

CONTRACT SUMMARY SHEET

TO: THE OFFICE OF THE CITY CLERK,
COUNCIL/PUBLIC SERVICES DIVISION
ROOM 395, CITY HALL

DATE: 07-27-2012

(PLEASE DO NOT STAPLE THE CONTRACT FOR THE CLERK'S FILE)

FROM (DEPARTMENT): BOARD OF PUBLIC WORKS

CONTACT PERSON: DAVID P. CHANQUIN

PHONE: 213 978-0260

CONTRACT NO.: N/A C-120777

COUNCIL FILE NO.: 12-0525

ADOPTED BY COUNCIL: 05-29-2012

DATE

APPROVED BY BPW: 04-06-2012

DATE

NEW CONTRACT X

AMENDMENT NO.

ADDENDUM NO.

SUPPLEMENTAL NO.

CHANGE ORDER NO.

CONTRACTOR NAME: MOU WITH COUNCIL FOR WATERSHED HEALTH

TERM OF CONTRACT: 07-27-2012

THROUGH: 06-30-2015

TOTAL AMOUNT: \$129,000.00

PURPOSE OF CONTRACT:

FOR THE ELMER AVENUE PASEO PROJECT

MEMORANDUM OF UNDERSTANDING

for

ELMER AVENUE PASEO PROJECT

between

CITY OF LOS ANGELES, DEPARTMENT OF PUBLIC WORKS

and

COUNCIL FOR WATERSHED HEALTH

INTRODUCTION

This Memorandum of Understanding ("Agreement"), made and entered into the 27th day of July, 2012, by and among the City of Los Angeles, a municipal corporation in the County of Los Angeles, hereinafter referred to as "City" and the Council for Watershed Health, a non-profit organization in the State of California hereinafter referred to as the "Council".

WHEREAS, the City and the Council recognize the need to improve water quality in the Los Angeles region, provide resilient water supplies by recharging aquifers, reduce flooding impacts, protect compatible beneficial uses, and improve neighborhood quality of life; and

WHEREAS, the Council, through the Los Angeles Basin Water Augmentation Study and the Elmer Avenue Neighborhood Retrofit, has forged a unique partnership between water, public works, and wastewater agencies, including the City, the State of California, and US Department of Interior Bureau of Reclamation to cooperatively evaluate capacity and feasibility of new stormwater management practices through infiltration that can be achieved without impacting groundwater quality and improve surface water quality;

WHEREAS, the Phase I work on the 7700 block of Elmer Avenue included installation of infiltration galleries underneath Elmer Avenue, sidewalks, trench drains, bio-swales, street trees and solar street lighting within the public right-of-way, and thirteen of the private properties on Elmer Avenue installation of permeable pavers, drip irrigation, drought tolerant plantings, rock swales, and rain barrels. These multiple Best Management Practices (BMPs) address the former existing significant runoff and public safety issues from runoff from approximately 40 acres of upstream land and demonstrate new and innovative stormwater best management practices with multiple benefits including but not limited to improving water quality, increasing local water supplies, reducing flood impacts, increasing native habitat, and improving neighborhood quality of life;

WHEREAS, the second phase of the Elmer Avenue Neighborhood Retrofit Project, the Elmer Ave Paseo, will provide additional water quality benefits, additional groundwater supplies and increase open space and amenities for the neighborhood;

WHEREAS, the goals of the Elmer Ave Paseo are supporting larger citywide efforts such as those of the implementation of the Integrated Resources Plan (IRP), the Water Quality Compliance Master Plan, the Stormwater Capture Master Planning, and the Mayor's initiative for making Los Angeles the greenest big city in United States;

WHEREAS, the City Bureau of Sanitation (BOS) and the City Bureau of Engineering (BOE) are partnering with the Council to implement the project;

WHEREAS, the (BOS) will act as the program manager for the City and lead liaison with the Council;

WHEREAS, the Council is the region's trusted hub for watershed research and analysis in pursuit of a more sustainable greater Los Angeles and will bring considerable resources and expertise to the Project; and will build on the successes and knowledge gained from the first phase of the Elmer Avenue Neighborhood Retrofit;

WHEREAS, the Project cost is estimated at \$675,806.00

WHEREAS, the City will provide \$129,000 of direct funding from City Proposition O to match the Federal, State, and regional funding of \$546,806.00;

NOW, THEREFORE, in consideration of promises, covenants, and agreements hereinafter set forth, the parties hereby agree as follows:

ARTICLE 1 – PUBLIC BENEFIT

Through this partnership, the Council and the City can make a significant difference to the residents of the surrounding Elmer Avenue Neighborhood and complete a demonstration project that will serve as a template for future neighborhood retrofits throughout the Los Angeles region. Much-needed improvements to City infrastructure can be realized along the Elmer Avenue Paseo and surrounding area to benefit receiving water quality, provide at least 4acre-feet annually of additional groundwater supplies and increase open space and amenities for the neighborhood.

ARTICLE 2– PROJECT DESCRIPTION AND SCOPE OF WORK

This project represents the second phase of the Elmer Avenue Neighborhood Retrofit Project hereinafter referred to as "Elmer Ave Paseo," located at the southern end of the Elmer Avenue project. The Elmer Ave Paseo project will address the runoff that drains to the Paseo from approximately 20 acres of land providing additional water quality, groundwater recharge, and community enhancement opportunities. The project includes installation of sustainable solutions that serve multiple benefits within the Elmer Ave Paseo such as swales, permeable materials, drought tolerant plantings, and educational signage.

SCOPE OF WORK

This project will be completed by CWH as described below:

- Prepare environmental documentation
- Prepare and finalize engineering design and construction plans and drawings, cost estimates, and obtain permits for the improvements
- Install improvements in accordance with approved final engineering and construction plans and drawings
- Provide construction management and oversight
- Conduct public outreach and education for the entire duration of the project
- Coordinate project element installations with private property owners adjacent to the project and in the Elmer Avenue neighborhood
- Perform monitoring of the completed project
- Provide periodic maintenance of the infiltration system.
- Provide periodic maintenance of the plantings.

Proposition O funds provided by the City shall only be used to fund construction and improvement of real property, consistent with the use of General Obligation Bond funds, as described in the first six bullets in this Article. Prop O Bond funds are limited to paying for clean water facilities. Project elements that have a green space of community benefit but do not provide for clean water must be supported from a funding source other than Prop O. Approval of expenditures for optimization of the Project shall receive separate prior approval by the Prop O Administrative Oversight Committee and City Council based upon the specific activities required to establish specific elements of the Project. Any Prop O funds received by the CWH and not expended on construction or improvement of clean water facilities on real property must be returned to the City.

ARTICLE 3 – CHANGES IN THE SCOPE OF WORK

Changes in the scope of work under this MOU will be made by an amendment and are subject to approval by the President of Board of Public Works and the Executive Director of the Council.

ARTICLE 4 – IMPLEMENTATION

The Project will fulfill the requirements of the grant agreements between the Council and the California Strategic Growth Council, the Santa Monica Mountains Conservancy, Los Angeles Department of Water & Power, and the U.S. Bureau of Reclamation. The key phases of the Project and the corresponding required dates are:

1. Design Completion – May 2012
2. Construction Completion – September 2012

3. Monitoring – October 2012 – April 2013

ARTICLE 5 – FUNDING

The Council has received funding from the California Strategic Growth Council (SGC) for \$294,395, the Santa Monica Mountains Conservancy (SMMC) for \$127,411, Los Angeles Waters and Power (LADWP) for \$125,000 funding from the City of Los Angeles Proposition O for \$129,000, and WAS Partners to design, install and monitor a green alleyway at the southern end of the 7700 block of Elmer Avenue on the City owned parcel (APN: 2315-010-900) between Keswick and Lull in the Los Angeles neighborhood of Sun Valley as part of Elmer Avenue Neighborhood Demonstration Project, a project of the Water Augmentation Study.

ARTICLE 6 – RESPONSIBILITIES OF TASKS TO BE PERFORMED BY THE CITY

1. BOS will act as the program manager for the City and lead liaison with the Council
2. Support the public outreach efforts for this project;
3. Act as the lead agency for the necessary California Environmental Quality Act (CEQA) clearances needed;
4. Participate in design and plan development meetings and review final plans;
5. Provide expedited review of all submittals and requests for permits for construction;
6. Operate and maintain the water quality and flood control elements that are installed within the subject property for a minimum of 20 years.
7. Indemnify, defend and hold the Council harmless from and against any and all liability to any third party for or from loss, damage or injury to persons or property in any manner arising out of, or incident to, the performance of this work;

ARTICLE 7 – RESPONSIBILITIES OF TASKS TO BE PERFORMED BY THE COUNCIL

1. Administer and manage the grants and subcontracts and prepare reports and invoices as required by the grants and this MOU;
2. Perform project management during the design and construction phases of the project and adhere to all of the terms and conditions in the Grant Agreements with the SGC, SMMC, LADWP, and USBR related to these tasks;
3. Conduct public outreach, develop bid documents and retain contracts for final design and construction, develop final designs and plans, manage construction of the project, inspect and monitor the site for a minimum of 1-year; coordinate and implement the components of the projects with the various City Departments;
4. Work with the City Departments to obtain necessary permits for the Project. Work with USBR to obtain any necessary National Environmental Policy Act (NEPA) clearance needed.

5. Provide trainings and organize the residents in the neighborhood and operate and maintain the plants, signage, and maintenance of the landscape elements installed within the subject property through June 30, 2015;
6. Indemnify, defend and hold the City harmless from and against any and all liability to any third party for or from loss, damage or injury to persons or property in any manner arising out of, or incident to, the performance of this work;
7. Be solely responsible for any contracts entered into, or other obligations or liabilities incurred by the Council in connection with the project or otherwise relating to this MOU and the City shall have no obligation or liability whatsoever hereunder or with respect thereto.
8. Provide the City with detailed status reports and invoices regarding the work completed to date.
9. Accept the transfers of funds from the City and perform the work necessary to adequately and timely complete the Project consistent with the scope of work described in the Grant Agreements. Funds shall not be released until the City has approved the work received and is satisfied with the documentation included in the invoice.
10. Retain all records and supporting documentation pertaining to the performance of the MOU for at least four years after the completion of the Project. Allow the City and State auditors access to such records during normal business hours and allow interviews of any employee who might reasonably have information related to records.
11. Upon completion of the Project, the Council shall submit copies of all project plans, specifications, as-built drawings, and other documents to the City.

ARTICLE 8 – INVOICING AND PAYMENT

1. Compensation: The City shall reimburse the Council upon the completion of project deliverables that comply with Article 2, Scope of Work and are eligible for Prop O funds. Should a project deliverable be partially eligible for Prop O funds, the appropriate Prop O eligible portion will be determined by the City in writing and the amount of payment shall be based upon that determination. Total compensation under this Agreement will be limited to \$129,000.
2. Invoicing and Payment: The Council is responsible for the preparation of a complete and accurate invoice. Invoices shall be prepared in such form and supported by copies of third party invoices and supporting documents, as required by the City to establish the amount of such invoices being allowable. Invoices and supporting documentation shall be prepared at the sole expense and responsibility of the Council.
3. Supporting Documentation: Original supporting documentation is preferred; however, photocopies of supporting documentation if marked "original" signed and dated by an authorized person will be acceptable.

4. Invoice Submittal: The Council shall submit all invoices to:

Shahram Kharaghani, Program Manager
Attention: Wing Tam, Assistant Division Manager
City of Los Angeles Bureau of Sanitation
Watershed Protection Division
1149 S. Broadway, 10th floor, MS 1149/756
Los Angeles, CA 90015-2213
Phone: (213) 485-0587

In order to ensure prompt processing, indicate clearly on the outside of the envelope that the envelope contains invoices for Elmer Avenue Paseo and Neighborhood Improvements Project.

5. Invoice Submittal Deadline: The City shall not be responsible for payments of invoices or supplemental invoices submitted to the City more than one year after the date of completion of service.
6. Invoice Approval and Processing: Payments shall be made upon the submission of complete and accurate invoice. The City shall review the Council invoice(s) and notify the Council in writing of exceptions within fifteen (15) days of receipt. If an invoice is not properly submitted, then the new 15-day review period will begin upon receipt of corrected invoice by the City. Once approved by the City, the City will process the payment within 30 days. No expedition of payment or explanation of payment progress shall be made within the 30-day processing period. To expedite the approval process, the Council is encouraged to submit draft invoices for review before submitting a final invoice. City liability under this MOU shall only be to the extent of the present appropriation to fund the MOU. No action, statement, or omission of any officer, agent, or employee of City shall impose any obligation upon City, such officer, agent, or employee, except to the extent City has appropriated funds and otherwise in accordance with the terms of this MOU. The Council and City agree that no indebtedness for work performed which results in costs under this MOU shall arise against City until and unless there is an appropriation of funds to pay for such work. However, if City shall appropriate funds for any successive fiscal years, City's liability shall be extended to the extent of such appropriation subject to the terms and conditions of this MOU.
7. Late Charges: The City does not pay any late charges, penalties, or interest on outstanding invoices. The City is not responsible for the payment of any interest, late charges, or penalties incurred by the Council from any Subcontractor or supplier for any items provided under the MOU.
8. Disputes: In the event that a dispute arises over an invoice, the City shall pay any undisputed portion of the amount due within the time period required for such payment, and any required payment of the disputed amount in accordance with existing City practices.

9. Past Expenses: Costs incurred by the Council prior to the actual date of full execution of this MOU shall only be payable to Council if said costs were incurred in completing tasks specifically authorized by this MOU and said costs are reviewed and approved by the City and said approval for payment occurs after this MOU is fully executed.

ARTICLE 9 – INDEPENDENT CONTRACTOR

The Council is acting hereunder as an independent Contractor and not as an agent or employee of the City. The Council shall not represent or otherwise hold out itself or any of its directors, officers, partners, employees, or agents to be an agent or employee of the City. The City shall not represent or otherwise hold itself or any of its directors, officers, partners, employees, or agents out to be an agent or employee of the Council.

ARTICLE 10 – TERM OF AGREEMENT

The term of this agreement shall commence on the date executed and shall continue through June 30, 2015, until terminated by either party, or as amended by mutual consent.

ARTICLE 11 – CHANGES OR MODIFICATIONS

Changes or modifications in the terms of this MOU or to the scope of work may be made at anytime by mutual written consent between the appointed representatives of the parties to the MOU.

Minor changes, such as schedules, quantities, product supplied, may be made by common consent between appointed representatives of the parties to this MOU.

ARTICLE 12 – FORCE MAJEURE

Notwithstanding any other provisions, the City shall not be held responsible or liable for failure to meet its respective obligations under this MOU if such failure shall be due to causes beyond the City's control. Such causes include, but are not limited to: strikes, fire, flood, civil disorder, acts of God or of the public enemy, acts of federal government or any unit of state or local government in either sovereign or contractual capacity, epidemics, quarantine restrictions, or delays in transportation to the extent that they are not caused by the party's willful or negligent acts or omissions, and to the extent that they are beyond the party's reasonable control.

ARTICLE 13 – NON-WAIVER

None of the provisions of this MOU shall be deemed waived unless expressly waived in writing. An omission or failure of either Party to demand or enforce strict performance of provisions of this MOU shall not be construed as a waiver or as a relinquishment of any rights. All provisions and rights shall continue and remain in full force and effect as if such omission or failure had not occurred.

ARTICLE 14 – SEVERABILITY

Should any portion of this MOU be determined to be void or unenforceable, such shall be severed from the whole and the MOU will continue as modified.

ARTICLE 15 – DISPUTES

Should a dispute or controversy arise concerning provisions of this MOU or the performance of work hereunder the parties may elect to submit such to representatives of the Board of Public Works and the Council for resolution.

ARTICLE 16 – GOVERNING LAW

Each party's performance hereunder shall comply with all applicable laws of the United States of America, the State of California, and the City.

ARTICLE 17 – TRANSFER OF INTEREST

Neither party shall assign or transfer this MOU in whole or in part without prior written consent of the other party. The consent to assign or transfer shall not be unreasonably withheld.

ARTICLE 18 – TERMINATION OF THE AGREEMENT

Either party may terminate this MOU for any reason in whole or in part by giving the other party, 30 calendar days written notice by certified mail with return receipt requested.

In the event of termination by either party prior to the completion date, the parties agree to take all reasonable measures to prevent further costs under this Agreement. All parties shall be responsible for any reasonable and non-cancelable obligation incurred in the performance of this Agreement until the date of the notice to terminate, but only up to the unpaid balance of funding authorized under this Agreement.

In the event that the Council terminates this Agreement during the Term of Agreement as defined above, or fails to complete the Project as describe in the Scope of Work, the Council shall be liable for repayment to City of all amounts paid by City under this Agreement. City may at its sole discretion consider extenuating circumstances and not require payment for work partially completed.

ARTICLE 19 – ENTIRE AGREEMENT

This MOU contains all of the representation and understandings of the parties here to and supersedes and/or incorporates any previous understandings proposals, or commitments, whether oral or written, and may be modified or amended only as herein before provided.

ARTICLE 20 – REPRESENTATIVES FOR THE PARTIES

All notices shall be made in writing and may be given by mail or by personal delivery. Such notices sent by mail should be registered or certified and sent to the designated contact person for each party and addressed as follows:

FOR THE DEPARTMENT OF PUBLIC WORKS:

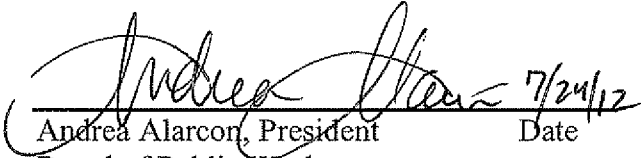
Shahram Kharaghani, Program Manager
Watershed Protection Division, Bureau of Sanitation
1149 S. Broadway
Los Angeles, CA 90015
Phone: (213) 485-0587
Attention: Wing Tam, Assistant Division Manager

FOR COUNCIL:

Nancy L. C. Steele, D. Env., Executive Director
700 N. Alameda St.
Los Angeles, CA 90012
Phone: (213) 229-9945

**THE CITY OF LOS ANGELES
DEPARTMENT OF PUBLIC WORKS**

**COUNCIL FOR WATERSHED
HEALTH**



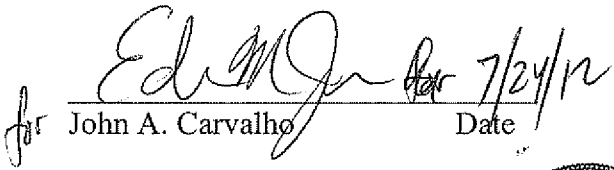
Andrea Alarcon, President 7/24/12
Board of Public Works Date



Nancy L. C. Steele, Executive Director 7/25/12
Date

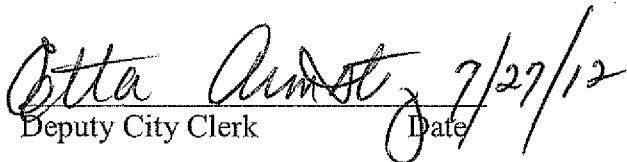
APPROVED AS TO FORM:

Carmen A. Trutanich, City Attorney


for _____
John A. Carvalho 7/24/12
Date

**ATTEST:
City Clerk**





Otta Amstutz 7/27/12
Deputy City Clerk Date