

LOS ANGELES FIRE DEPARTMENT



DOUGLAS L. BARRY
FIRE CHIEF

January 9, 2009

BOARD OF FIRE COMMISSIONERS
FILE NO. 09-001

TO: Board of Fire Commissioners

FROM: Douglas L. Barry, Fire Chief *DLB*

SUBJECT: **PROFESSIONAL SERVICES CONTRACT – HR VALUE**

FINAL ACTION:	<input type="checkbox"/> Approved	<input type="checkbox"/> Approved w/Corrections	<input type="checkbox"/> Withdrawn
	<input type="checkbox"/> Denied	<input type="checkbox"/> Received & Filed	<input type="checkbox"/> Other

Recommendations:

That the Board:

1. Subject to the approval of the Mayor, authorize the Fire Chief to enter into a contract with HR Value to provide management consulting services on an as-needed basis, and;
2. Upon execution of the contract, that the scope of work and cost of the Task Based Objectives must be approved by the Board of Fire Commissioners prior to the contractor commencing work, and;
3. Instruct the Commission Executive Assistant to forward this agreement to the Mayor's Office in accordance with Executive Directive No. 3.

Summary:

The Los Angeles Fire Department is at a point in its organizational development that it requires the assistance of a Management Consultant to provide the Fire Chief and other members of the management staff with professional consultation and training in the areas of strategic planning and guidance, leadership development and improved communications at and between all levels within the organization. Additionally, the Department requires assistance with improved methodologies and approaches to dealing with discord, and to provide training based on task-based objectives (TBOs) to improve managers' abilities to lead more effectively. The Los Angeles Fire Department has utilized the services of Management Consultants in the past with significant benefit to the Department. HR Value has knowledge and history of the Department, providing different services in the past, and is familiar with many of the issues related to managing a large municipal fire service.

Discussion:

The Los Angeles Fire Department has embarked on a process to reshape the organization, instill best practices and develop a strategic plan that will challenge its membership to critically examine organizational and individual paradigms, values, philosophies and beliefs. This process involves a complex series of discussions between the leadership and members of the organization as well as between stakeholder groups and organizations representing the membership. In order to ensure the Department is, and remains, on the proper course with the project, the Department requires the services of a Management Consultant.

The LAFD has effectively reached a point in the development of its strategic planning process that it requires Management Consulting services. In review of available agreements within other departments and surrounding public agencies, the LAFD identified a contract managed by the Orange County Transportation Authority (OCTA) with the same scope of services that will meet the needs of the Department in its endeavors.

The contract with HR Value is based on TBO's and will provide the necessary guidance to the Department in its approach and actions with organizational development and change, development of an overall strategic plan which includes paradigm shifts and the further evolutionary development of its values, missions, objectives and tasks. Additionally, HR Value will assist and train members in the areas of improving internal and external communications, to improve horizontal and vertical communications within the organization, to guide senior management staff in the formulation of organizational, operational and personnel policies of the department, to facilitate dialogue between the Department and various stakeholder groups of its membership, to provide leadership training to key management staff, to assist in initiating a best practices approach to internal operational and administrative procedures, and other task-based objectives as required by the Fire Chief. To ensure the TBOs are aligned properly with the policies of the City and the Department, staff will submit for review and approval the TBOs to the full Board of Fire Commissioners prior to any performance by the consultant.

The LAFD desires to utilize the OCTA Agreement with HR Value essentially "piggy-backing" on the competitive bid and selection process performed by another public agency, and, in accordance with the policies of the City of Los Angeles. The LAFD has reviewed the records with OCTA and the City Attorney's Office and determined that OCTA did follow established procedures as required of City Departments to award contracts through a competitive bid process, as defined in the Los Angeles City Charter and Administrative Code.

The agreement with HR Value is for a period of one-year, with one additional one-year renewal option, subject to the availability of funds in future fiscal years.

The LAFD has completed the contracting requirements to review the actions of OCTA in their award of contract, issued its own notices of intent to contract and sought the recommendations of the Office of the City Administrative Officer and Personnel Department in accordance with Section 1022 of the Los Angeles City Charter. Additionally, the LAFD has identified and included all the legislative requirements and standard provisions required as part of this contract. The attached contract has been reviewed by the Office of the City Attorney and approved as to legality and form.

Fiscal Impact: This contract obligates the Fire Department to expend funds for services in an amount up to \$99,000 in FY 2008-09. The Department has identified funds in the FY 2008-09 Contractual Services (3040) account for this purpose.

Conclusion: The LAFD requires these consulting services to continue its efforts to improve the Department and its relationships with its members. The Personnel Department and Office of the City Administrative Officer in review of the 1022 documentation related to this agreement has determined that it is not feasible to hire employees to perform this work as the duration and amount of work is not sufficient to retain regular employees for this purpose. This contract is essential to assist the Fire Chief and senior management staff in building a stronger, more cohesive organization.

Board report prepared by William Jones, Senior Management Analyst II, of the Administrative Services Bureau.

Attachment

AGREEMENT NO. _____

**SUPPLEMENTAL AGREEMENT
BETWEEN THE CITY OF LOS ANGELES AND HR VALUE**

This Supplemental Agreement (hereinafter referred to as "Agreement") to Contract Number C-7-1208 between the Orange County Transportation Authority and HR Value is made and entered into by and between the City of Los Angeles, a municipal corporation (hereinafter referred to as "City"), acting by and through the Los Angeles Fire Department (hereinafter referred to as "Fire Department"), and HR Value (hereinafter referred to as "Consultant") with reference to the following:

WHEREAS, on June 4, 2007, the Orange County Transportation Authority (hereinafter referred to as "OCTA") released Request for Proposals, Number 7-0692, for Labor, Employee Relations and Civil Rights Consulting Services; and

WHEREAS, Consultant submitted a proposal in response to the OCTA Request for Proposals;

WHEREAS, on November 8, 2007, the OCTA and Consultant entered into Agreement No. C-7-1208 (attached hereto and incorporated herein as Exhibit A); and

WHEREAS, the OCTA is substituted by and through the Fire Department in Agreement No. C-7-1208; and

WHEREAS, the Fire Department requires the assistance from Consultant to provide such services as leadership development programs, strategic plans to address communication efforts, and other management-related matters as included in Agreement No. C-7-1208, on an on-call basis; and

WHEREAS, the Consultant possesses the unique skills and proficiencies in these areas, and has agreed to provide such services to the Fire Department; and

WHEREAS, the consulting services to be provided are temporary and occasional in nature; and

WHEREAS, the City does not employ personnel with the required expertise and it is more economical and feasible to have the work performed by a contractor.

NOW, THEREFORE, the parties hereby covenant and agree as follows:

1. The term of this Supplemental Agreement will be for a period not to exceed two years from the date of execution, unless earlier terminated or extended by the parties. The City may, at its sole discretion and through the Fire Department, extend the term of this Agreement, but such amendment will be subject to the availability of

City funds and the Consultant's satisfactory performance of all the terms of this Agreement.

2. The maximum payable under this Agreement will not exceed Ninety-nine Thousand Dollars (\$99,000) per year for complete and satisfactory performance of the terms of this Agreement. Consultant may submit periodic invoices covering partial payment, not to exceed fifty percent of the total project cost, or one invoice for the project in whole at the completion of the project period. Invoices will contain information which clearly reflect and provide sufficient detail of the services provided. Consultant will not submit more than one invoice per month. All invoices will be submitted to Los Angeles Fire Department, Administrative Services Bureau, Attn: Lauren Nakasuji, 200 North Main Street, City Hall East, Room 1630, Los Angeles, California 90012. Consultant will not be compensated for non-delivery of services. The Fire Chief, or his designee, will make a final determination of approving the scope of work and completion of the project. This Agreement will be completed at the time the scope of work is approved by the Fire Department.
3. Due to the need for the Consultant's services to be provided continuously on an ongoing basis, the Consultant may have provided services prior to the execution of this Agreement. To the extent that said services were performed in accordance with the terms and conditions of this Agreement, those services are hereby ratified.
4. Regarding Article 7 (Notices) in Agreement No. C-7-1208, the Fire Department should be substituted in lieu of the OCTA as follows:

Fire Chief Douglas L. Barry
Los Angeles Fire Department
200 N. Main St., 18th Floor
Los Angeles, CA 90012
Attention: William R. Jones, Contracts Unit

5. The Consultant understands and agrees that some documents, materials, records, and the contents thereof, provided by the Fire Department may be confidential. Consultant agrees not to retain any copies of the documents, materials, records provided by the Fire Department, nor to disclose the contents thereof, which are of a confidential nature. Consultant shall ensure that each of its employees, or agents, who have access to such documents, materials, records, provided by the Fire Department, comply with the confidentiality provisions of this Agreement. All notes, documents and/or products resulting from this Agreement will become the sole property of the Fire Department and the City, and may not be used by the Consultant at any time, present or future, without the expressed written permission of the Fire Department.
6. Consultant agrees all work performed will be with the approval of the Board of Fire Commissioners.

7. Consultant, by entering into this agreement with the City agrees to abide by the City Standard Provisions. (Attached hereto and incorporated herein as Exhibit B.)
8. The Fire Department and Consultant understand and agree that this is a non-exclusive Agreement to provide services to the Fire Department, and that the Fire Department may contract with other consultants to provide similar services during the term of this Agreement.
9. This Agreement contains the complete Agreement between the parties. No verbal agreement(s) or conversation(s) with any officer or employee of either party will affect or modify the terms and conditions of this Agreement.
10. All other terms and conditions set forth in Agreement C-7-1208 shall remain in full force and effect except as amended herein.
11. In the event of an inconsistency between any of the provisions of this Supplemental Agreement and/or the Exhibits attached hereto, the inconsistency will be resolved by giving precedence in the following order to sections of this Agreement.
 1. The provisions of this Supplemental Agreement
 2. Exhibit A (OCTA Contract Number C-7-1208)

(Signature Page to Follow)

IN WITNESS WHEREOF, the parties have caused this Supplemental Agreement to be executed by their respective duly authorized representatives.

DATED: _____

For: THE CITY OF LOS ANGELES

By _____
Douglas L. Barry
Fire Chief
Los Angeles Fire Department

DATED: _____

For: HR VALUE

By: _____
Name: _____
Title: _____

Approved as to Form
and Legality:
ROCKARD J. DELGADILLO
City Attorney

ATTEST:

KAREN E. KALFAYAN
City Clerk

By _____
Laurel L. Lightner
Assistant City Attorney

By _____
Deputy City Clerk

Date _____

Date _____

Agreement Number: _____

performance of any term(s) or condition(s) of this Agreement shall not be construed as a waiver or relinquishment of AUTHORITY's right to such performance or to future performance of such term(s) or condition(s) and CONSULTANT's obligation in respect thereto shall continue in full force and effect. Changes to any portion of this Agreement shall not be binding upon AUTHORITY except when specifically confirmed in writing by an authorized representative of AUTHORITY by way of a written amendment to this Agreement and issued in accordance with the provisions of this Agreement.

ARTICLE 2. AUTHORITY DESIGNEE

The Chief Executive Officer of AUTHORITY or designee, shall have the authority to act for and exercise any of the rights of AUTHORITY as set forth in this Agreement.

ARTICLE 3. SCOPE OF WORK

A. CONSULTANT shall perform the work necessary to complete in a manner satisfactory to AUTHORITY the services set forth in Exhibit A, entitled "Scope of Work," attached to and, by this reference, incorporated in and made a part of this Agreement, and as specified in the Contract Task Orders ("CTOs") issued to CONSULTANT. Each CTO shall include a scope of work to be performed, the time frame for completing all work, the total cost of the CTO to be paid to CONSULTANT and any additional backup information which may be needed by CONSULTANT to perform the services. All services shall be provided at the times and places designated by AUTHORITY

B. CONSULTANT shall provide Patricia Lynch, Ph.D to perform the above-specified services, which hereby designated as key personnel under this Agreement. Dr. Lynch shall not be removed or replaced by CONSULTANT, nor shall his/her agreed-upon function or level of commitment hereunder be changed, without the prior written consent of AUTHORITY. Should the services of any key person become no longer available to CONSULTANT, the resume and qualifications of the proposed replacement shall be submitted to AUTHORITY for approval as soon as possible, but in no event later than seven (7) calendar days prior to the departure of the incumbent key person, unless CONSULTANT is not provided with such notice by the departing employee. AUTHORITY shall respond to CONSULTANT within seven (7) calendar days following receipt of these qualifications

concerning acceptance of the candidate for replacement.

ARTICLE 4. TERM OF AGREEMENT

This Agreement shall commence upon execution by both parties, and shall continue in full force and effect through September 30, 2009, unless earlier terminated or extended as provided in this Agreement.

ARTICLE 5. CTO AND PAYMENT

Contract Task Orders

A. This Agreement is issued to place CONSULTANTS, Agreement No. C-7-1209 with Human Resource Capital Consultants, Inc.; and Agreement No. C-7-0692 with Padilla & Associates, Inc. on an on-call list ("ON-CALL FIRMS"). As the need for Labor, Employee Relations and Civil Rights consulting services arises during the term of these Agreements, CTOs may be issued for CONSULTANT and/or the ON-CALL FIRMS at AUTHORITY's sole discretion. Each CTO will specifically define the Scope of Work, the total cost of the CTO to be paid the consulting firm, and any other information, which may be needed to perform the services. AUTHORITY does not guarantee that CONSULTANT or the ON-CALL FIRMS will receive an assignment, nor that the firms will receive an equal number of assignments.

B. For CONSULTANT's full and complete performance of its obligations under this Agreement, AUTHORITY shall pay CONSULTANT on a time and expense basis in accordance with the provisions of this Article and subject to the maximum cumulative payment obligation specified in Article 6 of this Agreement.

C. For time and expense based CTO's, for each full hour of labor satisfactorily performed by CONSULTANT's personnel under this Agreement, AUTHORITY shall pay CONSULTANT at the hourly labor rates specified in Exhibit B entitled "Schedule of Fees," which is attached to and, by this reference, incorporated in and made a part of this Agreement. These rates shall remain fixed for the entire term of this Agreement and are acknowledged to include CONSULTANT's direct labor costs, indirect costs and profit. Furthermore, AUTHORITY shall reimburse CONSULTANT for the exact

amount of the expenses shown in Exhibit B which are directly incurred by its personnel in the performance of work under this Agreement.

D. Upon completion of each CTO, CONSULTANT may request payment by invoicing in duplicate to AUTHORITY's Accounts Payable office. Each invoice shall be accompanied by a progress report specifying the work, which has been performed. AUTHORITY shall remit payment within thirty (30) calendar days of the receipt and approval of each invoice. Each invoice shall include the following information:

1. Agreement No. C-7-1208;
2. Work and CTO number for which payment is being requested;
3. Labor (staff name, hours charged, hourly billing rate, current charges and cumulative charges) performed during the billing period;
4. Itemized expenses if any incurred during the billing period;
5. Total invoice;
6. Such other information as requested by AUTHORITY; and
7. Certification signed by the CONSULTANT or his/her designated alternate that a) The invoice is a true, complete and correct statement of reimbursable costs and progress; b) The invoice is a true, complete and correct statement of reimbursable costs; c) The backup information included with the invoice is true, complete and correct in all material respects; d) All payments due and owing to subcontractors and suppliers have been made; e) Timely payments will be made to subcontractors and suppliers from the proceeds of the payments covered by the certification and; f) The invoice does not include any amount which CONSULTANT intends to withhold or retain from a subcontractor or supplier unless so identified on the invoice.

8. Any other information as agreed or requested by AUTHORITY to substantiate the validity of an invoice.

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ARTICLE 6. MAXIMUM OBLIGATION

Notwithstanding any provisions of this Agreement to the contrary, AUTHORITY and CONSULTANT mutually agree that AUTHORITY's maximum cumulative payment obligation (including obligation for CONSULTANT's profit) shall be Fifty Thousand Dollars (\$50,000.00) which shall include all amounts payable to CONSULTANT and the ON-CALL FIRMS for subcontracts, leases, materials and costs arising from, or due to termination of, this Agreement and the ON-CALL FIRMS Agreements. Furthermore, each issued CTO shall show AUTHORITY's maximum payment obligation for that CTO.

ARTICLE 7. NOTICES

All notices hereunder and communications regarding the interpretation of the terms of this Agreement, or changes thereto, shall be effected by delivery of said notices in person or by depositing said notices in the U.S. mail, registered or certified mail, returned receipt requested, postage prepaid and addressed as follows:

To CONSULTANT:

HR Value

2511 Belmont Avenue

Long Beach, CA 90815

ATTENTION: Patricia Lynch, Ph.D

(562) 985 – 0333, Pat@HRValue.biz

To AUTHORITY:

Orange County Transportation Authority

550 South Main Street

P.O. Box 14184

Orange, CA 92863-1584

ATTENTION: Maria Cruz-Thompson, Buyer

(714) 560 – 5605, mthompson@octa.net

ARTICLE 8. INDEPENDENT CONTRACTOR

CONSULTANT's relationship to AUTHORITY in the performance of this Agreement is that of an independent contractor. CONSULTANT's personnel performing services under this Agreement shall at all times be under CONSULTANT's exclusive direction and control and shall be employees of CONSULTANT and not employees of AUTHORITY. CONSULTANT shall pay all wages, salaries and other amounts due its employees in connection with this Agreement and shall be responsible for all reports and obligations respecting them, such as social security, income tax withholding, unemployment

1 compensation, workers' compensation and similar matters.

2 **ARTICLE 9. INSURANCE**

3 A. CONSULTANT shall procure and maintain insurance coverage during the entire term of this
4 Agreement. Coverage shall be full coverage and not subject to self-insurance provisions.
5 CONSULTANT shall provide the following insurance coverage:

6 1. Commercial General Liability, to include Products/Completed Operations,
7 Independent Contractors', Contractual Liability, and Personal Injury Liability with a minimum limit of
8 \$1,000,000.00 per occurrence and \$2,000,000.00 general aggregate.

9 2. Automobile Liability Insurance to include owned, hired and non-owned autos
10 with a combined single limit of \$1,000,000.00 each accident;

11 3. Workers' Compensation with limits as required by the State of California including a
12 waiver of subrogation in favor of AUTHORITY, its officers, directors, employees or agents; and

13 4. Employers' Liability with minimum limits of \$1,000,000.00.

14 B. Proof of such coverage, in the form of an insurance company issued policy endorsement
15 and a broker-issued insurance certificate, must be received by AUTHORITY prior to commencement of
16 any work. Proof of insurance coverage must be received by AUTHORITY within ten (10) calendar days
17 from the effective date of this Agreement with the AUTHORITY, its officers, directors, employees and
18 agents designated as additional insured on the general and automobile liability. Such insurance shall
19 be primary and non-contributive to any insurance or self-insurance maintained by the AUTHORITY.

20 C. CONSULTANT shall include on the face of the Certificate of Insurance the Agreement
21 Number C-7-1208; and, the Buyer's Name, Maria Cruz-Thompson.

22 D. CONSULTANT shall also include in each subcontract the stipulation that subcontractors
23 shall maintain insurance coverage in the amounts required from CONSULTANT as provided in this
24 Agreement.

25 **ARTICLE 10. ORDER OF PRECEDENCE**

26 Conflicting provisions hereof, if any, shall prevail in the following descending order of

precedence: (1) the provisions of this Agreement, including all exhibits; (2) the provisions of RFP 7-0692; (3) CONSULTANT's proposal dated June 20, 2007; (4) all other documents, if any, cited herein or incorporated by reference.

ARTICLE 11. CHANGES

By written notice or order, AUTHORITY may, from time to time, order work suspension and/or make changes in the general scope of this Agreement, including, but not limited to, the services furnished to AUTHORITY by CONSULTANT as described in the Scope of Work. If any such work suspension or change causes an increase or decrease in the price of this Agreement, or in the time required for its performance, CONSULTANT shall promptly notify AUTHORITY thereof and assert its claim for adjustment within ten (10) calendar days after the change or work suspension is ordered, and an equitable adjustment shall be negotiated. However, nothing in this clause shall excuse CONSULTANT from proceeding immediately with the agreement as changed.

ARTICLE 12. DISPUTES

A. Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under this Agreement which is not disposed of by supplemental agreement shall be decided by AUTHORITY's Manager, Contracts Administration and Materials Management, who shall reduce the decision to writing and mail or otherwise furnish a copy thereof to CONSULTANT. The decision of the Manager, Contracts Administration and Materials Management, shall be final and conclusive.

B. The provisions of this Article shall not be pleaded in any suit involving a question of fact arising under this Agreement as limiting judicial review of any such decision to cases where fraud by such official or his representative or board is alleged, provided, however, that any such decision shall be final and conclusive unless the same is fraudulent or capricious or arbitrary or so grossly erroneous as necessarily to imply bad faith or is not supported by substantial evidence. In connection with any appeal proceeding under this Article, CONSULTANT shall be afforded an opportunity to be heard and to offer evidence in support of its appeal.

C. Pending final decision of a dispute hereunder, CONSULTANT shall proceed diligently with

the performance of this Agreement and in accordance with the decision of AUTHORITY's Manager, Contracts Administration and Materials Management. This Disputes clause does not preclude consideration of questions of law in connection with decisions provided for above. Nothing in this Agreement, however, shall be construed as making final the decision of any AUTHORITY official or representative on a question of law, which questions shall be settled in accordance with the laws of the state of California.

ARTICLE 13. TERMINATION

A. AUTHORITY may terminate this Agreement for its convenience at any time, in whole or part, by giving CONSULTANT written notice thereof. Upon said notice, AUTHORITY shall pay CONSULTANT its allowable costs incurred to date of termination and those allowable costs determined by AUTHORITY to be reasonably necessary to effect such termination. Thereafter, CONSULTANT shall have no further claims against AUTHORITY under this Agreement.

B. AUTHORITY may terminate this Agreement for CONSULTANT's default if a federal or state proceeding for the relief of debtors is undertaken by or against CONSULTANT, or if CONSULTANT makes an assignment for the benefit of creditors, or if CONSULTANT breaches any term(s) or violates any provision(s) of this Agreement and does not cure such breach or violation within ten (10) calendar days after written notice thereof by AUTHORITY. CONSULTANT shall be liable for any and all reasonable costs incurred by AUTHORITY as a result of such default including, but not limited to, procurement costs of the same or similar services defaulted by CONSULTANT under this Agreement.

ARTICLE 14. INDEMNIFICATION

CONSULTANT shall indemnify, defend and hold harmless AUTHORITY, its officers, directors, employees and agents from and against any and all claims (including attorneys' fees and reasonable expenses for litigation or settlement) for any loss or damages, bodily injuries, including death, damage to or loss of use of property caused by the negligent acts, omissions or willful misconduct by CONSULTANT, its officers, directors, employees, agents, subcontractors or suppliers in connection with or arising out of the performance of this Agreement.

ARTICLE 15. ASSIGNMENTS AND SUBCONTRACTS

Neither this Agreement nor any interest herein nor claim hereunder may be assigned by CONSULTANT either voluntarily or by operation of law, nor may all or any part of this Agreement be subcontracted by CONSULTANT, without the prior written consent of AUTHORITY. Consent by AUTHORITY shall not be deemed to relieve CONSULTANT of its obligations to comply fully with all terms and conditions of this Agreement.

ARTICLE 16. AUDIT AND INSPECTION OF RECORDS

CONSULTANT shall provide AUTHORITY, or other agents of AUTHORITY, such access to CONSULTANT's accounting books, records, payroll documents and facilities as AUTHORITY deems necessary. CONSULTANT shall maintain such books, records, data and documents in accordance with generally accepted accounting principles and shall clearly identify and make such items readily accessible to such parties during CONSULTANT's performance hereunder and for a period of four (4) years from the date of final payment by AUTHORITY. AUTHORITY's right to audit books and records directly related to this Agreement shall also extend to all first-tier subcontractors identified in Article 15 of this Agreement. Consultant shall permit any of the foregoing parties to reproduce documents by any means whatsoever or to copy excerpts and transcriptions as reasonably necessary.

ARTICLE 17. FEDERAL, STATE AND LOCAL LAWS

CONSULTANT warrants that in the performance of this Agreement, it shall comply with all applicable federal, state and local laws, statutes and ordinances and all lawful orders, rules and regulations promulgated thereunder.

ARTICLE 18. EQUAL EMPLOYMENT OPPURTUNITY

In connection with its performance under this Agreement, CONSULTANT shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age or national origin. CONSULTANT shall take affirmative action to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, age or national origin. Such actions shall include, but not be limited to, the following: employment, upgrading,

demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

ARTICLE 19. PROHIBITED INTERESTS

CONSULTANT covenants that, for the term of this Agreement, no director, member, officer or employee of AUTHORITY during his/her tenure in office or for one (1) year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

ARTICLE 20. OWNERSHIP OF REPORTS AND DOCUMENTS

A. The originals of all letters, documents, reports and other products and data produced under this Agreement shall be delivered to, and become the property of AUTHORITY. Copies may be made for CONSULTANT's records but shall not be furnished to others without written authorization from AUTHORITY. Such deliverables shall be deemed works made for hire and all rights in copyright therein shall be retained by AUTHORITY.

B. All ideas, memoranda, specifications, plans, manufacturing, procedures, drawings, descriptions, and all other written information submitted to CONSULTANT in connection with the performance of this Agreement shall not, without prior written approval of AUTHORITY, be used for any purposes other than the performance under this Agreement, nor be disclosed to an entity not connected with the performance of the project. CONSULTANT shall comply with AUTHORITY's policies regarding such material. Nothing furnished to CONSULTANT which is otherwise known to CONSULTANT or is or becomes generally known to the related industry shall be deemed confidential. CONSULTANT shall not use AUTHORITY's name, photographs of the project, or any other publicity pertaining to the project in any professional publication, magazine, trade paper, newspaper, seminar or other medium without the express written consent of AUTHORITY.

C. No copies, sketches, computer graphics or graphs, including graphic artwork, are to be released by CONSULTANT to any other person or agency except after prior written approval by AUTHORITY, except as necessary for the performance of services under this Agreement. All press releases, including graphic display information to be published in newspapers, magazines, etc., are to

be handled only by AUTHORITY unless otherwise agreed to by CONSULTANT and AUTHORITY.

ARTICLE 21. PATENT AND COPYRIGHT INFRINGEMENT

A. In lieu of any other warranty by AUTHORITY or CONSULTANT against patent or copyright infringement, statutory or otherwise, it is agreed that CONSULTANT shall defend at its expense any claim or suit against AUTHORITY on account of any allegation that any item furnished under this Agreement or the normal use or sale thereof arising out of the performance of this Agreement, infringes upon any presently existing U. S. letters patent or copyright and CONSULTANT shall pay all costs and damages finally awarded in any such suit or claim, provided that CONSULTANT is promptly notified in writing of the suit or claim and given authority, information and assistance at CONSULTANT's expense for the defense of same. However, CONSULTANT will not indemnify AUTHORITY if the suit or claim results from: (1) AUTHORITY's alteration of a deliverable, such that said deliverable in its altered form infringes upon any presently existing U.S. letters patent or copyright; or (2) the use of a deliverable in combination with other material not provided by CONSULTANT when such use in combination infringes upon an existing U.S. letters patent or copyright.

B. CONSULTANT shall have sole control of the defense of any such claim or suit and all negotiations for settlement thereof. CONSULTANT shall not be obligated to indemnify AUTHORITY under any settlement made without CONSULTANT's consent or in the event AUTHORITY fails to cooperate fully in the defense of any suit or claim, provided, however, that said defense shall be at CONSULTANT's expense. If the use or sale of said item is enjoined as a result of such suit or claim, CONSULTANT, at no expense to AUTHORITY, shall obtain for AUTHORITY the right to use and sell said item, or shall substitute an equivalent item acceptable to AUTHORITY and extend this patent and copyright indemnity thereto.

ARTICLE 22. FINISHED AND PRELIMINARY DATA

A. All of CONSULTANT's finished technical data, including but not limited to illustrations, photographs, tapes, software, software design documents, including without limitation source code, binary code, all media, technical documentation and user documentation, photoprints and other graphic

information required to be furnished under this Agreement, shall be AUTHORITY's property upon payment and shall be furnished with unlimited rights and, as such, shall be free from proprietary restriction except as elsewhere authorized in this Agreement. CONSULTANT further agrees that it shall have no interest or claim to such finished, AUTHORITY-owned, technical data; furthermore, said data is subject to the provisions of the Freedom of Information Act, 5 USC 552.

B. It is expressly understood that any title to preliminary technical data is not passed to AUTHORITY but is retained by CONSULTANT. Preliminary data includes roughs, visualizations, software design documents, layouts and comprehensives prepared by CONSULTANT solely for the purpose of demonstrating an idea or message for AUTHORITY's acceptance before approval is given for preparation of finished artwork. Preliminary data title and right thereto shall be made available to AUTHORITY if CONSULTANT causes AUTHORITY to exercise Article 11, and a price shall be negotiated for all preliminary data.

ARTICLE 23. ALCOHOL AND DRUG POLICY

AUTHORITY and CONSULTANT shall provide under this Agreement, a safe and healthy work environment free from the influence of alcohol and drugs. Failure to comply with this Article may result in nonpayment or termination of this Agreement.

ARTICLE 24. FORCE MAJEURE

Either party shall be excused from performing its obligations under this Agreement during the time and to the extent that it is prevented from performing by an unforeseeable cause beyond its control, including but not limited to: any incidence of fire, flood; acts of God; commandeering of material, products, plants or facilities by the federal, state or local government; national fuel shortage; or a material act or omission by the other party; when satisfactory evidence of such cause is presented to the other party, and provided further that such nonperformance is unforeseeable, beyond the control and is not due to the fault or negligence of the party not performing.

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This Agreement shall be made effective upon execution by both parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement No. C-7-1208 to be executed on the date first above written.

HR VALUE

ORANGE COUNTY TRANSPORTATION AUTHORITY

By Patricia Lynch

By Kathleen Perez

Patricia Lynch, Ph.D
Principal

Kathleen Perez
Manager
Contracts and Procurement

APPROVED AS TO FORM:

By Kennard R. Smart, Jr.

Kennard R. Smart, Jr.
General Counsel

SCOPE OF WORK

**LABOR, EMPLOYEE RELATIONS AND
CIVIL RIGHTS CONSULTANT SERVICES**

Background

The Orange County Transportation Authority (OCTA) is a county-wide agency that develops and implements transportation programs and services in Orange County. The OCTA workforce is comprised of approximately 2000 employees, including non-union administrative employees and management and members of collective bargaining units. The OCTA Labor/Employee Relations & Civil Rights Division is responsible for labor relations, employee relations, conflict resolution, administering OCTA's Equal Employment Opportunity and Affirmative Action Programs, ensuring compliance with state and federal non-discrimination laws, DBE Program administration and other Civil Rights compliance.

Contract Tasks Orders

During the term of this Agreement, the Labor/Employee Relations Manager shall identify needs for services and projects. When a need is identified, a scope of work shall be developed and forwarded to the appropriate Consultants on the on-call list. Consultants shall be asked to prepare a brief proposal including only a work plan for the specified project and a firm fixed cost proposal.

The Consultants selected for the on-call list shall not be selected to provide all projects nor are the Consultants guaranteed any minimum amount of work.

Scope of Services

The following are general descriptions of consulting services that may be requested during the term of this Agreement. This list is intended to be a guideline as to the type of assignments that may be referred to a consultant on the on-call list. The types of assignments shall not be limited to the projects below but may also include yet unspecified projects as they arise and are required by OCTA.

Labor & Employee Relations

Projects may include joint labor-management training and facilitation of labor-management committees. Projects may also include training for supervisors in contract administration and grievance handling.

Conflict Resolution

Projects may involve conflict resolution for both union-represented and non-represented employees. Conflict resolutions activities may include, but are not limited to, activities initiated by actual or perceived employment disputes related to gender, race, ethnicity, age, religion, disability, sexual orientation/preference or other status protected by applicable federal or state statutes.

Projects may involve formal or informal conflict resolution and may include providing services as a neutral facilitator. Projects may also include providing training to internal staff to increase their skills in areas of conflict resolution and facilitation.

Equal Employment Opportunity/Affirmative Action

Projects may include consultation/research for new EEOC requirements for tracking ethnicity by federal job groups, validating data collection methods for various employment practices, and development of expanded EEO/AAP reports.

Projects may also include developing, implementing and promoting Equal Employment Opportunity/Affirmative Action Programs to enhance diversity in the workplace.

Other Civil Rights Projects

Projects may include review of current Title VI program and assistance in preparation for Triennial FTA audit.

Projects may include consultation and recommendation to ensure compliance with other civil rights responsibilities.

Disadvantaged Business Enterprise (DBE) Program

Provide consulting assistance and advice on review of the OCTA DBE annual goal preparation; discuss project goals, objectives, and schedule.

Project Management

The Labor/Employee Relations Manager or designee shall be OCTA's main contact and shall be responsible for management of these projects including approval of all scopes of work, time schedules and work completion.

SCHEDULE OF RATES

LABOR, EMPLOYEE RELATIONS, & RIGHTS CONSULTING SERVICES

<u>NAME OF PERSONNEL</u>	<u>FUNCTIONS</u>	<u>FULLY BURDENED RATES</u>
Patricia Lynch	Consultation and Project Design	\$250/HR
Patricia Lynch	Facilitation	\$350/HR
Patricia Lynch	Training	\$450/HR

OTHER COST:

<u>DESCRIPTION</u>	<u>COSTS</u>
Training or Facilitation Session Materials	At cost