provided under this Agreement.

7.3 Auditing Standards Report. Not less than annually or upon written request from Customer, Ventiv will provide Customer with a copy of its current certification or attestation report(s) concerning Ventiv's operation of the System. For example, URAC HIPAA Security Accreditation, ISO27001:2013, or replacement standard, concerning Ventiv's operation of the System.

7.4 Information Security Protocols. Ventiv uses a layered approach to information security. Ventiv will use commercially reasonable efforts to maintain the security, integrity and availability of all Customer Data to which it has access, including but not limited to commercially reasonable efforts reflecting changing technological approaches, to comply with the following measures: (a) HIPAA Security Rule; (b) ISO 27001; (c) maintain a documented Information Security Program which includes annual risk assessment and management procedures; (d) maintain the principle of least privilege; (e) classify and handle all Customer data as confidential and apply the necessary security and controls to support HIPAA/HITECH Act compliance; (f) maintain commercially customary physical security and access controls for its data center(s); (g) maintain commercially customary network security controls including firewall and intrusion prevention solutions; (h) maintain commercially customary redundancy at the demark, network and system layers; (i) maintain commercially customary monitoring solutions to continually manage health and capacity of the IT infrastructure components; (j) provide data encryption in a commercially customary manner of all data transmissions; (k) require a minimum of 128-bit SSL encryption for application access and use; (l) maintain and update anti-virus program; (m) require individual user accounts and passwords for any access; (n) maintain strong password requirements for all Ventiv-managed accounts; (o) maintain generally acceptable user account management processes and procedures; (p) maintain industry accepted data protection program; (q) maintain whole disk encryption for all laptops; (r) deploy software security patches in accordance with generally accepted industry best practices; (s) maintain and periodically test (at least annually) a commercially customary disaster recovery plan that provides adequate system backup, technology replacement, and alternate (backup-site) site capabilities; (t) follow commercially customary hardening procedures for system/device builds; (u) conduct ongoing vulnerability management through the use of commercially customary tools; (v) conduct periodic (at least annually) third party vulnerability assessments; (w) follow Open Web Application Security Project (OWASP) methodologies, guidelines and techniques for application development; (x) follow commercially customary change and release management practices for hardware and software changes; (y) follow commercially customary asset sanitization procedures to ensure decommissioned equipment is free of any and all Customer Data; (z) maintain Customer Data security using commercially customary database and application controls; (aa) notify Customer of any unauthorized access to Customer Data promptly upon confirmed discovery; and (bb) maintain at least one certification or attestation covered in Section 7.3 above or replacement standard on security practices from a nationally or globally recognized provider of such reports.

7.5 Operational Metrics. From time to time, Ventiv may collect and process technical and related information about Customer's use of the Software and System (which may include, without limitation, ingest volume, search concurrency, number of unique user logins, Internet protocol address, session duration and other similar data) and certain aggregated, anonymized data about the Software and Services or platform environment and configuration and use such information to support and troubleshoot issues, invoice, analyze trends and improve the Software and Services.

8. PROFESSIONAL SERVICES.

8.1 Services Generally. Subject to payment by Customer of the Fees detailed in the Order Form (Initial Order Form), Ventiv and its Affiliates will provide Customer with the services listed below in (a) through (f) (collectively "**Services**"). Ventiv has the sole right and obligation to supervise, manage, contract, direct, procure, perform, or cause to be performed the Services to be performed by Ventiv hereunder unless otherwise provided herein. Ventiv may, as it deems appropriate, use subcontractors for all or any portion of the Services. Ventiv may at any time remove and replace any such subcontractors.

(a) **Implementation Services.** Ventiv will provide the implementation services described in the Statement of Work in Attachment 1 to this Agreement ("**Implementation Services**").

(b) **Training Services.** Ventiv will provide the training services to Customer described in the SOW ("**Training Services**") and Order Form.

(c)

(d) **Support and Maintenance Services.** Ventiv will provide the customer support and maintenance services described in Section 9 ("**Customer Support Services**").

(e) **Ongoing Data Loads.** Ventiv will provide the ongoing data loads described in the Order Form ("**Ongoing Data Loads**"). Upon termination of the Agreement, or upon Customer's written instruction, after final export of Customer Data by Customer, Ventiv will delete the Customer Data remaining on servers hosting the Services unless applicable law requires retention. Retained data is subject to the confidentiality provisions of the Agreement.

(f) **Transitional Services.** At Customer's expense on a time-and-materials basis, Ventiv will provide Customer with reasonable assistance in the winding down of the Services and/or transition of such Services to a new service provider in the event of any termination or expiration of this Agreement.

8.2 Change Control Procedures. Either party may during the implementation of the Project (as detailed in the SOW) request a change to any aspect of the Project Plan ("**Change Request**"). Such Change Request is to be delivered by the requesting party's Project manager (a "**Project Manager**") to the other party's Project Manager. For the avoidance of doubt, any redefinition of the scope of services by Customer, or the provision by Customer of new details in respect of the implementation, will be deemed to constitute a Change Request. A Change Request must contain a detailed and complete explanation of the proposed changes. If there is any dispute as to whether a change requested by Customer is within or beyond the scope of the Project Plan, Ventiv will not be obliged to proceed with that change until that dispute is resolved and will proceed in accordance with the Project Plan as it then exists. If a Change Request is executed by authorized signatories of both parties, Ventiv will perform the services detailed in the Change Request in accordance with the terms and conditions of this Agreement (subject to any specific terms of the Change Request itself), and such executed Change Request will constitute an amendment to this Agreement and the applicable Statement of Work.

8.3 Customer Obligations. Customer will maintain a designated representative who will be authorized to act as the primary point of contact for Ventiv in dealing with Customer with respect to each party's obligations under this Agreement and on a timely basis and at no charge to Ventiv, issue all consents or approvals and make all requests on behalf of Customer. Customer will establish and maintain, at its own expense, all telecommunications equipment and access lines necessary to gain access to and support transmission of the Software via the System. Customer agrees to perform all tasks assigned to Customer as set forth in this Agreement, the SOW, or any Project Plan or as reasonably requested by Ventiv, and provide all assistance and cooperation to Ventiv in order to accomplish timely and efficiently the Services. Ventiv will not be deemed in breach of this Agreement or SOW in the event Ventiv's failure to meet the responsibilities and time schedules set forth in the SOW or any Project Plan is caused by Customer's failure to meet (or delay in) its responsibilities and time schedules set forth in the applicable SOW, this Agreement or as otherwise requested by Ventiv. In the event of any delay in Customer's performance of any of the obligations set forth in this Agreement, including any Statement of Work, or any other delays caused by Customer, the milestones, fees and date(s) set forth in the Statement of Work or Project Plan will be adjusted as reasonably necessary to account for such delays.

8.4 Additional Services. In the future, Customer may purchase additional services by executing an Order Form describing the proposed services and fee payment schedule. A new Statement of Work describing in detail the services to be provided may be attached to such Order Form (a "**New Statement of Work**"). Once the Order Form and New Statement of Work are signed by both parties it will be incorporated herein by reference and made a part of this Agreement. No New Statement of Work will become effective until it has been executed by an authorized representative of both Ventiv and Customer and

attached to an Order Form. Any services detailed in a New Statement of Work will be deemed to be "Services" under this Agreement.

9. CUSTOMER SUPPORT SERVICES AND SLAS.

9.1 Customer Support Services. Ventiv will provide the Customer Support Services set forth in Schedule C.

9.2 SLAs. Ventiv will provide the System in accordance with the service levels set forth in Schedule C. In the event Ventiv fails to meet applicable system availability or Incident Response resolution timeframes set forth in Schedule C more than 2 times in any rolling quarterly period, then Customer shall be entitled to a pro rata credit equal to one month of the Subscription portion of the Annual Recurring Fees stated in Schedule B of this Agreement for the applicable Term for each month, in an amount not to exceed \$10000, when such availability or Incident Response times are not met.

10. WARRANTY AND DISCLAIMER.

10.1 General Warranty. Each party represents and warrants that it is not subject to any agreement that would prevent it from complying with this Agreement. Ventiv represents and warrants that it will comply with all applicable laws and regulations relating to its performance of the Services under this Agreement.

10.2 Software Warranty. Following Production Use of the System, Ventiv represents and warrants that during the Term the System will perform substantially in accordance with the Specifications for the System. If Ventiv receives written notice that the System does not perform as warranted within sixty (60) days of such non-performance, Ventiv will, at its option and at no additional charge to Customer, undertake to correct errors, or replace such portions of the System free of charge with software that performs as warranted hereunder. If Ventiv is unable to repair or replace the non-conforming software, then Customer's sole and exclusive remedy against Ventiv will be to terminate this Agreement and receive a pro-rata refund of Subscription Fees paid under the Agreement for its use of the System for the terminated portion of the Term. For the avoidance of doubt, Ventiv will not be responsible for payment of any fines assessed against Customer by any regulatory authority for failure of the Customer to comply with statutory or regulatory requirements of any kind.

10.3 Services Warranty. For sixty (60) days after the performance of any Services under this Agreement, Ventiv warrants that such Services will be performed in a professional and workmanlike manner consistent with generally accepted industry practices. For any breach of this services warranty, AND Ventiv's entire liability will be the re-performance of such deficient Ventiv Services. Ventiv shall have an opportunity, not to exceed 30 business days, to satisfactorily reperform the deficient Services to Customer's reasonable satisfaction, or as otherwise agreed by the parties. If Ventiv fails to satisfactorily reperform such Services, then Ventiv shall promptly refund to Customer all fees paid for such Services. Customer must identify in a written notice to Ventiv any deficiencies in such Services within ninety (90) days of completion of such deficient Services in order to receive the above warranty remedies.

10.4 Customer Warranty. Customer represents and warrants that Customer is authorized to provide Ventiv with the Customer Data and that Ventiv is authorized to use such Customer Data solely for the purpose of providing the System and Services.

10.5 Exclusions. Ventiv does not warrant and is not responsible for (a) any third-party products not provided by Ventiv, or (b) services not provided solely by Ventiv, its agents and subcontractors.

10.6 DISCLAIMER. OTHER THAN AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER VENTIV, ITS AFFILIATES, LICENSORS OR SUPPLIERS, NOR THEIR OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS, AGENTS OR REPRESENTATIVES MAKES ANY EXPRESS OR IMPLIED WARRANTIES, CONDITIONS, OR REPRESENTATIONS TO CUSTOMER, OR ANY OTHER PERSON OR ENTITY WITH RESPECT TO THE SOFTWARE, SYSTEM AND SERVICES PROVIDED HEREUNDER OR OTHERWISE REGARDING THIS AGREEMENT, WHETHER ORAL OR WRITTEN, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, THE IMPLIED WARRANTY AGAINST INFRINGEMENT, AND THE IMPLIED WARRANTY OR CONDITION OF FITNESS FOR A PARTICULAR PURPOSE. VENTIV DOES NOT WARRANT THAT THE OPERATION OF THE SOFTWARE, SYSTEM OR SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE.

11. INDEMNIFICATION.

11.1 Ventiv Indemnity. Ventiv will indemnify, defend, and hold Customer, its individual directors, officers, employees and agents, harmless

from and against any claims, actions or proceedings, arising out of any third-party claim that the Software or the permitted use thereof infringes or violates any third party's valid U.S. patent, copyright or trade secret ("IP Claim"). If in Ventiv's reasonable judgment any such IP Claims, or threat of an IP Claim, materially interferes with Customer's use of the Software, Ventiv will consult with Customer, and Ventiv will have the option, in Ventiv's sole discretion, to (i) substitute functionally equivalent non-infringing software or documentation, (ii) modify the Software to make it non-infringing, (iii) obtain for Customer at Ventiv's expense the right to continue using the infringing Software; or, if the foregoing is not feasible in Ventiv's sole discretion, Ventiv will (iv) require Customer to cease using the System, refund a pro-rata portion of the Subscription Fees (as defined in the Order Form) for the System for such period of time in which Customer was unable to use the Software or System. Ventiv will have no indemnity obligation for claims of infringement resulting or alleged to result from (i) any combination, operation, or use of any Software with any programs or equipment not supplied or authorized by Ventiv or not specified in this Agreement for such purpose if in Ventiv's reasonable judgment such infringement would have been avoided by the combination, operation, or use of such Software with items supplied by Ventiv or specified in this Agreement for such purpose; (ii) inclusion of Customer Data; (iii) any modification of the Software by a party other than Ventiv if such infringement would have been avoided in the absence of such modifications; or (iv) the use of the Software in a manner other than for its intended purposes or contrary to the Specifications. This Section 11.1 states Ventiv's entire liability and Customer's sole and exclusive remedy for infringement claims and actions.

11.2 Customer Indemnity. Customer will indemnify, defend, and hold Ventiv, its Affiliates, and their respective individual directors, officers, employees and agents, harmless from and against any claims, actions or proceedings, arising out of any third-party claim: (a) resulting from Customer's reliance on results obtained through the use of the System (provided the System has functioned in accordance with the Documentation); (b) that the Customer Data or Ventiv's receipt and possession of such Customer Data infringes or violates the rights of such third party.

11.3 General. The defense and indemnification obligations set forth in this Section 11 are conditioned upon (i) the indemnified party providing the indemnifying party timely notice of any claim or cause of action upon which the indemnified party intends to base a claim of indemnification hereunder, (ii) the indemnified party providing reasonable assistance and cooperation to enable the indemnifying party to defend the action or claim hereunder; and (iii) allowing the indemnifying party to control the defense and all related settlement negotiations; provided that the indemnifying party may not settle any claim that results in the indemnified party's liability and the indemnifying party will be required to consult with the indemnified party during any settlement discussions.

12. LIMITATION OF LIABILITY.

12.1 LIMITATION OF REMEDY. EXCEPT AS PROHIBITED BY LAW, IN NO EVENT WILL EITHER PARTY, OR ITS CONTRACTORS, LICENSORS OR SUPPLIERS OR ANY OF THEIR OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS, AGENTS OR REPRESENTATIVES BE LIABLE TO THE OTHER PARTY, OR ANY OTHER PERSON OR ENTITY FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, INDIRECT, EXEMPLARY, OR PUNITIVE DAMAGES OR LIABILITIES FOR ANY CAUSE WHATSOEVER ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING ALL STATEMENTS OF WORK, ORDER FORMS, OR AMENDMENTS THERETO, WHETHER IN CONTRACT OR TORT OR BY WAY OF INDEMNITY OR OTHERWISE, INCLUDING A BREACH THEREOF OR INCLUDING DAMAGES OR LIABILITIES FOR LOST PROFIT, LOST REVENUE, LOSS OF USE, LOSS OF GOODWILL, LOSS OF REPUTATION, LOSS OF DATA, REGULATORY FINES, COSTS OF RECREATING LOST DATA, THE COST OF ANY SUBSTITUTE EQUIPMENT, SOFTWARE PROGRAM, OR DATA, REGARDLESS OF WHETHER THE POSSIBILITY OF SUCH DAMAGES OR LIABILITIES HAVE BEEN COMMUNICATED TO SUCH PARTY AND REGARDLESS OF WHETHER SUCH PARTY HAS OR GAINS KNOWLEDGE OF THE EXISTENCE OF SUCH DAMAGES OR LIABILITIES.

12.2 MAXIMUM LIABILITY. (A) EXCEPT FOR (I) THE RECOVERY OF SUMS DUE UNDER THIS AGREEMENT OR IN AN SOW, (II) AS PROHIBITED BY LAW OR (III) FOR CLAIMS ARISING UNDER SECTIONS 6 (OTHER THAN DATA BREACHES), 11.1 AND 11.2; IN NO EVENT WILL EITHER PARTY'S LIABILITY FOR ANY DAMAGES TO THE OTHER, ANY OF ITS AFFILIATES, OR TO ANY THIRD PARTY REGARDLESS OF THE FORM OF ACTION, WHETHER BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, PRODUCTS LIABILITY OR OTHERWISE, EVER EXCEED THE ACTUAL FEES RECEIVED BY VENTIV UNDER THIS AGREEMENT FOR THE PORTION OF THE SOFTWARE OR SERVICES GIVING RISE TO SUCH CLAIM DURING THE PRECEDING TWELVE (12) MONTH PERIOD.

13. TERM AND TERMINATION.

13.1 Term and Renewals. The initial term of this Agreement, including the Maintenance and Support Services will begin on December 18, 2018 the Effective Date of this Agreement and will continue for a term of three (3) years (i.e. December 18, 2018 through December 17, 2021) (the “**Initial Term**”), unless earlier terminated in accordance with this Section 13. Customer shall have the option to renew/extend the Term of this Agreement for up to two (2) one (1) year terms (the “**Renewal Term**”), upon ninety (90) days written notice prior to the expiration of any given Term. Except as set forth on the Order Form, any change in Recurring Fees (including Support and Maintenance Fees) for any year shall not exceed five percent (5.0%). For the avoidance of doubt, this provision shall not apply to any fees incurred pursuant to any Amendment or SOW for the purchase of additional Products or Services.

13.2 Termination for Breach. In the event that either party materially defaults in the performance of any of its duties or obligations under this Agreement and does not substantially cure such default, or commence a cure, within thirty (30) days after being given written notice specifying the default, the non-defaulting party may, by giving written notice thereof to the defaulting party, terminate this Agreement. Ventiv may, by written notice to Customer, terminate Customer's right to use the System without liability to Customer, if Customer fails to pay the applicable fees for the System as set forth in the Order Form within thirty (30) days after Ventiv gives Customer notice of such nonpayment. Any such suspension or termination of access to the System does not relieve Customer from paying any past due amounts and any amounts due Ventiv through the expiration date of this Agreement.

13.3 Effect of Termination. Within thirty (30) days (or earlier upon Ventiv's reasonable written request) after the effective date of a termination of this Agreement for any reason, Customer will (i) pay Ventiv for all Services satisfactorily performed by Ventiv up to the effective date of such termination and all other amounts owed by Customer to Ventiv under this Agreement including, but not limited to, all undisputed Fees owed by Customer as of the effective date of termination according to the payment schedule set forth in the Order Form, regardless of the date of; and (ii) destroy or return to Ventiv all Ventiv property, including, but not limited to all Documentation and the Confidential Information of Ventiv. Upon the destruction or return of such materials, Customer will provide Ventiv with a signed written statement certifying that it has destroyed or returned all Ventiv property to Ventiv. Upon termination of this Agreement for any reason, all rights and licenses granted by Ventiv hereunder to Customer will immediately cease.

13.4 Return of Customer Data. When requested in writing by Customer, based upon termination of this Agreement, Ventiv will deliver (within sixty (60) days of receipt of request) electronic files containing all available Customer Data. Ventiv will deliver the data files in a normalized, ASCII, flat file format. The files will be encrypted and posted to an agreed to SFTP site. Standardized documentation describing the data files will be included. All work completed by Ventiv for the extract of the data will be billed to the Customer on a time and materials basis at a rate not to exceed \$240/hour. Sixty (60) days following termination of this Agreement, all Customer Data in the System will no longer be available on Ventiv's Systems, as Ventiv will purge all such Customer Data from its Systems, and all such Customer Data will either be returned to Customer if requested in accordance with this Section 13.5 or, if return of data is not requested, it will be destroyed, unless otherwise agreed by the parties in writing. All data received from third parties for Customer will also be deleted from Ventiv's Systems within the 60-day period.

13.5 Survival. Termination of this Agreement will not affect survival of the provisions regarding Ventiv's or Customer's treatment of Confidential Information, provisions relating to the payments of amounts due that have accrued prior to termination, indemnity provisions, provisions limiting or disclaiming the party's liability, provisions on non-solicitation of employees, or the provisions on termination, which provisions will survive such termination.

14. DISPUTES.

If at any time a dispute arises out of or in connection with this Agreement or any part thereof (e.g., a SOW), then Ventiv and Customer (together the “**Parties**”) will have their respective Project Managers meet in good faith with a view to resolving the dispute within a period of fifteen (15) working days from the day the dispute first arises. Should the Parties not be able to resolve the dispute within the fifteen (15) working days, then both Parties will refer the matter to their own appropriate level of senior executive management respectively for resolution. If the relevant senior executive management of Ventiv and Customer are unable to resolve the dispute within a further ten (10) working day period, then the Parties will attempt to settle the dispute through discussions between each Parties' respective Chief Executive Officer. In the absence of an amicable resolution within fifteen (15) days from the meeting of

the respective Chief Executive Officers in accordance with the conditions set forth in this Section 14, the dispute may then be submitted to the appropriate courts having jurisdiction over the matter as governed by Section 15.6. Nothing in this Agreement will prevent either party from taking such action as it deems appropriate (including any application to a relevant court) for injunctive or other emergency or interim relief in relation to its Intellectual Property Rights or Confidential Information.

15. GENERAL.

15.1 Marketing. Neither Party shall issue press releases or other publicity regarding this Agreement and the Work or Services performed hereunder, or use the other Party's name, logo, trademark or brand in any publicity, publication, web site, marketing materials, any advertising or client listing or any similar use or dissemination of the other Party's identity or identifying marks without first obtaining the prior review and written approval of the other Party. Such approval may be withheld, at the discretion of the consenting Party. From time to time, but not more than twice per year, Customer, in its sole discretion, will agree to act as a reference for future potential clients of Ventiv.

15.2 Force Majeure. Neither Ventiv nor Customer will be liable to the other for any delay or failure to perform (other than a failure to pay monies due under this Agreement) arising out of causes beyond its reasonable control including, but not limited to, riots, epidemics, severe weather, acts of the other party, fire, flood, terrorism, war, acts of the enemy, embargoes or work stoppages, labor disputes or strikes. Ventiv and Customer will notify each other promptly upon learning of any event that may result in any delay or failure to perform. If the force majeure event occurs and continues to prevent substantial performance for more than thirty (30) days the other party has the right to terminate this Agreement.

15.3 Entire Agreement. This Agreement and any Addenda hereto signed by the parties, constitutes the entire agreement between the parties regarding the subject matter hereof and supersedes all prior agreements, negotiations, representations and proposals, written or oral. Neither party has relied upon any representation not contained in this Agreement as an inducement to enter into this Agreement. This Agreement will prevail over any conflicting or additional provision of any click-through agreement or consent to access the Services, purchase order or any other instrument of Customer or Ventiv, it being understood that any purchase order issued by Customer will be for Customer's convenience only, and any differing or additional terms and conditions contained therein are hereby expressly rejected by Ventiv. This Agreement will be construed and interpreted fairly, in accordance with the plain meaning of its terms, and there will be no presumption or inference against the party drafting this Agreement in construing or interpreting the provisions hereof. No modifications, additions, or amendments to this Agreement will be effective unless made in writing and signed by duly authorized representatives of the parties.

15.4 Assignment. Except as otherwise set forth in this Agreement, this Agreement and all rights and obligations may not be assigned (by operation of law or otherwise) in whole or in part by Customer, and any such attempted assignment will be void and of no effect; provided, however, that either party hereto will have the right to assign this Agreement to another entity in connection with a reorganization, merger, consolidation, acquisition or other restructuring involving all or substantially all of the voting securities and/or assets of the assigning party. This Agreement will be binding upon and inure to the benefit of the parties, their legal representatives, permitted transferees, successors, and assigns as permitted by this Agreement. Except with respect to indemnification provisions, there are no third-party beneficiaries of this Agreement and, in particular but without limiting the generality of the foregoing, no end-users of the Customer or any Customer Affiliate will have any legal rights or entitlements of any kind hereunder under any circumstances

15.5 Waiver and Invalidity. No delay or failure in exercising any right hereunder and no partial or single exercise thereof will be deemed to constitute a waiver of such right or any other rights hereunder. If any provision hereof is declared invalid by a court of competent jurisdiction, such provision will be ineffective only to the extent of such invalidity, so that the remainder of that provision and all remaining provisions of this Agreement will be valid and enforceable to the fullest extent permitted by applicable law.

15.6 Choice of Law. This Agreement will be exclusively construed, governed and enforced in all respects in accordance with the internal laws (excluding all conflict of law rules) of the State of California and any applicable federal laws of the United States of America, as from time to time amended and in effect. Each party agrees that any claim or cause of action whether in law or equity, arising under or relating to this Agreement may be brought in a court of appropriate jurisdiction in the state or federal courts for the place of principal business of the non-moving party; and each party agrees to the personal and

subject matter jurisdiction of such courts. . The parties agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply in any respect to this Agreement or the parties hereto. The parties hereby agree that their respective rights and obligations hereunder will be solely and exclusively as set forth herein and that UCITA, whether enacted in whole or in part by any state or applicable jurisdiction, regardless of how codified, will not apply to this Agreement and is hereby disclaimed. Each party represents and warrants that it is aware of, understands and has complied and will comply with, all applicable U.S. and foreign anti-corruption laws, including without limitation, the U.S. Foreign Corrupt Practices Act and the U.K. Bribery Act.

15.7 Counterparts. This Agreement may be executed in any number of counterparts, each of which will be deemed an original but all of which together will be deemed for all purposes to constitute one and the same instrument. Signatures transmitted and received via facsimile or other electronic means will be treated as original signatures for all purposes of this Agreement.

15.8 Solicitation. To promote an optimum working relationship, the parties agree in good faith not to knowingly solicit for employment, directly or indirectly, employ or otherwise engage any employee who has been involved in rendering or receiving services hereunder as an employee of the other party without that party's prior written consent. This restriction will apply during the term of and for a period of six (6) months after the termination of this Agreement. The provisions of this Section 15.8 will not restrict the hiring of any person who: (i) has not been involved in rendering or receiving services, on behalf of Ventiv or Customer, under this Agreement; (ii) as of the time of hiring, has not been an employee of the other party at any time during the preceding one hundred eighty (180) days; or (iii) responds to a publicly announced vacancy notice.

15.9 Government Entities. The Software is "commercial computer software" or "commercial computer software documentation" and that, absent a written agreement with Ventiv to the contrary, the government's rights with respect to such Software are, in the case of civilian agency use, Restricted Rights, as defined in FAR §52.227.19, and if for Department of Defense use, limited by the terms of this Agreement, pursuant to DFARS §227.7202.

15.10 Restricted Nations. The term "Restricted Nation" means any country, individual, group or organization on the U.S. Department of Treasury's Office of Foreign Assets Control's Country Sanctions Program or list of Specially Designated Nationals, or the U.S. Department of Commerce's Bureau of Export Administration's List of Denied Persons, as each may be amended from time to time. Customer represents and warrants that it will not allow access to the Software and/or System to any user and/or perform a transaction related to (i) an individual located in a Restricted Nation; (ii) a business or organization owned, controlled by or acting on behalf of an individual, business or organization in a Restricted Nation; (iii) a government of a Restricted Nation; (iv) a business or organization owned, controlled by or acting on behalf of a government of a Restricted Nation; and (v) an individual, group or organization on the U.S. Department of Treasury's Office of Foreign Assets Control's list of Specially Designated Nationals or the U.S. Department of Commerce's Bureau of Export Administration's List of Denied Persons. Subject to Customer having been notified by Ventiv of any changes to the Restricted Nations, Customer will defend, indemnify, and hold Ventiv, and Ventiv's officers, directors, employees, agents, suppliers, or representatives harmless from and against any and all losses, damages, costs, and expenses, including legal fees, incurred directly or indirectly as a consequence of Customer's failure to comply with this Section. This obligation will survive termination of this Agreement.

15.11 Notices. Any and all notices permitted or required to be given hereunder will be deemed duly given (a) upon actual delivery, if delivery is by hand; or (b) upon delivery into the United States mail if delivery is by postage paid registered or certified return receipt requested mail. Each such notice must be sent to the respective party at the addresses indicated on the signature page.

16. Beta Testing and Sunset. In the event that Customer agrees to beta-test any new software or new functionality ("Beta Versions") for Ventiv under the terms of this Agreement, Customer acknowledges and agrees that THE BETA VERSIONS ARE PROVIDED ON AN "AS-IS" BASIS and none of the warranties set forth in this Agreement with respect to the Software or System will apply to any Beta Versions. Ventiv will not be liable for any damages whatsoever that arise out of Customer's use of the Beta Version if Customer attempts to use the Beta Versions with anything other than test data in a test environment. Ventiv will have the right upon 120 days prior written notice to sunset and discontinue support of any of the Software provided under this Agreement in its sole discretion, subject to prorate reduction or refund of Support Fees paid for any such Software no longer being supported.

Schedule A to the Ventiv Claims Enterprise Software License & Support Agreement

Software Description

The Software being provided to Customer are Ventiv Claims Enterprise, Integrated Risk Management and Ventiv Digital products that include a number of different modules. Part I below includes a description of each module within the Software that the Customer will have a right to use based on the Fees set forth in the Order Form. Part II below describes the different user types and the level of access granted to each type of user. The Order Form will designate what type of users the Customer has purchased.

I. Ventiv Claims Enterprise

A. Claim Administration Modules

1. Workers' Compensation Module

Ventiv Claims Enterprise automatically calculates all temporary disability (TD) and permanent disability (PD) rates, given an incident date and a wage information. Additionally, the system can be set up to schedule and generate TD payments automatically. Other key worker's compensation features of Ventiv Claims Enterprise include:

- Jurisdiction-specific forms and letters for all 50 states
- OSHA 300, 301, 300A tracking and report generation
- Work status tracking
- Multiple dependent tracking
- Calculation of most jurisdictional standard compensation rates
- Medical management
- Business rules to facilitate compliance with state requirements
- Option to produce the Employer's First Report of Injury (FROI) and/or Subsequent Report of Injury (SROI)

2. Property and Casualty Module

For processing of Property and Casualty claims, such as General Liability, Professional Liability, Automobile Insurance, and other such Property and Casualty Lines of Business. The Ventiv Claims Enterprise Property & Casualty module is specifically designed to support multiple claimants to one incident. Each claimant supports its own set of financials and ancillary information (diary, notepad, correspondence, email, etc.). However, reports and online viewing of financial reserve information can be rolled up to the occurrence level. Other Ventiv Claims Enterprise liability claim features include:

- Tracking of multiple claimants per incident as well as initial claimant demand and multi-vehicle information
- Contact management
- Multiple employer tracking
- Vehicle reporting
- Traffic-accident tracking

Core Components Included. Each of the core components listed below comes standard with either of the modules listed above under Claims Administration Modules.

- **Business Rules** – Ventiv Claims Enterprise includes a full business rules engine with hundreds of rule templates that can be used to manage workflow for claims, including monitoring (e.g., notifying supervisors of open claims with no diary activity in X days) and event-driven rules (e.g., sending forms/letters for new claims). As Customer creates its own business rules, it can name each rule as desired, and even create its own folder system for organizing the rules. Existing rules can be moved or copied from folder to folder as needed, making it easy to create new rules that are similar to an existing rule.
- **Workflow Queues** – Ventiv Claims Enterprise has the capability to define workflow queues
- **Searches** – All claims can be looked up through the query functionality on the Ventiv Claims Enterprise home page. For example, on the home page, Claimant Search tab can find claims based on one or more of the following criteria: Claim Number, Social Security Number, Insured, Adjusting Office, Injured Part, Claimant Liability, Employee Number, Policy, Examiner, Medical Record Number, Incident From and Through Dates, Insurer Name, Affiliate Claim Number, and Insurance Type. Search results can be managed easily in Ventiv Claims Enterprise through multi-tiered sorting and filtering capabilities (which can be set as user preferences to apply to future searches), as well as the ability to “lock” selected columns for easy visual reference while scrolling through results. Ventiv Claims Enterprise also includes auto-complete and extended search (e.g., vendor and contact records in addition to claims) options to help users find the records they want.
- **Diary Management** – Each user can track their diary activities in Ventiv Claims Enterprise. Diaries can be manually entered or generated automatically by business rules. These activities can be filtered by category, priority, and date range to help manage an

examiner's caseload. User may also view diary activities at a claim level, showing all diaries scheduled for a single claim, enabling multiple users to collaborate on a claim. Security can be applied to diaries, restricting access by a combination of confidentiality level and diary category types, enabling certain groups of users to have diaries that cannot be seen by other workgroups. In addition, Ventiv Claims Enterprise gives users the ability to temporarily re-assign diaries for examiners who are on leave, or simply to oversee an examiner's workload to make sure he or she is not getting behind or "stair stepping" their diaries.

- **Notepads** - Used for documenting conversations, creating action plans, attaching electronic files such as photographs, and more. Ventiv Claims Enterprise provides unlimited free-form text entry in the notepad body that can be manually or automatically spell-checked upon saving (using American, legal, and medical dictionaries). Each notepad category can have a customizable template associated with it, enabling customers to establish standards for data Ventiv Digital in the notepad. In addition, security can be applied to specific notepad types (for example, case manager notes that can be hidden from examiners). Similarly, users can use a filtering option to view only notepads that meet selected criteria.
- **Correspondence** - Ventiv Claims Enterprise integrates with Microsoft Word for managing written correspondence, using user-definable templates stored in the application server. Users can generate a letter from a claim file simply by selecting a master group from a drop-down list, then choosing a specific letter within that group from another drop-down list. Ventiv Claims Enterprise then merges data from the claim file into the letter based on the template, and displays the letter in Microsoft Word on the user's computer for any additional editing and/or formatting. When custom changes to the letter are complete, the user will have a choice of saving the letter in draft mode or final mode (final mode will disallow further changes to the letter). Sent correspondence is can be locked in the database as read only, but can be easily retrieved and viewed. Other features of Ventiv Claims Enterprise correspondence include:
 - Inserting an examiner's signature
 - Customized form/letter headers and footers
 - Prompts for selection certain fields such as care providers, legal counsel, payment amounts, etc., associated with the claim in forms that require an objective decision
 - Auto-calculated fields such as benefit totals.
 - **CA EAMS Forms** – eForms option – The CA Division of Workers' Compensation, Electronic Adjudication Management System forms (EAMS forms) are provided and maintained within Ventiv Claims Enterprise. Ventiv Claims Enterprise supports the eForms solution option. **JET filing is not supported at this time**
- **Payments and Reserves** - Ventiv Claims Enterprise financial functionality is broken into two main areas, payments and reserves. Both functional areas are governed by business rules, SIR limits established by the policies, and user payment and reserve authority limits. Ventiv Claims Enterprise allows users to create "unapproved" payments and reserves above their authority limits. When "unapproved" payments or reserves are created, supervisors can be notified in real time through their User Diary, or these transactions can be queued in a list for a supervisor to review periodically through the day, approving them in bulk or individually. Payments that are due, but have unapproved reserves, unapproved payments, incomplete addresses, etc., will not be authorized for printing, but will be caught on a payment report specifying the reason for not being authorized (which can be distributed for correction). Ventiv Claims Enterprise also has the ability to schedule a series of payments that auto-calculate the benefit to be paid over a period of weeks, and schedule the payments for release on their proper due date.
- **Vendor Management** - Ventiv Claims Enterprise provides vendor management capabilities, including vendor search options from the home page and the payment screen (for selecting a vendor to pay). The Vendor Payment record has fields for tracking a vendor's name, address, main contact, vendor type and specialty, and ACH information for electronic funds transfer. In addition, Ventiv Claims Enterprise allows you to combine payments from multiple claims onto one vendor payment, as well as to have multiple vendor locations with a single tax ID. Other features include managing withholding payments for multiple date periods, W9 form requests, and other correspondence to the vendor. Ventiv Claims Enterprise also has a built-in interface that ensures compliance with federal Office of Foreign Assets Control (OFAC) regulations during the vendor payment process by performing a search against OFAC's published list of individuals and companies owned or controlled by, or acting for or on behalf of, targeted countries.
- **Policy Maintenance Module** - Ventiv Claims Enterprise provides comprehensive insurer, bank account, insured, policy, policy period, reinsurance, and agent tracking for policy verification, assignment and reporting. Policy period deductibles, premium, payroll, and other information are tracked for each contract period. Other features include:
 - Excess and reinsurance tracking
 - Coverage assignments to multiple locations
 - SIR by claim, by occurrence, and various reporting levels
- **Organizational Hierarchy** - Ventiv Claims Enterprise supports up to 20 levels of organizational hierarchy, including the ability to define relationships between entities within an organization. Assignment of a claim to an organizational level is accomplished using a directory tree (similar to Windows Explorer) that displays each level as a folder with expandable sublevels. Selecting a sublevel enables that claim's financial and other information to roll up in reports under the parent organizational levels.
- **Litigation Tracking** - Ventiv Claims Enterprise has a litigation tracking window that enables multiple lawsuits to be tracked, with multiple claimants and attorneys associated with the suit. This screen comprises extensive information, including demand amounts, hearing dates, court assignments, and more. Business rules can be configured based on dates entered in the litigation management window to notify system users (via diaries) or external partners such as defense attorneys (via e-mail) of upcoming hearings or trials. Ventiv Claims Enterprise also has a Litigation Calendar that displays daily, weekly, or monthly litigation activity across multiple suits, claims, and counsel, using an interface similar to Microsoft Outlook. The calendar also has a filter that allows the user to show only activities of a particular type or involving specific counsel, dates, and so forth.

- Case Load Management - This functionality will help a supervisor review each examiner's cases, and easily re-assign claims to another examiner by highlighting the claims to be moved, selecting the Assign Examiner button, and deciding which examiner, supervisor, or adjusting office to move claims to, and whether or not to move diaries assigned to the claim file.
- Reporter Module (includes Report Design Tool & Report Distribution) – Ventiv Claims Enterprise provides a broad range of standard report templates designed to enable users to analyze data from an insurance and risk management perspective. Reports can be run using diverse filtering and grouping options, and the report output can be saved for future reference or for distribution. Data can also be downloaded to excel for further analysis. The Report Design Tool can be used to modify existing standard report templates or to create a new report from scratch without any programming assistance. Report Distribution allows for the batch scheduling of electronic reports to be generated without user intervention.
- Scheduler – This module is used to configure, schedule, run and manage all jobs, processes, routines, services, etc., that need to be run on a regular or occasional basis. Examples are payment processing and check printing, report generator, import and export jobs. Ventiv Claims Enterprise Scheduler features include job chaining, error handling, e-mail error notification, and schedule monitoring.
- Claim Mail – Ventiv Claims Enterprise Mail is a fully integrated e-mail system within Ventiv Claims Enterprise that associates an e-mail account with each claim file. Sending an e-mail from a claim uses an interface similar to Microsoft Outlook, with comparable address book, text entry, and file attachment capabilities. Replies to Ventiv Claims Enterprise Mail messages are automatically placed in the claim file's Ventiv Claims Enterprise Mail inbox (only displaying e-mail associated with only the one claim), as well as the user's Ventiv Claims Enterprise Mail inbox (which displays e-mail from all claims). While viewing a claim-related e-mail in his or her user inbox, the user can navigate directly to the claim file by double-clicking a link in the message. [disclaimer - email in and out of Ventiv Claims Enterprise is based on client's email system and their security.....Ventiv has no liability around email system]
- Guest Links - E-mail generated by Ventiv Claims Enterprise (via either Claim Mail or business rules) can include a "guest link" that provides the recipient with single-click access to the referenced Ventiv Claims Enterprise claim file, even if the recipient is not an Ventiv Claims Enterprise user—all he or she needs is a web browser and an Internet connection. This feature enables examiners to share claim information online in real time with lawyers, investigators, nurse case managers, etc., without having to mail hard copies of the claim file. [disclaimer - email in and out of Ventiv Claims Enterprise is based on client's email system and their security.....Ventiv has no liability around email system]
- Medical Case Management – to track the referral of claims for nurse case management, including triage of the case, medical authorization, utilization review savings, and time tracking.
- Security and Configuration Administration - Ventiv Claims Enterprise uses role-based security to completely configure the user interface for the various workgroups that will be accessing the system. Each role can be defined by hiding tabs and fields, setting fields as read only, re-labeling field names, hiding columns of data, restricting access to data in tables, hiding items in drop down menus, etc.
- Complete Audit Trails - In order to preserve a comprehensive audit trail of transactions and information in Ventiv Claims Enterprise, any modification to claim data is logged with the user ID and timestamp. Both the creation of and changes to payments, reserves, diaries, notes, correspondence, and e-mail are all tracked by date/time/user stamp information. To ensure an accurate audit trail, there is no delete button on any claim-related page in the system. In addition, Ventiv Claims Enterprise Full Table Auditing functions provides clients with the ability to log all field changes and have an ongoing audit function. A user can search the Audit Logs and view log items. A search tool is provided on the Full Table Audit tab to enable users to quickly and easily access the edit logs they need to view.

B. Optional Modules

- ISO ClaimSearch Interface – Two-way interface with ISO that identifies claim histories of insureds and claimants to assist in the adjustment of claims and detection and prevention of insurance claim fraud. When Customer submits a claim, it will automatically receive any applicable matches along with other system information that helps verify data submitted as part of the claim report. Customer will be responsible for obtaining a license from ISO for the ISO functionality accessed by the ISO ClaimSearch Interface.
- CA Commutation Calculator – Incorporates the California Commutation Calculator for present value calculation of Permanent Disability per Labor Code §§5100-5106. Multiple calculations can be stored on each claim. Calculation results can then be copied to the scheduled payments for the remainder (if any) of the award. The commuted amount can also be copied to the payment window for payment processing.
- Check Printing Module – Provides high-quality printing of custom-designed checks using an existing laser printer and stock paper, including the capability to combine multiple payments per check according to Customer's specifications. The module also includes custom graphics and gives Customer control over different check stocks for different accounts.
- Electronic Funds Transfer – The ability to make payments directly into a claimant's bank account.
- Document Imaging Module – Enables the attachment of scanned documents to Ventiv Claims Enterprise claim records. The Ventiv Claims Enterprise imaging workflow is highly configurable and can be tailored specifically to handle Customer's interface/integration requirements. Ventiv Claims Enterprise can be configured to save images either in the claims database, or in a file structure.

- ODG Reserve Analysis – Provides the capability to electronically import data from the Work Loss Data Institute (WLDI) on a regularly scheduled basis. In addition, clients can configure Ventiv Claims Enterprise to generate reserves automatically based on certain criteria. Customer will be responsible for obtaining a license the data directly from WLDI.)
- Customer Invoicing - Provides the ability to invoice customers for claims administration services, by taking time entries that have been created by users on individual claims files (time tracking) module),and applying customer contract information (contract tab for Customer) to product an invoice.

C. Optional Interfaces

- Employee Interface – Ventiv Claims Enterprise has a standard employee import interface (fixed-width flat file). When a claim (or injury report) is opened and a Social Security or employee number is entered, the employee information is automatically populated into the general claim window, eliminating the need to manually enter the data.
- Positive Pay/Reconciliation Interface – Two-way electronic transfer of check information between Ventiv Claims Enterprise and Customer's bank. Information exported from Ventiv Claims Enterprise (Positive Pay) informs Customer's bank as to which checks have been issued, for how much, and to whom. Files imported from Customer's bank (Reconciliation) identify cleared checks and corrections, which are then applied to individual payments in Ventiv Claims Enterprise. (fixed-width flat files). A fixed-width flat file
- Claim Intake Interface – A fixed-width flat file that imports basic claim information or first report of injury/incident information from an external third-party system, such as a call center solution. This information is mapped into the appropriate fields, triggering business rules to initiate the claim workflow process. This is claim information only and only one claimant for one claim.
- Vendor Interface – A fixed-width flat file that imports basic vendor information from an external third-party system, such as an accounts payable system.
- Document Image Import – A fixed-width flat file that imports images from an external third-party system. The interface is in an ACORD-based format.
- Customer Nurse Interface - A fixed-width flat file that imports basic claim information or first report of injury/incident information from Customer Nurse. This information is mapped into the appropriate fields, triggering business rules to initiate the claim workflow process. This is claim information only and only one claimant for one claim.
- Policy Interface - A fixed-width flat file that imports policy information from an external third-party system, such as a policy administration system.
- Organization Interface - A fixed-width flat file that imports organization information from an external third-party system.
- Notes Interface - A fixed-width flat file that imports notes from an external third-party system.
- 3rd Party Interface Bill Review (Import & Export) - A fixed-width flat file that imports and exports bill review information. Claim and Vendor information is exported from Ventiv Claims Enterprise and Payment and Fee information is imported into Ventiv Claims Enterprise.
- ISO Fee Import Interface – allows the ISO Fees to be imported into Ventiv Claims Enterprise so they can be applied to the claim file.

D. Compliance Modules

- CMS Reporting Module – Includes several Ventiv Claims Enterprise scheduled jobs and business rules for processing the mandatory claims data to meet Section 111 reporting requirements. Features include assigning/managing Responsible Reporting Entity (RRE) IDs, running data validation reports, generating export files, importing CMS responses, and updating claims, as well as notifying adjusters of data validation issues and claim updates
- EDI FROI – Ventiv Claims Enterprise includes a standard interface to support state-mandated workers' compensation EDI and fully supports IAIABC Release 1, 2 and 3 transmission requirements. The interface will produce an export file that contains data formatted for transmission to the appropriate jurisdiction. Specific supported states are indicated in the Order Form in Schedule B.
- EDI SROI – Supports requirements for mandated EDI reporting of the SROI. The interface will produce an export file that contains data formatted for transmission to the appropriate jurisdiction. Specific supported states are indicated in the Order Form in Schedule B.

E. Ventiv Claims Enterprise User Types & Access Rights

- A. **“Concurrent Full Access Users”** means the total number of users of the Software who have full access rights to the Software who are allowed to access the Software on a concurrent basis. Customer may have any number of users with full access to the Software, but only up to the total number of full access user licenses may be using the Software at any one time, regardless of being remote or local.
- B. **“Concurrent Read Only Users”** means the total number of users of the Software who can only read information in the Software Product and use Ventiv Claims Enterprise Reporter, but cannot update or add any information. Unless a Customer changes Ventiv Claims Enterprise security to restrict Ventiv Claims Enterprise Reporter from a “read only” user, such users will have access to Ventiv Claims Enterprise Reporter.
- C. **“Concurrent Report Only Users”** means the total number of users of the Software who only have use of the Reporter function of the Software Product. The Customer would be required to use administrative tools to restrict access to all other functions of the Software other than Ventiv Claims Enterprise Reporter module as well as ticking the box to describe them as a “read only” user to ensure that such “Report Only” user is not counted against a concurrent license.
- D. **“Concurrent Guestlink Users”** means the total number of users of the Software who the Customer has granted Guestlink access through ClaimMail who can read, update or add information in the Software Product. Their level of access depends on the level of security defined by the Customer. **If the guest link user is set up as a Read Only User, then that user will not count as a “Concurrent Full Access User,” otherwise that user will count against the total number of Concurrent Full Access Users.**

Schedule B to the Software License & Support Agreement

Initial Order Form (Ventiv Claims Enterprise – Self Hosted)

- I. Initial Maintenance Term.** The Initial Maintenance Term of the Agreement is as stated in Section 13.1 of the Terms and Conditions.
- II. Initial Term.** The Initial Term of the Agreement is as stated in Section 13.1 of the Terms and Conditions. The Initial Term is also the term of the License granted in Section 3.1 of the Terms and Conditions.
- III. Software Modules.** Ventiv licenses the selected Software modules indicated below to Customer in accordance with the terms and conditions of the Agreement.

Ventiv Claims Enterprise			
Ventiv Claims Enterprise Claims Administration Modules		Optional Interfaces	
☒	Workers' Compensation Module	☐	Employee Interface
☒	Liability Module	☐	Positive Pay/Reconciliation Interface
☐	Disability Module	☐	Claim & Financial Interface (for takeovers)
☐	Event Management Module	☐	Vendor Interface
Optional Modules		☐	Document Image Import (for takeovers)
☐	ISO ClaimSearch Interface	☐	Customer Nurse Interface
☐	CA Commutation Calculator	☐	Policy Interface
☐	Content Management with Distribution	☒	3rd Party Interface Bill Review (Import & Export)
☒	Check Printing Module	☐	ISO Fee Import Interface
☐	Electronic Funds Transfer	☒	Accounts Payable Interface
☐	Document Imaging Module	☐	Carrier/Client Data Feeds
☐	ODG Reserve Analysis	☐	NCCI Medical and Indemnity Data Feeds
☐	SSO (Single Sign On)	☐	Custom Client Data Feeds
☐	Multi-Currency	Compliance Modules	
☐	Claim Invoicing w/TPA Billing	☒	CMS Reporting Module
☐	Custom Deductible Billing	☐	Advanced CMS Reporting w/Exam Works
		☒	EDI FROI
		☒	EDI SROI
		☐	FROI/SROI for State of Washington

- IV. Number of Users/User Types.** Customer's license to the Software is limited to the following number of users and user types:

Type of User*	# of Users	Cost for Additional Users
Concurrent Full Access Enterprise Users	5	Then current rates
Concurrent Read Only Enterprise Users	Unlimited	Then current rates

* User types are described in Part II of Schedule A

- V. Fees.** Ventiv will invoice and Customer will pay the following Fees upon execution of this Agreement:

A. Non-recurring Fees - Estimated one-time fees comprised of the following:

i. One-time License fee: \$25,000.00.

ii. Consulting: \$9,300.00

Hours estimated in the SOW for the following setup/deployment services:

The pricing estimate is based upon an estimated number of hours. Additional implementation costs will be invoiced on a monthly basis as incurred.

iii. Training: \$2,400.00

10 Hours:

The pricing estimate is based upon an estimated number of hours. Additional training costs will be invoiced on a monthly basis as incurred.

B. Annual Recurring Fees - Comprised of the following:

- i. **Annual Term Licensing (invoiced annually):** See table below
- ii. **Annual Support and Maintenance (invoiced annually):** See table below
- iii. **Other Annual Fees:**
 - 1. Annual Stewardship at client site for 1 person

C. Additional Fees.

- Additional Setup/Deployment Services are available at Ventiv's then-current hourly or block hour rates.
- Additional Training Services available at Ventiv's then-current hourly or block hour rates.
- Travel and expense costs associated with all services will be billed as incurred.

VI. Payment Schedule.

A. Annual Term Licensing (invoiced annually):

Ventiv will invoice Customer for the first year's Annual Recurring Fees upon the Effective date and future years' Annual Recurring Fees on subsequent anniversary dates.

B. Annual Support and Maintenance (invoiced annually):

Ventiv will invoice Customer for the first year's Annual Recurring Fees upon the Effective date and future years' Annual Recurring Fees on subsequent anniversary dates.

C. One-time License Fee: \$25,000.00

Ventiv will invoice Customer for the one-time License Fee on the Effective Date.

D. Consulting Fees: \$9,300.00:

Ventiv will invoice Customer for the Consulting Fees on the Effective Date.

E. Training Fees: \$2,400.00

Ventiv will invoice Customer for the Training Consulting Fees on the Effective Date.

F. Travel & Expenses. Ventiv will invoice Customer for all travel and expense costs on a monthly basis as incurred, in accordance with Appendix 1 to this Agreement.

VII. Total Fees per Year to be Paid as of Effective Date

The table below indicates what that the total fees will be in Years 1-3.

Year	Total Fees Payable	Non-Recurring	Annual Recurring
Year 1	\$118,054.44	\$36,700.00	\$81,354.44
Year 2	\$85,422.16		\$85,422.16
Year 3	\$89,693.27		\$89,693.27

Schedule C to the Software License & Support Agreement

Support Service Levels Schedule (Ventiv Claims Enterprise Self Hosted Model)

1. Definitions.

- 1.1 “**Business Hours**” means the hours of 8:00am to 9:00pm Eastern Time on all Business Days.
- 1.2 “**Customer’s Support Contacts**” has the meaning set forth in Section 6 of this Schedule C.
- 1.3 “**Error**” means a material failure of the applicable Software to conform to the functional specifications described in its Documentation.
- 1.4 “**Error Corrections**” means any modification, workaround, or routine intended to correct the practical adverse effect of an Error.
- 1.5 “**Excusable Downtime**” means the total minutes in the Measurement Window during which the Software or the Hosting Environment (as applicable) was not available due to (a) any negligent or wrongful act or omission by Customer or its users; (b) any negligent or wrongful act or omission by Third-Party Vendors; or (c) any force majeure events or disruption in public internet access.
- 1.6 “**Follow-up Frequency**” means the frequency of time that a support consultant will update the customer (electronically or otherwise) on the progress of commercially reasonable efforts to resolve an issue.
- 1.7 “**Measurement Window**” means a period of thirty (30) days.
- 1.8 “**Recovery Declaration**” means the time period in which a disaster would be declared and recovery plans are enacted.
- 1.9 “**Release**” means a modification of the Software, normally denoted with a new number to the immediate right or left of the decimal, which contains new features and functionality. Release does not include new products or modules of the Software for which Ventiv generally charges its customers an additional license or subscription fee.
- 1.10 “**Response Time**” means the amount of time from when the customer properly reports an issue until a support consultant acknowledges receipt (electronically or otherwise) and initiates troubleshooting to resolve.
- 1.11 “**Resolution Goal**” means the amount of time that is set as a goal to resolve an incident. Commercially reasonable efforts will be used to meet this goal.
- 1.12 “**RPO**” means Recovery Point Objective, which is the maximum amount of time for potential data loss in the event of a disaster.
- 1.13 “**RTO**” means Recovery Time Objective, which is the period of time to restore services from point of Recovery Declaration.
- 1.14 “**Scheduled Downtime**” means the total number of minutes of actual time the Software or Hosting Environment, as applicable, were not available as a result of scheduled time to perform system maintenance or Patches.
- 1.15 “**Severity Level**” means the impact level assigned to an issue based on the level of service degradation or loss of functionality.
- 1.16 “**Patches**” means a change to the Software that may include patches, fixes, minor updates and Error Corrections, which Ventiv generally provides to its customers who receive customer support services.
- 1.17 “**Unscheduled Downtime**” means total number of minutes of actual time the Software or Hosting Environment, as applicable, were not available, which does not qualify as Scheduled Downtime, but specifically excludes any Excusable Downtime.

2. Support Generally.

- 2.1 Ventiv will provide one or more reasonable means of communication to allow Customer’s Support Contacts to contact Ventiv for assistance in resolving problems with the Software (“**Help Desk**”) in accordance with and during the hours of operation more specifically set forth in this Schedule C. The Help Desk will allow communication in accordance with the table set forth in Section 7 below.
- 2.2 Because Customer has no rights in the source code version of the Software, and may only use the object code version of the Software, Customer may only maintain the Software at the administrative level and then only in a manner that will not cause corruption of the code. Customer is prohibited from attempting to support the Software (either itself or through a third party) in any way that would require access to the source code of the Software or would require any reverse engineering, reverse assembly or disassembly of the Software. Ventiv currently is the only entity authorized to support the Software at the code level and does not provide any of its customers the right to access the source code in order to support the Software.
- 2.3 Ventiv will provide Customer Support Services for the “current release” and “previous release” (major or minor). The “end-of-life” (“EOL”) release will be eligible for emergency, external-driven interface changes with less than three (3) months’ notice and defect resolution for issues of severity 1 – 3 to allow Customer to upgrade from the “EOL release” to either the “current release” or the “previous release.”

3. Support and Maintenance.

- 3.1 **Services.** Subject to the timely payment of the applicable Subscription Fees set forth in the Order Form, Ventiv will provide the level of support identified herein in accordance with the support descriptions set forth below. Ventiv will notify (electronically or otherwise) Customer of any changes to such support descriptions in each subsequent renewal, as applicable. No other maintenance or support for the Software is included in this Agreement.

3.2 Fees. Subscription Fees will be due and payable in accordance with this Agreement. Subscription Fees are non-refundable, once paid to Ventiv.

4. Error Corrections and Patches.

4.1 As a part of the Customer Support Services, Ventiv will use commercially reasonable efforts to provide Error Corrections for all verifiable and reproducible Errors in the Software in accordance with the Agreement and this Schedule C.

4.2 As a part of the Customer Support Services, Ventiv will provide Patches to the Software that Ventiv makes generally available to its customers who receive support services.

5. New Releases.

5.1 As a part of the Customer Support Services, Ventiv will provide to Customer new Releases of the Software as and when developed, except for new products or modules for which Ventiv generally charges a separate license or subscription fee. Ventiv is not obligated to develop new Releases of the Software.

5.2 Ventiv will provide Customer, as part of the Customer Support Services, with new Releases created by Ventiv as a result of a change in law or new law that directly applies to existing functionality within the Software currently offered by Ventiv. As an accommodation and not as provision of legal advice, Ventiv will take commercially reasonable efforts to promptly notify Customer in writing upon becoming aware of any material changes to any applicable law or governmental regulations that may cause the current Release of the Software not to conform to such law or regulations. Notwithstanding the foregoing, in the event that the required modifications to the Software (i) would require a material re-architecture or other significant product re-design, (ii) would require Ventiv to obtain data which is either unavailable, or, which is only available at a material cost, or (iii) would otherwise require Ventiv to incur material expenditures (as measured against the fees charged under this Agreement), and Ventiv is not otherwise making such modifications for its other customers, then Ventiv may cease providing the affected Software in the affected jurisdiction. Customer is strongly encouraged to consult with its own attorneys and other advisors as to legal requirements in effect from time to time.

5.3 In the event that Ventiv intends to withdraw any Software from general availability for any reason whatsoever, Ventiv will provide Customer at least six (6) months prior written notice of such withdrawal.

6. Software Upgrades.

6.1 Ventiv provides utilities, scripts and documentation to enable self-hosted Customers to upgrade their own test and production environments. Ventiv hosted Customers are entitled to one (1) test and one (1) production non-compliance related upgrade per year, included in their Subscription Fee.

6.2 Ventiv-hosted Customer upgrades include: (a) scheduling the upgrade with the Customer contact; (b) applying upgrade scripts to the test environment during Ventiv's business hours; (c) completing a backup of the production data before the upgrade; and (d) upgrading the Customer's production environment during normal Ventiv business hours. The Customer is also entitled to one (c) test database refresh from production data per year by Customer request.

6.3 If the upgrade request is outside of the scope of this Agreement as indicated in Sections 6.1 through 6.2 above, Ventiv will notify the Customer to that effect and reserves the right to charge Customer at Ventiv's then current standard hourly rates, for which Customer agrees to pay Ventiv promptly upon receiving an invoice. The following are examples of upgrade requests that are available from Ventiv: (a) Customer requested test refresh database from production data in addition to the one refresh per year (Ventiv-hosted Customers only); (b) additional upgrades in test or production environments required by the Customer through no fault of Ventiv; (c) upgrade or upgrade activities requested during non-business hours; (d) request for Ventiv to perform the test and/or production upgrades for self-hosted Customers.

7. Limitations.

7.1 Ventiv is under no obligation to provide Customer Support Services with respect to: (a) Software that has been altered or modified by Customer or any third party; (b) Software used on a system that does not meet the minimum hardware, software, operating system, mobile device, and other system and configuration requirements set forth in the Documentation or provided by Ventiv; and (c) any software not both supplied by Ventiv and identified on an Order Form.

7.2 Customer Support Services does not include researching Customer requests, researching and fixing anomalies caused by other vendors, making changes resulting from internal Customer business practices, enhancing system configuration and other similar tasks that are requested or required, but are outside of Ventiv's control. Causes or errors that are not attributable to Ventiv (and therefore would also be considered Additional Services) include, but are not limited to, the following: (i) accident; unusual physical, electrical or electromagnetic stress; neglect; misuse; failure or fluctuation of electric power, air conditioning or humidity control; excessive heating; fire and smoke damage; or causes other than ordinary use; (ii) use of the Software on equipment or rotation media other than the equipment for which such software was designed and licensed for use on; (iii) interconnection, interfacing or operation of the Software with other software products not supplied by Ventiv; (iv) operation of the Software with other media, hardware, software or telecommunication interfaces not meeting or not maintained in accordance with the manufacturer's or environmental or Ventiv's specifications; (v) improper installation by the Customer or use of the Software that deviates from any operating procedures established by Ventiv in the applicable Documentation or in environmental or manufacturer specifications, for example, virtual machine configuration; (vi) modification, customization, alteration or addition or attempted modification, customization, alteration or addition of the Software undertaken by the customer or its agents, assigns, contractors,

employees or other's under the customer's control (vii) software programs made by Customer or other parties unless specifically covered in a Statement of Work between the Customer and Ventiv; (viii) Customer's failure to implement current versions of the Software that are issued under this Agreement; (ix) introduction of data into any database used by the Software by any means other than the use of the Software; (x) failure by Customer to respond to any action plans provided by Ventiv pursuant to a support call by Customer; (xi) improper or incomplete J2EE application server administration; or (xii) improper or incomplete database administration.

7.3 If Ventiv has created a third party interface ("**Third Party Interface**") to one of Customer's third party products provided by another vendor ("**Third Party Product**") and such vendor modifies the Third Party Product causing the Third Party Interface to stop functioning properly, then the services required to modify the Third Party Interface as a result of the changes to the Third Party Product are considered outside the scope of Customer Support Services and would incur additional fees in accordance with Section 5.4 below. Services required to resolve any Customer-Created Error are outside the scope of Customer Support Services and would incur additional fees in accordance with Section 5.4 below.

7.4 If a problem reported is outside the scope of this Agreement as indicated in Sections 5.1 through 5.3 above, Ventiv will notify Customer to that effect and reserves the right to charge Customer at Ventiv's then current standard hourly rates, for which Customer agrees to pay Ventiv promptly upon receiving an invoice. Certain requests, such as building custom modules, database objects, reports, utilities or other complex projects ("**Additional Services**") may also incur additional fees beyond those associated with Customer Support Services and will be detailed in a new Order Form and Statement of Work agreed between the parties and subject to the terms and conditions of this Agreement. The following are examples of Additional Support Services that are available from Ventiv: (i) add-on data conversions; (ii) implementation for any optional software modules; (iii) supplemental training; (iv) custom reports – defining, creating, testing or troubleshooting (Ventiv will help with "how do I add a table, column, field, etc." in Report Designer, but Ventiv will require a Statement of Work to help troubleshoot or clean up a modified or custom report (unless the custom report is specifically under maintenance; for example: "I tried to add to or modify my custom report and now my outstanding indemnity figures are incorrect")); (v) Ventiv Claims Enterprise upgrades during non-business hours; (vi) security configuration consulting or setup; (vii) data conversion issues once transitioned from implementation to support; (viii) Ventiv database changes, such as organization changes, combining insureds, reference table changes, *etc.*; (ix) corrections to Customer's data, including, but not limited to, data modification for purposes of exporting/importing to/from the Ventiv database; (x) database administration services (Ventiv Claims Enterprise self-hosted only); (xi) J2EE application administration (Ventiv Claims Enterprise self-hosted only); (xii) backup and recovery consulting (Ventiv Claims Enterprise self-hosted only); (xiii) performance troubleshooting outside of the application; (xiv) any hardware or software problems beyond the control of Ventiv; (xv) network changes and network performance problems (xvi) support and maintenance of custom modules that are not covered under the Customer Support Services; (xvii) custom enhancements, for example: new check printing functionality or custom-stored procedures (*e.g.*, examiner); and (xix) for Ventiv Claims Enterprise interfaces: (a) installation and configuration of any interface Software on hardware external to the Software server; (b) training on interfaces; (c) Customer-initiated changes to the interface specification (note that Ventiv reserves the right to modify the interface specification for future enhancements); (d) Customer changes to systems external to Ventiv that result in any failures or performance problems with the interface; or (e) bugs in a Customer's computer software and hardware that result in interface operational failure.

7.5 Other than as set forth in an applicable Order Form, the following types of requests will incur additional fees: (i) password resets; (ii) performance troubleshooting outside of the application; (iii) any hardware or software problems beyond the control of Ventiv; (iv) Customer network changes and network performance problems; (v) training questions; and (vi) documentation requests for documents available on the portal or online help.

7.6 Support is delivered in English only, unless Customer is in a location where Ventiv has made localized support available.

8. Customer Obligations. Customer will be responsible for the following: (a) reporting errors promptly; (b) providing sufficient information for Ventiv to duplicate the circumstances of a reported Software defect or duplicate the error, as described in the Specifications, so Ventiv can duplicate the error, assess the situation, and/or undertake any needed or appropriate maintenance action hereunder; (c) designating two (2) members of its technical staff trained on the Ventiv Claims Enterprise product to serve as Customer's sole representatives to contact Ventiv with maintenance issues ("**Customer's Support Contacts**"); and (d) carrying out procedures for the rectification of errors or malfunctions within a reasonable time after such procedures (or revisions, upgrades, enhancements, etc.) have been received from Ventiv.

9. Helpdesk. Ventiv provides services through its Helpdesk as set forth in the table below.

Support Type	Support Description	Expectation	Exclusions
Toll Free Live Phone Support	Hours available for live phone support	Monday - Friday 8:00am – 9:00 pm EST (US)	Ventiv Holidays
Emergency after-hours Support	Emergency after normal Business Hours on-call support (24 hours a day, 7 days a week - Severity 1 issues only)	24x7x365	
Self-Service Portal	Online access to ticketing system to report an incident.	Response will be end of next Business Day	Use live or emergency for Severity 1

P1 = 24 x 7 through Ventiv support toll free telephone number: 1-800-980-9460
P2 = 24 hours per day during the five (5) business days (Monday through Friday), excluding Ventiv holidays.
P3 = During standard business hours (8:00 am to 9:00 pm) during the five (5) business days (Monday through Friday), excluding Ventiv holidays.
P4 = Monday through Friday by region (North America, APAC and EMEA) during standard business hours (8:00 am to 9:00 pm), excluding Ventiv holidays.

10. **Incident Response for Functionality of the Software.** The Software is designed and configured to meet minimal functionality standards as described in the Documentation and the Statement of Work. The following table illustrates the response level and resolution goal for loss of functionality of the Software.

Severity Classification	Severity Description	Initial Response Time	Follow-up Frequency	Resolution Goal
P1 – Critical	Ventiv Software is completely inaccessible, or the majority of its critical functionality is unusable and no work around exists.	30 minutes during Business Hours	Every 60 minutes during Business Hours. After hours, update frequency will be mutually agreed upon.	8 Business Hours
P2 – Major	One or more key features of Ventiv Software is unusable and no work around exists.	60 minutes during Business Hours	One Daily Update sent during Business Hours.	5 Business Days or by next scheduled maintenance window; whichever is less
P3 – Minor	- Non-critical functionality is down or impaired - Does not have significant current production impact - Performance is degraded	1 Business Day	As Agreed	As Agreed
P4 - General Request	- How to, training items, requests for general information - Enhancement requests	5 Business Days	As Agreed	As Agreed

11. **Customer Obligations.** Customer must make at least one of its two Customer Support Contacts available to work with the assigned Ventiv support resource(s) for all P1 and P2 issues. If Customer's Support Contacts are unavailable to work with Ventiv, then the issue will be lowered to a P3 issue. If an issue is considered P1, customer must call the Helpdesk
12. **Defect Resolution.** Should Ventiv, in its sole judgment, determine that there is a defect in the Software, it will, at its sole discretion, repair such defect in the version of the Software that Customer is currently using or instruct Customer to install a newer version of the Software with such defect repaired. Ventiv reserves the right to provide Customer with a work around in lieu of fixing a defect should it, in its sole judgment, determine that it is more effective to do so.
13. **Escalation Levels.**

Escalation Level	Contact Notified
State 1	Front-Line Support Manager
State 2	Global Support Services Director
State 3	VP Customer Management / Managing Director

Severity	Support State Levels	Escalation within the following time frames
P1 - Critical	State 1	1 Business Hour
	State 2	2 Business Hours
	State 3	8 Business Hours
P2 – Major	State 1	4 Business Hours
	State 2	8 Business Hours
	State 3	12 Business Hours
P3 – Minor	State 1	When agreed resolution time is not met.
P4 – General Request	All	N/A

ATTACHMENT 1 - STATEMENT OF WORK (ENTERPRISE)

This Attachment 1 – Statement of Work (“SOW”) includes a description of the Services to be performed during implementation of the Software, including without limitation, (i) Project Management – managing the project delivery; (ii) Business Analysis – requirements gathering, creating specifications, QA testing; (iii) Configuration – setup of Customer database including custom fields and custom business rules; (iv) Data Conversion – converting source data into format used by the Software; (v) Reporting – deploying standard templates, completing custom report development, as applicable, (vi) Training – training for Customer testing and go-live.

The Software that Ventiv is configuring for the Customer under this SOW are Ventiv Claims Enterprise. A description of each of the modules included within the Software being licensed to Customer is set forth in Schedule A to the Agreement to which this Attachment 1 relates.

The following outlines the Implementation Services as defined to date.

I. IMPLEMENTATION

B. Ventiv Enterprise Claims Implementation:

Estimated Hours: 40 hours

This is a time & materials agreement, and as such, the estimate provided herein are based on the information that Ventiv has received to date. Ventiv has derived this estimate in good faith and will target providing the deliverables herein within such estimate(s). All projects will be monitored by Ventiv, and any overage forecasts will be provided to the Customer early and often in the project lifecycle. If the project is expected to have hours overage, Customer redefines the scope of services, or Customer provides new details in respect to such project, a change control document will be executed with the Customer for additional services before Ventiv incurs the additional services. Ventiv will bill said additional services at current rates.

- The following modules and interfaces have already been implemented in Enterprise:
 - Worker’s Compensation Module
 - Liability Module
 - 3rd Party Bill Review Interface – 1 format
 - Laser Check Printing – 1 format
 - Accounts Payable Interface – 1 format

- The following modules will be implemented in Enterprise:
 - CMS Module (1 RRE)

II. PROJECT DELIVERABLES

A. Ventiv Enterprise Claims Deliverables

Configuration for Enterprise Claims Management

Configuration of the Enterprise claims module will be the primary responsibility of Customer. Ventiv Project Team will provide the necessary instruction to complete this task. Configuration tasks are outlined below for Ventiv to implement the following modules:

CMS Module

- ☐ Includes several Enterprise scheduled jobs and business rules for processing the mandatory claims data to meet Section III reporting requirements. Features include assigning/managing Responsible Reporting Entity (RRE) IDs, running data validation reports, generating export files, importing CMS responses, and updating claims, as well as notifying adjusters of data validation issues and claim updates.
- ☐ Ventiv will configure the standard module for one (1) RRE.

III. GENERAL ASSUMPTIONS

Customer Project Manager will be responsible for managing the project and obtaining consensus and sign-off on requirements and work products.

- ☐ Customer will be responsible for engaging all client stakeholders and facilitating / organizing all internal client relationships to allow full mobilization of a project team with support from the Ventiv Project Manager.
- ☐ Customer will dedicate sufficiently skilled resources to support the Services as described within this Statement of Work.
- ☐ Customer will provide the requested resources, with the requested skills and project dedication as outlined in a mutually agreed upon work plan.
- ☐ Customer will identify resource(s) to transition to and take ownership of the project deliverables.
- ☐ Customer will be responsible for providing internal change management, communications planning, and internal marketing for any project.
- ☐ Any critical code changes that must be implemented in any client systems that affect data provided to Ventiv IRM will be reviewed by Ventiv to determine the impact, if any, on fees and timeline for the implementation.

Client Testing

DURING THE IMPLEMENTATION, VENTIV WILL REQUIRE CLIENT TESTING ON EACH PROJECT DELIVERABLE AS VENTIV DEPLOYS SUCH DELIVERABLE TO CUSTOMER. CLIENT TESTING TIMELINES WILL BE OUTLINED IN THE PROJECT PLAN TO BE COMPLETED AFTER THE PROJECT KICKOFF. CUSTOMER RESOURCES WILL BE TRAINED AND ARE REQUIRED TO COMPLETE CLIENT TESTING WITHIN THE AGREED TO TIMELINES. TIME REQUIRED TO COMPLETE CLIENT TESTING WILL VARY DEPENDING ON THE COMPLEXITY OF THE DELIVERABLE. VENTIV WILL OBTAIN SIGNOFF FROM CUSTOMER ON EACH DELIVERABLE AS CLIENT TESTING IS COMPLETED THROUGHOUT THE IMPLEMENTATION. IMPLIED SIGNOFF IS INCORPORATED FOR DELIVERABLE AND PROJECT SIGNOFF INDICATING THAT CUSTOMER MUST PROVIDE FEEDBACK ON ANY ISSUES WITHIN TEN (10) BUSINESS DAYS FROM RECEIPT OF THE SIGNOFF

LETTER. IF FEEDBACK IS NOT RECEIVED WITHIN THE DEFINED TIME PERIOD, ACCEPTANCE OF THE DELIVERABLE AND/OR PROJECT IS ASSUMED.

Completion Criteria

- ☐ “Go Live Date” is when the deliverables of this Statement of Work have been deployed to production and made available for their intended use
- ☐ As an early step in implementation, Ventiv will work with Client to establish a target “Estimated Go Live Date”. This may change through mutual collaboration as details are confirmed, particularly in the earlier part of the implementation
- ☐ Ventiv will request confirmation from Client that “Go Live Date” has been achieved. No response for 30 days will constitute implied confirmation
- ☐ If client wishes to have a material portion of this Statement of Work deployed to production and made available (i.e. partially “go live”), Ventiv may require the Statement of Work be split accordingly.
- ☐ “Transition Period” is the 30 days after Go Live Date during which time Ventiv services pertaining to this Statement of Work are considered part of the implementation. After the Transition Period, Ventiv services pertaining to this Statement of Work will be considered Managed Service Hours (see Ongoing Support section).

IV. IDENTIFIED RISKS AND MITIGATION

Risk	Resolution
Customer key project personnel are not available, either due to personal or work commitments	Backup resources need to be available and up to speed to address gaps in resource capacity. Workloads of project personnel need to be adjusted to account for project requirements. Documentation must be logged in common area and accessible to all project team members.
User does not have connection to the internet	User will need to have internet installed at site. User workstation must meet minimum requirements for operating system, Internet Explorer and Internet connection.
Organizational hierarchy can't be completed on schedule	Conversion programs can be prepared, and data first loaded into system with default location then updated on subsequent runs.
Third Party cannot send required data	Customer and Ventiv will need to determine how to load data, either manually or via external extracts from Third Party system, into Ventiv IRM.
Poor quality data (invalid codes, unexpected records, missing records)	Analysis of data prior to loading to Ventiv IRM to identify issues and get source to fix where possible. Establish exception reports to identify data problems during production.
Data anomalies discovered after reports have been developed.	Try to get source to correct data, if not, attempt to account for data anomaly during data load, and, finally, if all else fails, adjust reports to accommodate for data anomaly.
Data cannot be provided via encrypted transfer protocol	Ventiv to provide guidance around options for encryption software and ftp transfer.

September 10, 2019

TO: HONORABLE MAYOR AND COUNCIL MEMBERS

FROM: GENERAL MANAGER WATER DEPARTMENT

SUBJECT: A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMPTON AUTHORIZING THE ISSUANCE OF A PURCHASE ORDER TO H₂O SOLUTIONS, LLC. FOR THE DIVING, INSPECTION AND CLEANING OF WATER TANKS (\$14,347.52)

SUMMARY

This resolution authorizes the City Manager to issue a purchase order in the amount of Fourteen Thousand Three Hundred Forty - Seven Dollars and Fifty - Two Cents (\$14,347.52) to H₂O Solutions, LLC., for the Diving, Inspection and Cleaning of Water Tanks.

BACKGROUND

The Compton Water Department ("Department") utilizes four steel water tanks for the storage and supply of water to the Distribution system.

STATEMENT OF THE ISSUE

The City of Compton Water Department has four 3.0 million gallon water storage tanks for the storage and supply to the water Distribution system. The interior coating was replaced in 2011. It is Best Practice to dive, inspect and clean water storage tanks every three years to ensure water quality and evaluate the integrity of the interior coating.

The Department advertised for bids and emailed seven contractors for the diving, inspection and cleaning of water tanks. Bids were opened on August 8, 2019, with three bids submitted. The bid of H₂O Solutions, LLC was the lowest, most responsible bid.

The total amount that is being requested to be encumbered for this project is \$14,347.52 (Fourteen Thousand, Three Hundred Forty-Seven Dollars and Fifty-Two Cents).

FINANCIAL IMPACT

The cost to perform the inspection and cleaning of water tanks is \$14,347.52.

Funds for this expenditure are available in Account 5000-900-000-4262 (Other Professional Services).

ALTERNATIVE

None suggested.

RECOMMENDATION

It is staff's recommendation that the City Council adopt the attached Resolution.

**BRIAN DICKINSON, GENERAL MANAGER
COMPTON MUNICIPAL WATER DEPARTMENT**

APPROVED FOR FORWARDING:

**CRAIG J. CORNWELL
CITY MANAGER**

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMPTON
AUTHORIZING THE CITY MANAGER TO ACCEPT THE BID OF H₂O SOLUTIONS,
LLC FOR THE TANK DIVING, CLEANING AND INSPECTION PROJECT
(\$14,347.52)

WHEREAS, the Water Department solicited bids for the Tank Diving, Cleaning
and Inspection; and

WHEREAS, quotes were, received as follows:

<u>VENDORS</u>	<u>AMOUNT</u>
H ₂ O Solutions, LLC	\$14,347.52
Inland Potable Services	\$15,600.00
Marine Industrial Tank Diving and Coating	\$16,450.00

WHEREAS, staff reviewed the bids submitted and determined that the bid of
H₂O Solutions, LLC is the lowest responsible bidder; and

WHEREAS, funds have been, allocated in the Water Department's Fiscal Year
2019-2020 Budget for these purchases.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COMPTON
DOES HEREBY RESOLVE AS FOLLOWS:**

SECTION 1. That the quote of H₂O Solutions, LLC in the amount of
(\$14,347.52) Fourteen Thousand Three Hundred Forty-Seven Dollars and Fifty-Two
Cents for the Diving, Cleaning and Inspection of four Water Storage Tanks is hereby
accepted.

SECTION 2. That funds for these services are available in the Water
Department's Fiscal Year 2019 – 2020 budget in Account Number 5000-900-000-
4262.

SECTION 3. That the City Manager is hereby authorized to issue a purchase
order in the amount of Fourteen Thousand Three Hundred Forty-Seven Dollars and
Fifty-Two Cents.

SECTION 4. That a certified copy of this resolution shall be filled in the offices
of the City Attorney, City Clerk, City Manager, City Controller, and Municipal Water
Department.

SECTION 5. That the Mayor shall sign and the City Clerk shall attest to the
adoption of this resolution.

ADOPTED this _____ day of _____, 2019.

MAYOR OF THE CITY OF COMPTON

RESOLUTION NO. _____
PAGE TWO

ATTEST:

CITY CLERK OF THE CITY OF COMPTON

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
CITY OF COMPTON

I, Alita Godwin, City Clerk of the City of Compton, hereby certify that the foregoing resolution was adopted by the City Council of the City of Compton, signed by the Mayor and attested by the City Clerk at a regular meeting thereof held on the _____ day _____ 2019.

That said resolution was adopted by the following vote, to wit:

AYES: COUNCIL MEMBERS-
NOES: COUNCIL MEMBERS-
ABSENT: COUNCIL MEMBERS-
ABSTAIN: COUNCIL MEMBERS-

CITY CLERK OF THE CITY OF COMPTON



August 6, 2019

Ms. Alita Godwin
City Clerk
205 S. Willowbrook Avenue
Compton, CA 90220

RE: City of Compton / Water Tank Cleaning & Inspection

Dear Ms. Godwin,

In response to your request for proposal for the City of Compton inspection & Cleaning Project, attached please find:

- Exhibit A – Qualifications & Key Personnel
- Exhibit B – Scope of Work
- Exhibit C – References
- Bid Schedule
- Signed Addendum #1

H2O Solutions looks forward to servicing the City of Compton. Please feel free to call me if you have any additional questions or concerns.

Sincerely,

A handwritten signature in black ink that reads "Renee Reed".

Renee Reed
Senior Project Manager
H2O Solutions, LLC
9030 W. Sahara, Suite 208
Las Vegas, NV 89117
206.422.0894
renee@H2ODivingSolutions.com

A) Key Personnel/Qualifications

A.1 Qualifications

H2O Solutions is a commercial diving company that specializes in underwater cleaning, inspecting, repairing, and maintenance of approximately 500 potable water storage reservoirs each year. Our clients include some of the largest utility organizations and municipalities in the country.

Our company members are professional, experienced, certified commercial divers based in the Pacific Northwest and have worked in the potable water industry since 2006. We can also provide additional testing and services to include: leak detection, non-destructive testing (NDT), wall cleanings, cathodic protection replacement, and river intake cleaning & inspections.

Corporate Office: H2O Solutions, 9030 W. Sahara, # 208, Las Vegas, NV 89117

Field Office: H2O Solutions, 6808 Dundee Court, Yakima, WA 98908

A.2 Experience for Key Personnel

John Williams, Dive Supervisor/Owner & Project Manager

Mr. Williams is a 2006 graduate of the Diver's Institute of Technology in Seattle, WA and holds all commercial diving certifications including ADC, NAUI, & PADI amongst others. After working for Liquid Engineering and LiquiVision Technologies, Mr. Williams and his partner founded H2O Solutions in 2010. Mr. Williams has supervised over 4,000 potable water reservoir cleaning & inspections throughout the United States.

Brett Williams, Lead Diver/Owner

Mr. Williams is a 2006 graduate of the Diver's Institute of Technology in Seattle, WA and holds all commercial diving certifications including ADC, NAUI, & PADI amongst others. After working for LiquiVision Technologies, Mr. Williams and his partner founded H2O Solutions in 2010. Mr. Williams has supervised over 3,500 potable water reservoir cleaning & inspections throughout the United States.

Lucas Bumann, Diver

Mr. Baker is a certified 2017 graduate of the Diver's Institute of Technology in Seattle, WA and holds all commercial diving certifications including ADC, NAUI, & PADI amongst others. He has been employed by H2O Solutions since 2018.

(B) Scope of Work / Inspection Procedure / Method of Cleaning

H2O Solutions will have 2 divers dedicated to this project with 1 supervisor. Field Supervisor, John Williams, will be managing the dive team and labor at the various sites. He will also be managing and reviewing all coating & corrosion issues, all video and written reports and the project as a whole.

B.1 Inspection Description

H2O Solutions does a professional inspection that will include a diver-narrated, unedited video and a written report with a minimum of 30 digital photographs per tank. The live video feed is recorded by a Lifeline 2 communication box that is hard wired to (2) Toshiba DVD recorders with flat screen monitor. A DVD is provided on site and the written reports are provided within 10 days via an electronic MS PowerPoint or a printed and bound paper copy. Areas inspected to include:

- Site Security
- Exterior Overflow
- Exterior Vents (screens included)
- Entry Hatch (weather stripping included)
- Exterior ladders
- Exterior Walls and Roof
- Exterior Man ways
- Exterior Level Indicator
- Exterior Inlet, Outlet & Drain
- Exterior Gate Valves
- Exterior Cathodic protection
- Exterior Coating
- Interior ladder and stand offs
- Interior floors , walls, columns and roof
- Interior Inlet, Outlet and Drain
- Interior Overflow
- Interior Cathodic Protection
- Interior Man Ways
- Interior Mixers
- Interior Level Indicator
- Interior Coating

B.2 Cleaning Description

The diver will be suited up, disinfected and slowly enter the reservoir. All equipment and divers entering the tank will first enter a staging area where they are disinfected with a 200ppm chlorine solution.

The cleaning process begins by following the floor-to-wall seam until the diver completes a circle or square around the tank. Once the diver has completed this first pass, they will continue in the opposite

direction starting the 2nd pass which will overlap the first pass continuing with this method until the floor is clean.

A custom vacuum will force the sediment into a corrugated, floating, 3-inch diameter section of pipe and is discharged from the tank using a Wacker Neuson Tash pump. The vacuum head is equipped with a food-grade rotating brush that is 48 inches wide and is made of polypropylene. The rotating brush causes no turbidity and successfully scrubs away the biofilm that adheres to the floor.

All sediment will be discharged onsite. All standard pricing includes up to 1" of sediment removal with an additional charge per inch of \$400 for tanks having more than 1".

Once complete, the diver will attach a hand held cleaning device and manually clean the manways, column bases, and around the interior plumbing. Depending on the depth of the sediment, about 5,000 square feet per hour can safely be cleaned with this method.

All wall-cleaning is performed by hand using a brush & vacuum method.

B.3 Disinfection / AWWA Standards

H2O Solutions meets or exceeds all standards as outlined by the American National Standards Institute and the American Water Works Association for inspecting & repairing concrete and steel water tanks.

We use Vita-D-Chlor which is ideal for field dechlorination where treatment must be safe and immediate. Vita-D-Chlor is NSF certified for treatment of drinking water and the Vitamin C based chemistry makes it safe for neutralizing chlorine in water that is being discharged to the environment and other sensitive areas.

Additional, a deChlorinator is attached to the discharge end of our Wacker Neuson trash pump allowing for the most accurate dechlorinating procedure. Vita-D-Chlor products are 100% organic, completely soluble, and provide a safe, rapid and complete method of dechlorination.

B.4 List of Equipment

- Hunter vulcanized rubber dry suit with matted rubber gloves
- Kirby Morgan SS 37K dive helmet
- 37 cubic inch bailout attached to safety harness
- Diver's air source is surface supply and powered by the DeVair 255C compressor with a 2 stage filter system, 17CFM and upper loader set to 170 psi
- Divers are backed by a HP system that holds 8000 psi
- Aquaflo 4 part umbilical that is 400' in length
- Tripod and safety harnesses
- Helmet-mounted AXSub SEE high resolution camera and helmet mounted 150 watt light
- Lifeline 2 communication boxes which are hard wired to (2) Toshiba DVD recorders with flat screen monitors
- The vacuum head is a food grade brush that is 48" wide and is made of polypropylene. The brush has a straight pattern and a hex shaft. The brush spins by pushing the vacuum which in turn rotates two small sprockets on the front wheels that are attached to two larger sprockets on the shaft. They are connected by a chain that forms a 1 to 10 ratio.

C) References

C.1 3 References of Projects of Similar Size & Scope

<u>Project Title</u>	<u>Description</u>	<u>Contact Info</u>
Mt. View / Edgewood Water Company	Cleaning & Inspection of Water Tanks	Mr. Jackie Masters, 614 105 th Ave E, Edgewood, WA 98372; Tel: 253.863.7348; jackiem@mtviewwater.com
Seattle Public Utilities, WA	Preventative Maintenance / Repair	Mr. David Muto, 2700 Airport Way South, Seattle, WA 98134, Tel: 206.386.9778; david.muto@seattle.gov
North Coast County Water District	Cleaning & Inspection of Water Tanks	Norm Regnart, Plant Supervisor, 2400 Francisco Blvd, Pacifica, CA 94044; 650.355.3462; nregnart@nccwd.com

Bid Schedule

Item	Unit	Quantity	Unit Cost	Total Cost
Mobilization, Bonds, Permits, Demobilization, Cleanup and Site Security	Lump Sum	1	\$500.00	\$500.00
Provide all Labor materials and equipment to dive and inspect, to include video, photographs and written report. 37' H X 120' D Tanks	Lump Sum	4	\$600.00	\$2,400.00
Provide all Labor Materials and Equipment to clean reservoirs. Assume ¼" of sediment. 37' H XC 120' D Tanks	226 Cubic Feet 11,304 Square Feet	4	\$0.22	\$9,947.52
SUBTOTAL				12,847.52
CONTINGENCY				\$1,500
TOTAL				\$14,347.52

Total In Words: Fourteen thousand three-hundred forty seven dollars and fifty-two cents

John Williams

Contractor's Representative Signature



CITY OF COMPTON WATER DEPARTMENT

ADDENDUM NUMBER 1 TO THE BID DOCUMENTS

To all general contract bidders of record on the Bid Proposal titled:

Tank Diving, Inspection and Cleaning Project

Addendum Date: July 17, 2019

A. This Addendum shall be, considered part of the bid documents for the above mentioned project as though it had been issued at the same time and shall be incorporated integrally therewith. Where provisions of the following supplementary data differ from those of the original bid documents, this Addendum shall govern and take precedence.

B. Bidders are hereby notified that they shall make any necessary adjustments in their estimates as a result of this Addendum. It will be, construed that each bidder's proposal is submitted with full knowledge of all modifications and supplemental data specified herein.

Additional Information about this Solicitation

Miscellaneous

- There will be no Pre-Bid meeting.
- Sediment bags shall be, used to collect discharge sediment during tank cleaning.
Sediment bags shall be, disposed of by contractor.
- Discharge water shall be, de-chlorinated.
- All tanks have exterior and internal ladders.
- All discharge water can be, discharged on site but must be, contained on site and not allowed to runoff into adjacent properties.

Revised Bid Schedule

- Updated Bid Schedule to include Contingency Amount

Acknowledgment of Addendum No. 1

Contractor's Representative Signature: _____

A handwritten signature in black ink, appearing to read "D. Reed", is written over a horizontal line.

**CONSTRUCTION SERVICES AGREEMENT
BETWEEN
CITY OF COMPTON
AND
H₂O SOLUTIONS, LLC
[Tank Diving, Inspection and Cleaning Project]**

This **AGREEMENT** is entered into by and between the **CITY OF COMPTON**, a municipal corporation of the State of California (hereinafter referred to as "**CITY**") located at 205 South Willowbrook Avenue, Compton, California 90220, and **H₂O SOLUTIONS, LLC** (hereinafter referred to as "**CONTRACTOR**") located at 9030 W. Sahara, Suite 208 Las Vegas, NV 89117.

RECITALS:

A. City is a municipal corporation duly organized and validly existing under the law of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of City.

B. Contractor is a corporation duly organized and in good standing in the State of California. Contractor represents that it is duly licensed by the State of California and has the background, knowledge, experience and expertise to perform the obligations set forth in this Agreement.

C. City and Contractor enter into this Agreement for the purpose of retaining H₂O Solutions, LLC (Contractor) to perform that work required pursuant to the Tank Diving, Cleaning and Inspection Project ("Project").

D. Authorization to enter into this Agreement is pursuant to Resolution No. _____, adopted by the City Council on _____, 2019.

WHEREFORE, the City and Contractor, for the consideration, terms and conditions herein described, mutually agree as set forth below:

1.0 GENERAL PROVISIONS

1.1 Definitions.

1.1.1 "Work" consists of all of the Construction Services, including but not limited to all of the labor, materials and equipment necessary to complete the Project in accordance with the Contract Documents.

1.1.2 "Contract Documents" consists of this Agreement (including all exhibits and schedules), any amendments and clarifications issued thereto, the "Notice Inviting Bids," "Instructions to Bidders," any "Supplementary Instructions to Bidders," and any addendum(s) and supplements thereto issued by the City, the "Proposal" and any "Bid/Unit Price Proposal" submitted by the Contractor, the plans, general conditions, special provisions, standard and technical specifications, schedules, exhibits, drawings, designation of subcontractors, information required of bidder, all required bonds, insurance policies, endorsements, certificates, permits, notices and affidavits, notice to proceed, notice of completion, any Change Orders, the provisions of the Standard Specifications for Public Works Construction (SSPWC), latest Edition (except as modified), Standard Specifications of the State of California Department of Transportation (CalTrans), latest Edition (except as modified), Work Area Traffic Control Handbook (WATCH), latest Edition, CalTrans Standard Drawings, latest edition, Manual on Uniform Traffic Control Devices (MUTCD), latest Edition, MUTCD Latest California Supplement, and any and all other documents

identified in the Contract Documents which together form the agreement between the City and the Contractor.

1.2 Public Work of Improvement.

City and Contractor acknowledge that City is a political subdivision of the State of California and that construction of the Project is to be funded with public funds.

1.3 Trust and Confidence.

Contractor accepts the obligation of trust and confidence established between it and City by this Agreement and shall act in the best interests of City, as its fiduciary, in carrying out Contractor's duties and responsibilities under this Agreement, including, without limitation, the furnishing of efficient business administration, sufficient senior level management and other qualified personnel to complete Contractor's obligations under the Contract Documents in an expeditious and economical manner and within the Contract Price and Contract Time.

1.4 Standard of Care.

Contractor shall perform all its obligations under the Contract Documents in accordance with the highest standard of care applicable to the performance of services and Work required by the Contract Documents. In the event portions of the Project are to be performed in accordance with a specific performance standard, the Work shall be performed so as to achieve such standard.

1.5 Compliance with Applicable Laws.

Contractor shall give all notices and comply with all applicable laws and lawful orders of any governmental authorities (including, without limitation, those laws, ordinances, rules, regulations and lawful orders relating to safety, prevailing wage, Hazardous Substances, and equal employment opportunities); pay all local, state and federal taxes; and pay all benefits, insurance, taxes and contributions for Social Security and Unemployment Insurance which are measured by wages, salaries or other remuneration paid to Contractor's employees. Upon City's request, Contractor shall furnish evidence satisfactory to City that any and all of the foregoing obligations have been fulfilled. Without limiting the foregoing, Contractor shall pay all employees on said Work a salary or wage at least equal to the prevailing salary or wage established for such Work as set forth in the wage determinations and wage standards applicable to this Work.

The Contractor must obtain and present all relevant state and local insurance, training and licensing pursuant to services required within this Contract. Contractor shall also comply with the following laws:

1.5.1 Prohibition Against Employment Discrimination. During the performance of this Contract, the Contractor will not discriminate against any employee or applicant for employment because of race, color, gender, marital status, ethnicity, religion, age or medical condition as set forth in the California Labor Code Section 177.6, Government Code, Title VII of the Civil Rights Act and the Civil Rights Act of 1991 and any amendments to the above. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoffs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor; state that all qualified applicants will receive consideration for employment without regard to race, color, gender, marital status, ethnicity, religion, age or medical condition.

In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of such rules, regulations or orders, this Contract may be canceled, terminated or suspended in whole or part and the Contractor may be declared ineligible for further Government contracts and such other sanctions may be imposed and remedies invoked as provided by law.

1.5.2 Clayton Act and Cartwright Act. In accordance with Section 7103 of the California Public Contract Code, in entering into a public works contract or a subcontract to supply goods, services or materials pursuant to a public works contract, the Contractor or subcontractor offers and agrees to assign to the City all rights, and interest in and all causes of action it may have under Section 4 of the Clayton Act or under the Cartwright Act, arising from the purchases of goods, services or materials pursuant to this Contract.

1.5.3 Subletting and Subcontracting. Contractor acknowledges and agrees that it is the City's intent for the provisions of the Subletting and Subcontracting Fair Practices Act (commencing with Section 4100 of the California Public Contract Code) to apply to all phases of the Work.

1.5.4 State Prevailing Wage Requirements. The Contractor's duty to pay prevailing wages can be found under California Labor Code Section 1770 et seq. and the penalties for failure to pay prevailing wages and employ apprentices including forfeitures and debarment can be found in California Labor Code Sections 1775 and 1777.7, as such wage rates are amended from time to time. It is the Contractor's responsibility to ensure payment of prevailing wages and inform all subcontractors that prevailing wage requirements apply to this construction project from commencement of the Contract through completion of the Work.

.a Contractor shall pay all employees on said Work a salary or wage at least equal to the prevailing salary or wage established for such Work as set forth in the wage determinations and wage standards applicable to this Work. Contractor shall forfeit to the City, as penalty, **Fifty Dollars (\$50.00)** for each calendar day or portion thereof for each worker paid (either by him or any subcontractors under him) less than the prevailing rate described above on the Work provided for in this Agreement, all in accordance with the State Labor Code and be subject to debarment from future public works projects with the City for a period not to exceed three (3) years. The Contractor shall not require more than eight (8) hours in a day from any person employed by him hereunder, except as provided in the Labor Code. The Contractor shall conform to the State Labor Code and it is agreed that the Contractor shall forfeit to the City, as penalty, the sum of **Twenty Five Dollars (\$25.00)** for each worker employed in the execution of this Contract by the Contractor or any subcontractors for each calendar day during which any worker is required or permitted to labor more than eight (8) hours in one day or 40 hours in one week in violation of said article. The Contractor shall indemnify, defend and hold harmless the City, its officials, officers, employees and agents from any and all liability including, but not limited to wages, overtime pay, liquidated damages, penalties, court costs, and attorneys fees arising under any wage and hour law including, but not limited to the Federal Fair Labor Standards Act, as amended, for work performed by the Contractor's employees for which the City may be found jointly or solely liable.

1.5.5 Employment of Apprentices. Pursuant to California Labor Code Section 1777.5, Contractor shall file with the appropriate Joint Apprenticeship Training Committee ("JATC"), a DAS-140 form registering to train apprentices. Only those programs approved by the California Apprenticeship Council are applicable to accept DAS-140 registration forms. In addition, contractor is required to make appropriate training contributions as set forth in the prevailing wage determination to each appropriate JATC, or in the alternative, to the California Apprenticeship Council.

.a Contractor shall forfeit to the City, as penalty, **Fifty Dollars (\$50.00)** for each calendar day and be subject to debarment from future public works projects with the City for a period not to exceed three (3) years for failure of Contractor to register to train apprentices or failure to pay the appropriate training contribution.

1.5.6 Certified Payrolls. Pursuant to California Labor Code Section 1776, Contractor shall keep weekly payroll records, which shall be certified under penalty of perjury to record the proper payment of prevailing wages for this Project. City shall accept computer printouts (which are then certified) in lieu of the standard form as long as the computer printout provides all of the same information as required on the certified payroll form. Failure of Contractor to provide the certified payrolls within ten (10) days of a written deficiency notice from the City shall result in a penalty of **Twenty Five Dollars (\$25.00)** per day per worker for each day of violation. City maintains the right to withhold any and all funds due the Contractor and/or his/her subcontractors in the event that certified payrolls are not maintained and provided to the City upon request.

1.6 Key Personnel.

1.6.1 Contractor's Representative. Contractor hereby designates John Williams of Contractor as Contractor's Representative, who shall be deemed to be Contractor's agent with express authority to bind Contractor with respect to all matters requiring Contractor's approval or authorization.

1.6.2 Before starting the Work, City shall have the authority to not approve the Contractor's proposed representative. The City shall inform the Contractor in writing and request a replacement representative. The City shall have the authority to require the Contractor to remove its representative at any time without cause and at no cost to the City.

1.6.3 City's Representative. City hereby designates **Brian A. Dickinson, General Manager – Water Department** or his/her designee as City's Representative for this Project.

1.7 Independent Contractor.

Contractor shall be an independent contractor, and neither Contractor, its officers, principals, employees, agents, volunteers and subcontractors (collectively hereinafter the "Contractor"), shall be considered employees or agents of City. Neither the City nor any of its officers, employees, agents or volunteers shall have any control over the conduct of the Contractor, except as expressly set forth in this Agreement. Contractor expressly warrants that while engaged in carrying out and complying with any terms and conditions of this Agreement that Contractor shall not at any time or in any manner, represent that Contractor is in any manner officers, employees, agents or volunteers of the City. Contractor shall obtain no rights to retirement, health care or any other benefit that accrue to City officials, officers, or employees. Contractor expressly waives any claim to such rights.

1.8 Permits.

Contractor understands and assumes all risk and sole responsibility, without any adjustment to the Contract Price or Contract Time, for obtaining all permits, licenses and approvals that may be necessary for the Project to be completely constructed and ready for occupancy by City.

Prior to or at the time of execution of this Agreement, the Contractor shall purchase a business license permit in conformance with *Section 9-1.2* of the *Compton Municipal Code* and obtain applicable no-fee construction permits.

2.0 SCOPE OF SERVICES

2.1 It is the mutual understanding of the parties that all construction services to be performed hereunder shall be performed pursuant to the fee schedule, scope of work, the City Engineer and/or Project Manager, and other requirements contained in the Contract Documents. Contractor agrees to provide and furnish all necessary professionals, managers, supervisors, staff, equipment, materials, laborers, necessary tools, expendable equipment, all utility and transportation services and other facilities required to complete the following Work:

Tank Diving, Inspection and Cleaning Project

The Tank Diving, Inspection and Cleaning project shall be performed in accordance with the plans, specification and other contract documents as specified herein and shall consist of but is not limited to, furnishing all products, labor, equipment, material, transportation, and incidental services to construct the following:

- Dive and Inspection of, 4 – 3.0 million gallon reservoirs, 37' high X 120' diameter.
- Clean and remove any accumulated sediment or other materials, as needed.

2.2 Management of Construction Work.

In addition to the Construction Work, Contractor shall cooperate with the City, City's Engineer and/or any construction management firm it may utilize as concerns and is incidental to construction projects of the nature and scope of this Project. The services required are not intended in any manner to diminish the overall responsibility of Contractor for the full and final completion of the Construction Work within the time and cost constraints specified in this Contract.

Contractor shall bear all costs associated with this Work, including, but not limited to, all professional, technical, clerical services, materials, tools, equipment, transportation, telephone, etc., used by Contractor in connection with this Work.

3.0 CONTRACT PRICE

3.1 Total Compensation.

As full and complete compensation for the faithful performance of all of the Work hereunder performed by Contractor in accordance with the Contract Documents, City shall pay, and Contractor agrees to accept, a not-to-exceed maximum sum of **Fourteen Thousand Three Hundred Forty-Seven Dollars and Fifty-Two Cents (\$14,347.52)** ("Contract Price"), subject to adjustments for changes in the Work as may be agreed to in writing by the City and Contractor.

3.2 The Contract Price, unless changed by Change Order, represents the absolute limit of obligation or liability that City may ever have insofar as the cost for full and final completion of the Work, and the total of all payments to Contractor are concerned. Should additional amounts be required to be expended, over and above the Contract Price, to achieve completion of the Work, including project construction, and payment to Contractor, in accordance with this Contract, liability for and payment of such additional amounts shall be the sole responsibility of Contractor and its Contract surety herein, and City shall not be liable for same. Should the final cost of the construction work and Contractor's

compensation total less than the Contract Price, or any approved revision thereof, the difference shall inure to the benefit of City and no claim for all or any portion of said difference shall be valid against or payable by City.

3.3 Payments.

Progress payments may be made in arrears based on the percentage of work and deliverables completed by the Contractor. If Contractor fails to submit the required deliverable items according to schedule, the City shall have the right to delay payment and/or terminate this Agreement in accordance with the provisions noted herein.

Contractor shall be reimbursed in accordance with the provisions of *California Public Contract Code, Section 20104.50*, upon receipt by the City of itemized invoices for services completed. City will verify the accuracy of the request, correct the charges where appropriate and make payment to the Contractor in an amount equal to the amount of such invoice, as verified or corrected by City. Invoices shall be submitted no later than 45 calendar days after the performance of Work for which the Contractor is billing. Invoices shall be delivered or mailed to the **General Manager – Water Department** or his/her designee at the following address: **City of Compton, 205 South Willowbrook Avenue, Compton, California 90220.**

3.4 Retention.

Contractor agrees to the withholding of a 5% retention fee by the City. Unless there is a dispute, within sixty (60) days after the date of completion of the Work, the retention fee shall be released. If there is a dispute, the City may withhold from the final payment an amount not to exceed 150% of the disputed amount. For purposes of this section, "completion" means any of the following:

- The occupation and use of the improvement by the City after cessation of labor on the Work; or
- The acceptance of the Work by the City; or
- Cessation of labor on the Work of improvement for continuous period of at least 100 days, due to factors beyond the control of the City; or
- Cessation of labor on the Work of improvement for continuous period of at least 30 days if the City files for record a notice of cessation or a notice of completion.

-Or-

Pursuant to *Section 22300 of the Public Contract Code*, this Contract permits the substitution of securities for any monies withheld by a public agency to ensure performance under this Contract. At the request and expense of the Contractor, securities equivalent to the amount withheld shall be deposited with the public agency, or with a state or federally chartered bank as the escrow agent, who shall then pay such monies to the Contractor. Upon satisfactory completion of the Contract, the securities shall be returned to the Contractor.

Securities eligible for investment under this section shall include those listed in *Government Code Section 16430* or bank or savings and loan certificates of deposit. The Contractor shall be the beneficial owner of any securities substituted for monies withheld and shall receive any interest thereon.

In the alternative, under Section 22300, Contractor may request the City to make payment of earned retentions directly to the escrow agent at the expense of Contractor. Also at Contractor's expense, Contractor may direct investment of the payments in securities, and Contractor shall receive interest earned on such investment upon the same conditions as provided for securities deposited by Contractor. Upon satisfactory completion of the Contract, Contractor shall receive from the escrow agent all securities, interest and payments received by escrow agent from the City pursuant to the terms of Section 22300. Contractor shall pay to each subcontractor, not later than 20 days after receipt of such payment, the respective amount of interest earned, net of costs attributed to retention withheld from each

subcontractor, on the amount of retention withheld to insure performance of Contractor.

3.5 Contractor's Warranty of Contract Price.

Contractor warrants and represents that the Contract Price, includes without Limitation:

(i) all overhead, general and administrative expenses, including without limitation, both on-site and off-site direct job expenses and home office overhead for the Project and all fees and assessments for building and other permits for which Contractor is responsible, licenses and inspections required for the Project, and (ii) includes and assumes that from time to time Contractor will encounter delays, difficult conditions arising from limited access to work areas or other interferences for which responsibility is not otherwise attributable to Contractor and unforeseen conditions at the Site not constituting differing site conditions. Except as otherwise provided in the Contract Documents, Contractor assumes full responsibility for its examination, investigation and understanding of such delays and difficulties which may be encountered, and shall be deemed to have included in its Contract Price a sum to cover the cost and expense associated therewith.

4.0 TIME

4.1 Time of Essence.

Time is of the essence with respect to all time limits set forth in the Contract Documents.

4.2 Commencement.

4.2.1 Construction Services. Contractor agrees to commence the Work provided for herein within **10 calendar days** after receipt of the **Notification to Proceed** or as otherwise agreed in writing with the Director of his/her designee, and continue in a diligent, professional and worker-like manner as directed by the City without interruption until the each of the requested segment(s) and/or location(s) identified by the City for repairs and work is completed or within a total of **20 working days** (this period is inclusive of time to procure needed materials, mobilization, etc.), whichever occurs first, unless this Agreement is extended, suspended or terminated as provided herein.

a Notwithstanding any other provisions of this Contract, Contractor shall not be obligated to perform any work and the City shall not be obligated to accept or pay for any work performed by the Contractor prior to issuance of a Notice to Proceed. The City's knowledge of work being performed prior to issuance of the Notice to Proceed shall not obligate the City to accept or pay for such work. Contractor shall provide all required contract bonds and evidences of insurance prior to commencing work pursuant to this Contract.

4.3 Extensions.

The Contract Time shall not be extended except by a Change Order issued in accordance with the Contract Documents.

4.4 Compensation for Delay.

4.4.1 Sole Remedy. Extensions of time adjusting the Contract Time shall be Contractor's sole and exclusive remedy for delay for reasons beyond its reasonable control.

4.5 Liquidated Damages.

IF CONTRACTOR FAILS TO ACHIEVE SUBSTANTIAL COMPLETION OF THE WORK WITHIN THE PERIODS OF TIME REFERRED TO IN PARAGRAPH 4.2.1 OF THIS AGREEMENT (AS ADJUSTED BY CHANGE ORDER FOR EXTENSIONS PERMITTED BY THE CONTRACT DOCUMENTS), CITY WILL INCUR DAMAGES, THE AMOUNT OF WHICH WILL BE DIFFICULT OR IMPOSSIBLE TO ESTABLISH WITH CERTAINTY, INCLUDING BUT NOT LIMITED TO INEFFICIENCY AND DISRUPTION OF CITY'S OPERATIONS. THE PARTIES THEREFORE AGREE THAT FOR EACH DAY PAST THE COMPLETION

DATES REFERRED TO IN PARAGRAPH 4.2.1 (AS ADJUSTED BY CHANGE ORDER FOR THE EXTENSIONS PERMITTED BY THE CONTRACT DOCUMENTS) THAT THE WORK IS NOT SUBSTANTIALLY COMPLETE, CONTRACTOR SHALL PAY CITY THE SUM OF ONE THOUSAND TWO HUNDRED DOLLARS (\$1,200) FOR EACH CALENDAR DAY DELAYED BEYOND THE TIME PRESCRIBED FOR FINISHING THE WORK AS LIQUIDATED DAMAGES. THIS SUM REPRESENTS A REASONABLE EFFORT TO ESTIMATE FAIR COMPENSATION FOR THE FORESEEABLE LOSSES CITY WILL INCUR ON ACCOUNT OF DELAYS IN SUBSTANTIAL COMPLETION OF THE WORK AND IS NOT A PENALTY. IF LIQUIDATED DAMAGES ARE NOT PAID, THE CITY MAY DEDUCT THE AMOUNT THEREOF FROM ANY MONEY DUE OR THAT MAY BECOME DUE TO THE CONTRACTOR UNDER THIS AGREEMENT IN ADDITION TO ANY OTHER REMEDY AVAILABLE TO THE CITY. CONTRACTOR SHALL NOT BE ASSESSED LIQUIDATED DAMAGES IF THE DELAY IS CAUSED BY ACTS OF GOD WHICH COULD NOT REASONABLY HAVE BEEN FORESEEN OR GUARDED AGAINST; STRIKES, BOYCOTTS OR LIKE OBSTRUCTIVE ACTIONS BY CONTRACTOR'S OR IT'S SUBCONTRACTOR'S EMPLOYEES WHICH ARE BEYOND CONTRACTOR'S CONTROL; FAILURE OF CITY TO PERFORM; OR FAILURE OF A PUBLIC UTILITY TO RELOCATE OR REMOVE AN EXISTING UTILITY REQUIRED FOR PERFORMANCE OF THIS CONTRACT. CITY AND CONTRACTOR HEREBY INDICATE THEIR AGREEMENT TO THE FOREGOING LIQUIDATED DAMAGES PROVISION:

City of Compton – City Manager

Contractor – John Williams, Owner

4.6 Construction Schedule.

Contractor shall prepare and submit to City a detailed Construction Baseline Schedule (showing all milestones with critical activities on the Baseline Schedule) for each street segment(s) and/or location(s) identified and requested for repairs and Work prior to commencing construction. No Work shall be started until the Schedule has been approved in writing by the City. The Construction Schedule shall be prepared, utilizing a time-scaled bar chart showing continuous flow from left to right and major milestones which are critical to the completion of the construction of the project and a clearly highlighted critical path. Durations and specific calendar dates shall be clearly and legibly shown for the start and finish of each activity. Activities shall be in sufficient detail to demonstrate a practical plan to complete the construction within the Contract Time. There shall be no extension of time granted due to delay caused by inability to obtain materials without the advance written approval of the Public Workers Director or his/her designee.

5.0 CONSTRUCTION PHASE

5.1 General.

5.1.1 Contractor shall completely perform, to City's satisfaction, all of the Work in accordance with this Agreement and other Contract Documents.

5.1.2 Unless otherwise provided in the Contract Documents, Contractor shall furnish, or cause to be furnished, and shall pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated into the Work.

5.1.3 Contractor shall attend meetings with City as frequently as is necessary to the expeditious performance of the Work for the purpose of discussing construction issues which may arise during the Project.

5.2 Supervision of Work.

Contractor shall supervise and direct the Work, using Contractor's best skill and attention. Contractor shall be solely responsible for and have control over all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work.

5.3 Permits, Approvals, Licenses and Notices.

Contractor shall obtain and pay for (i) all permits, approvals, licenses and easements; and (ii) government charges and inspection fees pertaining to the construction of the Project.

5.4 Safety.

5.4.1 Contractor shall have overall responsibility for safety precautions and programs in the performance of the Work.

5.4.2 Contractor shall seek to avoid injury, loss or damage to persons or property by taking reasonable steps to protect:

.a Employees and all other persons at the Site;

.b Materials and equipment stored on the Site or off the Site at locations for use in performance of the Work; and

.c The Project and all property located at the Site, whether or not said property or structures are part of the Project or involved in the Work.

5.4.3 Contractor shall designate an individual at the Site in the employ of Contractor who shall act as Contractor's designated safety representative with a duty to prevent accidents.

5.4.4 Losses not insured under property insurance which may arise from the performance of the Work, to the extent of the negligence attributed to such acts or omissions of Contractor or anyone for whose acts Contractor may be liable, shall be promptly remedied by Contractor at Contractor's cost and without reimbursement by City as a cost of work, or in any other manner.

5.4.5 If City deems any part of the Work or Site unsafe, City may require Contractor, without assuming responsibility for Contractor's safety program, to immediately stop performance of the Work or take corrective measures. Neither City's order nor Contractor's action in response thereto shall be the basis for adjustment in the Contract Price or Contract Time.

5.4.6 Should this work involve digging trenches or other excavations that extend deeper than four (4) feet below the surface, the Contractor shall promptly, and before the following conditions are disturbed, notify the City, in writing, of any:

.a Material the Contractor believes may be material that is hazardous waste, as defined in *Section 25117 of the Health and Safety Code* that is required to be removed to a Class I, Class II or Class III disposal site.

.b Subsurface or latent physical conditions at the Site differing from those indicated by information about the Site made available to bidders prior to deadline for submitting bids.

.c Unknown physical conditions at the Site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract.

5.4.7 Contractor represents that in advance of the excavation of any trench deeper

than five (5) feet, it shall submit for acceptance by the City or a registered civil or structural engineer, employed by the City, to whom authority to accept has been delegated, in advance of excavation, of a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches. If such plan varies from the shoring system standards, the plan shall be prepared by a registered civil or structural engineer.

5.5 Substitutions.

There shall be no substitutions in the Work or procedures or methods specified by the Contract Documents for performing the Work, unless Contractor first receives written approval for such substitution from City.

5.6 Trade Contractors.

5.6.1 If applicable, Contractor shall employ only Trade Contractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents. Each Trade Contractor, of every tier, shall be fully bound to the Contract Documents in the same manner as Contractor is bound to City for all the requirements of the Contract Documents to the extent applicable to the Trade Contractor's portion of the Work.

5.6.2 Contractor assumes responsibility for the proper performance of the Work of Trade Contractors, of every tier, and any acts or omissions in connection with such performance. Contractor shall coordinate the activities of all Trade Contractors, of every tier.

5.7 Separate Contractors.

5.7.1 Contractor agrees to reasonably cooperate with, and coordinate its activities so as not to interfere with, those Separate Contractors performing work at the Site, so that the Project can be completed in an orderly and coordinated manner without delay.

5.7.2 If any part of the Work depends upon other work performed by Separate Contractors, Contractor shall, prior to proceeding with that part of the Work, inspect such other work and promptly notify the City of any circumstance or fact that would render such other work unacceptable for the proper performance of the Work. Contractor shall not proceed with such part of the Work without further direction from the City. Contractor shall be liable for losses incurred due to any defects in such other work not so reported by Contractor.

6.0 ACCOUNTING RECORDS

6.1 Access.

Contractor shall keep, and shall include in its contracts with its Trade Contractors, provisions requiring its Trade Contractors to keep, full and detailed accounts in accordance with the requirements of the Contract Documents and exercise such controls as may be necessary for proper financial management of the Work. Such accounting and control systems shall comply with prevailing custom and practice for similar Projects and be satisfactory to City and shall include preservation of such records for a period of four (4) years after final completion of the Work, or for such longer period as may be required by law.

Contractor shall allow, and shall include in its contracts with its Trade Contractors, provisions requiring its Trade Contractors to allow, City or its authorized representative(s) and accountants, within twenty-four (24) hours after requested by City, to inspect, audit or reproduce any and all records relating to the Project. Such records shall include all information, materials and data of every kind and character (hard copy, as well as computer readable data if it exists), that may, in City's judgment, have any bearing on or pertain to any matters, rights, duties or obligations relating to the Project, including without

limitation the following: agreements; purchase orders; leases; contracts; commitments; arrangements; notes; schedules; daily diaries; superintendent reports; drawings; receipts; vouchers; memoranda; accounting records; job cost reports, job cost files (including documentation covering negotiated settlements); backcharge logs; general ledgers; documentation of cash and trade discounts earned, insurance rebates and dividends; any documents customarily maintained by contractors performing work on a cost plus a fee basis; other documents that City otherwise deems necessary to substantiate charges or claims related to the Project.

6.2 Enforcement.

Contractor hereby consents and agrees that any failure by Contractor to provide access to records as provided in this Article 6.0 shall be specifically enforceable by issuance of a preliminary and/or permanent mandatory injunction by a court of competent jurisdiction based on affidavits submitted to such court, without the necessity of oral testimony, to compel Contractor to permit access, inspection, audit and/or reproduction of the records or to require delivery of the records to City for inspection, audit and/or reproduction.

7.0 INDEMNITY, BONDS

7.1 Indemnity.

7.1.1 General Indemnity. To the fullest extent allowed by law, Contractor hereby agrees to defend, indemnify, and hold harmless City, its City Council, boards and commissions, officials, officers, agents, employees, representatives, insurers and volunteers (hereinafter collectively referred to as "City") through legal counsel acceptable to City, from and against any and all Losses arising directly or indirectly from, or in any manner relating to, any of the following: (i) any act or omission (negligent or otherwise) of Contractor, or by its Trade Contractors, of any tier; (ii) performance or nonperformance by Contractor or its Trade Contractors, of any tier, of any of the obligations under this Agreement or the other Contract Documents; (iii) the construction activities of Contractor, or its Trade Contractors, of any tier, either on the Site or on other properties; (iv) the payment or nonpayment of money by Contractor, or by any of its Trade Contractors, of any tier; or (v) any personal injury, property damage or economic loss to third persons or entities associated with the performance or nonperformance by Contractor, or any of its Trade Contractors, of any tier; provided, however, that nothing contained herein shall be construed as obligating Contractor to indemnify the City for losses resulting from the City's sole negligence, active negligence or willful misconduct. Contractor shall pay City for any costs incurred in enforcing the defense and/or indemnity obligations under this provision. Nothing in this Section 7.1 shall be construed to give rise to any implied right of indemnity in favor of Contractor against the City.

7.1.2 Survival. The provisions of Paragraph 7.1.1 shall survive complete performance or termination of this Agreement.

7.1.3 Severability. The invalidity of any portion of Paragraph 7.1.1 shall not affect or render unenforceable any other portions thereof.

7.2 Bonds.

7.2.1 Bond Forms. Prior to commencing any construction of the Work, Contractor shall file with City good and sufficient "Labor and Material Payment" and "Performance" bonds in the amount of one hundred percent (100%) of the Contract Price for each. Contractor shall take steps to assure that the penal sum of the bonds shall be increased by the amount of any additive adjustments to the Contract Price due to Change Orders. The bonds shall be on forms satisfactory to and approved by City, signed by both Contractor and surety and properly notarized. Should any bond required hereunder or any surety on such bond become or be determined by City to be insufficient, it shall be replaced within ten (10) days by a bond that fully complies with the requirements of this Paragraph 7.2.1. No further payments to Contractor for work performed shall be made or become due until Contractor has fully complied with the requirements of this Section 7.2.

7.2.2 Duration. The payment bond shall remain in effect until sixty (60) days after final completion of the Work and all claims by Contractor and Trade Contractors, of every tier, have been satisfied. The performance bond provided by Contractor shall remain in effect for the duration of the period of all warranties required by the Contract Documents and shall assure faithful performance of all of Contractor's obligations under the Contract Documents, including, without limitation, all obligations that survive final completion or termination, such as but not limited to Contractor's obligations under its warranties, guarantees and to defend and indemnify City.

7.2.3 Premiums. The premiums for all bonds are included in the Contract Price and shall be paid by Contractor.

7.2.4 Obligees. The performance and payment bonds shall name City as obligee.

7.2.5 Changes. Change Orders, Field Orders, Modifications, Scope Changes and other Changes in the Work and adjustments to the Contract Price or Contract Time shall in no way release or exonerate Contractor or its sureties from their obligations and notice thereof shall be waived by such sureties.

7.2.6 Communications. City shall have the right to communicate with Contractor's sureties with respect to matters that are related to Contractor's performance of its obligations under the Contract Documents. Such communications shall not create or be interpreted as creating any contractual relationship between City and any such surety.

8.0 INSURANCE

8.1 Insurance Requirements. The Contractor shall not commence Work under this Contract until it has provided evidence satisfactory to the City that it has secured all insurance required under this section. In addition, Contractor shall not allow any subcontractor to commence work on any subcontract until it has secured all insurance required under this Section 8.0.

As a condition precedent to the effectiveness of this Contract for work to be performed hereunder and without limiting the Contractor's indemnification of the City, Contractor shall provide and maintain at its own expense during the term of this Agreement the following program(s) of insurance covering its operations hereunder. ***Failure on the part of the Contractor to procure or maintain insurance shall constitute a material breach upon which the City may immediately terminate this Agreement.*** Contractor agrees to suspend and cease all operations hereunder during such period of time as the required insurance coverage is not in effect and evidence of insurance has not been furnished to the City. In the event that the Contractor's operations are suspended for failure to maintain required insurance coverage, the Contractor shall not be entitled to an extension of time for completion of the Work because of production lost during suspension.

8.2 Minimum Scope of Insurance. Insurance coverage specified herein constitutes the minimum requirements and said requirements shall in no way lessen or limit the liability of the Contractor under the terms of the Agreement. Contractor shall procure and maintain, at its own costs and expense, any additional kinds and amounts of insurance that, in its own judgment, may be necessary for its proper protection of the work.

All insurance required hereunder shall be primary with respect to any insurance maintained by the City and shall not call on the City's program for contributions. Program(s) of insurance shall include:

8.2.1 Commercial General Liability. Insurance which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 00 01 11 88, with minimum limits of at least **One Million Dollars (\$1,000,000.00)** per occurrence, and if written with an aggregate, the aggregate shall be double the per occurrence limit. Defense costs shall be paid in addition to the limits. Products and completed operations coverage shall be maintained for a minimum of two years after completion of the

Work.

.a The policy shall contain no endorsements or provisions limiting coverage for (1) explosion, collapse or underground hazard (XCU); (2) products and completed operations; (3) contractual liability; (4) third party action over claims; (5) cross liability exclusion for claims or suits by one insured against another; or (6) contain any exclusions contrary to the Contract.

8.2.2 Automobile Liability. Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form CA 00 01 06 92 covering "Any Auto" (Symbol 1) with minimum limits of **One Million Dollars (\$1,000,000.00)** each accident. If Contractor does not own any company vehicles, the requirement may be satisfied by providing (a) a Personal Automobile Liability policy for the Contractor's own vehicle (as specified in the following paragraph); and (b) a non-owned auto endorsement to the Commercial General Liability policy if Contractor may use vehicles of others (e.g., vehicles of employees). Independent Contractors may not be able to purchase a Business Automobile policy and consideration may be given to accepting a Personal Automobile Liability policy. Requirements should stipulate "Automobile Liability Insurance with a limit of not less than \$1,000,000 each accident."

8.2.3 Workers' Compensation. Workers' Compensation Insurance, as required by the State of California and Employer's Liability Insurance, with a limit of not less than **One Million (\$1,000,000.00)** per accident for bodily injury and disease. Workers' Compensation and Employer's Liability insurance may not be required if Contractor has no employees and provides, to City's satisfaction, a declaration stating this.

8.3 Endorsements. Required insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to the City for approval.

8.3.1 The policy or policies of insurance required by Section 8.2.1 (Commercial General Liability) shall be endorsed to provide the following:

.a Additional Insured: The City, its officials, officers, employees, agents, and volunteers shall be named as "**additional insured**" with regard to liability and defense of suits or claims arising out of the performance of the Agreement.

.b Additional Insured Endorsements shall not (1) be restricted to "ongoing operations"; (2) exclude "contractual liability"; (3) restrict coverage to "sole" liability of Contractor; or (4) contain any other exclusions contrary to the Contract.

.c Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City, except ten (10) days written notice shall be provided for non-payment of premium.

8.3.2 The policy or policies of insurance required by Section 8.2.2 (Automobile Liability) shall be endorsed to provide the following:

.a Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City, except ten (10) days written notice shall be provided for non-payment of premium.

8.3.3 The policy or policies of insurance required by Section 8.2.4 (Workers' Compensation) shall be endorsed to provide the following:

.a Waiver of Subrogation: A waiver of subrogation stating that the insurer waives all rights of subrogation against the indemnified parties.

.b Cancellation: Required insurance policies shall not be canceled or the

coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City, except ten (10) days written notice shall be provided for non-payment of premium.

8.4 Waiver of Subrogation. Required insurance coverage's shall not prohibit Contractor from waiving the right of subrogation prior to a loss. Contractor shall waive all subrogation rights against the indemnified parties. Policies shall contain or be endorsed to contain such provisions.

8.5 Deductible. Any deductible or self-insured retention must be approved in writing by the City and shall protect the indemnified parties in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention.

8.6 Evidence of Insurance. The Contractor, concurrently with the execution of the Contract, and as a condition precedent to the effectiveness thereof, shall deliver certified copies of the required policies on forms approved by the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15) days prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced, Contractor shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

8.7 Acceptability of Insurers. Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and authorized to do business in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

8.8 Insurance for Subcontractors. All subcontractors shall be included as additional insured's under the Contractor's policies, or the Contractor shall be responsible for causing subcontractors to purchase the appropriate insurance in compliance with the terms of these Insurance Requirements, including adding the City as an **"additional insured"** to the subcontractor's policies. Contractor shall submit proof of compliance with this provision upon request of the City.

9.0 CHANGE ORDERS

9.1 Changes. City has the right, in its sole discretion, to make whatever changes it deems necessary or desirable to the Work; no change ordered by City shall entitle Contractor to an adjustment of the Contract Price or Contract Time unless it constitutes a Scope Change.

9.2 Change Orders. A Change Order is a written order signed by City and Contractor, and issued after execution of this Agreement, authorizing an adjustment in the Contract Price and/or Contract Time. The Contract Price and Contract Time can be adjusted only by Change Order. No action, conduct, omission, prior failure or course of dealing by City shall act to waive, modify, change or alter the requirement that Change Orders must be in writing signed by City and that such written Change Orders are the exclusive method for effecting any adjustment to the Contract Price and Contract Time.

10.0 CERTIFICATIONS

10.1 Certification of Contractor. I, **John Williams**, **HEREBY CERTIFY** that I am the President, and duly authorized representative of the Contractor firm of **H₂O Solutions, LLC** and that, except as hereby expressly stated, neither I nor the above firm that I represent have: (i) employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above consultant) to solicit or secure this agreement; nor (ii) agreed, as an express or implied condition for obtaining this Contract, to employ or retain the services of any firm or person in connection with carrying out the agreement; nor (iii) paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above consultant)

any fee, contribution, donation, or consideration of any kind, for or in connection with, procuring or carrying out this Agreement.

10.2 Debarment and Suspension Certification. The Contractor, under penalty of perjury, certifies that, except as noted below, he/she/it or any other person associated therewith in the capacity of owner, partner, director, officer, manager:

- is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any Federal, State or local agency; and
- has not been suspended, debarred, voluntarily excluded or determined ineligible by any Federal, State or local agency within the past 3 years; and
- does not have a proposed debarment pending; and
- has not been indicted, convicted, or had a civil judgment rendered against him/her/it by a court of competent jurisdiction in any matter involving fraud or official misconduct in connection with obtaining, attempting to obtain, or performing a public (Federal, state or local) transaction or contract under a public transaction; violation of Federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property within the past 3 years; and
- are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in the preceding paragraph; and
- have not had one or more public transactions (Federal, State or local) terminated for cause or default within the past 3 years.

If there are any exceptions to this certification, insert the exceptions in the following space.

[Supply exceptions on separate page]

For any exception noted above, indicate below to whom it applies, initiating agency, and dates of action.

[Attach separate page]

These certifications are a material representation of fact upon which reliance was placed when this transaction was made or entered into. The above certifications are part of this Contract. Signing this Agreement on the signature portion thereof shall also constitute signature of the above Certifications.

John Williams, Owner

(Date)

11.0 DEFAULT AND TERMINATION

11.1 Default by Contractor.

11.1.1 Notice of Default. Without limitation to any of City's other rights or remedies at law or in equity, City shall have the right to terminate this Agreement in the event that Contractor fails or refuses to perform any of the obligations set forth in this Agreement or the other Contract Documents, and fails to cure such default in the manner required hereafter.

11.1.2 Opportunity to Cure Default. Contractor shall cure any default in performance of its obligations under the Contract Documents within two (2) business days after receipt of written notice of such default from City; provided, however, that if the breach cannot reasonably be cured within such time then Contractor will commence to cure the breach within two (2) days and will diligently and continuously prosecute such cure to completion within a reasonable time, which shall in no event be later than ten (10) calendar days after receipt of such written notice.

11.2 City's Rights and Remedies Upon Default.

11.2.1 Remedies Upon Default. In the event that Contractor fails to cure any breach of this Agreement within the time periods set forth above, then City may pursue any remedies available under law or equity, including, without limitation, the following:

.a Delete Certain Services. City may, without terminating this Agreement, delete certain portions of the Work, reserving to itself all rights to recover losses related thereto.

.b Perform and Withhold. City may, without terminating this Agreement, engage others to perform the Work or portion of the Work that has not been performed by Contractor and withhold the cost thereof to City from future payments to Contractor, reserving to itself all rights to recover losses related thereto.

.c Suspend this Agreement. City may, without terminating this Agreement and reserving to itself all rights to recover losses related thereto, suspend all or any portion of this Agreement for as long a period of time as City determines, in its sole discretion, appropriate, in which event City shall have no obligation to adjust the Contract Price or Contract Time, and shall have no liability to Contractor for adjustment to the Contract Price, Contract Time, or for losses, if City directs Contractor to resume Work.

.d Terminate this Agreement. City may terminate all or any part of this Agreement for cause according to the notice provisions set forth in this Agreement, reserving to itself all rights to recover losses related thereto.

.e Invoke the Performance Bond. City may, with or without terminating this Agreement and reserving to itself all rights to recover losses related thereto, exercise its rights under the Contractor's performance bond.

11.2.2 Rights Cumulative. All of City's rights and remedies under this Agreement are cumulative, and shall be in addition to those rights and remedies available in law or in equity. Designation in the Contract Documents of certain breaches as "material" shall not be construed as implying that other breaches not so designated are not material nor shall such designations be construed as limiting City's right to terminate or the exercise of its other rights or remedies for default to only material breaches. City shall determine whether there has been noncompliance with the Contract Documents so as to warrant exercise by City of its rights and remedies for default. No termination or action taken by City after termination shall prejudice any other rights or remedies of City provided by law or equity or by the Contract Documents upon such termination; and City may proceed against Contractor to recover all losses suffered by City.

11.2.3 Monies. In the event of a termination or suspension of all or a portion of the Work due to a default by Contractor, City shall have the right, without releasing Contractor or its sureties from liability for failure to fulfill this Agreement, to withhold all or a portion of the monies owing or retained until final completion of the Work. Any cost over and above the Contract Price arising from the suspension of operations of this Agreement and the completion of the Work shall be paid by Contractor's sureties. Contractor will be paid any surplus monies remaining after all contract disputes have been resolved and finally determined.

11.2.4 Delays by Sureties. Without limitation to any of City's other rights or remedies under the law or in equity, City has the right to suspend the performance by Contractor's sureties in the event of any of the following: (i) failure of the sureties to begin work within a reasonable time in such manner as to ensure full compliance with the Contract Documents within the Contract Time; (ii) abandonment of the Work; (iii) if at any time City is of the opinion the Work is unnecessarily or unreasonably delayed; (iv) willful violation of any terms of this Agreement; (v) failure to perform according to this Agreement or the other Contract Documents; or (vi) failure to follow instructions of City for performance of the Work within the Contract Time. City will serve notice of such failure upon the sureties

and in the event the sureties neglect or refuse to cure the breach within the time specified in such notice, City shall have the power to suspend the operation or any part thereof of Contractor's sureties.

11.2.5 Contractor Obligations. Upon receipt of a notice of termination for default, Contractor shall, unless the notice states otherwise, perform each of the obligations set forth in Paragraph 11.4.1, below.

11.2.6 Damages to City.

.a Reservation of Remedies. City will be entitled to all damages available under the law, and all rights in equity, in the event of Contractor's breach of this Agreement or the other Contract Documents.

.b Deductions. If City suffers a loss due to Contractor's nonperformance, then such loss shall be deducted from the amounts withheld. Should the amount withheld exceed the amount deducted, the balance will be paid to Contractor or its designee upon completion of the Project. If the loss incurred by City exceeds the amount withheld, Contractor shall be liable to City for the difference and shall promptly remit same to City.

.c No Release. If, however, City elects to terminate this Agreement for cause, all monies due Contractor or retained under the terms of the Contract Documents shall be forfeited to City. Such forfeiture shall not release Contractor or its sureties from liability for failure to fulfill this Agreement. Contractor and its sureties will be credited with the amount of monies forfeited toward any greater sum they may be liable for in connection with Contractor's default.

11.3 Suspension by City for Convenience. City may, at any time and from time to time, without cause, order Contractor, in writing, to suspend, delay, or interrupt the Work in whole or in part for such period of time, up to an aggregate of fifty percent (50%) of the Contract Time, as City may determine, with such period of suspension to be computed from the date of the written order. Without limitation to the foregoing, Contractor acknowledges that issuance of a suspension order by City due to circumstances relating to City's compliance with the California Environmental Quality Act is foreseeable and that such suspension order, regardless of its duration, shall not be considered a breach by City of this Agreement. Upon receipt of a suspension order, Contractor shall, at City's expense, comply with its terms and take all reasonable steps to minimize costs allocable to the Work covered by the suspension order during the period of work stoppage. Within the period of the above noted aggregate time, or such extension to that period as is agreed upon by Contractor and City, City shall either cancel the suspension order or it shall have the right, without incurring a liability to Contractor for lost profits or consequential damages, to delete the Work covered by such suspension order by issuing a Change Order.

11.3.1 Resumption. If a suspension order is canceled or expires, Contractor shall resume and continue with the Work. A Change Order will be issued adjusting the Contract Price and/or the Contract Time for additional costs of work and delay necessarily caused by such suspension.

11.3.2 Suspension Order Required. The provisions of this Section 11.3 shall not apply if a suspension order is not issued by City. A suspension order shall not be required to stop the Work as permitted or required under any other provision of the Contract Documents.

11.4 Termination Without Cause. City shall have the option, at its sole discretion and without cause, to terminate this Agreement in part or in whole by giving thirty (30) days' written notice to Contractor as provided herein. Contractor agrees to accept such sums as allowed under this Section 11.4 as its sole and exclusive compensation and waives any claim for other compensation or Losses, including, but not limited to, Loss of anticipated profits, Loss of revenue, lost opportunity, or other consequential, direct, indirect, incidental Losses or damages, of any kind.

11.4.1 Contractor Obligations. Upon receipt of notice of termination without cause, Contractor shall, unless the notice directs otherwise, do the following:

.a Immediately discontinue performance to the extent specified in the notice;

.b Place no further orders or subcontracts for materials, equipment, services or facilities, except as may be necessary for completion of such portion of its obligations as is not discontinued;

.c Provide to City a description, in writing no later than two (2) business days after receipt of the notice of termination, complete copies of all subcontracts, purchase orders and contracts that are outstanding, including any change orders, amendments and modifications thereto, status of payments and balance owing, the status of performance and claims by Trade Contractors, together with such other information as City may determine necessary in order to decide whether to accept assignment of, or request Contractor to terminate the subcontract, purchase order or contract;

.d Promptly assign to City those subcontracts, purchase orders or contracts, or portions thereof, that City elects to accept by assignment and cancel, on the most favorable terms reasonably possible, all subcontracts, purchase orders or contracts, or portions thereof, that City does not elect to accept by assignment; and

.e Thereafter continue only such performance as may be necessary to preserve and protect work already completed or in progress and to protect materials and equipment on the Site or in transit thereto.

11.4.2 Final Billing. Following termination without cause and within thirty (30) days after receipt of a complete and timely billing from Contractor seeking payment of sums authorized by this Paragraph 11.4.2, City shall pay to Contractor as its sole and exclusive compensation for performance under this Agreement the following:

.a The Contract Price earned and payable as of the date of termination, less sums previously paid to Contractor;

.b Plus, reasonable costs of work of Contractor and Trade Contractors for (i) demobilizing, and (ii) administering the close out of its participation in the Project (including, without limitation, all billing and accounting functions) for a period of no longer than thirty (30) days after receipt of the notice of termination;

11.4.3 Trade Contractors. Contractor shall include provisions in all of its subcontracts, purchase orders and other contracts with its Trade Contractors permitting termination for convenience by Contractor on terms that are consistent with this Agreement and that afford no greater rights of recovery against Contractor for termination than are afforded to Contractor.

11.5 Contractor's Rights and Remedies.

11.5.1 Contractor's Remedies. Contractor may terminate this Agreement for cause only upon the occurrence of one of the following:

.a The work is stopped for one hundred sixty (160) consecutive days, through no act or fault of Contractor, any Trade Contractor, of any tier, or any employee or agent of any of them, due to issuance of an order of a court or other governmental authority other than City having jurisdiction or due to an act of government, such as a declaration of a national emergency making material unavailable.

.b City fails to make payment of sums that are not in good faith disputed by

City and fails to cure such default within (i) ninety (90) days after receipt of notice from Contractor notifying City of the default; and (ii) an additional thirty (30) days notice to City notifying it of its intention to terminate this Agreement.

11.5.2 Continuous Performance. Provided that Contractor is paid undisputed sums due under this Agreement, Contractor shall not stop, delay or interrupt continuous performance of the Work by reason of any dispute or disagreement with City, including, without limitation, any disputes or disagreements over payments of funds that are disputed in good faith by City.

12.0 MISCELLANEOUS PROVISIONS

12.1 Warranties. Contractor warrants and guarantees all equipment, materials, supplies and work furnished on the Project against defective construction or workmanship for a period of one (1) year following completion of the Project, except when a longer guaranty is provided by the supplier or manufacturer of the equipment. The Contractor warrants to the City that all materials and equipment furnished under this Contract will be new unless specified and that all work will be of good quality, free from faults and defects and in conformance with the Contract Documents. All work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. Contractor expressly agrees to act as co-guarantor of such equipment and materials and the Contractor shall supply City with all warranty and guaranty documents relative to equipment and materials incorporated in the Work and guaranteed by their suppliers or manufacturers.

If within one (1) year after the date of completion of the Project, any of the Work is found to be defective or not in accordance with the Contract documents, Contractor shall correct it or cause it to be corrected promptly after receipt of a written notice from the City to do so, at the Contractor's expense. This obligation shall survive completion or termination of the Contract. The City shall give notice promptly after discovery of the condition.

12.2 Governing Law. This Agreement shall be governed by the laws of the State of California. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in the County of Los Angeles. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in Los Angeles.

12.3 Waiver of Jury Trial. Contractor voluntarily waives its right to a jury trial of any cause of action, claim, counter-claim or cross-complaint in any action, proceeding or hearing on any matter whatsoever arising out of, or in any way connected with, this Agreement, the relationship between City and Contractor, Contractor's performance on the Project, or the enforcement of any remedy under any law, statute or regulation now or hereafter in effect. Contractor shall include this provision for waiver of jury trial right in its contracts with its Trade Contractors who provide work to the Project, waiving the right of a jury trial in any action involving City as a party, whether by joinder, consolidation, counter-claim, cross-complaint or otherwise.

12.4 Severability. Should any part of this Agreement be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of either party to enter into or carry out, such decision shall not affect the validity of the remainder of this Agreement, which shall continue in full force and effect, provided that the remainder of this Agreement, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the parties.

12.5 Successors and Assigns. This Agreement shall be binding on successors, assigns and legal representatives of and persons in privity of contract with City or Contractor. Contractor shall not assign, sublet or transfer an interest in this Agreement without advance written approval of City. Assignment, subletting or transfer will not release Contractor from any of its obligations to City.

12.6 Interpretation. Contractor and City acknowledge that the terms of this Agreement has been mutually negotiated and that such documents shall not be interpreted against either City or Contractor on the basis that either party was responsible for or in control of the drafting of such documents.

12.7 Survival. All provisions of this Agreement which by their nature continue beyond the termination or completion of performance under this Agreement, including, without limitation, those obligations pertaining indemnification, insurance and confidentiality, shall survive and continue in force after either termination or completion of performance by Contractor.

12.8 Conflict of Interest. The Contractor represents, warrants and agrees that to the best of its knowledge, it does not presently have, nor will it acquire during the term of this Contract, any interest direct or indirect, by Contract, employment or otherwise, or as a partner, joint venturer or shareholder (other than as a shareholder holding a one percent (1%) or less interest in publicly traded companies) or affiliate with any business or business entity that has entered into any Contract, subcontract or arrangement with the City. Upon execution of this Contract and during its term, as appropriate, the Contractor shall disclose in writing to the City, any other Contract or employment during the term of this Contract by any other persons, business or corporation in which employment will or may likely develop a conflict of interest between the City interest and the interests of the third parties.

12.9 City's Quality Assurance Plan. The City shall evaluate Contractor's performance under this Contract. Such evaluation will include assessing Contractor's compliance with all Contract terms and performance standards. Contractor deficiencies which the City determines are severe or continuing and that may place performance of the Contract in jeopardy if not corrected will be reported to the City. The report will include improvement/corrective action measures taken by the City and the Contractor. If improvement does not occur consistent with the corrective action measures, the City may terminate this Contract or seek other remedies as specified in this Contract.

12.10 Copyrights. No report, maps, or other documents produced in whole or in part under this Contract shall be the subject of an application for copyright by or on behalf of the Contractor. All documents become the property of the City who holds all the rights to said data.

12.11 Confidentiality of Reports. The Contractor shall keep confidential all reports, information and data received, prepared or assembled pursuant to performance hereunder. Such information shall not be made available to any person, firm, corporation or entity without the prior written consent of the City.

12.12 Employees of Contractor. Worker's Compensation: Contractor understands and agrees that all persons furnishing services to the City pursuant to this Contract are, for the purposes of workers' compensation liability, employees solely of Contractor. Contractor shall bear sole responsibility and liability for providing workers' compensation benefits to any person for injury arising from an accident connected with services provided to the City under this Contract.

Professional Conduct: The City does not and will not condone any act, gestures, comments or conduct from the Contractor's employees, agents or subcontractors which may be construed as sexual harassment or any other type of activity or behavior that might be construed as harassment. The City will properly investigate all charges of harassment by residents, employees, agents or subcontractors and is responsible for taking appropriate action after reports of harassment are received by the Contractor.

12.13 Patent Rights. The City will hold all the patent rights with respect to any discovery or invention which arises or is developed in the course of, or under this Contractor.

12.14 Waivers. A waiver by either party to this Agreement of any breach of any term, covenant or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein, whether of the same or a different character.

12.15 Federal and State Withholding Taxes. Contractor shall be responsible for paying when due all federal and state income withholding taxes for all earning under this Agreement. Contractor agrees to indemnify City for any claims, costs, losses, fees, penalties, interest, or damages suffered by City resulting from Contractor's failure to comply with this provision.

12.16 Entire Agreement. The Contract Documents represent the entire and integrated agreement between City and Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. The Contract Documents may be amended or modified only by Change Order. Nothing contained in the Contract Documents shall be for the benefit of, create any contractual relationship with, or give rise to a cause of action in favor of any third party.

12.17 Water Pollution Control.

12.17.1 Best Management Practices (BMPs). Contractor, without limitation, shall be responsible to provide and implement Best Management Practices to comply with National Pollution Discharge Elimination System ("NPDES") standards and practices. The Contractor shall be responsible, to the fullest extent possible, not to permit any contaminants, including soil, to enter any drainage system. Contractor shall be responsible to maintain equipment so that oil, grease, gasoline, diesel fuel, et al., does not contaminate areas subject to run-off. The Contractor and its surety shall fully indemnify the City for any pollution damage and/or cleaning costs. All construction of off-site and on-site improvements shall adhere to NPDES Best Management Practices to prevent deleterious materials or pollutants from entering the City or County storm drain systems. Best Management Practices shall be defined as any program, technology, process, site criteria, operating method, measure or device which controls, prevents, removes or reduces pollution. Contractor shall obtain and refer to the California Storm Water Best Management Practice Handbooks, Volume 3 Construction BMP Handbook and the Los Angeles County Department of Public Works Best Management Practices Handbook for Construction Activities.

The City, as permittee, is subject to enforcement actions by the State Water Resources Control Board, Environmental Protection Agency and private citizens. The City may assess the Contractor a penalty of **One thousand Dollars (\$1,000.00)** for each calendar day that the Contractor has not fully implemented the BMPs specified for the contract and/or is otherwise in noncompliance with these provisions. In addition, the City will deduct, from the final payment due the contractor, the total amount of any fines levied on the City, plus legal and staff costs, as a result of the Contractor's lack of compliance with these provisions and/or less than complete implementation of the specified BMPs.

12.18 Execution Authority. The person(s) executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other agreement to which said party is bound. The Contractor shall complete a W9 Form in the form provided by the City.

13.0 NOTICES

13.1 Delivery. All notices, demands or requests to be given under this Agreement shall be given in writing and conclusively shall be deemed received when: (a) delivered personally, or (b) on the fifth (5th) day after the deposit thereof in the United States mail, postage prepaid, and addressed as hereinafter provided, or (c) one (1) business day after send by facsimile transmission.

13.2 Addresses. All notices, demands, requests or approvals from Contractor to City shall be addressed to the City at:

City of Compton
205 South Willowbrook Avenue

Compton, California 90220
Attn: General Manager Water Department
(310) 605-5505
(310) 605-6326 – Fax

with copies to:

City of Compton
205 South Willowbrook Avenue
Compton, California 90220
Attn: City Manager

All notices, demands or requests from City to Contractor shall be addressed to:

Insert Company Name Address and Phone Number

13.3 Change in Address. In the event of any change of address, the moving party is obligated to notify the other party of the change of address in writing. Each party may amend, supplement and update the notice list to add, delete or replace any listed individuals; however, the amendment must be in writing.

IN WITNESS WHEREOF, Contractor has executed this Agreement and the City, by its City Manager, who is authorized to do so, has executed this Agreement.

Insert Company Name
CONTRACTOR

Dated: _____

By _____
John Williams, Owner/Project Manager

CITY OF COMPTON
Recommended for Approval:

By _____
Brian A. Dickinson, General Manager
Water Department

Dated: _____

Approved by:

Dated: _____

By _____
Craig J. Cornwell, City Manager

Approved as to form:

By _____ **Dated:** _____
Damon Brown, City Attorney

ATTEST:

Dated: _____ **By** _____
Alita Godwin, City Clerk

September 10, 2019

TO: HONORABLE MAYOR AND CITY COUNCIL MEMBERS

FROM: COMMUNITY DEVELOPMENT DIRECTOR

SUBJECT: A REQUEST TO SCHEDULE A PUBLIC HEARING TO CONSIDER AND ADOPT A RESOLUTION RECOMMENDING THE CITY COUNCIL'S APPROVAL OF AN AMENDMENT TO CHAPTER 30, ZONING, OF THE COMPTON MUNICIPAL CODE TO: 1) CREATE A NEW CHAPTER REGULATING EMERGENCY SHELTERS AND 2) AMEND THE USE REGULATIONS TO SPECIFICALLY ALLOW TRANSITIONAL AND SUPPORTIVE HOUSING IN RESIDENTIAL ZONES (September 24, 2019 at 5:45 p.m.)

SUMMARY

Senate Bill No. 2 ("SB-2"), otherwise known as The Planning and Zoning Law, was enacted to amend Sections 65582, 65583 and 65589.5 of the Government Code and became effective January 1, 2008. SB-2 declares emergency shelters be allowed as a permitted use without a conditional use or other discretionary permit, while authorizing jurisdictions to establish standards for specified aspects of emergency shelters. The law also requires that transitional and supportive housing be defined as residential uses and zoning regulations must specifically allow these uses.

The proposed amendments will bring the Compton Municipal Code into compliance with SB-2.

Staff requests a public hearing be set on Tuesday, September 24, 2019 at 5:45pm.

**RICHARD ROJAS, AICP
DIRECTOR OF COMMUNITY DEVELOPMENT**

APPROVED FOR FORWARDING:

**CRAIG CORNWELL
CITY MANAGER**

September 10, 2019

TO: HONORABLE MAYOR AND COUNCIL MEMBERS

FROM: PARKS AND RECREATION DIRECTOR

**RE: ACTION ITEM – REQUEST FOR CITY COUNCIL RATIFICATION TO
WAIVE FACILITY FEES FOR USE OF DOLLARHIDE COMMUNITY
CENTER FOR MARGIE GARRETT REPAST HELD ON AUGUST 3, 2019
(\$750.00)**

The Parks and Recreation Department (“Department”) received a request to utilize the Dollarhide Community Center Banquet Room on Saturday, August 3, 2019, from 2:00 P.M. to 8:00 P.M. for the repast of Compton Unified Board of Trustee Member Margie Garrett. The request for fee waiver was presented to staff on Tuesday, July 30, 2019, after the City Council adjourned for the August break.

Margie Garrett was a native East Texan, who moved to Southern California in 1960 and resided in Compton for over 50 years. For more than 40 years, Margie Garrett faithfully served the Compton community as a school teacher and union activist until her retirement in 2009. To honor her achievements, Margie Garrett was elected to the Compton Unified School District Governing Board of Trustees in 2009 and eventually re-elected in 2013.

The family of Margie Garrett requested the use of the Dollarhide Community Center for holding the repast and is seeking a waiver of facility use fees; however, City policy does not give authorization for staff to waive fees for use of City owned facilities for non-City related activities or business; thus, City Council ratification is required.

Breakdown of the fees associated with use of the Dollarhide Community Center for the requested event is described below.

DEPARTMENT	COSTS
Facility Fees \$125 per hour x 6 hours = \$750	\$750.00
General Services 2 Staff x \$35 an hour x 6 hours = \$210	\$420.00
Security Services 1 Staff x \$30 an hour x 6 hours = \$180	\$180.00
Total	\$1,350.00

**Action Item – Request for Facility Use Fee Waiver
Dollarhide Community Center (August 3, 2019)
Margie Garrett Repast
September 10, 2019 page 2**

As in the case of previous requests, City Council has the option of waiving the facility costs only of \$750.00 for the event. However, staff time costs for this event, assuming City Council waives the facility fee, would be \$600.00 and will be directed to be paid by Margie Garrett's family representative.

**MARVIN C. HUNT, DIRECTOR
PARKS AND RECREATION DEPARTMENT**

APPROVED FOR FORWARDING:

**CRAIG J. CORNWELL
CITY MANAGER**

SEPTEMBER 10, 2019

TO: HONORABLE MAYOR AND COUNCIL MEMBERS

FROM: CITY MANAGER

SUBJECT: A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMPTON AUTHORIZING THE CITY MANAGER TO EXECUTE AN INCENTIVE AGREEMENT WITH PLENTY UNLIMITED, INC. TO LOCATE A STATE OF THE ART INDOOR FARM WITHIN THE CITY OF COMPTON

SUMMARY

This resolution proposes a Utility User Fee (“UUT”) reduction agreement (“Incentive Agreement”) between the City of Compton and Plenty Unlimited, Inc. (“Plenty”) or its farm level subsidiary.

BACKGROUND

Plenty is an indoor, hydroponic farming company that grows field-scale agricultural produce. Its mission is to provide food that is better for plants, people, and the planet. Plenty grows, harvests, packages, and ships fresh produce to grocery stores, restaurants, and consumers that set a new bar for flavor, quality, nutrition, shelf life, and cleanliness. In addition, Plenty’s produce is pesticide-free and its farms use a small fraction of the water and land compared to conventional agriculture.

Plenty will make more flavorful and nutritious produce more available in Compton. By growing where consumers live, Plenty minimizes transportation needs to provide clean, pesticide-free food for Compton residents. Staff believes that by increasing accessibility to fresh produce in Compton, a Plenty farm will improve community health in the City.

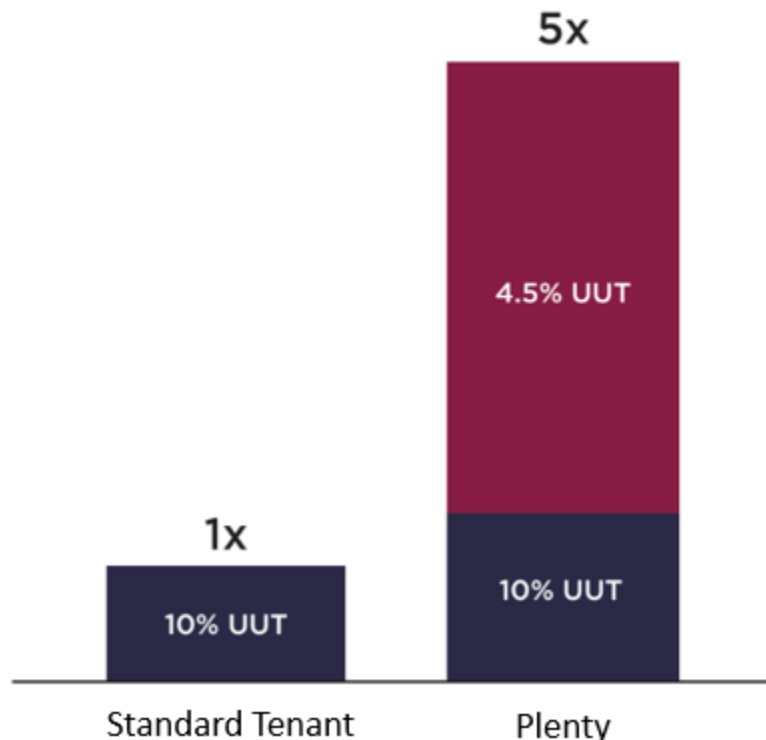
Plenty is drawn to locate in Compton due to the City’s vibrant community, rich farming history, and talented workforce. As a heavy power user, however, the City’s ten percent (10%) UUT limits Plenty’s ability to achieve long term success. Plenty is projected to use up to ten times more power than another tenant in the same space due to the nature of its operations.

Plenty has requested that the City reduce its UUT tax burden to a level that will allow Plenty to be competitive in the market, while still accruing more UUT tax revenue to the City than a company with a normal power use profile. This structure would apply for five (5) years and extend for an additional five (5) years if Plenty meets certain conditions requested by the City.

Plenty recently commissioned the world’s most efficient leafy greens farm at its South San Francisco headquarters. Compton is one jurisdiction under consideration for a future farm.

STATEMENT OF THE ISSUE

Plenty has proposed a tax structure whereby it would pay a UUT equal to ten percent (10%) on the first \$300,000 of electricity usage in a given year (more energy usage than a standard tenant), and thereafter four and one-half percent (4.5%) on any remaining electricity usage for the remainder of such year after giving effect to the reduction.



TERM

Plenty would be subject to this tax structure for an initial term of five (5) years from the start of commercial operations, which will be extended for an additional five (5) year term subject to:

1. Plenty paying an annual average amount of at least \$60,000 in UUT fees to the City of Compton during the initial five-year term, and
2. Plenty fulfilling all the community benefit conditions outlined below.

COMMUNITY BENEFITS

After conversations with the City, Plenty will commit to the following community benefits:

1. **Local Hires.** Plenty will use good faith efforts to source at least 30 percent of the full-time workers at its Compton facility from City of Compton area zip codes.

2. **Youth Educational Program.** Plenty will give an annual presentation on indoor farming to each of the seven middle schools in the City of Compton.
3. **College Educational Program.** Plenty will give an annual career talk at Compton College in order to expose students to and prepare students for careers in indoor farming.
4. **Chamber of Commerce.** Plenty will provide civic engagement through membership or sponsorship with a Compton Area Chamber of Commerce.

Plenty's compliance with the terms of its agreement with the City of Compton would be verified halfway through the initial 5-year term, as well as prior to the end of such initial term as a condition to extension.

FISCAL IMPACT

If Plenty receives this tax structure and locates in Compton, the City is expected to accrue a minimum of \$300,000 in net UUT revenue over the first five years of the agreement compared to another tenant paying a ten percent (10%) UUT rate on a lower electricity usage over the same time period, with further net gains in UUT revenue as compared to another tenant over the second five years of the agreement.

RECOMMENDATION

Staff recommends that the City Council Members approve the attached resolution.

CRAIG J. CORNWELL
CITY MANAGER

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMPTON
AUTHORIZING THE CITY MANAGER TO EXECUTE AN INCENTIVE
AGREEMENT WITH PLENTY UNLIMITED, INC. TO LOCATE A STATE OF THE
ART INDOOR FARM WITHIN THE CITY OF COMPTON)**

WHEREAS, Plenty Unlimited, Inc. ("Plenty") is an indoor, hydroponic farming company that grows field-scale agricultural produce; and

WHEREAS, Plenty's mission is to provide food that is better for plants, people, and the planet; and

WHEREAS, as a heavy power user, the City of Compton's 10% Utility User Fee would limit Plenty's ability to achieve long term success; and

WHEREAS, Plenty is projected to use up to ten times more power than traditional tenants in the similarly zoned spaces due to the nature of its operations; and

WHEREAS, Plenty proposes a tax structure whereby it would pay a UUT equal to 10% on the first \$300,000 of electricity usage in a given year and thereafter 4.5% on any remaining electricity usage for the remainder of such year after giving effect to the reduction; and

WHEREAS, Plenty would be subject to this tax structure for an initial term of five (5) years from the start of commercial operations, which will be extended for an additional five (5) year term subject to the following conditions:

1. Plenty paying an annual average amount of at least \$60,000 in UUT fees to the City of Compton; and
2. Plenty fulfilling agreed upon community benefits, i.e., 30% local hires, youth educational program, college educational program and Compton Area Chamber of Commerce membership/sponsorship.

NOW, THE CITY OF COMPTON HEREBY RESOLVES AS FOLLOWS:

Section 1. That the City Manager, on advice of the City Attorney, is hereby authorized to enter into an Incentive Agreement, with Plenty Unlimited, Inc. or its subsidiary, to provide one five-year initial term and one extended five-year term if conditions referenced above are met.

Section 2. That Plenty shall receive a reduction in the City of Compton's 10% UUT charge after the first \$300,000 of electricity usage in a given year and thereafter 4.5% on any remaining electricity usage for the remainder of such year after giving effect to the reduction.

Section 3. That a copy of this Resolution shall be filed with the offices of the City Manager, City Attorney, City Controller and City Clerk.

Section 4. That the Mayor shall sign and the City Clerk shall attest to the adoption of this Resolution.

ADOPTED this ____ day of _____, 2019.

MAYOR OF THE CITY OF COMPTON

ATTEST:

CITY CLERK OF THE CITY OF COMPTON

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
CITY OF COMPTON

I, Alita Godwin, City Clerk to the City of Compton, hereby certify that the foregoing Resolution was adopted by the City Council, signed by the Mayor and attested by the City Clerk at a regular meeting thereof held on the ____ day of _____, 2019.

That said Resolution was adopted by the following vote, to wit:

AYES:	COUNCIL MEMBERS-
NOES:	COUNCIL MEMBERS-
ABSENT:	COUNCIL MEMBERS-
ABSTAIN:	COUNCIL MEMBERS-

CITY CLERK OF THE CITY OF COMPTON

INCENTIVE AGREEMENT
BETWEEN
THE CITY OF COMPTON AND BLUE GARDEN LLC

THIS INCENTIVE AGREEMENT (hereinafter the “Agreement”) is made by and between the City of Compton, a charter city in the State of California (hereinafter the “City”) and Blue Gardens LLC, a Delaware limited liability company (together with its direct parent Plenty Unlimited Inc., a Delaware corporation, hereinafter “Plenty”).

WHEREAS, the purpose of this Agreement is to provide incentives to Plenty to locate its operation in the City through the lease of a facility and leasehold improvements located at 126 East Oris Street in the City, and the purchase and installation of machinery and equipment for use of the facility as a vertical indoor farm (hereinafter, such facility shall be referred to as the “Project”); and

WHEREAS, the City wishes to encourage development of the Project because it will help meet important economic, social, and planning goals of the City, including but not limited to creating jobs and increasing revenue to the City; and

WHEREAS, by locating the Project in the City, Plenty will stimulate the City’s economy through investment and employment and enhance the City’s tax base; and

WHEREAS, Plenty’s commitment to build the Project and to increase the number of Plenty’s employees in the City provides public benefit and constitutes material consideration inducing the City to enter into this Agreement; and

WHEREAS, the purpose of this Agreement is to formalize the commitments between Plenty and the City.

NOW, THEREFORE, for valuable consideration, receipt of which is hereby acknowledged, the City and Plenty agree as follows:

Section 1. Purpose

The purpose of the Agreement is to provide certain incentives to Plenty in exchange for Plenty's development of the Project.

Section 2. Term

The Term of this Agreement shall be five (5) years from the Effective Date (the "Initial Term"), which shall be extended for one additional five (5) years (the "Extension Term") if, during the Initial Term (i) Plenty has paid an annual average of at least Sixty Thousand Dollars (\$60,000) in Utility User Tax, and (ii) Plenty has satisfied the Community Benefit Obligations as set forth in Section 3. As used herein, the Effective Date shall be the date that Plenty has commenced full-scale commercial operations at the Project site. As used herein, "full-scale commercial operations" shall be upon written declaration of such status from Plenty to the City. The City acknowledges and agrees that, if Plenty has not paid an annual average of at least Sixty Dollars (\$60,000) in Utility User Tax during the Initial Term, Plenty may nevertheless satisfy the condition in Section 2(i) by making a voluntary payment to the City in the amount necessary to make up the shortfall.

Section 3. Plenty's Obligations

In order to receive the City UUT Abatement described in Section 4 of this Agreement, Plenty shall:

- (i) Use good faith efforts to ensure that during the Term at least thirty percent (30%) of its full-time equivalent employees at the Project are residents of the City, with such residency determined as of the date of hiring. As used herein, "full-time equivalent employees" means any combination of employees who are employed by Plenty (and/or a subsidiary of Plenty) and other individuals who provide direct services to the Project whose collective hours worked are equal to or greater than an average of thirty-five (35) hours per week. Plenty and the City agree that Plenty shall have used good faith efforts to satisfy the employment target in this Section if it takes one or more of the following actions in its reasonable discretion in order to fill

vacancies (i) uses the services of local employment agencies to identify Compton residents as potential applicants, (ii) contacts public job programs to identify Compton residents as potential applicants, and/or (iii) participates in local job fairs or other job placement programs to recruit Compton residents; provided, however that “good faith efforts” may also be satisfied through other reasonable recruitment efforts in Plenty’s reasonable discretion. Plenty and the City also agree that, to satisfy the “good faith efforts” standard, Plenty is not obligated to depart from its standard employment practices and policies, including with respect to qualifications or wages and benefits.

- (ii) Give an annual presentation on indoor farming to each of the seven (7) middle schools in the City;
- (iii) Give an annual career talk to local college students in the City in order to expose students to and prepare students for careers in indoor farming; and
- (iv) Provide civic engagement through membership or sponsorship with a Compton Area Chamber of Commerce.

The foregoing obligations are collectively referred to as the “Community Benefit Obligations.” Plenty’s compliance with the Community Benefit Obligations will be subject to an audit as of the date that is thirty (30) months after the Effective Date. As a condition precedent for the Term of this Agreement to be extended for the Extension Term, Plenty’s compliance with the Community Benefit Obligations will be subject to an audit as of the date that is fifty-five (55) months after the Effective Date. Each such audit will consist of a written certification as to compliance signed by an officer of Plenty, accompanied by such supporting documentation as Plenty shall reasonably provide and as may be reasonably requested by the City (subject to the City taking reasonable steps to avoid the disclosure of any of Plenty’s competitively sensitive information). If, based on either of the audits, Plenty was unable to satisfy any of the Community Benefit Obligations, Plenty shall not be in default of such obligations unless it has received written notice from the City of such default, been given an opportunity to cure the default and has failed to cure such default within 60 days from the date Plenty receives such written notice. If, after such opportunity to cure, Plenty has not cured the default, the City’s sole remedy shall be

to terminate this Agreement and Plenty will thereafter be ineligible to receive the City UUT Abatement (as defined in Section 4). If Plenty is unable to satisfy any of the obligations stated in Section 3(ii) and (iii) through no fault of Plenty, Plenty shall be allowed to satisfy such obligation by conducting similar presentations to another Compton school or community organization.

Section 4. City Utility User Tax Abatement

The City charges a utility user tax (the “Utility User Tax”) to businesses operating in the City at a rate of ten percent (10%) of the electricity charges, as shown on each invoice delivered by Southern California Edison (“SCE”). As a direct inducement to encourage Plenty to develop the Project within the City, the City will provide Plenty with an abatement of the Utility User Tax as follows: during each twelve (12) month period commencing on the Effective Date and each anniversary thereof, the Utility User Tax rate shall be ten percent (10%) of the electricity charges for the first Three Hundred Thousand Dollars (\$300,000) of the electricity charges billed by SCE, and thereafter the Utility User Tax rate shall be reduced to four and one-half percent (4.5%) of such electricity charges billed during the remainder of the twelve (12) month period (hereinafter, the “City UUT Abatement”). The City shall work with SCE and Plenty to implement the City UUT Abatement by absolving SCE of its obligation to collect Utility User Tax payments from Plenty and allowing Plenty to calculate and remit its Utility User Tax payments under the City UUT Abatement directly to the City. If the Three Hundred Thousand Dollar (\$300,000) breakpoint occurs prior to the end of an invoice cycle, the reduced Utility User Tax rate shall be equitably prorated based on the number of days in the month.

Section 5. Assignment

Neither Plenty nor any subsidiary or affiliate shall assign or transfer any interest in this Agreement or the performance of any of their obligations hereunder, without the prior written consent of the City, which consent shall not be unreasonably withheld, or delayed and any attempt to assign this Agreement or any rights, duties, or obligations arising hereunder shall be void and of no effect. This Section shall not apply to (and such assignments may occur without the City’s consent and upon Plenty giving the City written

notice thereof): (i) assignments between Plenty and any of its subsidiaries and/or affiliates, (ii) collateral assignments to financing sources (iii) assignments between Plenty or one of Plenty's subsidiaries and/or affiliates to a successor-in-interest by merger, consolidation, or reorganization (provided that Plenty shall not be released from its obligations under this Agreement until such assignee or transferee agrees to be bound by the terms and conditions set forth in this Agreement). Following the assignment of this Agreement as permitted herein, the assignor shall be released of any and all obligations and liabilities hereunder.

Section 6. Governing Law

This Agreement shall be governed exclusively by the laws of the State of California.

Section 7. Private Undertaking

It is specifically understood by and between the parties hereto that the development of the Project is exclusively undertaken by Plenty as a private, independent development. No partnership, joint venture or other association of any kind between Plenty and the City is formed, contemplated, or intended by this Agreement.

Section 8. No Third Party Beneficiary

Nothing in this Agreement is intended to create duties or obligations to or rights in third parties who are not parties to this Agreement.

Section 9. Notices and Reports

Any notices or reports required or permitted to be provided under this Agreement shall be in writing and personally served or sent by overnight delivery, addressed as follows:

TO CITY:

City of Compton

Attn: City Manager

205 S. Willowbrook Avenue
Compton, CA 90220

TO PLENTY:

Blue Gardens LLC
c/o Plenty Unlimited, Inc.
Attn: Daniel Malech, Head of Legal
590 Eccles Avenue
South San Francisco, CA 94080

Notice shall be deemed provided upon delivery. The parties shall notify each other of changes in their addresses and/or their representatives to whom notice should be provided.

Section 10. Severability

If any term, provision, covenant, or condition of this Agreement is held in a final disposition by a court of competent jurisdiction to be invalid, void, or unenforceable, such provision shall be severed, and the remaining provisions of this Agreement shall continue in full force and effect unless the rights and obligations of Plenty or the City have been materially altered or abridged by such invalidation, voiding, or unenforceability.

Section 11. Interpretation

Plenty and the City have each reviewed this Agreement with their counsel. Any question of doubtful interpretation shall not be resolved by any rule or interpretation providing for interpretation against the drafting party, and this Agreement shall be construed as if both parties to this Agreement drafted it. The captions and headings contained herein are for convenience only and shall not affect the meaning or interpretation of this Agreement.

Section 12. Time for Performance

Unless otherwise specified, any reference herein to “days” shall mean calendar days. If the time for performance of any obligation under this Agreement ends on a

Saturday, Sunday, City holiday, or when the City is not open for business, then the time for performance shall be extended to the next business day.

Section 13. Counterparts

This Agreement may be executed in counterparts and multiple originals.

Section 14. Entire Agreement

This Agreement represents the entire understanding of the parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters contained herein. This Agreement may only be modified by a written amendment duly executed by the City and Plenty.

[Signatures follow on next page]

WHEREFORE, the Parties hereunto have caused this Agreement to be signed by their authorized representatives.

APPROVED AS TO FORM:

CITY OF COMPTON

By: _____
Craig J. Cornwell, City Manager

By: _____
Damon M. Brown, City Attorney

Date: _____

Date: _____

ATTEST:

By: _____
Alita Godwin, City Clerk

APPROVED AS TO FORM:

BLUE GARDENS LLC

By: _____
Attorney for Blue Gardens LLC

By: _____
Authorized Representative for
Blue Gardens LLC

Date: _____

Date: _____

September 10, 2019

TO: HONORABLE MAYOR AND COUNCIL MEMBERS

**FROM: BRIAN A. DICKENSON, GENERAL MANAGER
WATER DEPARTMENT**

**SUBJECT: A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
COMPTON AUTHORIZING THE CITY MANAGER TO ISSUE A
PURCHASE ORDER TO THE METROPOLITAN WATER
DISTRICT OF SOUTHERN CALIFORNIA FOR \$300,000.00 TO
PURCHASE IMPORTED WATER FOR THE 2019-2020 FISCAL
YEAR**

SUMMARY

This resolution will authorize the City Manager to issue a purchase order to Metropolitan Water District of Southern California to pay for capacity charges, readiness to serve charges and for imported water purchased for the City of Compton.

BACKGROUND

The Compton Municipal Water Department provides for the City's water demands through two sources; groundwater pumping wells and imported water purchases from the Metropolitan Water District of Southern California (MWD).

STATEMENT OF THE ISSUE

The Compton Municipal Water Department delivers a total annual demand of approximately 8,000 acre-feet of water. This is provided through groundwater pumping rights of 5,780 acre-feet of water (75%) and MWD imported water purchases of approximately 2,220 acre-feet.

The Compton Municipal Water Department produces groundwater through its water rights from City water wells, augmented with additional, leased-in groundwater rights from other entities, and combines this with imported water purchased from MWD to meet the total water demand.

The Compton Municipal Water Department has leased additional water rights for the current Fiscal Year 2019-2020, but needs to make sure that we have imported water available. The City does not anticipate but must pay for services as needed to meet all its anticipated demands, therefore, the Water Department anticipates purchasing 300 acre-feet of imported water from MWD for the 2019-20 Fiscal Years to meet its annual demands.

ALTERNATIVE

No other options exist. The City is one of the original MWD thirteen member agencies and has been a member since 1931. This purchase is to insure adequate water supplies to meet our total water demand and fulfill our obligation as a member agency.

FINANCIAL IMPACT

It is estimated that the capacity charges from MWD for FY 2019-20 is \$300,000.00 (Three Hundred Thousand Dollars). Adequate funds are available as part of the approved FY 2019 - 2020 Compton Municipal Water Department's Budget in Account No. 5000-850-000-4252 (MWD Water Purchase).

RECOMMENDATION

It is recommended that the attached Resolution authorizing the City Manager to issue a purchase order in the amount of \$300,000.00 to MWD be adopted.

BRIAN A. DICKINSON
WATER MANGER

APPROVED FOR FORWARDING:

CRAIG J. CORNWELL
CITY MANAGER

RESOLUTION NO. _____

**A RESOLUTION OF CITY COUNCIL OF THE CITY OF COMPTON
AUTHORIZING THE CITY MANAGER TO ISSUE A PURCHASE ORDER TO
METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA (MWD) IN
THE AMOUNT OF \$300,000.00 TO PURCHASE IMPORTED WATER FOR THE
2019-2020 FISCAL YEAR**

WHEREAS, the goals and objectives of the Compton Municipal Water Department (CMWD) includes maintaining the City's water infrastructure and providing top tier water service to its customers and in doing so must purchase imported water and water rights; and

WHEREAS, the purchase of water from the Metropolitan Water District of Southern California (MWD) will assist the CMWD in the fulfillment of its goals and objectives; and

WHEREAS, the CMWD anticipates purchasing 300 acre-feet of imported water for its customers from MWD for the 2019-2020 Fiscal Year; and

WHEREAS, the CMWD delivers a total annual demand of approximately 8,000 acre-feet of water which is provided partly through groundwater pumping rights of 5,780 acre-feet of water (75%) from the Water Replenishment District of Southern California; and

WHEREAS, despite acquiring additional groundwater rights through lease agreements, the City needs to insure it has sufficient rights to meet all its anticipated demands; therefore, it is estimated that the cost for Fiscal Year 2019-2020 will be Three Hundred Thousand Dollars (\$300,000); and

WHEREAS, funds are available in the Water Department 2019-2020 fiscal year budget in account No. 5000-850-000-4252 (MWD – Water Purchase).

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COMPTON RESOLVES
AS FOLLOWS:**

Section 1. That the City Manager is authorized to issue a purchase order to the Metropolitan Water District of Southern California (MWD) in the amount of Three Hundred Thousand Dollars (\$300,000).

Section 2. That the funds have been allocated in the Compton Municipal Water Department's 2019-2020 Fiscal Year budget in Account No. 5000-850-000-4252.

Section 3. That a certified copy of this Resolution shall be filed in the offices of the City Attorney, City Manager, City Controller, City Clerk, and the Municipal Water Department.

Section 4. That the Mayor shall sign and the City Clerk shall attest to the adoption of this resolution.

ADOPTED this _____ day of _____, 2019

MAYOR OF THE CITY OF COMPTON

ATTEST:

CITY CLERK OF THE CITY OF COMPTON

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
CITY OF COMPTON

I, Alita Godwin, City Clerk of the City of Compton, hereby certify that the foregoing Resolution was adopted by the City Council, signed by the Mayor and attested by the City Clerk at the regular meeting thereof held on the ____ day of _____, 2019

That said resolution was adopted by the following vote, to wit:

AYES: COUNCIL MEMBERS-
NOES: COUNCIL MEMBERS-
ABSENT: COUNCIL MEMBERS-
ABSTAIN: COUNCIL MEMBERS-

CITY CLERK OF THE CITY OF COMPTON

September 10, 2019

TO: MAYOR AND CITY COUNCIL MEMBERS

FROM CITY MANAGER

**SUBJECT: A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMPTON
AUTHORIZING THE CITY MANAGER TO ENTER INTO A SCHEDULE
LS-1 OPTION E, LED FIXTURE REPLACEMENT RATE AGREEMENT
WITH SOUTHERN CALIFORNIA EDISON**

SUMMARY

This resolution requests that the City Council authorize the City Manager to enter into a Schedule LS-1 Option E, Energy Efficiency-Light Emitting Diode (LED) Fixture Replacement Rate Agreement with Southern California Edison (SCE). Participation in this agreement includes the installation of "smart" street light poles citywide related to the installation, maintenance, and operation of related equipment. If approved, the conversion will be completed by year-end 2019.

BACKGROUND

The City recently identified an opportunity to collaborate with SCE to activate the use of smart technology in street lighting infrastructure. Smart City technologies typically focus on the use of technology to reduce energy usage, optimize systems, and reduce costs. The proposed pilot project to install "smart" streetlight poles will enable automated communication through new photocells on the SCE streetlights making the lights more energy efficient through expanded use of innovative technology.

SCE owns approximately 4,553 street lights within the City of Compton. Four thousand two hundred eighty-four (4,284) of these street lights use metal halide lamp technology which is currently the least efficient lamp. Consequently, Compton would benefit in savings and minimizing repairs by upgrading to LED technology for its street lights.

STATEMENT OF ISSUE

SCE has proposed its Schedule LS-1 Option E, Energy Efficiency-Light Emitting Diode (LED) Fixture Replacement Rate Agreement program to the City for its SCE owned street lights. These LED fixtures have brighter illumination and fewer repair needs than the City's current lights. SCE has successfully completed the conversion of Schedule LS-1 Option E, LED program from High-Pressure Sodium Vapour (HPSV) lighting to this advanced LED illumination technology with 34 communities.

Staff Report – Resolution Authorizing an Energy Efficiency Project with SCE
September 10, 2019
Page 2

Under the pilot program, SCE will provide a turnkey replacement effort for existing streetlights while continuing to own, maintain and operate the streetlights and poles. The streetlight fixtures, which are expected to last 12-20 years, will be replaced in the future as needed by SCE as part of its routine streetlight maintenance program.

Based on actual number of SCE street lights (4,284), wattages, and LED replacements for all metal halide lamps the annual savings expectations for the City is \$243,940.00. The annual savings for all high-pressure sodium lamps (269 streetlights) after Option E LED replacements is \$5,250.00, for a projected total annual savings of \$249,190.00 to the City.

The proposed “smart” street lighting pilot project would include the following key details:

- The installation of citywide smart street light poles.
- The implementation of several innovations, such as integrated public electric vehicle charging components, geographic information systems (GIS) positioning equipment, dimming sensors that reduce light coverage in off-peak hours, remote energy and performance monitoring systems, and electronic banners/ message boards, among other possible new technologies.

The 1,600 City-owned streetlights (LS-2 and LS-3 models) are not included in this proposed conversion pilot program.

ALTERNATIVE

Staff has been contacted by various consultants proposing to determine the feasibility of the City purchasing Edison-owned street lights, converting the fixtures to LED and entering into a separate maintenance agreement for any repair needs. If successful, this prospective lighting conversion project would move forward at a timeframe of 18 to 24 months from an approved vendor engagement.

FINANCIAL IMPACT

There is no financial outlay associated with this SCE LED conversion project. However, the City will be charged an Energy Efficiency Premium Charge of \$1.32 - \$2.79 per light for a twenty-year period. Notwithstanding this charge, there remains a projected total annual savings in energy expense to the City.

RECOMMENDATION

Staff recommends that the City Council adopt the attached Resolution.

CRAIG J. CORNWELL
CITY MANAGER

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMPTON AUTHORIZING THE CITY MANAGER TO ENTER INTO A SCHEDULE LS-1 OPTION E, LED FIXTURE REPLACEMENT RATE AGREEMENT WITH SOUTHERN CALIFORNIA EDISON

WHEREAS, the City Council authorizes the City Manager to enter into a Schedule LS-1 Option E, Energy Efficiency-Light Emitting Diode (LED) Fixture Replacement Rate Agreement with Southern California Edison (SCE), and

WHEREAS, SCE provides a turnkey replacement effort for existing streetlights while continuing to own, maintain and operate the streetlights and poles, and

WHEREAS, the streetlight fixtures, which are expected to last 12-20 years, will be replaced in the future as needed by SCE as part of its routine streetlight maintenance program, and

WHEREAS, this project has been determined to be categorically exempt under California Environmental Quality Act (CEQA) in accordance with Title 14, Chapter 3, Class 1, Sections 15301 and 15302, and

WHEREAS, the City will be charged an Energy Efficiency Premium Charge of \$1.32 - \$2.79 per light for twenty years; and

WHEREAS, based on actual number of SCE street lights (4,284), wattages, and LED replacements for all metal halide lamps, and HPSV lamps (269 streetlights) will result in a projected annual savings of \$249,190.00 to the City.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COMPTON DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. That the City Manager, upon the advice of the City Attorney, is hereby authorized to enter into a Schedule LS-1 Option E, Energy Efficiency-Light Emitting Diode (LED) Fixture Replacement Rate Agreement with Southern California Edison (SCE).

SECTION 2. Based on actual number of SCE street lights (4,284), wattages, and LED replacements for all metal halide lamps, and HPSV lamps (269 streetlights), there is a projected annual savings of \$249,190.00 to the City.

SECTION 3. That a certified copy of this Resolution shall be filed in the offices of the City Manager, City Controller, and City Attorney.

SECTION 4. That the Mayor shall sign and the City Clerk shall attest to the adoption of this Resolution.

ADOPTED this ____ day of _____, 2019.

MAYOR OF THE CITY OF COMPTON

ATTEST:

CITY CLERK OF THE CITY OF COMPTON

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
CITY OF COMPTON: ss

I, Alita Godwin, City Clerk of the City of Compton, hereby certify that the foregoing Resolution was adopted by the City Council, signed by the Mayor and attested by the City Clerk at a regular meeting thereof held on the ____ day of _____, 2019.

That said Resolution was adopted by the following vote, to wit:

AYES:	COUNCIL MEMBERS-
NOES:	COUNCIL MEMBERS-
ABSENT:	COUNCIL MEMBERS-
ABSTAIN:	COUNCIL MEMBERS-

CITY CLERK OF THE CITY OF COMPTON



Southern California Edison
Rosemead, California (U 338-E)

Original
Cancelling

Cal. PUC Sheet No. 57074-E
Cal. PUC Sheet No.

Sheet 1

SCHEDULE LS-1 OPTION E,
ENERGY EFFICIENCY-LIGHT EMITTING DIODE (LED) FIXTURE REPLACEMENT
RATE AGREEMENT

Form 14-965

(To be inserted by utility)

Advice 3241-E
Decision 14-10-046

Issued by
R.O. Nichols
Senior Vice President

(To be inserted by Cal. PUC)

Date Filed Jun 30, 2015
Effective Jun 1, 2016
Resolution _____

SOUTHERN CALIFORNIA EDISON COMPANY
SCHEDULE LS-1 OPTION E, ENERGY EFFICIENCY-LIGHT EMITTING DIODE (LED)
FIXTURE REPLACEMENT RATE AGREEMENT

This Schedule LS-1 Option E, Energy Efficiency-Light Emitting Diode (LED) Fixture Replacement Rate Agreement (Agreement), effective this _____ day of _____,

_____ (Effective Date), is entered into between Southern California Edison Company (SCE) and _____, an SCE customer taking service on Schedule LS-1 (Applicant), referred to collectively as "Parties," and individually as "Party." This Agreement provides for SCE, at Applicant's request, to replace the existing street lighting fixtures serving Applicant's premises with Light Emitting Diode (LED) street lighting fixtures to achieve energy efficiency benefits for Applicant, as set forth in Special Condition 14, Option E, Energy Efficiency-Light Emitting Diode (LED) Fixture Replacement, of Schedule LS-1.

The Parties agree as follows:

1. LED FIXTURES

SCE shall install, own, operate, and maintain LED Fixtures for Applicant as set forth in Exhibit "A" attached hereto and incorporated herein by this reference. The LED Fixtures provided hereunder shall at all times remain the property of SCE.

2. LED FIXTURE REPLACEMENT COSTS

- 2.1 The replacement costs of the LED Fixtures provided hereunder shall be borne by Applicant.
- 2.2 Applicant shall pay the charge for the LED Fixtures Replacement rate, which includes an Energy Efficiency Premium Charge (EEPC) and a Base LED Charge, under Option E of Schedule LS-1. Applicant elects Option E in lieu of an upfront, one-time payment of the replacement costs.
- 2.3 SCE does not guarantee that any energy or bill savings will accrue to Applicant as a result of the LED Fixture replacements.

3. COMMENCEMENT OF SERVICE

The Parties agree that SCE has the right to charge Applicant, and Applicant has an obligation to pay SCE, for the charges set forth in Schedule LS-1, Option E, commencing on the date SCE begins serving the LED Fixtures installed pursuant to this Agreement.

4. TERM AND TERMINATION

- 4.1 This Agreement shall be effective as of the Effective Date and shall continue for a term of twenty (20) years from the commencement of service as specified in Section 3 above (Term).
- 4.2 Applicant may terminate this Agreement at any time during the Term upon a thirty (30) - day advance written notice, provided that Applicant, prior to or within the 30-day advance notice period, assigns the Agreement to any New Party In (NPI) that owns, rents or leases the premises served by the street lighting fixtures replaced under this Agreement and will take service under Option E of Schedule LS-1 effective as of the date of termination; *otherwise*, Applicant shall pay a one-time termination charge equal to the present value of the balance of the EEPC of Option E over the remaining Term. The present value is determined based on SCE's authorized rate of return on rate base, or discounted rate of 7.90%.

**SOUTHERN CALIFORNIA EDISON COMPANY
SCHEDULE LS-1 OPTION E, ENERGY EFFICIENCY-LIGHT EMITTING DIODE (LED)
FIXTURE REPLACEMENT RATE AGREEMENT**

5. AMENDMENTS; ASSIGNMENTS

- 5.1 Any changes or amendments to this Agreement must be in writing and must be executed by the Applicant and SCE and, if required, be approved by the California Public Utilities Commission (Commission).
- 5.2 Applicant shall not assign this Agreement without the prior written consent of SCE; provided, however, that Applicant may assign the Agreement pursuant to the terms and conditions of Section 4.2 above, and the NPI must assume all rights and obligations under this Agreement for the remaining Term. Any assignment and assumption shall be in a form acceptable to SCE.

6. NOTICE

Any notice either Applicant or SCE may wish to provide the other regarding this Agreement must be in writing. Such notice must be either hand-delivered or sent by U.S. certified or registered mail, postage prepaid, to the person designated to receive notice for the other Party below, or to such other address as either may designate by written notice. Notices delivered by hand shall be deemed effective when delivered. Notices delivered by mail shall be deemed effective when received, as acknowledged by the receipt of the certified or registered mailing.

Applicant:

SCE:

(Name)

(Title)

(Address)

(City, State, Zip)

Business Customer Division
Southern California Edison Company
2244 Walnut Grove Avenue
Rosemead, CA 91770

7. NONWAIVER

The failure of either Party to enforce any of the terms and conditions or to exercise any right or privilege in this Agreement shall not be construed as a waiver of any such term and conditions or rights or privileges, and the same shall continue and remain enforce and effect as if no such failure to enforce or exercise had occurred.

8. SEVERABILITY

In the event that any of the provisions, or portions thereof, of this Agreement are held to be unenforceable or invalid by the Commission, or any court of competent jurisdiction, the validity and enforceability of the remaining provisions or any portion thereof shall not be affected.

9. APPLICABLE LAWS, RULES, AND REGULATIONS

This Agreement shall be subject to, and interpreted under the laws, rules, decisions and regulations of the State of California, without regard to its conflict of laws principles, the Commission, and SCE's Commission-approved tariffs.

**SOUTHERN CALIFORNIA EDISON COMPANY
SCHEDULE LS-1 OPTION E, ENERGY EFFICIENCY-LIGHT EMITTING DIODE (LED)
FIXTURE REPLACEMENT RATE AGREEMENT**

10. CALIFORNIA PUBLIC UTILITIES COMMISSION JURISDICTION

- 10.1 This is a filed form tariff agreement authorized by the Commission for use by SCE. No officer, inspector, solicitor, agent or employee of SCE has any authority to waive, alter, or amend any part of this Agreement except as provided herein or authorized by the Commission. This Agreement is to be used in conjunction with Schedule LS-1 and supplements the terms and conditions of the Applicant's electric service under Schedule LS-1.
- 10.2 This Agreement shall at all times be subject to such changes or modifications by the Commission as said Commission may, from time to time, direct in the exercise of its jurisdiction.
- 10.3 Notwithstanding any other provisions of this Agreement, SCE has the right to unilaterally file with the Commission, pursuant to the Commission's rules and regulations, an application for change in rates, charges, classification, service, or rule or any agreement relating thereto.

11. ENTIRE AGREEMENT

This Agreement, including SCE's Commission-approved tariffs, constitutes the complete agreement and understanding between the Applicant and SCE regarding the LED Fixtures replacement costs. Prior agreements, representations, understandings, whether expressed or implied, and communications, oral or written, between the Applicant and SCE shall not be construed to be a part of this Agreement.

12. AUTHORIZATION SIGNATURE

In witness whereof, the Parties hereto have caused this Agreement to be signed by their duly authorized representatives.

APPLICANT

BY: _____

NAME: _____

TITLE: _____

DATE SIGNED: _____

SOUTHERN CALIFORNIA EDISON COMPANY

BY: _____

NAME: _____

TITLE: _____

DATE SIGNED: _____

SOUTHERN CALIFORNIA EDISON COMPANY
EXHIBIT "A"
SCHEDULE LS-1 OPTION E,
ENERGY EFFICIENCY-LIGHT EMITTING DIODE (LED) FIXTURE REPLACEMENT

APPLICANT

CUSTOMER ACCOUNT NO.

SERVICE ACCOUNT NO.

(Additional account numbers/addresses may be attached hereto.)

SERVICE ADDRESS

APPLICANT REQUESTED READY TO SERVE DATE

SCE READY TO SERVE DATE _____

DESCRIPTION OF **LED** FIXTURES/SCOPE OF WORK: SPECIFY HOW MANY STREET LIGHTING
FIXTURE REPLACEMENTS ARE BEING REQUESTED AND AGREED TO UNDER THIS
AGREEMENT AND OTHER RELEVANT DETAILS.

W.O. No(s): _____

Southern California Edison

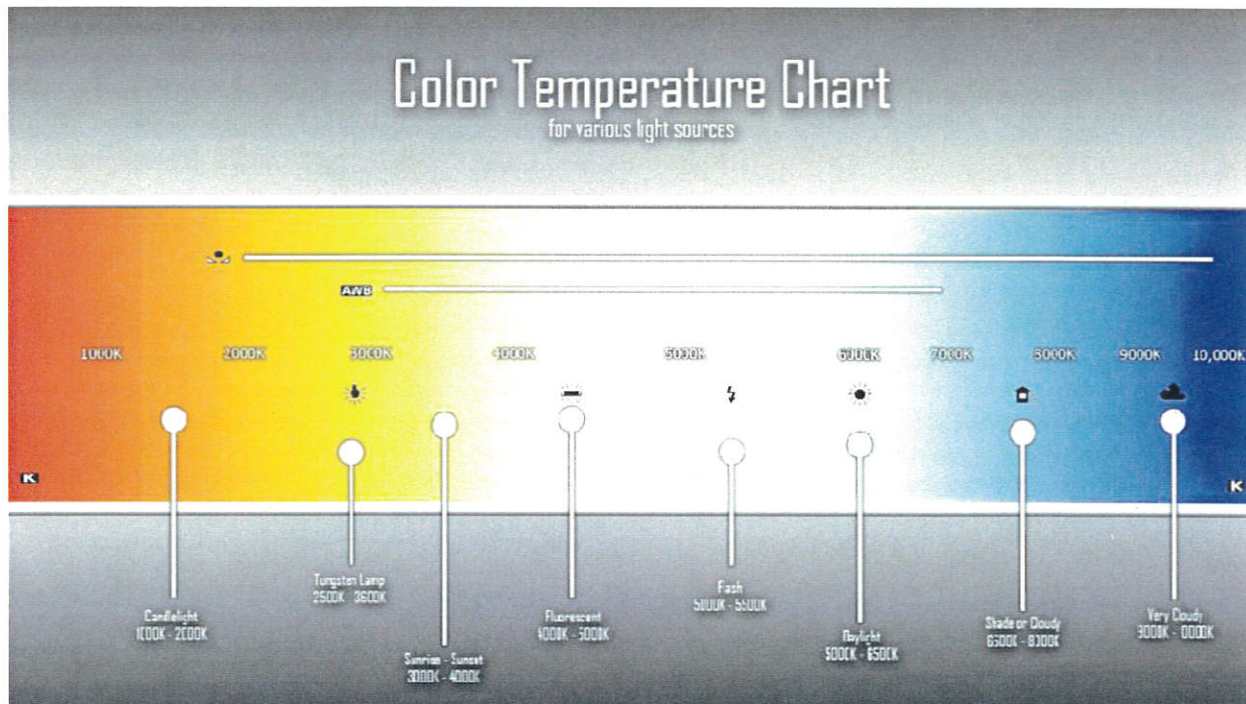
LS-1 Option E

Color Temperature Specification

At present, Southern California Edison is using current generation General Electric (GE) Evolve LED street light fixtures for LED replacements under the LS-1 Option E program. GE LED fixtures allow for a choice between color temperatures of either 4000 Kelvin degrees (4000k) or 3000 Kelvin degrees (3000k) at the customer's discretion. Please check the box below and sign to signify your preference for either 3000k or 4000k color temperature lights. Thank you.

3000k color temperature lights are considered "warm white" and will have more yellow and amber tones that are consistent with today's existing High Pressure Sodium street lights.

4000k color temperature lights are between warm and cool on the spectrum and will provide a "whiter" appearing light without crossing into the bluer spectrum.



Please check your choice of 3000k or 4000k

_____ 3000K

_____ 4000k

Local Government or Customer: _____

Printed Name of Authorized Signer: _____

Signature: _____ Date: _____

	HPSV	LED-equiv	HPSV	LED-equiv	HPSV	LED-equiv	HPSV	LED-equiv	HPSV	LED-equiv	HPSV	LED-equiv	HPSV	LED-equiv	HPSV	LED-equiv
Watts	50	25	70	32	100	41	150	88	200	90	250	161	310	157	400	193
kWh per month	20.01	7.80	28.64	11.20	40.37	14.70	66.59	30.20	84.87	31.90	107.99	56.10	132.135	54.3	167.33	66.40
Energy Rate (\$/kWh)	0.07889	0.07889	0.07889	0.07889	0.07889	0.07889	0.07889	0.07889	0.07889	0.07889	0.07889	0.07889	0.07889	0.07889	0.07889	0.07889
Energy Charge (\$/month)	1.58	0.62	2.26	0.88	3.18	1.16	5.25	2.38	6.70	2.52	8.52	4.43	10.42	4.28	13.20	5.24
Facilities Charge (\$/month)	8.38	8.32	8.39	8.32	8.39	8.37	8.77	8.86	9.09	9.18	9.14	9.43	9.14	NA ^[3]	9.08	10.37
Energy Efficiency Premium Charge (EEPC)^[1] (\$/month)	NA	1.32	NA	1.32	NA	1.36	NA	1.48	NA	1.76	NA	1.97	NA	NA ^[3]	NA	2.79
Undepreciated Book Value (\$/month)	NA	0.00	NA	0.00	NA	0.00	NA	0.00	NA	0.00	NA	0.00	NA	0.00	NA	0.00
Total Charge (\$/month)	9.96	10.26	10.65	10.52	11.57	10.89	14.02	12.72	15.79	13.46	17.66	15.83	19.56	NA^[3]	22.28	18.40
Savings^[2] (\$/month)		(0.30)		0.13		0.68		1.30		2.33		1.83		NA^[3]		3.88

- [1] "EEPC" is also known as the "Accelerated Replacement Value," which recovers the capital cost of LED-equivalents of HPSV fixtures to be replaced. The premium will remain on the customer's bill for 20 years.
- [2] (+) net savings (-) net loss
- [3] Estimations available upon request

September 10, 2019

TO: HONORABLE MAYOR AND COUNCIL MEMBERS

FROM: CITY ATTORNEY

**RE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
COMPTON AMENDING SECTION 4-11 (PURCHASING
SYSTEM) OF CHAPTER IV OF THE COMPTON MUNICIPAL
CODE**

SUMMARY

The City Council will consider adopting an ordinance that will amend Chapter 4 of the Compton Municipal Code by amending Section 4-11 ("Purchasing System") in its entirety, which will; in addition to renumbering some of the current subsections; update the procurement and purchasing procedures for purchases of or contracting for supplies, materials, equipment and services not addressed by Section 1409 (i.e. public work contracts) of the Compton City Charter.

BACKGROUND

In general, the goals of laws regulating competitive bidding are to guard against favoritism, extravagance, fraud and corruption; to prevent the waste of public funds; and, to obtain the best economic result for the public.

Article XIV of the Compton City Charter seemingly provides a complete scheme for the awarding of public works contracts and the purchasing of supplies, materials and equipment, in that:

- Section 1409 of the Charter addresses the letting of public works contracts by requiring that "... contracts involving an expenditure of more than Twenty Five Thousand (\$25,000.00) Dollars for the construction or improvement (excluding maintenance and repair) of public buildings, works, streets, drains, sewers, utilities, parks and playgrounds shall be let to the lowest responsible bidder after notice by publication in the official newspaper by one or more insertions, the first of which shall be at least ten days before the time for opening bids."
- Charter Section 1410 calls for the City Manager to recommend and the City Council consider and adopt by ordinance, rules and regulations governing the contracting for, purchasing of, storing, distribution or disposal of all supplies, materials and equipment required by any office, department or agency of the City government.

- Section 1411 of the Charter requires competitive bidding before making purchasing of or contracting for supplies, materials or equipment under such rules and regulations and with such exceptions as the City Council may prescribe in the ordinance setting up such rules and regulations, including giving local merchants preference when quality and prices are equal.

Presumably, and in compliance with the provisions of Sections 1410 and 1411 of the Charter, the City Council adopted an ordinance, codified as Section 4-11 of the Compton Municipal Code, which established a purchasing system for the City of Compton.

STATEMENT OF ISSUE

The current provisions of Section 4-11, as pertains to purchasing and procurement were adopted decades ago and in need of revision and updating. The provisions of the proposed ordinance will establish a clear and concise procurement and purchasing procedure for purchases of or contracting for supplies, materials, equipment and services not addressed by or applicable to the requirements of Section 1409 of the Charter.

Highlights of the proposed amended ordinance include:

1. Competitive Bidding Requirements:
 - a. (Informal Bids) – for purchases estimated between \$10,000 and \$25,000, solicitation of at least 3 quotes, purchases of or contract for supplies, materials, equipment or services from lowest responsive and responsible bidder.
 - b. (Formal Bids) – for purchases estimated greater than \$25,000, notice inviting bids published in local newspaper, purchase of or contract for supplies, materials, equipment or services from lowest responsive and responsible bidder, Council authorized to accept or reject bid(s).
2. Criteria, in addition to price, to be considered in determining the lowest responsible bidder.
3. Procurements that are exempt from competitive bidding requirements above:

- a. Emergency deemed to exist and determined that supplies, materials, equipment or services involving public health, safety or welfare would be interrupted. Council ratification required.
- b. Inadequate or non-existent competition available.
- c. Purchases of or contracts for supplies, materials, equipment or services from other governmental or quasi-governmental entities.
- d. Contracts for professional services.

FISCAL IMPACT

None anticipated.

RECOMMENDATION

It is recommended that the Council adopt the attached Ordinance.

**DAMON M. BROWN
CITY ATTORNEY**

APPROVED FOR FORWARDING:

**CRAIG J. CORNWELL
CITY MANAGER**

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COMPTON
AMENDING SECTION 4-11 (PURCHASING SYSTEM) OF CHAPTER IV OF
THE COMPTON MUNICIPAL CODE**

WHEREAS, in general, the goals of laws regulating competitive bidding are to guard against favoritism, extravagance, fraud and corruption; to prevent the waste of public funds; and, to obtain the best economic result for the public; and

WHEREAS, Article XIV of the Compton City Charter seemingly provides a complete scheme for the awarding of public works contracts and the purchasing of supplies, materials and equipment, in that:

- Section 1409 of the Charter addresses the letting of public works contracts by requiring that "... contracts involving an expenditure of more than Twenty Five Thousand (\$25,000.00) Dollars for the construction or improvement (excluding maintenance and repair) of public buildings, works, streets, drains, sewers, utilities, parks and playgrounds shall be let to the lowest responsible bidder after notice by publication in the official newspaper by one or more insertions, the first of which shall be at least ten days before the time for opening bids"; and

- Charter Section 1410 calls for the City Manager to recommend and the City Council consider and adopt by ordinance, rules and regulations governing the contracting for, purchasing of, storing, distribution or disposal of all supplies, materials and equipment required by any office, department or agency of the City government; and

- Section 1411 of the Charter requires competitive bidding before making purchasing of or contracting for supplies, materials or equipment under such rules and regulations and with such exceptions as the City Council may prescribe in the ordinance setting up such rules and regulations, including giving local merchants preference when quality and prices are equal; and

WHEREAS, presumably, and in compliance with the provisions of Sections 1410 and 1411 of the Charter, the City Council adopted an ordinance, codified as Section 4-11 of the Compton Municipal Code, which established a purchasing system for the City of Compton; and

WHEREAS, the current provisions of Section 4-11, as pertains to purchasing and procurement are in need of revision and updating; and

WHEREAS, the provisions of this ordinance will establish a clear and concise procurement and purchasing procedures for purchase of or contracting for supplies, materials, equipment and services not addressed by or applicable to the requirements of Section 1409 of the Charter.

THE CITY COUNCIL OF THE CITY OF COMPTON DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. That Section 4-11 (Purchasing System) of Chapter IV of the Compton Municipal Code is hereby amended in its entirety to read as follows:

**4-11 PURCHASING AND PROCUREMENT SYSTEM; STORAGE AND SALE
OF CITY PERSONAL PROPERTY.**

4-11.1 Purchase Orders. All purchases made on behalf of the City shall be by purchase order only issued by the City Manager.

4-11.2 City Controller. No purchase order shall be issued by the City Manager except upon a requisition upon which the City Controller shall endorse that there exists an unencumbered appropriation in the fund account against which such purchase is to be charged.

4-11.3 Budget Record. The City Controller shall maintain a budget record reflecting at all times the unencumbered appropriation account balances and encumbrances as shown by unfilled outstanding purchase orders.

4-11.4 Competitive Bids.

a. Informal Bids. Except as otherwise provided in this section, Section 1409 of the City Charter, state or federal law, the purchase of or contract for supplies, materials, equipment or services having an estimated value between ten thousand dollars (\$10,000) and twenty-five thousand dollars (\$25,000) shall be made from the lowest responsive and responsible bidder pursuant to the procedure set forth below:

1. At least three (3) vendors shall be solicited to submit bids. This solicitation requirement may be met if price quotations have been sought through prices listed on a vendor's Internet website, provided that the City Manager or his/her authorized designee reviews and approves such pricing. The names of the vendors submitting bids and/or vendors whose prices were obtained on the vendor's website, their respective local addresses, if any, principal place(s) of business and the date and amount of each bid and/or website price(s), shall be recorded and maintained as a public record.

2. Bids and/or website price(s) shall be submitted to the soliciting department's Manager or his/her authorized designee, who shall specify the time, place and manner in which bids are to be submitted.

b. Formal Bids. Except as otherwise provided in this section, Section 1409 of the City Charter, state or federal law, the purchase of or contract for supplies, materials, equipment or services having an estimated value greater than twenty five thousand dollars (\$25,000) shall be made from the lowest responsive and responsible bidder pursuant to the procedure set forth below:

1. Notices inviting bids shall include a general description of the supplies, materials, equipment or services to be purchased, shall state where bid blanks and specifications may be secured, and the time and place for opening bids. Notices inviting bids shall be published at least ten (10) days before the date of the opening of the bids. Notices shall be published at least once in a newspaper of general circulation, printed and published in the City, or if there is none, shall be posted in at least three (3) places in the City that have been designated by ordinance as the place for posting public notices. The soliciting department's Manager or his/her authorized designee shall also solicit bids from responsible prospective suppliers whose names are on the bidders' list or who have made a written request that their names be added to the bidders' list.

2. When deemed appropriate or otherwise required by local, state and/or federal laws or regulations, bidder's security shall be prescribed in the notices inviting bids. The bid security shall be returned to bidders; provided however, that a successful bidder shall forfeit its bid security upon failure to execute the purchase contract within ten (10) days after mailing of the notice of award of the contract.

3. When deemed appropriate or otherwise required by local, state and/or federal laws or regulations, performance and/or payment bond(s) shall be required as a condition to the award of a contract. If a performance and/or payment bond is required, the form and amount of the bond shall be described in the bid invitation notice.

4. The City Council shall have the right to accept any bid or portion of bid which it deems to be for the best interests of the City; provided, however, the City Council may reject any and all bids and in its discretion re-advertise for bids or, if appropriate order the purchase made on the open market.

4-11.5 Lowest Responsible Bidder.

a. In addition to price, in determining the lowest responsible bidder, consideration shall be given to the quality and performance of the supplies to be purchased or services by the vendor. The criteria for determining the low bid shall include, but not be limited to the following:

1. The ability, capacity, and skill of the bidder to perform the contract or provide the supplies or services required.

2. The ability of the bidder to provide the supplies or services promptly, or within the time specified, without delay or interference.

3. The character, integrity, reputation, judgment, experience, and efficiency of the bidder.

4. The quality of the bidder's performance on previous purchases or contracts with the City.

5. The ability of the bidder to provide future maintenance, repair parts, and services for the use of the supplies or equipment purchased.

6. Current compliance by the bidder with Federal acts and executive orders and State statutes governing the subject of nondiscrimination in employment; provided, however, the City Manager shall recognize as proof of noncompliance only the final decisions and orders of those Federal and State agencies empowered under the law to make such findings.

7. Certification by the bidder that the bidder shall pursue an affirmative course of action as required by the affirmative action guidelines adopted by the City Council reasonably pertaining to the work of the contract and to the nature and size of the bidder's work force to ensure that applicants are sought and employed, and that employees are treated during employment, without regard to their race, color, national origin or ancestry, or religion. Such specific guidelines will be adopted by Council resolution from time to time, identifying the nature and scope of the affirmative action desired by the City. Such guidelines shall be made available to all persons desiring to bid on City business.

8. Each bidder shall enclose with its bid a certificate stating Whether the bidder is currently in compliance with all Federal and State laws covering nondiscrimination in employment, and that the bidder will pursue an affirmative course of action as required by the affirmative action guidelines provided for in subsection (f) above of this section, and resolutions adopted pursuant thereto, and that, if awarded the contract, it will not discriminate in the employment of any person under the contract because of the race, color, national origin or ancestry, or religion of such person, and that the bidder will participate, if requested, in a pre-award review of his/her/its qualifications under the provisions of this section.

b. Pursuant to Section 1411 of the Charter, and in accordance with applicable state or federal law, when making purchases for the City, local merchants shall be given the preference, quality and price being equal.

4-11.6 Penalties for Violations of Discrimination and Affirmative Action Provisions.

a. Any contractor who shall be found in violation of the nondiscrimination provisions of the Fair Employment Practices Act of the State, or similar provisions of Federal law, or executive order in the performance of any contract with the City thereby shall be found to be in material breach of such contract, and thereupon the City shall have the power to cancel, terminate or suspend the contract, in whole or in part, or to deduct from the amount payable to such contractor the sum of twenty-five (\$25.00) dollars for each person for each calendar day during which such person was discriminated against as damages for the breach of contract, or both. Only a finding of the Fair Employment Practices Commission of the State or the equivalent Federal agency or officer shall constitute evidence of a violation of contract pursuant to the provisions of this section.

b. Any contractor who shall be found by the City to be in violation of the agreement to pursue an affirmative course of action or in violation of any provisions of the affirmative action guidelines pertaining to the contract shall be found in material breach of such contract, and thereupon the City shall have the power to cancel, terminate or suspend the contract, in whole or in part, or to deduct from the amount payable to such contractor the sum of two hundred fifty (\$250.00) dollars for each calendar day during which the contractor is found to have been in noncompliance as damages for said breach of contract, or both.

4-11.7 Exceptions to Competitive Bidding Requirements.

Except as otherwise provided in Section 1409 of the City Charter, state or federal law, the competitive bidding requirements of this section shall not apply in the following circumstances:

a. Where an emergency is deemed to exist and it is determined that supplies, materials, equipment or services involving the public health, safety or welfare would be interrupted if the normal procedures were followed, provided that all emergency purchases which would otherwise require bidding procedures made pursuant to this section shall be submitted to the Council for ratification, if required, at the next regular Council meeting after the purchase and/or services are authorized.

b. Where competition is determined to be inadequate or non-existent; such as membership in professional organizations, attendance at meetings or conventions, travel, and when it is determined that only one (1) vendor is qualified to do the work or provide the product. Use of this exception shall be justified and documented.

c. The purchase of or contract for supplies, materials, equipment or services entered into with another governmental or quasi-governmental entity.

d. Any contract for professional services; such as, but not limited to attorneys, physicians, architects, engineers, consultants, accountants, specialized printers or other individuals or organizations possessing a high degree of professional, unique, specialized or technical skill or expertise. Selection of professional services providers shall be on the basis of demonstrated competence and professional qualifications necessary for the satisfactory performance of the services required at a fair and reasonable price.

4-11.8 Payment of Prevailing Wages Required for Public Works Projects.

a. Except as otherwise provided in this section, the general rate of per diem wages, as set forth in Labor Code Section 1770, et seq., or any successor provision thereto ("prevailing wages"), shall be paid on all City public works projects. As

used in this section, the term 'public works' shall have the same meaning and shall refer to the same term as used in Labor Code Section 1782. All notices inviting bids for such public works projects shall incorporate and provide notification of the provisions of this section. Nothing in the City Charter, including Section 1409, shall affect the provisions of this section.

b. In accordance with the provisions of Labor Code Section 1782, the requirement to pay prevailing wages, as set forth above in this section, does not apply to the following:

1. A contract of \$25,000 or less when the contract is for construction work;
2. A contract of \$15,000 or less when the contract is for alteration, demolition, repair, or maintenance work; or
3. A public works contract that was advertised or awarded prior to January 1, 2015.

4-11.9 Storage of Materials. The City Manager shall provide proper facilities for the storage of all materials, supplies, equipment and other personal property owned by the City. No such materials, supplies, equipment or other personal property shall be withdrawn except upon requisition as required by the City Controller.

4-11.10 Sale of City Personal Property. Whenever the City has any materials, supplies, equipment or other personal property which it no longer needs for municipal purposes, or which has become unfit for use for municipal purposes, the City Manager shall provide for the sale, donation or destruction of such materials, supplies, equipment or other personal property by such means as he or she shall find most advantageous to the City. In the event such materials, supplies, equipment or other personal property has a sale value of more than five hundred dollars (\$500.00), the City Manager shall obtain the consent and approval of the City Council before authorizing the sale, donation or disposal thereof.

Section 2. That if any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction, the remainder of this Ordinance shall remain in full force and effect.

Section 3. That this Ordinance and the rules, regulations, provisions, requirements, orders and matters established and adopted hereby shall take effect and be in full force and effect thirty (30) days after the date of its final passage and adoption by the City Council.

Section 4. That the Mayor shall sign and the City Clerk shall attest to the adoption of this Ordinance and shall cause same to be published as required by law.

ADOPTED this _____ day of _____, 2019.

MAYOR OF THE CITY OF COMPTON

ATTEST:

CITY CLERK OF THE CITY OF COMPTON

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss
CITY OF COMPTON)

I, Alita Godwin, City Clerk of the City of Compton, do hereby certify that the foregoing Ordinance was adopted by the City Council of the City of Compton, signed by the Mayor and attested by the City Clerk at a regular meeting thereof held on the _____ day of _____, 2019.

That said Ordinance was adopted by the following vote, to wit:

AYES: COUNCIL MEMBERS-
NOES: COUNCIL MEMBERS-
ABSENT: COUNCIL MEMBERS-
ABSTAIN: COUNCIL MEMBERS-

CITY CLERK OF THE CITY OF COMPTON

Health and Safety Code. The audit shall be conducted by an independent auditor selected by the District as provided in Section 44244 of the Health and Safety Code. (Ord. #1862, § 3)

4-5—4-10 RESERVED.

ARTICLE 2: PURCHASING

4-11 PURCHASING SYSTEM.¹

4-11.1 Purchase Orders. All purchases made on behalf of the City shall be by purchase order only issued by the City Manager. (Ord. #856, § 2600; Ord. #1862, § 2)

4-11.2 City Controller. No purchase order shall be issued by the City Manager except upon a requisition upon which the City Controller shall endorse that there exists an unencumbered appropriation in the fund account against which such purchase is to be charged. (Ord. #856, § 2601; Ord. #1862, § 2)

4-11.3 Budget Record. The City Controller shall maintain a budget record reflecting at all times the unencumbered appropriation account balances and encumbrances as shown by unfilled outstanding purchase orders. (Ord. #856, § 2602; Ord. #1862, § 2)

4-11.4 Competitive Bids. In all cases where the purchase or contract amount exceeds five thousand (\$5,000.00) dollars, the provisions of subsections ~~4-2.6~~ and ~~4-2.7~~ shall apply. The performance of any contract for an amount in excess of five thousand (\$5,000.00) dollars shall be subject to the penalties set forth in sub-

sections 4-11.10 and 4-11.11. (Ord. #856, § 2603; Ord. #986; Ord. #1862, § 2)

4-11.5 Acceptance of Bids. The Council shall have the right to accept any bid or portion of bid which it deems to be for the best interests of the City; provided, however, the Council may reject any and all bids and in its discretion re-advertise for bids or order the purchase made on the open market. (Ord. #856, § 2604; Ord. #1862, § 2)

4-11.6 Storage of Materials. The City Manager shall provide proper facilities for the storing of all materials, supplies, equipment, and other personal property owned by the City. No such materials, supplies, equipment, or other personal property shall be withdrawn except upon requisition as required by the City Controller. (Ord. #856, § 2605; Ord. #1862, § 2)

4-11.7 Sale of Personal Property. Whenever the City has any materials, supplies, equipment, or other personal property which it no longer needs for municipal purposes, or which has become unfit for use for municipal purposes, the City Manager shall provide for the sale of such materials, supplies, equipment, or other personal property by such means as he shall find most advantageous to the City. In the event such materials, supplies, equipment, or other personal property has a sale value of more than five hundred (\$500.00) dollars, the City Manager shall obtain the consent and approval of the Council before offering the same for sale. (Ord. #856, § 2606; Ord. #1862, § 2)

4-11.8 Lowest Responsible Bidder. In addition to price, in determining the lowest responsible bidder consideration will be given to the quality and performance of the supplies to be purchased or services by the seller. The criteria for determining the low bid shall include, but not be limited to, the following:

¹Editor's Note: For statutory provisions governing purchase of supplies and equipment, see Gov. Code § 54201 et seq.

a. The ability, capacity, and skill of the bidder to perform the contract or provide the supplies or services required;

b. The ability of the bidder to provide the supplies or services promptly, or within the time specified, without delay or interference;

c. The character, integrity, reputation, judgment, experience, and efficiency of the bidder;

d. The quality of the bidder's performance on previous purchases or contracts with the City;

e. The ability of the bidder to provide future maintenance, repair parts, and services for the use of the supplies purchased;

f. Current compliance by the bidder with Federal acts and executive orders and State statutes governing the subject of nondiscrimination in employment; provided, however, the City Manager shall recognize as proof of non-compliance only the final decisions and orders of those Federal and State agencies empowered under the law to make such findings; and

g. Certification by the bidder that he will pursue an affirmative course of action as required by the affirmative action guidelines provided for in this subsection reasonably pertaining to the work of the contract and to the nature and size of his work force to ensure that applicants are sought and employed, and that employees are treated during employment, without regard to their race, color, national origin or ancestry, or religion.

Such specific guidelines will be adopted by Council resolution from time to time, identifying the nature and scope of the affirmative action desired by the City. Such guidelines shall be made available to all persons desiring to bid on City business.

(Added by Ord. #1351, § 2607; amended by Ord. #1862, § 2)

4-11.9 Certificates of Nondiscrimination.

Each bidder shall enclose with his bid a certificate stating whether he is currently in compliance with all Federal and State laws covering nondiscrimination in employment, and that he will pursue an affirmative course of action as required by the affirmative action guidelines provided for in subsection 4-11.8, and resolutions adopted pursuant thereto, and that, if awarded the contract, he will not discriminate in the employment of any person under the contract because of the race, color, national origin or ancestry, or religion of such person, and that he will participate, if requested, in a pre-award review of his qualifications under the provisions of this section. (Added by Ord. #1351, § 2608; amended by Ord. #1862, § 2)

4-11.10 Penalties for Discrimination in Employment.

Any contractor who shall be found in violation of the nondiscrimination provisions of the Fair Employment Practices Act of the State, or similar provisions of Federal law, or executive order in the performance of any contract with the City thereby shall be found to be in material breach of such contract, and thereupon the City shall have the power to cancel or suspend the contract, in whole or in part, or to deduct from the amount payable to such contractor the sum of twenty-five (\$25.00) dollars for each person for each calendar day during which such person was discriminated against as damages for the breach of contract, or both. Only a finding of the Fair Employment Practices Commission of the State or the equivalent Federal agency or officer shall constitute evidence of a violation of contract pursuant to the provisions of this section. (Added by Ord. #1351, § 2609; amended by Ord. #1862, § 2)

4-11.11 Penalties for Violations of Affirmative Action Provisions.

Any contractor who shall be found by the City Manager to be in violation of his agreement to pursue an affirmative course of action or in violation of any provisions of the affirmative action guidelines pertaining to his contract shall be found in material breach of such contract, and thereupon the City shall have the power to cancel or suspend the contract, in whole or in part, or to deduct from the amount payable to such contractor the sum of two hundred fifty (\$250.00) dollars for each calendar day during which the contractor is found to have been in noncompliance as damages for said breach of contract, or both. (Added by Ord. #1351, § 2610; amended by Ord. #1862, § 2)

4-11.12 Payment of Prevailing Wages Required for Public Works Projects.

Except as otherwise provided in this section, the general rate of per diem wages, as set forth in Labor Code Section 1770, et seq., or any successor provision thereto ("prevailing wages"), shall be paid on all City public works projects. As used in this section, the term 'public works' shall have the same meaning and shall refer to the same term as used in Labor Code Section 1782. All notices inviting bids for such public works projects shall incorporate and provide notification of the provisions of this section. Nothing in the City Charter, including Section 1409, shall affect the provisions of this section.

a. Exceptions. In accordance with the provisions of Labor Code Section 1782, the requirement to pay prevailing wages, as set forth above in this section, does not apply to the following: (a) a contract of \$25,000 or less when the contract is for construction work; or (b) a contract of \$15,000 or less when the contract is for alteration, demolition, repair, or maintenance work; or (c) a public works contract that was advertised or awarded prior to January 1, 2015. (Ord. #2267)

4-12 CONTRACTS; CONTENTS; AFFIRMATIVE ACTION PROGRAM.

4-12.1 Contracts; City Council Authorization, Execution Requirements.

a. The City shall not be and is not bound by any contract, except as otherwise provided herein, unless the same is made in writing, by order or authorization of the City Council and signed by the City Manager or by another officer authorized to do so by the City Council. Pursuant to Section 702 of the Compton City Charter, the approval of the form of the contract by the City Attorney shall be endorsed thereon before the same shall be signed on behalf of the City by the City Manager and attested to by the City Clerk. The City Council, by ordinance or resolution duly adopted, may authorize the City Manager to bind the City by written contract or purchase order without previous specific action of the City Council for the acquisition of equipment, materials, supplies, labor, services or other items included within the budget approved by the City Council and may impose a monetary limit upon such authority.

b. Legislative actions of the City Council awarding a contract shall not constitute a contract. No contract shall be binding or of any force or effect until approved by the City Attorney pursuant to Section 702 of the City Charter and signed by the City Manager.

c. The requirements for City Council approval specified in paragraph a., above shall apply to all expenditures, extensions, amendments or renewals of an existing or expired contract or term agreement whenever the aggregated expenditures under the original contract or term agreement, or extensions, renewals or amendments exceed (1) the City Manager's contract approval limit, or (2) the total contract amount approved by the City Council for such extension, amendment or renewal in a City resolution.