

CONTRACT FOR CONSULTING/PROFESSIONAL SERVICES

This Contract is made as of the _____ day of _____, 20____, by and between the City of Hollywood (hereinafter the "City"), a municipal corporation of the State of Florida, and Actuarial Concepts, Inc. (hereinafter the "Consultant"), a Florida corporation authorized to do business in the State of Florida, whose principal office is located at 2950 Halcyon Lane, Suite 402, Jacksonville, FL 32223 and whose Federal I.D. Number is 59-2921222.

WHEREAS, the Consultant specializes in consulting services in the area of actuarial services; and

WHEREAS, the City requires the expertise of the Consultant for actuarial services;

NOW, THEREFORE, in consideration of the mutual promises herein, the City and the Consultant hereby agree as follows:

ARTICLE 1 - SERVICES/CONSULTANT AND CITY REPRESENTATIVES

The Consultant's responsibility under this Contract is to provide professional/consulting services as described in Exhibit "A" attached hereto and incorporated herein by reference. The Consultant's Representative shall be Michael J. Tierney (telephone 904 716-1397). The City's Representative shall be Raquel Elejabarrieta (telephone 954 921-3519).

ARTICLE 2 – SCHEDULE/TERM

The term of this Contract shall commence on October 1, 2014 and expire on September 30, 2015.

ARTICLE 3 - PAYMENTS TO CONSULTANT

- A. The total amount to be paid by the City under this Contract for all services, materials, out-of-pocket expenses and also including any approved subcontracts shall not exceed a total contract amount of Seventy-Five Thousand and 00/100 Dollars (\$75,000.00). For purposes of this Contract, out-of-pocket expenses are for such items as travel, copying, postage, and express mail. The Consultant shall notify the City's Representative in writing when 80% of the "not to exceed" amount has been reached. The Consultant will bill the City on a monthly basis, or as otherwise provided, at the amounts set forth in Exhibit "A" for services rendered toward the completion of the Scope of Work. All invoices submitted to the City must be itemized to indicate the number of hours incurred by each category of personnel. Where incremental billings for partially completed items are permitted,

the total billings shall not exceed the estimated percentage of completion as of the billing date. It is acknowledged and agreed to by the Consultant that the dollar limitation set forth in this section is a limitation upon, and describes the maximum extent of, the City' obligation to pay the Consultant for services requested by the City.

- B. Invoices received by the City from the Consultant pursuant to this Contract will be reviewed and approved in writing by the City's Representative, indicating that services have been rendered in conformity with the Contract, and then will be sent to the City's Financial Services Department for payment. All invoices shall contain a detailed breakdown of the services provided for which payment is being requested. Invoices shall be paid within thirty (30) days following the City Representative's approval.
- C. Final Invoice: In order for both parties herein to close their books and records, the Consultant will clearly state "final invoice" on the Consultant's final/last billing to the City. This final invoice shall also certify that all services provided by Consultant have been properly performed and all charges and costs have been invoiced to the City. Because this account will thereupon be closed, any and other further charges not properly included on this final invoice are waived by the Consultant.

ARTICLE 4 – “MOST FAVORED CUSTOMER” CERTIFICATE

Signature of this Contract by the Consultant shall also act as the execution of a truth in negotiation certificate certifying that the wage rates, overhead charges, and other costs used to determine the compensation provided for in this Contract are no higher than those charged the Consultant's most favored customer for the same or substantially similar service.

ARTICLE 5 - TERMINATION

This Contract may be terminated, in whole or in part, by either party, with or without cause, with 60 days' advance written notice. Unless the Consultant is in breach of this Contract, the Consultant shall be paid for services rendered to the City's satisfaction through the date of termination. After receipt of a Termination Notice and except as otherwise directed by the City, the Consultant shall:

- A. Stop work on the date and to the extent specified.
- B. Terminate and settle all orders and subcontracts relating to the performance of the terminated work.
- C. Transfer all work documents in process, completed work, and other materials related to the terminated work to the City.
- D. Continue and complete all parts of the work that have not been terminated.

ARTICLE 6 - PERSONNEL

The Consultant is, and shall be, in the performance of all work, services and activities under this Contract, an independent contractor, and not an employee, agent, or servant of the City. All persons engaged in any of the work or services performed pursuant to this Contract shall at all times, and in all places, be subject to the Consultant's sole direction, supervision, and control. The Consultant shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Consultant's relationship and the relationship of its employees to the City shall be that of an independent contractor and not as employees or agents of the City. This contract does not create a partnership or joint venture between the parties.

The Consultant represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the City, nor shall such personnel be entitled to any benefits of the City including, but not limited to, pension, health and workers' compensation benefits.

All of the services required hereunder shall be performed by the Consultant or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services.

Any changes or substitutions in the Consultant's key personnel, as may be listed in Article 1, must be made known to the City's Representative and written approval must be granted by the City's Representative before said change or substitution can become effective.

The Consultant warrants that all services shall be performed by skilled and competent personnel to the highest professional standards in the field.

ARTICLE 7 - SUBCONTRACTING

The Consultant shall not subcontract any services or work to be provided to the City without the prior written approval of the City's Representative. The City reserves the right to accept or reject the use of a subcontractor and to inspect all facilities of any subcontractor in order to make a determination as to the capability of the subcontractor to perform properly under this Contract. The City's acceptance of a subcontractor shall not be unreasonably withheld. The Consultant is encouraged to seek minority and women business enterprises for participation in subcontracting opportunities.

ARTICLE 8 - FEDERAL AND STATE TAX

The City is exempt from payment of Florida sales and use Taxes. The City will sign an exemption certificate submitted by the Consultant. The Consultant shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the City, nor is the Consultant authorized to use the City's tax exemption in securing such materials.

The Consultant shall be responsible for payment of its own and its share of its employees' payroll, payroll taxes, and benefits with respect to this Contract.

ARTICLE 9 - AVAILABILITY OF FUNDS

The City's performance and obligation to pay under this Contract is contingent upon an annual appropriation for its purpose by the City Commission. The City Commission has appropriated sufficient funds in the FY 2015 Operating Budget for this Contract.

ARTICLE 10 - INSURANCE REQUIREMENTS

The Consultant shall not commence work under this Contract until it has obtained all insurance required under this paragraph and such insurance has been approved by the Risk Manager of the City, nor shall the Consultant allow any subcontractor to commence work on its subcontract until all similar such insurance required of the subcontractor has been obtained and approved.

Certificates of insurance, reflecting evidence of the required insurance, shall be filed with the Risk Manager prior to the commencement of the work. These Certificates shall contain a provision that coverage afforded under these policies will not be cancelled, will not expire and will not be materially modified until at least thirty (30) days prior written notice has been given to the City. Policies shall be issued by companies authorized to do business under the laws of the State of Florida and shall have adequate Policyholders and Financial ratings in the latest ratings of A.M. Best and be part of the Florida Insurance Guarantee Association Act.

Insurance shall be in force until all work required to be performed under the terms of this Contract is satisfactorily completed as evidenced by formal acceptance by the City. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the period of this Contract, the Consultant shall furnish, at least thirty (30) days prior to the expiration of such insurance, a renewed certificate of insurance as proof that equal and like coverage for the balance of the period of this Contract and any extension hereof is in effect. The Consultant shall not continue to work pursuant to this Contract unless all required insurance remains in full force and effect.

REQUIRED INSURANCE

1. Commercial General Liability

Commercial General Liability Insurance to cover liability for bodily injury and property damage. Exposures to be covered are: premises, operations, products/completed operations, and contractual. Coverage must be written on an occurrence basis, with no less than the following limits of liability:

A. Single Limit Bodily Injury & Property Damage

1. General Aggregate	\$1,000,000
2. Products-Comp/Op Aggregate	\$ 500,000
3. Personal and Advertising Injury	\$ 500,000
4. Each Occurrence	\$ 500,000
5. Fire Damage	\$ 50,000

2. Professional Liability

Professional Liability with limits not less than \$500,000 per Occurrence/\$1,000,000 Aggregate. If coverage is provided on a claims made basis then coverage must be continued for the duration of this Contract and for not less than one (1) year thereafter, or in lieu of continuation, provide an "extended reporting clause" for one (1) year.

The Consultant shall notify the City's Risk Manager in writing within thirty (30) days of any claims filed or made against the Professional Liability Insurance Policy.

.3. Workers' Compensation Insurance

Workers' Compensation Insurance shall be maintained during the life of this Contract to comply with statutory limits for all employees, and in the case any work is sublet, the Consultant shall require any subcontractors similarly to provide Workers' Compensation Insurance for all the latter's employees unless such employees are covered by the protection afforded by the Consultant. The Consultant and its subcontractors shall maintain, during the life of this Contract, Employer's Liability Insurance. The following must be maintained.

A. Workers' Compensation	\$100,000
B. Employer's Liability	\$500,000

The City reserves the right to require any other insurance coverage it deems necessary depending upon the exposures.

ARTICLE 11 – UNCERTAIN NATURE OF OPINIONS

It is understood by the Consultant and City that any actuarial opinions provided and liability appraisals made are estimates that are not perfect by nature and may not turn out to be representative of future reality.

ARTICLE 12 - INDEMNIFICATION

The Consultant shall indemnify, defend and hold harmless the City, its officials, appointed officers, agents and employee, from and against any and all liability, suits, actions, damages, costs, losses and expenses, including, but not limited to attorneys' fees, to the extent caused by the negligence, recklessness or intentionally wrongful conduct of the Consultant and other persons employed or utilized by the Consultant in the performance of the services under this Contract. These provisions shall survive the expiration or earlier termination of this Contract. Such obligation to indemnify and hold harmless shall include all costs, expenses and liabilities incurred by the City in connection with any such claim, suit, action or cause of action, including the investigation thereof and the defense of any action or proceeding brought thereon and any order, judgment or decree which may be entered in any such action or proceeding or as a result thereof. These provisions shall survive the expiration or earlier termination of this Contract. Nothing in this contract shall be construed to affect, in any way, the City's rights, privileges, and immunities under the doctrine of "sovereign immunity" and as set forth in Florida Statutes §768.28.

ARTICLE 13 – SUCCESSORS AND ASSIGNS

The City and the Consultant each binds itself and its partners, successors, executors, administrators and assigns to the other party of this Contract and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Contract. Except as provided above, neither the City nor the Consultant shall assign, sublet, encumber, convey or transfer its interest in this Contract without the prior written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the City, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the City and the Consultant.

ARTICLE 14 - REMEDIES

This Contract shall be governed by the laws of the State of Florida. Any and all legal action between the parties arising out of this Contract will be brought in Broward County. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

ARTICLE 15 - CONFLICT OF INTEREST

The Consultant represents that it has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder, as provided for in the Code of Ethics for Public Officers and Employees (Chapter 112, Part III, Florida Statutes). The Consultant further represents that no person having any interest shall be employed for said performance.

The Consultant shall promptly notify the City's Representative, in writing, by certified mail, of all potential conflicts of interest for any prospective business association, interest or other circumstance which may influence or appear to influence the Consultant's judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the Consultant may undertake and request an opinion of the City as to whether the association, interest or circumstance would, in the opinion of the City, constitute a conflict of interest if entered into by the Consultant. The City agrees to notify the Consultant of its opinion by certified mail within thirty (30) days of receipt of notice by the Consultant. If, in the opinion of the City, the prospective business association, interest or circumstance would not constitute a conflict of interest by the Consultant, the City shall so state in the notice and the Consultant shall, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the City by the Consultant under the terms of this Contract.

ARTICLE 16 - EXCUSABLE DELAYS

The Consultant shall not be considered in default by reason of any failure in performance if such failure arises out of causes reasonably beyond the control of the Consultant or its subcontractors and without their fault or negligence. Such causes include, but are not limited to: acts of God; natural or public health emergencies; freight embargoes; and abnormally severe and unusual weather conditions.

Upon the Consultant's request, the City shall consider the facts and extent of any failure to perform the work and, if the Consultant's failure to perform was without its or its subcontractors' fault or negligence, the Contract schedule and/or any other affected provision of this Contract shall be revised accordingly; subject to the City's rights to change, terminate, or stop any or all of the work at any time.

ARTICLE 17 - DEBT

The Consultant shall not pledge the City's credit or attempt to make it a guarantor of payment or surety for any contract, debt, obligation, judgement, lien or any form of indebtedness. The Consultant further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Contract.

ARTICLE 18 - DISCLOSURE AND OWNERSHIP OF DOCUMENTS

The Consultant shall deliver to the City's Representative for approval and acceptance, and before being eligible for final payment of any amounts due, all documents and materials prepared by and for the City under this Contract.

All written and oral information not in the public domain or not previously known, and all information and data obtained, developed, or supplied by the City or at its expense will be kept confidential by the Consultant and will not be disclosed to any other party, directly or indirectly, without the City's prior written consent unless required by a lawful order. All drawings, maps, sketches, programs, data base, reports and other data developed, or purchased, under this Contract for or at the City's expense shall be and remain the City's property and may be reproduced and reused at the discretion of the City.

The City and the Consultant shall comply with the provisions of Chapter 119, Florida Statutes (Public Records Law).

All covenants, agreements, representations and warranties made herein, or otherwise made in writing by any party pursuant hereto, including but not limited to any representations made herein relating to disclosure or ownership of documents, shall survive the execution and delivery of this Contract and the consummation of the transactions contemplated hereby.

ARTICLE 19 - CONTINGENT FEES

The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant to solicit or secure this Contract and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Contract. Violation of this Article shall constitute a forfeiture of this Contract by the Consultant.

ARTICLE 20 - ACCESS AND AUDITS

The Consultant shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the work for at least three (3) years after completion of this Contract or until completion of any audit, whichever is later. The City shall have access to such books, records, and documents as required in this Article for the purpose of inspection or audit during normal business hours, at the Consultant's place of business.

ARTICLE 21 - NONDISCRIMINATION

The Consultant warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, or sexual orientation.

ARTICLE 22 - INTERPRETATION

The language of this Contract has been agreed to by both parties to express their mutual intent and no rule of strict construction shall be applied to either party hereto. The headings are for reference purposes only and shall not affect in any way the meaning or interpretation of this Contract. All personal pronouns used in this Contract shall include the other gender, and the singular, the plural, and vice versa, unless the context otherwise requires.

ARTICLE 23 - AUTHORITY TO PRACTICE

The Consultant hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner. Proof of such licenses and approvals shall be submitted to the City's Representative upon request.

ARTICLE 24 - SEVERABILITY

If any term or provision of this Contract, or the application thereof to any person or circumstance shall, to any extent, be held invalid or unenforceable, the remainder of this Contract, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Contract shall be deemed valid and enforceable to the extent permitted by law.

ARTICLE 25 - ENTIRETY OF CONTRACTUAL AGREEMENT

The City and the Consultant agree that this Contract, together with the Exhibits hereto, sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith. None of the provisions, terms and conditions contained in this Contract may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto in accordance with Article 26 - Modification of Scope of Work. In the event of any conflict or inconsistency between this Contract and the provisions in the incorporated Exhibits, the terms of this Contract shall supersede and prevail over the terms in the Exhibits.

ARTICLE 26 - MODIFICATION OF SCOPE OF WORK

The City reserves the right to make changes in the Scope of Work, including alterations, reductions therein or additions thereto. Upon receipt by the Consultant of the City's notification of a contemplated change, the Consultant shall, in writing: (1) provide a detailed estimate of the increase or decrease in cost due to the contemplated change, (2) notify the City of any estimated change in the completion date, and (3) advise the City if the contemplated change shall effect the Consultant's ability to meet the completion dates or schedules of this Contract.

If the City so instructs in writing, the CONSULTANT shall suspend work on that portion of the Scope of Work affected by a contemplated change, pending the City's decision to proceed with the change.

If the City elects to make the change, the City shall initiate a Contract Amendment and the Consultant shall not commence work on any such change until such written amendment is signed by the Consultant and the City, and if such amendment is in excess of \$25,000, it must also first be approved by the City Commission and signed by the appropriate City official authorized by the City Commission.

The City shall not be liable for payment of any additional or modified work which is not authorized in the manner provided for by this article.

ARTICLE 27 - NOTICE

All notices required in this Contract shall be sent by certified mail, return receipt requested, and if sent to the City shall be mailed to:

Raquel Elejabarrieta
Director, Office of Labor Relations
2600 Hollywood Blvd., Suite.212
Hollywood, FL. 33020

and if sent to the Consultant shall be mailed to:

Michael J. Tierney
Actuarial Concepts, Inc.
2950 Halcyon Lane, Suite 402
Jacksonville, FL 32223

ARTICLE 28 – OWNERSHIP OF DOCUMENTS

All finished or unfinished documents, data, reports, studies, surveys, drawings, maps, models and photographs prepared or provided by the Consultant in connection with this Contract shall become property of the City, whether the project for which they are made is completed or not, and shall be delivered by the Consultant to the City within ten

(10) days of notice of termination. If applicable, the City may withhold any payments then due to the Consultant until the Consultant complies with the provisions of this article.

IN WITNESS WHEREOF, the parties hereto have set their hands and official seals the day and year first above written.

ATTEST:

City of Hollywood, a municipal
Corporation of the State of Florida

Patricia A. Cerny, MMC
City Clerk

By: _____
Wazir Ishmael, Ph.D.,
City Manager

Approved as to form & legality for the
use and reliance of the City of Hollywood,
Florida, only.

Approved by: _____
Matt Lalla, Director of
Financial Services

Jeffrey P. Sheffel
City Attorney

AS TO CONSULTANT

Actuarial Concepts, Inc.

By: _____
Michael J. Tierney, President

Exhibit "A"

Scope of Work

Services will be based on specific assignments requested by the City and are expected to include one or more of the following:

- Independent review and/or appraisal of current financial liability and contribution requirements of selected plans.
- Review and/or appraisal of proposed benefit improvement plans.
- Assist with pension issues as part of union negotiations.
- Assist with issues relating to Chapter 175/185 compliance.
- Assist with development of pension benefit and financing policy.
- Consulting Expert to legal counsel for pension litigation/impasse proceedings.
- Expert Witness preparation and testimony for legal proceedings.

Hourly Rate Structure

Services will be performed based on the regular hourly rates as listed below:

Strategic Actuarial Consulting	\$290.00
Valuation Actuary	225.00
Actuarial Analyst/Assistant	150.00
Administrative	50.00
Expert Witness (litigation, impasse)	460.00
Consulting Expert (litigation, impasse)	375.00