

**BOARD OF PUBLIC WORKS
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CITY OF LOS ANGELES

CALIFORNIA



KAREN BASS
MAYOR

**OFFICE OF THE
BOARD OF PUBLIC WORKS**

ELYSE MATSON
EXECUTIVE OFFICER

200 NORTH SPRING STREET
ROOM 361, CITY HALL
LOS ANGELES, CA 90012

TEL: (213) 978-0261
TDD: (213) 978-2310
FAX: (213) 978-0278

<http://bpw.lacity.org>

December 9, 2025

BPW-2025-0677

The Honorable City Council
Room No. 395
City Hall

REQUEST FOR AUTHORITY – OLYMPIC GATEWAY PROJECT

As recommended in the accompanying report of the City Engineer and the Director of the Bureau of Contract Administration, which this Board has adopted, the Board of Public Works recommends that the City Council:

1. APPROVE the Supplemental Agreement No.1 to the contract between the City of Los Angeles and the Los Angeles Neighborhood Initiative to increase the total contract term from 24 months to 48 months
2. AUTHORIZE the President or two Commissioners of the Board to Supplemental Agreement No. 1; and
3. REQUEST the City Clerk to attest and certify the two original copies of Supplemental Agreement No. 1. The City Clerk and the Board will each retain one original copy.

(W.O.: E1908832, C-142056)

Fiscal Impact: There is no impact to the General Fund.

Sincerely,

TJ KNIGHT,
Asst. Executive Officer, Board of Public Works

TK:lc



TRANSMITTAL

TO
Board of Public Works

DATE
10/30/2025

FROM
The Mayor

**REQUEST FOR AUTHORITY – OLYMPIC GATEWAY PROJECT SUPPLEMENTAL
AGREEMENT NO. 1**

Approved, ED3 waived, and transmitted for further processing.



MAYOR
(Jenny Delwood for)

**BOARD OF PUBLIC WORKS
MEMBERS**

STEVE S. KANG
PRESIDENT

JENNY CHAVEZ
VICE PRESIDENT

JOHN GRANT
PRESIDENT PRO TEMPORE

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COMMISSIONER

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CITY OF LOS ANGELES

CALIFORNIA



KAREN BASS
MAYOR

**OFFICE OF THE
BOARD OF PUBLIC WORKS**

ELYSE MATSON
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ROOM 361, CITY HALL
LOS ANGELES, CA 90012

TEL: (213) 978-0261
TDD: (213) 978-2310
FAX: (213) 978-0278

<http://bpw.lacity.org>

October 20, 2025

BPW-2025-0677

The Honorable Mayor Bass
City Hall – Room 320
Los Angeles, CA 90012

REQUEST FOR AUTHORITY – OLYMPIC GATEWAY PROJECT

As recommended in the accompanying report from the City Engineer and the Director of the Bureau of Contract Administration, which this Board has adopted, the Board of Public Works (Board) recommends that the Mayor and City Council:

1. APPROVE the Supplemental Agreement No.1 to the contract between the City of Los Angeles and the Los Angeles Neighborhood Initiative to increase the total contract term from 24 months to 48 months
 - a. AUTHORIZE the President or two Commissioners of the Board to Supplemental Agreement No. 1; and
2. REQUEST the City Clerk to attest and certify the two original copies of Supplemental Agreement No. 1. The City Clerk and the Board will each retain one original copy.

(W.O.: E1908832, C-142056)

Fiscal Impact: There is no impact to the General Fund.

Sincerely,

TJ KNIGHT,
Asst. Executive Officer, Board of Public Works

TK:lc

ADOPTED BY THE BOARD
PUBLIC WORKS OF THE CITY
of Los Angeles California

Department of Public Works

OCT 20 2025

Bureau of Engineering
Bureau of Contract Administration
Joint Report No. 1

AND REFERRED TO THE MAYOR

Executive Officer
Board of Public Works

AND REFERRED TO THE CITY COUNCIL

October 20, 2025
CD No. 10

EXECUTE SUPPLEMENTAL AGREEMENT NO. 1 TO CONTRACT NO. C-142056 WITH THE LOS ANGELES NEIGHBORHOOD INITIATIVE FOR DESIGN AND CONSTRUCTION SERVICES FOR THE OLYMPIC GATEWAY PROJECT (WORK ORDER NO. E1908832)

RECOMMENDING THE BOARD OF PUBLIC WORKS (BOARD):

1. APPROVE and FORWARD this report with transmittals to the Mayor's Office requesting the following:
 - a. APPROVE the Supplemental Agreement No.1 to the contract between the City of Los Angeles (City) and the Los Angeles Neighborhood Initiative (LANI) to increase the total contract term from 24 months to 48 months.
 - b. AUTHORIZE the President or two Commissioners of the Board to execute Supplemental Agreement No. 1.
2. UPON Execution, request the City Clerk to attest and certify the two original copies of Supplemental Agreement No. 1. The City Clerk and the Board will each retain one original copy.

FISCAL IMPACT STATEMENT

There is no direct impact on the General Fund. Funding for the contract is provided by the Assembly Bill AB1290 Fund and Community Redevelopment Agency of Los Angeles (CRA/LA) Excess Bond Proceeds.

TRANSMITTALS

1. Copy of the Joint Report No. 1 between the Bureau of Engineering (BOE) and the Bureau of Contract Administration (BCA) and its associated transmittals authorizing the BOE to execute a sole source contract with the LANI for design and construction services for the Olympic Gateway Project (Project), dated June 1, 2022.
2. Copy of the executed contract between LANI and the City, dated December 1, 2022.
3. Copy of the draft Supplemental Agreement No. 1.

DISCUSSION

Background

On April 22, 2020, the City Council adopted a Council Motion authorizing the Board to approve, negotiate, and execute contracting documents with the LANI as required to effectuate the Project. On June 1, 2022, the Board authorized the BOE to execute a sole source contract with LANI (Transmittal No. 1). On December 1, 2022, the City Council executed a contract between LANI and the City (Transmittal No. 2). The LANI is an organization that implements streetscape and transit improvements in economically challenged transit-dependent communities throughout the City and has been spearheading this Project since 2011. The LANI has successfully administered similar projects throughout the City in nearly 30 communities.

The Project will construct an illuminated cultural gateway consisting of a twisting cable structure spanning diagonally between two approximately 50-foot pole structures at the intersection of Normandie Avenue and Olympic Boulevard (Figure).

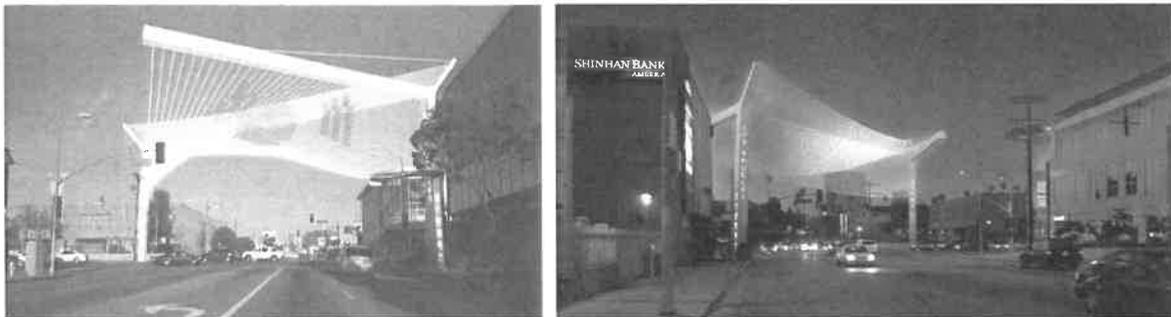


Figure: Proposed gateway looking eastbound on Olympic Boulevard, westerly of Normandie Avenue (left) and looking northbound on Normandie Avenue, southerly of Olympic Boulevard (right).

Scope of Work

This contract includes scope to design and construct an illuminated cultural gateway consisting of a twisting cable structure spanning diagonally between two approximately 50-foot pole structures at the intersection of Normandie Avenue and Olympic Boulevard (Figure) for a total amount of \$3,630,933, under the current authority. The total Project budget has increased and a request for a higher budget authority will be requested in the future. Additionally, the LANI will also be required to obtain a B-permit and an R-permit for the Project and to submit a Maintenance Plan for the structure. This Maintenance Plan shall include, but not be limited to a maintenance schedule, instructions on how to perform maintenance, a list of parts, and manufacturers product data sheets.

Sole Source Justification

Due to the limited scope of work and extensive experience the LANI has on the Project, it is more feasible and economical for this work to continue to be done by the LANI than by any other contractor or City employees.

October 20, 2025

Page 3

On May 27, 2021, the BOE received approval from the Mayor's Office to waive the Business Inclusion Program (BIP) Outreach requirements. However, the firm was encouraged to utilize Minority-owned Business Enterprise, Women-owned Business Enterprise, Small Business Enterprise, Emerging Business Enterprise, Disabled Veteran Business Enterprise and Other Business Enterprise subconsultants whenever possible.

The current contract between the City and LANI expired on December 1, 2024, and there is a need to extend the contract another two years to December 1, 2026 in order to construct the necessary scope of improvements within the contract. On August 30, 2022, the City Council has authorized a total term of four years for the Project, extending the date to December 1, 2026 (CF 22-0846). The process for extending the contract was delayed in part to obtain approval for sole source justification for the LANI to continue their original contract with the City. The City Attorney's Office concurred with the sole source justification in August 2025, and the extension of the contract from 24 months to 48 months will be effectuated as Supplemental Agreement No. 1 (Transmittal No. 3).

The LANI's original Project schedule had experienced delays for both design completion, due to longer than anticipated plan review times, and the bid and award phase. Interested contractors submitted bids higher than anticipated resulting in the LANI re-bidding the Project in order to get more favorable bids. As of August 2025, the LANI has accepted a cost proposal from a contractor, although their bid price was higher than the current budget authority within this contract. In order to maintain the identified EBP funds which are tied to stringent deadlines, the LANI's contractor will proceed with partial mobilization and steel fabrication work until additional funding can be identified. As additional funding is identified, an amendment to raise the cost ceiling of the contract will be transmitted to the Board for consideration at a later date.

Compliance with City and Board Policies

The LANI is subject to compliance with the following City Ordinances and policies: Business Tax Registration Certificate; Non-Discrimination, Equal Employment Practices, and Affirmative Action; Insurance requirements; Equal Benefits Ordinance; Child Support Obligations Ordinance; Americans with Disabilities Act; Worker Retention Ordinance; Living Wage Ordinance; Disclosure Ordinances; Non-Collusion; Municipal Lobbying Ordinance; First Source Hiring Ordinance; Contractors' Use of Criminal History for Consideration of Employment Applications Ordinance; and Best Terms. Failure to comply with all requirements will render the consultant's contract subject to termination pursuant to the conditions therein.

Businesses are encouraged to locate or remain within the City to preserve and enhance the economic base and well-being of the City. According to the Los Angeles Residence Information form, the LANI currently staffs a total of six employees, of which three reside in the City or 50 percent of their workforce.

Contractor Performance Evaluation

The quality of the work performed by the LANI will be monitored in accordance with the Contractor Evaluation Ordinance No. 173018 [Division 10, Chapter 1, Article 13 of the Los Angeles Administrative Code (LAAC)] and the Rules for the Evaluation of Service Contractors which require departments to prepare performance evaluations upon completion of all service contracts over \$25,000 and at least three months in duration. The appropriate City personnel responsible for the quality control of these personal services contracts shall submit Contractor Performance Evaluation Reports to the Department of Public Works' BCA upon completion of the contracts. The critiques are kept on file by the BCA, Special Research & Investigation Section for reference by other City departments and agencies.

Contractor Responsibility Ordinance

The LANI is subject to compliance with the requirements specified in the City's Contractor Responsibility Ordinance No. 173677 (Division 10, Chapter 1, Article 14 of the LAAC). Failure to comply with all requirements specified in the ordinance may render the consultant's contract subject to termination pursuant to the conditions expressed therein.

Notice of Intent to Contract and Charter Section 1022 Determination

In accordance with Charter Section 1022, on April 22, 2020, the City Council adopted a motion determining that due to the limited scope of work and the extensive experience of the LANI on the Project and in providing community neighborhood improvement projects with stakeholders, it is more feasible and economical for this work to be done by a contractor than by City employees.

City Attorney Review

The draft Supplemental Agreement No. 1 has been sent to the City Attorney for review and approval as-to-form.

STATUS OF FUNDING

The status of funding has not changed from the prior executed board report.

An amount of \$1,500,000 for this contract comes from the Capital Improvement Expenditure Program, Fund No. 100, Department No. 54, Appropriation Unit No. 00S740 (Funding Source AB1290), and \$2,130,933 for this contract comes from the CRA/LA Excess Non-Housing Bond Proceeds Fund, Fund No. 57D, Department No. 28, Appropriation Unit Nos. 22L9TT, 22S9TT, and 22S9TN. The breakdown of the two funds is listed in the Economic and Workforce Development Department Report for the Bond Oversight Committee (Transmittal No. 1).

The City's liability under this contract shall only be to the extent of the present City appropriation to fund the contract. However, if the City shall appropriate funds for any succeeding years, the City's liability shall be to the extent of such appropriation, subject to the terms and conditions of the contract.

Department of Public Works
Bureau of Engineering
Bureau of Contract Administration
Joint Report No. 1
October 20, 2025

Page 5

(NM VCA AV KD)

Report reviewed by:

BOE (ADM and PAC)
and EWDD (EDD)

Report prepared by:

Street Improvement Division

Nur Malhis, PE
Division Engineer
Phone No. (213) 485-4737

Compliance Review performed
and approved by:



Lynda McGlinchey (Oct 9, 2025 14:21:16 PDT)
Lynda McGlinchey, Program Manager II
Office of Contract Compliance
Bureau of Contract Administration

NM/GH/09-2025-0144_SID.pc

Questions regarding this
report may be referred to:
Nur Malhis, Division Manager
Phone No. (213)485-4737
Email: nur.malhis@lacity.org

Respectfully submitted,



Alfred Mata, PE
Interim City Engineer
Bureau of Engineering



John L. Reamer, Jr.
Inspector of Public Works
Bureau of Contract Administration

Department of Public Works

Bureau of Engineering
Bureau of Contract Administration
Joint Report No. 1

June 1, 2022
CD No. 10

EXECUTE A SOLE SOURCE CONTRACT WITH THE LOS ANGELES NEIGHBORHOOD INITIATIVE FOR DESIGN AND CONSTRUCTION SERVICES FOR THE OLYMPIC GATEWAY PROJECT (WORK ORDER NO. E1908832)

RECOMMENDING THE BOARD OF PUBLIC WORKS (BOARD):

APPROVE and FORWARD this report with transmittals to the Mayor requesting that he approve and authorize the President or two Commissioners of the Board to execute a sole source contract with the Los Angeles Neighborhood Initiative (LANI) for design and construction services with a budget authority of \$3,630,933 for a two-year contract with two one-year renewal options.

FISCAL IMPACT STATEMENT

There is no direct impact on the General Fund. Funding for the contract is provided by the AB1290 Fund and Community Redevelopment Agency of Los Angeles (CRA/LA) Excess Bond Proceeds.

TRANSMITTALS

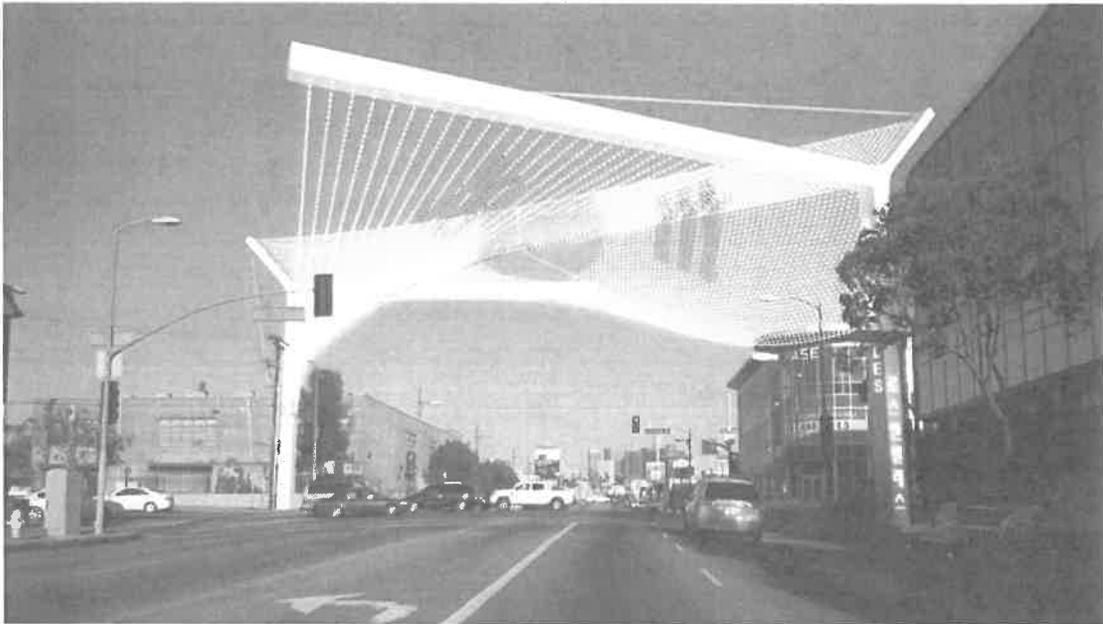
1. Copy of a City Council motion adopted by the City Council on April 22, 2020 authorizing the Board's Bureau of Engineering (BOE) to approve, negotiate, and execute contracting documents with the LANI (Council File No. 14-1174-S85).
2. Copy of the Mayor's Office of Economic Development waiver of the Good Faith Effort requirements for this contract dated May 27, 2021.
3. Master copy of the proposed sole source contract between the City of Los Angeles (City) and the LANI. NOT INCLUDED
4. Copy of the City Council motion, adopted on July 3, 2019, relative to utilizing AB1290 funds for the Olympic Gateway Project (Project) (Council File No. 14-1174-S85).
5. Copy of Economic and Workforce Development Department (EWWDD) Report for bond oversight committee.

DISCUSSION

Background

On April 22, 2020, the City Council adopted a motion authorizing the Board, BOE to approve, negotiate, and execute contracting documents with the LANI as required to effectuate the

Project (Transmittal No. 1). The LANI has been spearheading the project since 2011. The LANI is an organization that implements streetscape and transit improvements in economically challenged transit-dependent communities throughout the City. The LANI has successfully administered such projects throughout the City in nearly 30 communities. The Project will construct an illuminated cultural gateway consisting of a twisting cable structure spanning diagonally between two approximately 50-foot pole structures at the intersection of Normandie Avenue and Olympic Boulevard.



East View Daytime



North View Nighttime

Department of Public Works
Bureau of Engineering
Bureau of Contract Administration
Joint Report No. 1

June 1, 2022
Page 3

Scope of Work

The scope of work under this contract will include scope to design and construct an illuminated cultural gateway consisting of a twisting cable structure spanning diagonally between two approximately 50-foot pole structures at the intersection of Normandie Avenue and Olympic Boulevard for a total amount of \$3,630,933. The LANI will also be required to obtain a B-permit and a R-permit for the project and to submit a Maintenance Plan for the structure. This Maintenance Plan shall include, but not be limited to a maintenance schedule, instructions on how to perform maintenance, a list of parts, and manufacturers product data sheets.

Sole Source Justification

Due to the limited scope of work and extensive experience the LANI has on the project, it is more feasible and economical for this work to be done by the LANI than by any other contractor or City employees.

On May 27, 2021, the BOE received approval from the Mayor's Office to waive the Business Inclusion Program (BIP) requirements. Approval to waive the BIP requirements was because it is more feasible and economical for this work to be completed by the LANI due to the extensive experience of the LANI on the project (Transmittal No. 2). However, the firm was encouraged to utilize Minority-owned Business Enterprise, Women-owned Business Enterprise, Small Business Enterprise, Emerging Business Enterprise, Disabled Veteran Business Enterprise and Other Business Enterprise subconsultants whenever possible.

Compliance with City and Board Policies

The Board's personal services contracting policies have been followed. The consultant is subject to compliance with the following City ordinances and policies: Contractor Responsibility Ordinance; Business Tax Registration Certificate; Non-Discrimination, Equal Employment Practices, and Affirmative Action; Insurance requirements; Equal Benefits Ordinance; Child Support Obligations Ordinance; Americans with Disabilities Act; Worker Retention Ordinance; Living Wage Ordinance; Slavery Disclosure Ordinance; Disclosure of Border Wall Contracting Ordinance; Non-Collusion; Municipal Lobbying Ordinance; First Source Hiring Ordinance; Contractors' Use of Criminal History for Consideration of Employment Applications Ordinance. Failure to comply with all requirements will render the consultant's contract subject to termination pursuant to the conditions therein.

Businesses are encouraged to locate or remain within the City to preserve and enhance the economic base and well-being of the City. According to the Los Angeles Residence Information form, the LANI has a total of six employees, of which three reside in the City or 50 percent of their workforce.

The quality of the work performed by the LANI will be monitored in accordance with the Contractor Evaluation Ordinance No. 173018 (Division 10, Chapter 1, Article 13 of the Los Angeles Administrative Code) and the Rules for the Evaluation of Service Contractors which require departments to prepare performance evaluations upon completion of all service contracts over \$25,000 and at least three months in duration. The critiques are kept on file by the Bureau of Contract Administration, Special Research & Investigation Section for reference by other City departments and agencies.

Notice of Intent to Contract and Charter Section 1022 Determination

In accordance to Charter Section 1022, on April 22, 2020, the City Council adopted a motion determining that due to the limited scope of work and the extensive experience of the LANI on the Project and in providing community neighborhood improvement projects with stakeholders, it is more feasible and economical for this work to be done by a contractor than by City employees.

City Attorney Review

The proposed contract (Transmittal No. 3) has been reviewed and approved as-to-form by the City Attorney's Office.

STATUS OF FUNDING

\$1,500,000 for this contract comes from the Capital Improvement Expenditure Program, Fund No. 100, Department No. 54, Appropriation Unit No. 00S740 (Funding Source AB1290), subject to re-appropriation, and \$2,130,933 for this contract comes from the CRA/LA Excess Non-Housing Bond Proceeds Fund, Fund No. 57D, Department No. 28, Appropriation Unit Nos 22L9TT, 22S9TT, and 22S9TN (Transmittal No. 4). The breakdown of the two funds listed in EWDD Report for Bond Oversight Committee (Transmittal No. 5).

The City's liability under this contract shall only be to the extent of the present City appropriation to fund the contract. However, if the City shall appropriate funds for any succeeding years, the City's liability shall be the extent of such appropriation, subject to the terms and conditions of the contract.

Department of Public Works
Bureau of Engineering
Bureau of Contract Administration
Joint Report No. 1

June 1, 2022
Page 5

(AV MM GV JS)

Report reviewed by:

BOE (ADM and PAC)
and EWDD (EDD)

Report prepared by:

Street Improvement Division

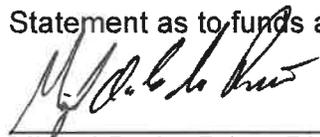
Arsen Voskerchyan, PE
Division Engineer
Phone No. (213) 485-4474

Compliance review performed
and approved by:



Lynda McGlinchey (May 19, 2022 12:21 PDT)
Lynda McGlinchey, Program Manager II
Office of Contract Compliance
Bureau of Contract Administration

Statement as to funds approved by:



Miguel De La Peña, Director
Office of Accounting
Fund Ref. 100/54/00S740/\$1,500,000
Date: 5/23/2022

AV/DT/08-2021-0108_SID.dng

Questions regarding this
report may be referred to:
Danny Tang, Civil Engineer
Phone No. (213) 485-4507
E-mail: danny.tang@lacity.org

Respectfully submitted,



Gary Lee Moore, PE, ENV SP
City Engineer
Bureau of Engineering



John L. Reamer, Jr.
Inspector of Public Works
Bureau of Contract Administration

TRANSMITTAL NO 1
MOTION PUBLIC WORKS & GANG REDUCTIO

On October 30, 2019, Council took various actions related to the Olympic Gateway Project (Project) that included authorizing the Department of Public Works, Bureau of Engineering (BOE), to negotiate and execute contracting documents as required to implement the Project (C.F. 14-1174-S85). The Project consists of installing a twisting cable structure stretching between two 50-foot pole structures spanning the intersection of Normandie Avenue and Olympic Boulevard in Council District 10.

The Los Angeles Neighborhood Initiative (LANI) has been spearheading the Project since 2011. LANI is a nonprofit organization that implements streetscape and transit improvements in economically challenged transit-dependent communities throughout the City of Los Angeles. For the Project, LANI formed a Steering Committee of community stakeholders who reviewed and selected the winning architectural design, awarded and administers a contract with the selected architectural firm, obtained construction drawings that are ready for permit review and approval, and hired a Construction Management Firm through a competitive Request for Qualifications process. Over the past 25 years, LANI has successfully administered such projects throughout the City in nearly 30 communities.

Due to the limited scope of work and extensive experience LANI has on the Project, it is more feasible and economical for this work to be done by LANI than by any other contractor or City employees. Council action is needed to authorize the Board of Public Works, Bureau of Engineering, to contract with LANI for completion of the Project.

I THEREFORE MOVE that the Council, subject to approval of the Mayor, take the following actions:

1. AUTHORIZE the Board of Public Works, Bureau of Engineering (BOE), to approve, negotiate, and execute contracting documents with the Los Angeles Neighborhood Initiative (Contractor) as required to effectuate the "Olympic Gateway Project" (Project) in Council District 10 subject to the approval of the Board of Public Works, prevailing wage requirements, and the City Attorney as to form;
2. AUTHORIZE the Controller, subject to the requirements identified in Council's approval of Project related recommendations on October 30, 2019 (C.F. 14-1174-S85), the availability of funds, and a duly executed and encumbered contract, to expend up to \$1,755,166 plus Interest from CRA/LA Excess Bond Proceeds (EBP) Fund No. 57D, Account Nos. 22L9TT and 22S9TT Wilshire Center/Koreatown Taxable Series 2006-A and 2008-B, and to expend up to the total amount of Interest available from EBP Fund No. 57D, Account No. 22S9TN Wilshire Center/Koreatown Tax-Exempt Series 2008-C, for activities related to the Project upon presentation of proper documentation by the BOE, and satisfactory review and approval of the Economic and Workforce Development Department (EWDD) in accordance with the terms and conditions of the Bond Expenditure Agreement (Contract No. C-125212);
3. DETERMINE that, in accordance to Chapter Section 1022, due to the limited scope of work and the extensive experience of LANI on the Project and in providing community neighborhood improvement projects with stakeholders, it is more feasible and economical for this work to be done by a contractor than by City employees; and
4. AUTHORIZE the Interim General Manager, EWDD, or designee, to prepare Controller instructions and/or make technical adjustments that may be required and are consistent with this action, subject to the approval of the City Administrative Officer; and, AUTHORIZE the Controller to implement these instructions.

PRESENTED BY: 
HERB J. WESSON, JR.
Councilmember, 10th District

SECONDED BY: 

ORIGINAL





Richard Louie <richard.louie@lacity.org>

Mayor's Office of Economic Development - Contact

Richard Louie <richard.louie@lacity.org>

Thu, May 27, 2021 at 12:57 PM

To: Jessica Lopez <jessica.e.lopez@lacity.org>

Cc: CPO Team <CPO-Team@lacity.org>, Erik Munoz <erik.munoz@lacity.org>, Shannon Hoppes <shannon.hoppes@lacity.org>, Steven Chen <steven.chen@lacity.org>

Thank you Jessica!

Hope you have a great weekend.

Thanks,

Richard Louie, PE, CCM
Senior Civil Engineer
Bureau of Engineering | Department of Public Works
1149 S. Broadway, Suite 800
Los Angeles, CA 90015
Mail Stop 494
Phone: 213-485-5864
Cell: 213-923-6337
Richard.Louie@lacity.org

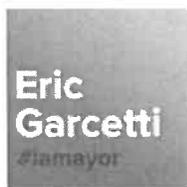


On Thu, May 27, 2021 at 12:54 PM Jessica Lopez <jessica.e.lopez@lacity.org> wrote:

Thank you for the clarification, Richard. Under the subcontracting opportunity question, you were supposed to write no, to signal that there are no subcontracting opportunities.

I've written that in our notes and your BIP waiver is approved.

Best,



Jessica E. Lopez
Clear Contracting Analyst | CPO Team
Mayor's Office of Budget and Innovation
200 N. Spring St. Los Angeles, CA 90012
jessica.e.lopez@lacity.org

On Thu, May 27, 2021 at 12:41 PM Richard Louie <richard.louie@lacity.org> wrote:

Hi Jessica,

I may have mis-understood the question on the form. The answer should have been no, there are no subcontracting opportunities. This contract will be sole sourced to LANI.

Let me know if that answers your question.

Thanks,

Richard Louie, PE, CCM
Senior Civil Engineer
Bureau of Engineering | Department of Public Works
1149 S. Broadway, Suite 800
Los Angeles, CA 90015

Mail Stop 494
Phone: 213-485-5864
Cell: 213-923-6337
Richard.Louie@lacity.org



On Thu, May 27, 2021 at 11:08 AM Jessica Lopez <jessica.e.lopez@lacity.org> wrote:

Hi Richard,

Sorry for the wait! I do have a couple of follow-up questions.

I was under the impression that this was a sole-source contract, however in the form you indicated that there are subcontracting opportunities in this contract. If there are subcontracting opportunities BIP can be implemented, unless there are other reasons unknown?

Please elaborate as this may be an entirely different contract from the one mentioned in this thread, the LANi sole source.

Thank you,



Jessica E. Lopez
Clear Contracting Analyst | CPO Team
Mayor's Office of Budget and Innovation
200 N. Spring St. Los Angeles, CA 90012
jessica.e.lopez@lacity.org

On Thu, May 27, 2021 at 10:57 AM Richard Louie <richard.louie@lacity.org> wrote:

Hi Jessica,

I wanted to follow up regarding the waiver request that I submitted last week. Can you let me know what is a typical timeline I should plan for, for the review of the request? Is there anything other information that you need me to provide?

Thanks,

Richard Louie, PE, CCM
Senior Civil Engineer
Bureau of Engineering | Department of Public Works
1149 S. Broadway, Suite 800
Los Angeles, CA 90015
Mail Stop 494
Phone: 213-485-5864
Cell: 213-923-6337
Richard.Louie@lacity.org



On Fri, May 21, 2021 at 4:23 PM Jessica Lopez <jessica.e.lopez@lacity.org> wrote:

Yes, I received it and will be reviewing it!

Thank you!

On Fri, May 21, 2021 at 3:48 PM Richard Louie <richard.louie@lacity.org> wrote:

Hi Jessica,

I have submitted a request for waiver through the Google Form. Can you please confirm that you have received it?

Thanks,

Richard Louie, PE, CCM
Senior Civil Engineer
Bureau of Engineering | Department of Public Works
1149 S. Broadway, Suite 800
Los Angeles, CA 90015
Mail Stop 494
Phone: 213-485-5864
Cell: 213-923-6337
Richard.Louie@lacity.org

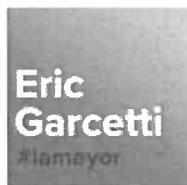


On Tue, May 4, 2021 at 9:59 AM Jessica Lopez <jessica.e.lopez@lacity.org> wrote:

Hi Richard and Erik,

Please submit an official request by submitting your request via our google form. If you have any questions please feel free to email me.

Thank you,



Jessica E. Lopez
Clear Contracting Analyst | CPO Team
Mayor's Office of Budget and Innovation
200 N. Spring St. Los Angeles, CA 90012
jessica.e.lopez@lacity.org

On Tue, May 4, 2021 at 8:30 AM Erik Munoz <erik.munoz@lacity.org> wrote:

Great, thank you Shannon.

We look forward to working with you Jessica. Richard Louie will be the lead BOE contact for this item.

Regards,

On Tue, May 4, 2021 at 8:28 AM Shannon Hoppes <shannon.hoppes@lacity.org> wrote:

Hi, Erik. Jessica Lopez of my team will be in touch.

On Tue, May 4, 2021 at 8:15 AM Erik Munoz <erik.munoz@lacity.org> wrote:

Good Morning Shannon,

BOE is in the process of executing a sole source contract with the Los Angeles Neighborhood Initiative (LANI) per Council direction. On the sole source board report, it indicates we need a waiver from the Mayor's Office of Economic Development Good Faith requirements. Would you be able to assist us with this request?

Thank you,

On Wed, Apr 28, 2021 at 12:37 PM Karen Dominguez <karen.x.dominguez@lacity.org> wrote:

Good afternoon Erik,

Shannon Hoppes and her team will be in contact to provide the waiver.

Thank you
Karen Dominguez

On Wed, Apr 28, 2021 at 11:24 AM Mayor Helpdesk <mayor.helpdesk@lacity.org> wrote:
Good afternoon Erik,

I have copied my colleague +Karen Dominguez who can provide more information.

Thank you,
Office of Mayor Eric Garcetti

On Wed, Apr 28, 2021 at 7:46 AM Erik Munoz <erik.munoz@lacity.org> wrote:
Good Morning,

BOE is in the process of executing a sole source contract with the Los Angeles Neighborhood Initiative (LANI) per Council direction. On the sole source board report, it indicates we need a waiver from the Mayor's Office of Economic Development Good Faith requirements. Can you please direct me to a contact at the Mayor's Office of Economic Development that can assist with this request?

Thank you,

--

Erik Muñoz, P.E., ENV SP

Executive Division | Council/Board Liaison

Bureau of Engineering | Department of Public Works

200 N. Spring St., Suite M-154, Los Angeles, CA 90012 (MS-195)

Phone: 213.978.2074

The Koreatown Gateway Project in Council District 10 will be a cultural gateway spanning the intersection of Normandie Avenue and Olympic Boulevard in the heart of Koreatown. The community selected an award winning design of a twisting cable structure that is illuminated and programmable from over 27 concept drawings. The design is evocative of the high tech streets of Seoul and in direct contrast to the iconic, authentic Korean pavilion within sight of the structure. The cables will stretch between two 50' pole structures. Funding is needed to cover the estimated \$3.6 million project cost.

The Koreatown Madang Linear Park Project, also in Council District 10, will extend the existing curb on Normandie Avenue, where it meets Irolo Street, to the center line of the two-lane street. Normandie Avenue, between Irolo Street and San Marino Street will become a one-way street with angled parking. The plaza space created will be landscaped with lighting and pedestrian seating and may include a water feature. Funding is also needed to cover the estimated \$1.1 million project cost.

Funds are available to Council District 10 through the AB1290 Fund, taxable and tax-exempt CRA/LA Excess Bond Proceeds from the Wilshire Center/Koreatown Redevelopment Project Area, and possibly Quimby funds derived from the area that can assist with development costs related to both projects. In accordance with policies adopted by Council (C.F. 14-1174) related to the CRA/LA Bond Expenditure Agreement and Bond Spending Plan, any proposal to expend CRA/LA Excess Bond Proceeds shall be initiated by Council Motion. Proposals will be reviewed by the CRA/LA Bond Oversight Committee, Economic Development Committee, and any other applicable committee with final recommendations presented to the Council and Mayor for final consideration and approval. The use of taxable and tax-exempt CRA/LA Excess Bond Proceeds for cultural investments in the Wilshire Center/Koreatown Redevelopment Project Area is an eligible expense identified in the Bond Expenditure Agreement and Bond Spending Plan.

I THEREFORE MOVE that the Council instruct the Economic and Workforce Development Department (EWDD), with the assistance of the City Administrative Officer, Chief Legislative Analyst, Bureau of Engineering (BOE), and any other applicable City department, to provide a report with recommendations to the CRA/LA Bond Oversight Committee to allocate all remaining taxable and tax-exempt CRA/LA Excess Bond Proceeds available to Council District 10, including any earned interest, for development costs related to the Koreatown Gateway and Koreatown Madang Linear Park projects (Projects) as identified in the Bond Expenditure Agreement and Bond Spending Plan for the Wilshire Center/Koreatown Redevelopment Project Area.

I FURTHER MOVE that the Council authorize the expenditure of all remaining taxable and tax-exempt CRA/LA Excess Bond Proceeds available to Council District 10, including any earned interest, from the Wilshire Center/Koreatown Redevelopment Project Area to be utilized by BOE for development costs related to the Projects upon Council's approval of the forthcoming EWDD report.

I FURTHER MOVE that \$1,500,000 in AB1290 Fund No. 53P, Account No. 281210 (CD 10 Redevelopment Projects - Services) be transferred / appropriated to the BOE (Account TBD) for development costs related to the Projects.

I FURTHER MOVE that Council request that the Board of Recreation and Parks Commissioners allocate \$1,500,000 in Quimby Funds available to Council District 10 for use by BOE for development costs related to the Projects.

I FURTHER MOVE that Council instruct City Administrative Officer to prepare the necessary Controller instructions for transfer of the above stated funding and be authorized to make technical corrections or adjustments that may be required to effectuate the intent of this Motion and authorize the Controller to implement these instructions.

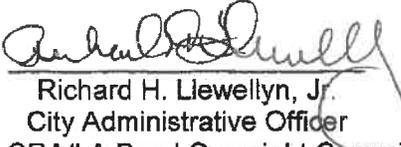
PRESENTED BY: Herb J. Wesson, Jr.
HERB J. WESSON, JR.
Councilmember, 10th District

SECONDED BY: Dee C. S.

ORIGINAL

JUN 28 2019

oi
[Signature]

TRANSMITTAL		0111-31341-0133
TO Council	DATE 09-19-19	COUNCIL FILE NO. 14-1174-S85
FROM CRA/LA Bond Oversight Committee		COUNCIL DISTRICT 10
<p>At a Special Meeting on September 17, 2019, the CRA/LA Bond Oversight Committee approved recommendations in the attached Economic and Workforce Development Department (EWDD) report and instructed staff to transmit to Council for consideration. Council approval of the report recommendations would authorize the appropriation of up to \$1,755,166 in CRA/LA Excess Non-Housing Bond Proceeds plus all earned interest from the Wilshire Center Koreatown Project Area (Taxable Series 2006-A and 2008-B) for the Olympic Gateway Project.</p> <p>Fiscal Impact Statement: There is no impact on the City's General Fund from the proposed appropriation. The CRA/LA Excess Non-Housing Bonds Proceeds Fund No. 57D is funded solely from transfers totaling approximately \$88.4 million in pre-2011 tax allocation bond proceeds from CRA/LA to the City. (C.F. 14-1174) Said transfers have been deposited with the Office of the Controller.</p> <div style="text-align: center;">  Richard H. Lewellyn, Jr. City Administrative Officer Chair, CRA/LA Bond Oversight Committee </div>		
<p>RHL:YC/JVW:nsh15200042 Attachment – September 17, 2019 EWDD Report – Olympic Gateway Project</p>		

CITY OF LOS ANGELES

CALIFORNIA

JOHN L. REAMER, JR.
INTERIM GENERAL MANAGER



ERIC GARCETTI
MAYOR

**ECONOMIC AND WORKFORCE
DEVELOPMENT DEPARTMENT**

1200 W. 7TH STREET
LOS ANGELES, CA 90017

September 17, 2019

Council File:14-1174-S85
Council District No.: 10
Contact Person & Extension:
Daysi Hernandez: (213) 744-9340

CRA/LA Bond Oversight Committee
c/o Jacqueline Wagner
Office of the City Administrative Officer
Room 1500, City Hall East

BOND OVERSIGHT COMMITTEE TRANSMITTAL: REQUEST REVIEW AND RECOMMENDATION THAT COUNCIL AND MAYOR, AS REQUIRED, APPROPRIATE UP TO \$1,755,166 IN TAXABLE CRA/LA EXCESS NON-HOUSING BOND PROCEEDS PLUS ALL TAXABLE AND TAX-EXEMPT EARNED INTEREST FROM THE WILSHIRE CENTER/KOREATOWN REDEVELOPMENT PROJECT AREA (TAXABLE SERIES 2006-A AND 2008-B) FOR THE OLYMPIC GATEWAY PROJECT

The Interim General Manager of the Economic and Workforce Development Department (EWDD) requests your review, approval and processing of the recommendations in this transmittal to the Mayor and City Council for their review and consideration.

RECOMMENDATIONS

The Interim General Manager of EWDD, or designee, requests that the Bond Oversight Committee (BOC) recommend that the City Council, subject to the approval of the Mayor as required:

1. FIND that the action of appropriating and withholding expenditure of funds for the Olympic Gateway Project (Project), pending the completion, review and consideration of planning and environmental documents related to Project is not a project pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15378(b)(4) because it merely creates a funding mechanism or other government fiscal activity that does not commit the City to a project that may result in a potentially significant impact on the environment, and that preparing preliminary planning and environmental documents is not a project pursuant to CEQA Guidelines Section 15378(b)(5) because it is an administrative activity that will not result in physical changes in the environment;

2. APPROVE up to \$1,755,166 in taxable CRA/LA Excess Non-Housing Bond Proceeds (EBP) plus all earned taxable and tax-exempt interest (Interest) available to Council District (CD) 10 from the Wilshire Center/Koreatown Redevelopment Project Area (Project Area) to be utilized for Project;
3. AUTHORIZE the Department of Public Works, Bureau of Engineering (BOE) to be the implementing department for activities related to Project;
4. AUTHORIZE BOE to approve, negotiate and execute contracting documents as required to implement Project with selected contractor(s) (Contractor) subject to the Board of Public Works (BPW) approval to perform the scope of work to effectuate Project;
5. DIRECT BOE to transmit copies of all executed agreement awards related to Project to EWDD;
6. AUTHORIZE the Controller, subject to the requirements below and the availability of funds and a duly executed and encumbered contract between BOE and Contractor(s), to expend up to \$1,755,166 plus Interest from EBP Fund No. 57D, Account Nos. 22L9TT and 22S9TT Wilshire Center/Koreatown Taxable Series 2006-A and 2008-B, and to expend up to the total amount of Interest available from EBP Fund No. 57D, Account No. 22S9TN Wilshire Center/Koreatown Tax-Exempt Series 2008-C, for activities related to Project upon presentation of proper documentation by BOE, and satisfactory review and approval of EWDD in accordance with the terms and conditions of the Bond Expenditure Agreement (BEA);
7. AUTHORIZE BOE to perform limited preliminary planning as may be necessary to conduct the environmental review for Project from the above-noted funds allocated to Project;
8. DIRECT BOE to withhold expending, or committing to expend, any of the remainder of the above-noted funds allocated to Project until all of the following have occurred:
 - a. BOE has completed the preliminary planning documents and environmental review documents;
 - b. The City has complied with the requirements of CEQA with respect to Project, including obtaining any necessary CEQA clearances; and
 - c. BPW has considered and approved Project for expenditure of the remaining funds;
9. DIRECT BOE to expend the EBP appropriation no later than September 30, 2024;
10. DIRECT BOE to report on its work accomplishments to the Office of the City Administrative Officer (CAO), and fund expenditures to EWDD, on a quarterly and as-needed basis; and

11. AUTHORIZE the Interim General Manager of EWDD, or designee, to prepare Controller instructions and/or make technical adjustments that may be required and are consistent with this action, subject to the approval of the CAO, and authorize the Controller to implement these instructions.

SUMMARY

Transmitted herewith for your review, approval, and further processing are recommendations pursuant to a CD 10 Motion (Wesson-Ryu) (Attachment 1) which was adopted by Council on July 3, 2019 (C.F. 14-1174-S85).

The Motion requests that all remaining taxable and tax-exempt EBP plus Interest in Project Area within CD 10 be allocated to BOE for development costs related to the Koreatown Gateway and the Koreatown Madang Linear Park, which have a combined total estimated cost of \$4.7 million. Due to certain restricted use for a portion of funding towards the estimated \$4.7 million total project cost, it is determined that Project's EBP and Interest allocation will only be used for the Koreatown Gateway which has an estimated total cost of \$3.6 million. In subsequent meetings with CD 10 and the BOC team, the name of the Koreatown Gateway Project was changed to the Olympic Gateway Project. Cultural Investments, including investments in facilities, capital improvements and public art that brand the Koreatown area, enhance cultural tourism, and further community goals, were identified as a potential project in the Project Area's Bond Spending Plan (BSP) that was adopted by Council on June 24, 2015 (C.F. 14-1174). However, there are only sufficient funds for the Koreatown Gateway element from CD 10's portion of EBP and Interest in Project Area.

The original EBP in Project Area available to CD 10 was \$6,975,260 consisting of \$5,631,940 taxable, and \$1,343,320 tax-exempt EBP. After the 16% (\$901,110) taxable EBP bond administration, there remained a combined \$6,074,150 in Project Area available to CD 10. CD 10 subsequently received an additional \$2,857,016 in tax-exempt EBP from the FY 17/18 and FY 19/20 Recognized Obligations Payment Schedules (ROPS), thus bringing CD 10's total EBP to \$8,931,166. This transmittal's proposed allocation, along with two (2) pending and BOC/Council approved motions, will completely exhaust CD 10's taxable and tax-exempt EBP and Interest in Project Area.

EWDD ANALYSIS

EWDD has met with CD 10 and BOE regarding Project. Project consists of a twisting cable structure stretching between two 50-foot pole structures spanning the intersection of Normandie Avenue and Olympic Boulevard in the heart of Koreatown. The community selected this award winning design that is illuminated and programmable to evoke imageries of the high tech streets of Seoul.

BOE will serve as the implementing department who will oversee Contractor's completion of design and permitting towards bidding and construction. The scope of work consists principally of designing and constructing an illuminated cultural gateway diagonally spanning Olympic Boulevard and Normandie Avenue.

The estimated total project cost is \$3.6 million with budget breakdown as follows:

Project Administration/Outreach	\$ 385,000
Design/Engineering	\$ 100,000
Construction Management	\$ 275,000
Construction Hard Cost	\$2,760,933
Utility Pole Relocation	<u>\$ 110,000</u>
Total Estimated Budget	\$3,630,933

Project will receive \$1,500,000 in AB 1290 funding as outlined in the Motion. The \$1,755,166 taxable EBP allocation plus \$380,455 interest (through June 30, 2019) is sufficient to cover the remaining estimated project cost of \$2,130,933. Below is the estimated cost and EBP utilization breakdown:

Taxable EBP Estimates

Construction Management	\$ 31,362
Grading	\$ 109,000
Concrete Pile Caps	\$ 173,000
Drilled Piles/Excavation	\$ 234,500
Structural Steel	\$1,233,350
Electrical	<u>\$ 240,000</u>
Total Taxable Cost Estimates	\$2,021,212

Tax-Exempt EBP Estimates

Demolition	\$ 57,000
Salvage/Erosion Control	\$ 27,721
Painting	<u>\$ 25,000</u>
Total Tax-Exempt Cost Estimates	\$ 109,721

Total Taxable and Tax-Exempt Estimates: \$2,130,933

Upon Council adoption and City compliance with CEQA, Contractor(s) will work towards completion of the remaining 40% design. Construction related activities will commence thereafter over 2 years. Project completion is targeted for January 2022.

Contract(s) must be executed and encumbered with EBP appropriation fully expended no later than September 30, 2024. Deliverables and/or activity reports showing percentages of completion must accompany BOE's original signed off invoices to be submitted to EWDD. Disbursements will be authorized pursuant to receipt and satisfactory review by EWDD to ensure compliance with bond covenants and BEA, and that the approved charges adhere to the spending categories and amounts outlined in this transmittal.

BOE will report on its work accomplishments to CAO, and fund expenditures to EWDD, on a quarterly and as-needed basis for their respective reporting to the BOC, Mayor and CRA/LA.

BENEFITS TO THE AFFECTED TAXING ENTITIES

The key benefits from this Project includes the removal of a dangerous secondary street segment and an awkward intersection, reduction in traffic accidents and related injuries and property damage, connecting two culturally significant landmarks in Wilshire Koreatown, and the creation of open space in a congested and high density community.

ENVIRONMENTAL REVIEW

The City of Los Angeles Housing and Community Investment Department provided the environmental analysis below:

The recommended actions are not considered a "project" pursuant to CEQA. Consistent with CEQA Guidelines Section 15378(b)(4), approving the allocation of funds for Project and concurrently withholding any expenditure of those funds pending the completion, review, and consideration of planning and environmental documents and consideration of whether or not to approve Project, is not a project. Such actions are intended to only create a funding mechanism or other government fiscal activity that does not commit to a project that may result in a potentially significant impact on the environment. Instead, the funds would be made available to Project, similar to other regular government budgeting activities. But, just as such occurs with other City budgeting procedures, no construction of Project will occur until the City has complied with CEQA (including the preparation and consideration of an environmental review document, if needed), and until BPW has ultimately reviewed and determined whether or not to approve moving forward with, and expending the funds on Project.

Accordingly, after preparing preliminary planning and environmental documents, BOE's expenditure of the remainder of the funds will not occur until all of the following have occurred: (1) BOE has completed the preliminary planning and environmental review documents; (2) the City has complied with the requirements of the CEQA with respect to Project, including obtaining any necessary CEQA clearances prior to final consideration and approval of Project by BPW; (3) and BPW has considered and approved Project. This process is intended to ensure compliance with CEQA by evaluating and considering the environmental impacts before deciding whether to proceed with Project. If BPW ultimately determines not to proceed with Project, the remaining funds will not be used on Project.

Also, consistent with CEQA Guidelines Section 15378(b)(5), preparing preliminary planning and environmental documents is not a project pursuant to CEQA because it is only an administrative activity that will not result in physical changes in the environment. Preparing such preliminary documents does not commit the City to completing Project. Rather, such documents merely facilitate assisting BPW with evaluating whether Project will potentially impact the environment when it considers whether to approve Project.

CAO COVENANT REVIEW

CAO has completed its review of the original bond documents, covenants and BSP, and has found that the proposed use of EBP, as presented, is consistent with those documents.

FISCAL IMPACT STATEMENT

There is no impact on the City's General Fund from the proposed allocation of EBP. The CRA/LA EBP Fund No. 57D is funded solely from transfers of approximately \$88.4 million in pre-2011 tax allocation bond proceeds from CRA/LA to the City (C.F. 14-1174, 14-1174-S36, and 14-1174-S78). Said Transfers have been deposited with the Office of the Controller.



JOHN L. REAMER, JR.
Interim General Manager

JLR:SH:DH:MMS:JL

ATTACHMENT 1: Motion (Wesson-Ryu) C. F. 11-1174-S85

MOTION

The Koreatown Gateway Project in Council District 10 will be a cultural gateway spanning the intersection of Normandie Avenue and Olympic Boulevard in the heart of Koreatown. The community selected an award winning design of a twisting cable structure that is illuminated and programmable from over 27 concept drawings. The design is evocative of the high tech streets of Seoul and in direct contrast to the iconic, authentic Korean pavilion within sight of the structure. The cables will stretch between two 50' pole structures. Funding is needed to cover the estimated \$3.6 million project cost.

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I THEREFORE MOVE that the Council instruct the Economic and Workforce Development Department (EWDD), with the assistance of the City Administrative Officer, Chief Legislative Analyst, Bureau of Engineering (BOE), and any other applicable City department, to provide a report with recommendations to the CRA/LA Bond Oversight Committee to allocate all remaining taxable and tax-exempt CRA/LA Excess Bond Proceeds available to Council District 10, including any earned interest, for development costs related to the Koreatown Gateway and Koreatown Madang Linear Park projects (Projects) as identified in the Bond Expenditure Agreement and Bond Spending Plan for the Wilshire Center/Koreatown Redevelopment Project Area.

I FURTHER MOVE that the Council authorize the expenditure of all remaining taxable and tax-exempt CRA/LA Excess Bond Proceeds available to Council District 10, including any earned interest, from the Wilshire Center/Koreatown Redevelopment Project Area to be utilized by BOE for development costs related to the Projects upon Council's approval of the forthcoming EWDD report.

I FURTHER MOVE that \$1,500,000 in AB1290 Fund No. 53P, Account No. 281210 (CD 10 Redevelopment Projects - Services) be transferred / appropriated to the BOE (Account TBD) for development costs related to the Projects.

I FURTHER MOVE that Council request that the Board of Recreation and Parks Commissioners allocate \$1,500,000 in Quimby Funds available to Council District 10 for use by BOE for development costs related to the Projects.

I FURTHER MOVE that Council instruct City Administrative Officer to prepare the necessary Controller instructions for transfer of the above stated funding and be authorized to make technical corrections or adjustments that may be required to effectuate the intent of this Motion and authorize the Controller to implement these instructions.

PRESENTED BY:


HERB J. WESSON, JR.

Councilmember, 10th District

SECONDED BY:



CONTRACT SUMMARY SHEET

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

DATE: ~~DECEMBER~~ 1, 2022

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

FORM MUST BE TYPEWRITTEN

FROM (DEPARTMENT): BOARD OF PUBLIC WORKS _____

CONTACT PERSON: MATTHEW CASELLANOS _____ PHONE: 213-978-0262 _____

CONTRACT NO.: **C-142056** _____ COUNCIL FILE NO.: 14-1174-S85 _____

ADOPTED BY COUNCIL: 4/22/2020 _____

APPROVED BY BPW: _____
DATE 06/1/2022 _____
DATE _____

NEW CONTRACT X
AMENDED AND RESTATED _____
ADDENDUM NO. _____
SUPPLEMENTAL NO. _____
CHANGE ORDER NO. _____
AMENDMENT _____

CONTRACTOR NAME: LOS ANGELES NEIGHBORHOOD INITIATIVE _____

TERM OF CONTRACT: 2 YEARS _____ THROUGH: _____

TOTAL AMOUNT: \$3,630,933.00 _____

PURPOSE OF CONTRACT:
OLYMPIC GATEWAY PROJECT

City of Los Angeles
Department of Public Works

AGREEMENT No. C-142056

AGREEMENT

for the

OLYMPIC GATEWAY PROJECT

Between

CITY OF LOS ANGELES

and

LOS ANGELES NEIGHBORHOOD INITIATIVE

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EXHIBITS

- EXHIBIT A Insurance Requirements
- EXHIBIT B Certificate of Compliance with Americans with Disabilities Act
- EXHIBIT C Contractor Responsibility Ordinance
- EXHIBIT D Employer's Use of Criminal History for Consideration of Employment Applications
- EXHIBIT E Project Budget and Payment Schedule
- EXHIBIT F Olympic Gateway 60% Drawings
- EXHIBIT G Artist Release Form

This Agreement is made and entered by and between the City of Los Angeles, California, a municipal corporation acting by order of and through its Department of Public Works, Bureau of Engineering (hereinafter referred to as the "City" or "BOE"), and Los Angeles Neighborhood Initiative, a 501(c)3 non-profit agency (hereinafter referred to as the "CONSULTANT").

WITNESSETH

WHEREAS, LANI was created by the Los Angeles Mayor's Office as a "City Partner" to expedite transit and pedestrian projects, and serves as a liaison between the City and economically challenged transit-dependent communities throughout the City of Los Angeles; and

WHEREAS, LANI uses its nationally recognized community engagement process to provide comprehensive outreach and consensus planning, design, and construction of transit and pedestrian improvements, urban greening projects, business district revitalization, and the development and support of community organizations; and

WHEREAS, in 2014, the CRA/LA-DTLA, the City's former redevelopment agency, hired LANI to provide project administration/management services for public outreach, design, and construction services for the Olympic Gateway Project (Project) within the Wilshire Center/Koreatown Recovery Redevelopment Project Area. Since then, LANI has spearheaded the Project by completing community outreach, design, and interagency planning of the proposed Olympic Gateway Project. LANI's contract with CRA/LA ended as a result of the dissolution of redevelopment and funding was transferred from CRA/LA to the City for continuation of the Olympic Gateway Project. Under a City contract, LANI would continue to serve as Project Manager, finalize design and engineering of the improvements, and manage and implement construction of the Olympic Gateway Project including obtaining all necessary permits and environmental clearances; and

WHEREAS, Due to the limited scope of work and the extensive experience of LANI on the Project and in providing community neighborhood improvement projects with stakeholders, it is more feasible and economical for this work to be done by a contractor than by City employees; and

WHEREAS, a Motion was introduced by CD 10 on June 28, 2019, to transfer/appropriate \$1,500,000 in AB1290 Funds for the construction of the Olympic (Koreatown) Gateway Project; and

WHEREAS, a Motion was introduced by CD 10 on December 10, 2019, to transfer/appropriate \$1,755,166 plus Interest from CRA/LA Excess Bond Proceeds (EBP) for the construction of the Olympic Gateway Project; and

WHEREAS, the City authorized the City Engineer to approve, negotiate, and execute an agreement with the Grantee subject to the approval of the Board of Public Works; and,

WHEREAS, the City's Department of Public Works, Bureau of Engineering (BOE) will reimburse Grantee on a milestone basis with proper documentation of adequate vouchers and receipts submitted to BOE; and

WHEREAS, Grantee will be responsible to complete the Olympic Gateway Project within (2) years from the date of attestation by the City Clerk;

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth herein and the mutual benefits to be derived therefrom, the CITY and Grantee mutually agree as follows:

I. INTRODUCTION

§101 Section Headings and Construction of Provisions and Titles Herein

All titles, subtitles, and/or section headings appearing herein have been inserted for convenience and shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning, intent or construction of any of the terms or provisions hereof. The language of this Agreement shall be construed according to its fair meaning and not strictly for or against the CITY or the CONSULTANT. The singular shall include the plural; use of the feminine, masculine, or neutral genders shall be deemed to include the genders not used. The terms "include" and "including" do not exclude items not enumerated that are in the same general class.

§102 Conditions Precedent to Execution of Contract

Prior to the execution of this Agreement, the CONSULTANT shall provide the City with copies, or signed original documents as required, of the following documents:

- a. CONSULTANT's documentation of its 501(c)(3) status.
- b. Acceptable evidence of evidence of insurance, with original signature(s), covering general liability, professional liability, automobile liability, workers compensation, and others as required in *Exhibit A – Insurance Requirements* (Form Gen. 133 and Form Gen. 146) and §619 *Insurance* of this Agreement as submitted to the City. The evidence of insurance will be reviewed and is subject to approval by the City Risk Manager. Hard copies must also be sent to the Department of Public Works.
 1. Throughout the term of this Agreement, the CONSULTANT must submit to the BOE, hard copies of all proofs of insurance or proofs of renewal of insurance that the CONSULTANT has submitted online to the City Risk Manager.
- c. An executed Certification Regarding Compliance with the Americans with Disabilities Act (42 U.S.C. 11201 *et seq.*), and its implementing regulations which is attached hereto as *Exhibit B – Certification of Compliance with Americans with Disabilities Act (ADA)* and which is incorporated herein by this reference
- d. Contractor Responsibility Ordinance Compliance Forms – *Exhibit C*
- e. Current and valid Business Tax Registration Certificate required by the City's Business Tax Ordinance to do business within the City or evidence of exemption. For the term covered by this agreement, the CONSULTANT shall maintain, or obtain as necessary, all such Certificate(s) required of it under the Business Tax Ordinance or evidence of exemption and shall not allow any such Certificate or exemption to be revoked or suspended.
- f. City Contractors' Use of Criminal History for Consideration of Employment Applications – *Exhibit D*

All items listed above shall be kept current, and the City shall be notified of, or provided with, in accordance with the reporting requirement identified in §104 Contract Administration and Representative of the Parties herein, any changes to, updates of or non-compliance with, any below listed item.

§103 Contract Administration and Representatives of the Parties

A. The representative of the City shall be, unless otherwise stated in the Agreement:

Gary Lee Moore, City Engineer
Department of Public Works - Bureau of Engineering
1149 South Broadway, 7th Floor
Los Angeles, CA 90015
Attention: Steven Chen, Division Manager
Phone: (213) 485-4516
Email: Steven.Chen@lacity.org

The City Engineer or his/her designee shall have full authority to act on behalf of the City in the administration of this Agreement, consistent with the provisions herein. The City Engineer is also named the repository for all reporting requirements identified in this Agreement.

The City Engineer is the party to whom the CONSULTANT shall forward all documents, reports and records as required by this Agreement for submittal to, or review by the "City", and is the party authorized to provide written approvals by the City to the CONSULTANT in reference to matters addressed in this Agreement.

B. The representative of the CONSULTANT shall be:

Veronica Hahni, Executive Director
Los Angeles Neighborhood Initiative
800 S. Figueroa Street, Suite 970
Los Angeles, CA 90017
veronica@lani.org

§104 Service of Notices

Formal notices, demands, and communications to be given hereunder by either party shall be made in writing and shall be affected by either personal delivery or by private expressed carrier or registered or certified mail, prepaid postage, return receipt requested and shall be deemed communicated and effective as of the date of mailing unless otherwise stated in the notices, demands or communications. If the name of the person designated to receive the notices, demands or communications or the address of such

person is changed, written notice shall be given, in accordance with this Section, within five (5) working days of said change.

All documents, correspondence, invoices, etc., transmitted to the City shall be in writing. Payment requests shall be made both in written and electronic formats, on a form to be provided by the City. Documents shall be delivered to the City via U.S. mail or private express carrier or via email to Steven.Chen@lacity.org.

§105 Term of Agreement and Time of Performance

A. Term of Services

The term of this Agreement shall commence on the date of full execution. All design and construction hereunder shall be completed within two (2) years from the date of attestation by the City with up to two (2) one-year renewal terms at the CITY's sole discretion and under the same terms and conditions unless terminated as provided under §505 *Termination* or extended by a duly approved amendment or change order to this AGREEMENT and signed by the parties. Due to the need to advance the project in a timely manner, CONSULTANT has performed services under the Contract prior to the execution of this Contract. To the extent that such services were performed in accordance with the terms and conditions of the Contract, the City hereby acknowledges the services previously performed by CONSULTANT and ratifies CONSULTANT'S performance of said services under the Contract.

The date of full execution is deemed to be the date when all the following events have occurred:

- This AGREEMENT has been signed on behalf of CONSULTANT by the person or persons authorized to bind CONSULTANT hereto;
- This AGREEMENT has been approved by the City Council, by the Mayor, or by the BOARD, officer or employee authorized to give such approval;
- The Office of the City Attorney has indicated in writing its approval of this AGREEMENT as to form; and,
- This AGREEMENT has been signed on behalf of the CITY by the person designated by the City Council, or by the BOARD, officer, or employee authorized to enter into this AGREEMENT.
- This AGREEMENT has been attested by the City Clerk.

B. Performance shall not commence until the CONSULTANT has obtained the City's approval of all insurance as required by the City (see *Exhibit A – Insurance Requirements*, attached thereto and incorporated herein by reference, and §619 *Insurance*).

C. If the CONSULTANT fails to complete the project within the time required in this Agreement, CITY may terminate this Agreement then the CITY may terminate this Agreement as specified in *Article V - Remedies* of this Agreement.

§106 Scope of Project

The CONSULTANT will use the funds to design and construct an illuminated cultural gateway consisting of a twisting cable structure spanning diagonally between two approximately 50-foot pole structures at the intersection of Normandie Avenue and Olympic Boulevard. The CONSULTANT has completed 60% design plans for the project (See Exhibit F). The scope of the project as described above includes, but is not limited to:

1. Project Administration / Outreach
2. Design/Engineering
3. Permitting
4. Construction
5. General Conditions / General Requirements
6. Site Protection
7. Demolition
8. Dewatering
9. Erosion Control
10. Drilled Piles
11. Earthwork
12. Asphalt Concrete Paving
13. Site Concrete
14. Rebar
15. Concrete
16. Structural Steel
17. Painting
18. Electrical
19. Utility Pole Relocation

As part of the scope of work, the CONSULTANT shall also submit a Maintenance Plan for the Olympic Gateway Project, twisting cable structure. This Maintenance Plan shall

include but not be limited to: a maintenance schedule, instructions on how to perform maintenance, a list of parts, and manufacturers product data sheets.

§107 Compensation

The total compensation for this Agreement shall not exceed \$3,630,933 for the scope of the Project. Under no condition shall the liability of the City and the State exceed the respective amounts in this section. The CONSULTANT will be compensated based on the PAYMENT SCHEDULE, attached hereto as *Exhibit E*. The use of the Public Funds from the two public agencies are as follows:

1. State, CRA/LA Excess Bond Proceeds (\$2,130,933) - Any disbursement of the State Funds shall be subject to a determination that such expenditure is consistent with the PAYMENT SCHEDULE and is for an Eligible Cost toward the design and installation of public improvements in the public right-of-way or on publicly owned property as set forth under *§401 Allowable and Unallowable Costs and §403 Limitation of Expenditures*;
 2. City, AB1290 (\$1,500,000) - Any disbursement of City Funds shall be subject to a determination that such expenditure is consistent with the Project Budget and is for an Eligible Cost toward the design and installation of public improvements in the public right-of-way or on publicly owned property as set forth under *§401 Allowable and Unallowable Costs and §403 Limitation of Expenditure*.
- A. The City shall authorize the expenditure of an amount not to exceed \$3,630,933 in consideration of, and on the condition that the sum be expended in carrying out the purposes set forth in the Scope of Services and for the complete and satisfactory performance of the terms of this Agreement.
 - B. The City's liability under this Agreement shall only be to the extent of the present City appropriation to fund the contract.
 - C. The CONSULTANT shall bear sole responsibility to complete all required design and construction/improvements as described in §106 of this Agreement. It is understood by both parties that the City makes no commitment to increase funding for the Project should conditions change which would impair the completion of the Project in its entirety.
 - D. The City and the CONSULTANT agree that the CONSULTANT shall hire a single construction subcontractor (General Contractor) for construction services. If bid proposals for construction services exceed the amount provided by this contract as indicated on the PAYMENT SCHEDULE (see Exhibit E), then the CONSULTANT may propose scope reductions to allow for the project to be constructed within the amount provided for construction of the project. However, proposed scope reductions must be approved by the Bureau of Engineering prior to reducing scope. Additionally, at the City's discretion, the City may terminate this Contract as set forth under section §505 – Termination for Convenience.

II. DUTIES OF CONSULTANT

§201 Duties and Requirements

A. General Statement of Work to be Performed by CONSULTANT

Pursuant to this Agreement, the Public Funds shall be used toward the design and construction of a twisting cable structure that is illuminated and programmable, stretching diagonally between two 50'-0" pole structures at the intersection of Normandie Avenue and Olympic Boulevard as depicted in Exhibit F. In addition, any affected area by this work shall be upgraded to current code requirements not limited to street work, utility relocation, sidewalk, etc. as required by the required permits.

B. General Requirements

The CONSULTANT shall use the Public Funds for eligible project costs for public improvements in the public right-of-way or on publicly-owned property, subject to the terms and conditions of this Agreement. Funds shall be used solely to carry out the purposes set forth in the General Statement of Work set forth above, and in accordance with the PAYMENT SCHEDULE. Any deviation from the General Statement of Work, the Project Budget, or PAYMENT SCHEDULE must be submitted in writing to the City in advance of any financial commitment for review and approval. The City shall review any such request for deviation within 10 business days of receipt, and that approval shall not unreasonably be withheld. Failure to submit and obtain prior written approval from the City may result in future disbursements being withheld.

§202 Specific Requirements

In furtherance of the general requirements, the CONSULTANT shall do the following:

- A. The CITY and the CONSULTANT agree that the CONSULTANT shall hire a single construction subcontractor (General Contractor) to implement the contract. Comply with the requirements delineated for the CONSULTANT in its subcontracts with the Architect for design services and with the General Contractor for construction services. Unless previously approved by the City, the use of standard AIA (American Institute of Architects) Agreement B141 between the Owner and Architect and between the Owner and General Contractor A101, shall be used. All construction work on this project shall be performed by a licensed General Contractor. Also, the current edition of "Green Book", Standard Specifications for Public Works Construction as well as the AIA's "General Conditions of the Contract for Construction," current (2003 or later) edition (AIA Form A 201) shall be cited as part of the contract with the Architect and General Contractor. If the CONSULTANT has already selected and entered into a contract with subcontractors prior to the execution of this Agreement, then the CONSULTANT shall provide a copy of subcontractor contracts to the City upon execution of this Agreement. Upon the execution of this Agreement, all new contracts entered with subcontractors must be approved by the City prior to execution of the subcontractor contract; shall adhere to the terms and conditions set forth in *Section 205 – Subcontracting*, and are superseded by this Agreement in case of conflicting requirements or obligations. The

City shall review any such request for new, or modified subcontracts in a timely manner, and that approval shall not unreasonably be withheld.

- B. Submit monthly reports, in an acceptable form by both parties, to the Department of Public Works Bureau of Contract Administration (Attn: Brett McReynolds; Address: 1159 S Broadway, 3rd Floor, Los Angeles, CA 90015) concerning local hiring efforts for the Project. As this is a Public Works project, the CONSULTANT and subconsultants is encouraged to comply with the City's Project Labor Agreement, which promotes workforce development through establishing local hiring and disadvantage worker employment opportunities.
- C. Assure that reports, permits, forms, certifications, and other documents required by federal, state, and local requirements be expeditiously submitted to various governing or regulatory bodies to avoid delays in completing the general requirements of this Agreement.
- D. Identify and provide corrective action on those issues or barriers that impede or delay the completion of the Project as defined in this Agreement. CONSULTANT shall notify the City, in writing, within 10 working days of discovering those issues or barriers, and provide a corrective action plan of resolution with sub-activities and milestone completion dates.
- E. Assure that the Architect and the General Contractor and their respective subcontractors comply with all applicable United States, State of California, County of Los Angeles, and City statutes, rules, regulations, and reporting requirements in the completion of the General Requirements as defined in this Agreement.
- F. Designate a person to act as the CONSULTANT's representative prior to the execution of the Architect and General Contractor contracts to carry out the responsibilities of the "Owner" in those contracts.
- G. Prepare the proposed plans and specifications so that construction can be completed within the available construction budget and PAYMENT SCHEDULE.
- H. Ensure that the General Contractor constructs the Project in conformance with the City's construction standards (included but not limited to City of Los Angeles Standard Plans and the latest edition and supplements of the Standard Specifications for Public Works Construction as adopted by the Board of Public works of the City of Los Angeles and as modified by the corresponding issue of the "Brownbook"). The CONSULTANT shall ensure the Project is in full conformance with all applicable local, State, and federal statutes, regulations, and building codes.

§203 Accounting Services

The CONSULTANT shall maintain records for every expenditure incurred directly or indirectly by this Agreement; such records shall include, but not be limited to,

documentation of all budgeted expenditures, e.g.: time cards, requisitions for payments, rentals, leases, invoices and any other documents pertinent to the expenditures. In addition, a log of all expenditures by line item shall be maintained by the CONSULTANT. Such records shall be maintained in a file and be made available for examination by the City.

§204 Independent Contractor Status

The CONSULTANT is an independent contractor and not an agent or employee of the City. The CONSULTANT 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.

§205 Subcontracting

CONSULTANT shall not use subcontractors to assist in the performance of this Agreement without the prior written approval of the CITY. If the CONSULTANT has already selected and entered into a contract with subcontractors prior to the execution of this Agreement, then the CONSULTANT shall obtain CITY's written approval of the subcontractor within ten (10) business days from the date of execution of this Agreement. Additionally, if the CONSULTANT notifies the City of any future subcontracting agreement prior to the execution of such agreement, the City shall review it, and that approval shall not unreasonably be withheld. The City shall review any such request for new, or modified subcontracts within 10 business days of receipt, and that approval shall not unreasonably be withheld. If the CONSULTANT uses subcontractors, CONSULTANT shall remain responsible for performing all aspects of this Agreement. The CITY reserves the right to request replacement of subcontractors. The CITY does not have any obligation to pay CONSULTANT'S subcontractors, and nothing herein creates any privity of contract between the CITY and the subcontractors. CONSULTANT shall comply with the following:

- Require that the architect and any contractors or subcontractors for the Project be licensed by the State of California;
- Require the architect, general contractor, and subcontractor(s) to maintain insurance as required by the City; and,
- Meet all applicable requirements of federal, state and local government agencies for Project design documents.

A. Senate Bill 854 and Department of Industrial Relations (construction work)

All contractors and subcontractors shall be registered with the State of California Department of Industrial Relations (DIR) pursuant to California Labor Code section 1725.5, to be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any public works contract.

CONSULTANT is advised of the following change made by California State Senate Bill 854 (Stat. 2014, chapter 28) to the DIR: No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the DIR pursuant to Labor Code Section 1725.5. DIR maintains an

up-to-date listing of registered contractors.

- B. The subcontract shall require the selected architect or general contractor to maintain a minimum insurance amount as provided in *Exhibit A* in errors and omission insurance with a twelve (12) month recovery period and the CONSULTANT must submit evidence of same to the City for verification prior to the execution of the CONSULTANT's Agreement with the architect or general contract.

III. DUTIES AND POWERS OF THE CITY

The City represents, warrants, and covenants as follows:

- A. That it is a municipal corporation, duly organized and validly existing and in good standing under the laws of the State of California;
- B. That it has the power and authority to carry on its function as a City, to enter into this Agreement, and to consummate the transaction herein contemplated;
- C. That all actions to be taken by or on behalf of the City to authorize it to make, deliver and implement the terms of this Agreement have been duly and properly taken prior to the execution of this Agreement; and

IV. PAYMENT AND FISCAL CONTROLS

§401 Allowable and Unallowable Costs

Allowable Costs

- A. To be eligible for payment under this Agreement, expenditures must be made in compliance with all of the principles set forth below:
1. Clearly defined costs for the design, construction or installation of public improvements in the public right of way or on publicly owned property;
 - a. Clearly defined costs shall specifically identify the public improvement, including details of the location of the improvement;
 - b. Should the CONSULTANT propose to use funds under this Agreement for improvements located on privately owned property, the CONSULTANT will be required to obtain approval of the CITY prior to authorizing the use of funds. The CITY will make a determination whether a public benefit is derived from the use of the funds. The CONSULTANT may be required to provide the City with information to assist with the determination.
 2. Be necessary and reasonable for the proper and efficient performance of this Agreement. The City shall have final authority to determine in good faith whether

an expenditure is "necessary and reasonable." Eligible costs may include, but are not limited to the following:

- a. Plan Check fees, Building Permit fees, and construction inspection fees.
 - b. Project management costs, including inspection to oversee the design and construction.
3. Conform to the limitations within this Agreement and to any governing statutes, regulations and ordinances.
 4. Be fully documented and determined to be in accordance with standard accounting procedures.
 5. Not to be billed to any other private or government funding source.
 6. Costs incurred prior to the date of execution of this Agreement which have been expressly approved by the City, subject to eligibility as set forth in this Agreement.
 7. Community outreach staff costs including e mails, telephone calls, and presentations to Neighborhood Council meetings and other interested Community Organizations, and one on one meetings with Stakeholders. The cost of community outreach shall not exceed \$34,500.

Unallowable Costs

B. The following costs, among others, are specifically not allowable:

1. Contributions and donations.
2. Travel and entertainment: Costs of travel, amusements, social activities and incidental costs, such as meals, beverages, lodging and gratuities relating to entertainment, or any political or lobbying activity.
3. Fines and Penalties: Costs resulting from violations of, or failure to comply with federal, state, and local laws and regulations.
4. Interest and Other Financial Costs: Interest or borrowings (however represented), bond discounts, refinancing of property or of facilities, cost of financing and refinancing operations, and legal and professional fees paid in connection therewith, other than those specifically allowed in advance.
5. Community engagement reimbursement costs (non-staff costs, including but not limited to, reprographic costs, travel time, supplies, etc).
6. Interest due to late payment of construction subcontractor (General Contractor)

invoices or any tier construction sub-subcontractor invoices.

7. Membership Expenses: Membership expenses are specifically disallowed.
8. Meeting Attendance: CONSULTANT's staff costs of attending meetings with the City, and/or its consultants, and CONSULTANT's staff and/or subcontractors.
9. Losses: Due to theft, vandalism and/or misconduct of CONSULTANT or subcontractor of any tier.
10. Losses due to delay: Lack of scheduling, coordinating, and monitoring.
11. Subcontracts not approved by the City.
12. Costs incurred prior to the date of execution of this Agreement which have not been expressly approved by the City, subject to eligibility as set forth in this Agreement.
13. Operating license fees.
14. CONSULTANT's program staffing and personnel costs other than direct costs under this contract.
15. Non-maintenance equipment costs.
16. Furnishings.
17. Utilities.
18. Personal hygiene products such as: toilet paper, tissue, hand towels, bars of soap, and liquid soap except for such personal hygiene projects that will be included in the construction General Conditions/General Requirements such as porta-potties.
19. Maintenance or service costs.
20. Pension, health, vacation, sick leave, or other benefits for staff other than direct costs under this contract.

Reimbursements or payments for expenditures which are determined by the City to be unallowable must be immediately returned to the City. If not returned to the City promptly, City may withhold any unpaid amount from future City's future payment to CONSULTANT.

§402 Disbursement

A. Disbursement

1. The CONSULTANT shall be reimbursed on a milestone basis (See Exhibit E), no later than sixty (60) days after receipt by the CITY of a completed and approved invoice for expenses authorized for material furnished, service rendered, or work completed under the terms and conditions of this Agreement, subject to the availability of funds for this project and subject to all other provisions of this Agreement. Project progress payments shall be certified by the CONSULTANT. All charges and expenses shall be properly documented with adequate vouchers and receipts. Only those expenses that are eligible and relate directly to the scope and intent of this project shall be authorized and approved for reimbursement.
2. The CONSULTANT acknowledges that it is aware of liabilities resulting from submitting a false claim for payment by the City under the False Claims Act (Cal. Gov. Code §§ 12650 et seq.), including treble damages, costs of legal actions to recover payments, and civil penalties
3. The CONSULTANT will withhold 5% of the total contracted amount from the General Contractor as retention against their payment(s) to the General Contractor. The retention is withheld to ensure that the General Contractor completes the Project.
4. Payment Retention - All disbursements to CONSULTANT shall be subject to withholding of a five percent (5%) retention until the CONSULTANT provides documentation to City showing that the Project has been completed to the City's satisfaction and upon meeting the following conditions:
 - a. Payment of B-permit and R-Permit fees;
 - b. Submittal of proof of payments, including supporting backup documentation, for all project related costs;
 - c. Submittal of lien releases from all contractors and subcontractors;
 - d. Submission of a Maintenance Plan for the improvements in the public right-of-way; and,
 - e. Submission of signed released forms from each artist involved, which will provide evidence that each artist has received full and fair compensation for the work and releases the City from any and all future liability (*Exhibit G*);
 - f. Written confirmation submitted by the CONSULTANT that they have received all assurances, and warranties for the project from the construction contractor.
 - g. Upon verification by BOE of the following:
 - i. That all employees of the General Contractor and all sub-contractors were paid appropriately (i.e. prevailing wage, living wage and/or minimum wage);
 - ii. The number of employees (i.e. General Contractor, all sub-contractors, and CONSULTANT staff) working on the Project that reside locally; and,
 - iii. Final close-out fiscal report as required by the City within forty-five (45) days of completion of the Project. The report should include the following:
 - Evidence from the applicable governmental agencies that the work was performed per required codes such as Notice of Completion, Certificate of Occupancy or Certificate of Completion, as appropriate, etc.;

- A statement that the contracted work has been completed generally in accordance with the plans and specifications previously approved by the Department of Public Works; and,
 - A statement indicating the use of the funds and final close-out fiscal report showing final expenditures, including supporting documents
- B. Invoices shall be prepared in such form and supported by such copies of invoices, payrolls, time sheets, and other documents of proof as may be required by CITY to establish the amount of such invoices for allowable expenses. To expedite the approval process, the CONSULTANT is encouraged to submit draft invoices for review before submitting a final invoice.
- C. During the term of this agreement, the CONSULTANT shall require the General Contractor, within five (5) working days after the close of the work week, submit to the City, all certifications, weekly payroll forms, employment utilization forms, code inspection reports, sign-offs, and other related documents that are required by the City. It is understood that failure to adhere to the reporting requirements may delay release of construction funds.

§403 Limitation of Expenditures

- A. The CONSULTANT shall not expend funds provided under this Agreement prior to the commencement of this Agreement unless specifically allowed hereunder, or subsequent to suspension or termination of this Agreement.
- B. Expenditure shall be made in conformance with the PAYMENT SCHEDULE, and shall meet criteria established for "allowable costs" under §401 of this Agreement. Expenditures shall not be made on "non-allowable costs" as established under §401 of this Agreement.
- C. Expenditures shall be in direct support of the Project that is the subject of this Agreement. Expenditures for improvements that are on private property (such as facade improvements) shall require one of the following:
1. A finding of public benefit approved by the City Council prior to the expenditure of any funds on private property; and/or,
 2. A comparable financial benefit provided to the City for any expenditure of funds. This benefit shall be confirmed in writing by BOE and City Attorney prior to commitment to fund improvements on private property.
- D. Any payment of funds shall be used exclusively for the activities set forth under this Agreement and shall not be commingled with other funds from other sources administered by the CONSULTANT.

§404 Return of Unexpended Funds and Close-outs

- A. Funds granted by the City, determined by the City to be in excess of the amount actually required, shall be immediately returned to the City. If not returned to the City

promptly, City may withhold any unpaid amount from future City's future payment to CONSULTANT.

- B. On or before the date specified in §105 *Time of Performance* of this Agreement, the CONSULTANT shall submit to the City, a complete and accurate final close-out invoice of costs eligible for payment under this Agreement. Failure by the CONSULTANT to comply with this requirement may result in a unilateral close-out of this Agreement by the City, based on previous invoices filed with the City, and/or the imposition of sanctions as specified in *Article V - Remedies* of this Agreement.

§405 Schedule of Payments

The CONSULTANT, upon submittal of an acceptable invoice and required documents as set forth under the Disbursement section of §402 *Deposit and Disbursement*, shall be paid or reimbursed based upon the PAYMENT SCHEDULE as specified in *Exhibit E* or as amended by the City.

The CONSULTANT shall require the General Contractor to submit to the CONSULTANT, the Architect, and the City a Proposed CONSTRUCTION PAYMENT SCHEDULE and updated CONSTRUCTION PAYMENT SCHEDULES as described in §608 *Construction Subcontracts*.

§406 Withheld Payments

- A. The City has the authority to withhold funds under this Agreement pending a final determination by the City of questionable expenditures or indebtedness to the City arising from past or present agreements between the City and the CONSULTANT. Upon final determination by the City of disallowed expenditures or indebtedness, the City may deduct and retain the amount of the disallowance or indebtedness from the amount of the withheld funds.
- B. Payments to the CONSULTANT may be withheld by the City if the CONSULTANT fails to comply with the provisions of this Agreement, including but not limited to all requirement under applicable prevailing wage laws.

§407 Audits and Inspections

At any time during normal business hours and as often as the City or State may deem necessary, the CONSULTANT shall make available for examination and audit, all of its records that support all matters covered by the Agreement. Any subcontract entered into by CONSULTANT for work to be performed under this Agreement must include an identical provision.

§408 Documentation of Construction Expenditures

Construction expenditures shall be supported and verified by properly executed General Contractor and subcontractors' payrolls, time records, invoices, vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. Checks, payrolls, invoices, vouchers, orders or other accounting documents shall be clearly identified and readily accessible. The City may require additional substantiation of costs before making payment. All evidence of costs incurred or to be incurred shall identify or bear identification of the budget account to be charged.

§409 Maintenance of Records

- A. Records, in their original form, shall be maintained in accordance with requirements prescribed by the City with respect to all matters covered by this Agreement. Such records shall be retained for a period of three (3) years with the following qualifications:
 - 1. If any litigation, claim or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.
 - 2. When records are requested and transferred to be maintained by the City, the 3-year retention requirement is not applicable to the CONSULTANT.
- B. The retention period starts following (1) final payment made by CITY, (2) the expiration of this contract, or (3) termination of this Contract.
- C. Records in their original form pertaining to matters covered by this Agreement shall at all times be retained within Los Angeles County unless written authorization to remove them is granted by the City. The records will be subject to examination and audit by authorized CITY personnel or CITY'S representatives at any time.
- D. Any subcontract entered into by CONSULTANT for work to be performed under this Agreement must include an identical provision.

§410 Reporting Requirement

- A. At a minimum quarterly, and in such forms as the City may require, there shall be furnished to the City such statements, records, reports, data and information in both paper documents and electronic files, as the City may request pertaining to matters covered by this Agreement.
- B. For any exceptions to the provision of this Section, the CONSULTANT shall have obtained written approval from the City.
- C. If the CONSULTANT's reports or other documentation are not submitted as required, the City reserves the right to withhold payments to the CONSULTANT or to impose other sanctions, at the City's sole discretion.

§411 Validity of Financial Documentation Submission

Financial reports required to be prepared and submitted by the CONSULTANT to the City shall be accurate and correct in all respects. Should inaccurate reports be submitted to the City, the City may elect to have the CONSULTANT secure the services of a licensed accounting firm. Cost of such accounting services are to be borne by the CONSULTANT and are not to be reimbursed from the funds authorized by this Agreement, unless specifically agreed to between the CONSULTANT and the City in a written agreement.

V. REMEDIES

§501 Breach

A. In the event any party fails to perform, in whole or in part, any promise, covenant, or agreement herein, or should any representations made by it be untrue, any aggrieved party may avail itself of all rights and remedies, at law or equity, in the courts of law. Said rights and remedies are cumulative of those provided for herein with respect to termination, if any, except that in no event shall any party recover more than once, suffer a penalty or forfeiture, or be unjustly compensated.

§502 Defaults

- A. Should the CONSULTANT fail for any reason(s) to comply with the contractual obligations of this Agreement, the City reserves the right to exercise any of the following remedies:
1. Reduce the total budget and funding to conform to the CONSULTANT's actual performance.
 2. Suspend project operations in accordance with *§504 Suspension* of the Agreement.
 3. Terminate the Agreement in accordance with *§505 Termination* of this Agreement.
 4. Recover spent funds.
 5. Assume the management of activities covered under this Agreement, either directly or by contract.
 6. Direct CONSULTANT to assert any applicable rights under the Performance Bond and Payment Bond from its construction subcontractor that may be necessary in order to complete the Project.

- B. The City shall provide written notice of default to the CONSULTANT as provided in this Agreement and the CONSULTANT shall have fifteen (15) calendar days to cure the default. In the event the CONSULTANT fails to cure the default within fifteen (15) calendar days, City may avail itself of all right or remedies available at law or equity, including but not limited to those referred to in this Agreement. In the event the CONSULTANT commences to cure default which reasonably requires more than fifteen (15) days to cure and the CONSULTANT diligently pursues curing the default, the CONSULTANT will not be held in default so long as the CONSULTANT is diligently pursuing their actions to cure and completing the cure in a reasonable time period.

§503 Notices of Suspension or Termination

In the event that this Agreement is suspended or terminated, the CONSULTANT shall immediately notify all affected employees and participants and shall notify in writing all other parties contracted under the terms of this Agreement within five (5) working days.

§504 Suspension

- A. The City may suspend all or part of the project operations for failure of the CONSULTANT to comply with the terms and conditions of this Agreement by giving written notice, which shall be effective upon receipt.
- B. Said notice shall set forth the specific conditions of non-compliance and the period provided for corrective action.
- C. Within five (5) working days, the CONSULTANT shall reply in writing setting forth the corrective actions which will be undertaken, subject to written approval.
- D. Performance under this Agreement shall be automatically suspended without any notice from the City as of the date the CONSULTANT is not fully insured in compliance with §619 *Insurance* of this Agreement. Performance shall not resume without the prior written approval of the City.

§505 Termination

- A. Termination for Convenience

The CITY may terminate this Contract for the CITY'S convenience at any time by giving CONSULTANT thirty days written notice thereof. Upon receipt of said notice, CONSULTANT shall immediately take action not to incur any additional obligations, cost or expenses, except as may be reasonably necessary to terminate its activities. The CITY shall pay CONSULTANT its reasonable and allowable costs through the effective date of termination and those reasonable and necessary costs incurred by CONSULTANT to affect such termination. Thereafter, CONSULTANT shall have no further claims against the CITY under this Contract. All finished and unfinished documents and materials

procured for or produced under this Contract, including all intellectual property rights the CITY is entitled to, shall become CITY property upon the date of such termination. CONSULTANT agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights provided herein.

B. Termination for Breach of Contract

1. Except for excusable delays as provided in Section 639, if CONSULTANT fails to perform any of the provisions of this Contract or so fails to make progress as to endanger timely performance of this Contract, the CITY may give CONSULTANT written notice of such default. If CONSULTANT does not cure such default or provide a plan to cure such default which is acceptable to the CITY within the time permitted by the CITY, then the CITY may terminate this Contract due to CONSULTANT'S breach of this Contract.
2. If a federal or state proceeding for relief of debtors is undertaken by or against CONSULTANT, or if CONSULTANT makes an assignment for the benefit of creditors, then the CITY may immediately terminate this Contract.
3. If CONSULTANT engages in any dishonest conduct related to the performance or administration of this Contract or violates the CITY'S lobbying policies, then the CITY may immediately terminate this Contract.
4. In the event the CITY terminates this Contract as provided in this section, the CITY may procure, upon such terms and in such manner as the CITY may deem appropriate, services similar in scope and level of effort to those so terminated, and CONSULTANT shall be liable to the CITY for all of its costs and damages, including, but not limited to, any excess costs for such services.
5. All finished or unfinished documents and materials produced or procured under this Contract, including all intellectual property rights the CITY is entitled to, shall become CITY property upon date of such termination. CONSULTANT agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights provided herein. CONSULTANT agrees that a monetary remedy for breach of this

VI. GENERAL TERMS AND CONDITIONS AND CONTRACTING PROVISIONS

§601 General

The following specifically identified exhibits and attachments shall hereby be incorporated herein by reference.

§602 Construction of Provisions and Titles Herein

All titles, subtitles, or headings in this Agreement have been inserted for convenience,

and shall not be deemed to affect the meaning or construction of any of the terms or provisions of this Agreement. The language of this Agreement shall be construed according to its fair meaning and not strictly for or against the City or the CONSULTANT. The word "CONSULTANT" includes the party or parties identified in this Agreement. The singular shall include the plural and if there is more than one CONSULTANT, unless expressly stated otherwise, their obligations and liabilities shall be joint and several. Use of the feminine, masculine, or neuter genders shall be deemed to include the genders not used.

§603 Applicable Law, Interpretation and Enforcement

Each party's performance shall comply with all applicable laws of the United States of America, the State of California, and the City, including but not limited to, laws regarding health and safety, labor and employment, wage and hours and licensing. This Agreement shall be enforced and interpreted under the laws of the State of California without regard to conflict of law principles. The CONSULTANT shall comply with new, amended, or revised laws, regulations, or procedures that apply to the performance of this Agreement with no additional compensation paid to the CONSULTANT.

In any action arising out of this Agreement, the CONSULTANT consents to personal jurisdiction, and agrees to bring all such actions, exclusively in state or federal courts located in Los Angeles County, California.

§604 Competitive Proposal Requirement

Upon the execution of Agreement, any new subcontracts entered into by the CONSULTANT exceeding the amount of One Hundred Thousand Dollars (\$100,000) shall be let only by competitive proposals, except where using a sole supplier of services or materials, which is justified and approved in advance by the City. The CONSULTANT shall submit to the City evidence that it has received a minimum of three (3) verifiable proposals for such subcontract and justification for selection of the successful proposer or documentation to support the fact of the sole supplier. Consideration shall be given to local proposers and/or proposers with a demonstrated record of hiring local workers. Records shall be maintained by the CONSULTANT showing the successful proposer or documentation to support the fact of the sole supplier. Records shall be maintained by the CONSULTANT showing the parties solicited and the proposals submitted.

§605 Compliance with Prevailing Wages Laws

The CONSULTANT warrants and certifies that any contract awarded hereunder will require the Contractor to comply with the provisions of the Labor Code of the State of California, relating to Public Works wages. These provisions require the Contractor to pay

not less than the "General Prevailing Wage Rates" to all workers employed in the execution of the contract and to post a copy of the "General Prevailing Wage Rates" at the job-site, in a conspicuous place available to all employees and applicants for employment.

The "General Prevailing Wage Rates" shall be those rates as determined by the Director of the Department of Industrial Relations of the State of California. Copies of these rates are on file in the Office of Contract Compliance, Bureau of Contract Administration, telephone (213) 847-1922.

Information regarding prevailing wage rates may be obtained from the Office of Policy, Research and Legislation, Prevailing Wage Unit, P.O. Box 420603, San Francisco, CA 94142, Telephone (415) 972-8628, Fax (415) 972-8640.

The contractor shall submit Certified Payroll Records to the Office of Contract Compliance on a weekly basis using the City's On-Line Certified Payroll System (OCPS) throughout the project until completion of the project. In addition, the contractor shall employ apprentices in the ratio to journeymen as required by Section 1777.5 of the California Labor Code.

The contractor, and all subcontractors, shall cooperate in allowing approved Compliance Group Representatives access to the project job site for the purpose of conducting worker interviews to insure compliance with the requirement to pay proper prevailing wages on City projects. This will be done in order to comply with the Board of Public Works' August 20, 2004 adoption of a Joint Labor Compliance Monitoring Program.

Each Compliance Group Representative must wear their City-issued Joint Labor Compliance Monitoring Program identification badge at all times while on the job site, and must restrict their actions to interviewing workers employed on the project. For a copy of the Joint Labor Compliance Monitoring Program board report, or for any questions, contact the Office of Contract Compliance at (213) 847-2662.

§606 Compliance with Statutes and Resolutions

- A. The CONSULTANT warrants and certifies that in the performance of this Agreement, it shall comply with all applicable statutes, rules, regulations and orders of the United States, the State of California, the County and the City of Los Angeles, including laws and regulations pertaining to labor, wages, hours, and other conditions of employment; the City's anti-discrimination provisions and Affirmative Action Plan; and abatement of Asbestos Containing Materials (ACM) and Lead-Based Paint (LBP), including insuring that all personnel involved in the abatement or removal process of all ACMs and LBP will wear the necessary, legally-required protective clothing and respiratory gear and that the work done by properly licensed personnel. If during the course of this Agreement, the City receives or promulgates new or revised laws, regulations and/or procedures that apply to the performance of this Agreement, such data shall be submitted to the CONSULTANT for compliance thereto. These conditions shall be made an integral part of any subsequent amendment arising out of new, amended, or revised laws, regulations, and/or procedures that apply to the performance of this Agreement.

B. Applicable statutes, rules, or regulations may include, but are not limited to, the following:

1. Clean Air Act, as amended (42 USC 1857, *et seq.*);
2. Federal Pollution Control Act, as amended (33 USC 1251, *et seq.*);
3. Title VI of the Civil Rights Act of 1964, (42 USC 2000d), and implementing regulations;
4. Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972, (42 USC 2000e), and implementing regulations;
5. Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, (29 USC 794), and implementing regulations issued at 45 CFR, Part 84;
6. The Americans with Disabilities Act (ADA), PL 101-336 and all applicable regulations;
7. The Age Discrimination Act of 1975, as amended, (42 USC 6101, *et. seq.*) implementing regulations;

§607 Conflict of Interest

A. The CONSULTANT covenants that none of its directors, officers, employees, or agents shall participate in selecting, or administering any subcontract supported (in whole or in part) by City funds (regardless of source) where such person is a director, officer, employee or agent of the contractor or subcontractor; or where the selection of contractors or subcontractors is or has the appearance of being motivated by a desire for personal gain for themselves or others such as family business, etc.; or where such person knows or should have known that:

1. A member of such person's immediate family, or partner, or organization has a financial interest in the subcontract;
2. The subcontractor is an entity or someone with whom such person has or is negotiating any prospective employment; or
3. The participation of such persons would be prohibited by the California Political Reform Act, California Government Code Section 87100 *et seq.* If such person were a public officer, because such person would have a "financial or other interests" in the subcontract.

B. Definitions

1. The term "immediate family" includes but is not limited to those persons related by blood or marriage, such as husband, wife, father, mother, brother, sister, son, daughter, father-in-law, mother-in-law, brother-in-law, son-in-law, and daughter-in-law.
2. The term "financial or other interest" includes but is not limited to:

- a. Any direct or indirect financial interest in the specific contract, including a commission or fee, a share of the proceeds, prospect of a promotion or of future employment, a profit, or any other form of financial reward.
 - b. Any of the following interest in the subcontractor ownership: partnership interest or other beneficial interest of five percent or more; ownership of five percent or more of the stock; employment in a managerial capacity or membership on the board of director or governing body.
- C. The CONSULTANT further covenants that no officer, director, employee, or agent shall solicit or accept gratuities, favors, anything of monetary value from an actual or potential subcontractor, supplier, a party to a sub-agreement, (or persons who are otherwise in a position to benefit from the actions of any officer, employee, or agent).
- D. The CONSULTANT shall not subcontract with a former director, officer, or employee within a one-year period following the termination of the relationship between said person and the CONSULTANT.
- E. Prior to obtaining the City's approval of any subcontract, the CONSULTANT shall disclose to the City any relationship, financial or otherwise, direct or indirect, of the CONSULTANT or any of its officers, directors or employees or their immediate family with the proposed subcontractor and its officers, directors or employees.
- F. For further clarification of the meaning of any of the terms used herein, the parties agree that references shall be made to the guidelines, rules, and laws of the City of Los Angeles and State of California regulations regarding conflict of interest.
- G. The CONSULTANT warrants that it has not paid or given and will not pay or give to any third person, any money or other consideration for obtaining this Agreement.
- H. The CONSULTANT covenants that no member, officer or employee of the CONSULTANT shall have any interest, direct or indirect, in any contract or subcontract of the proceeds thereof for work to be performed in connection with this project during his/her tenure as such employee, member or officer or for one year thereafter.
- I. The CONSULTANT shall incorporate the foregoing Subsections of this Section into every agreement that it enters into in connection with this Project and shall substitute the term "subcontractor" for the term "CONTRACTOR" or "CONSULTANT."

§608 Construction Subcontracts

- A. If the CONSULTANT has already selected and entered into a contract with a construction subcontractor to assist in the performance of this Agreement prior to the execution of this Agreement, then the CONSULTANT shall obtain City's written approval within 10 business days from the date of execution of this Agreement.

- B. Applicable labor standard provisions including assurances that the construction subcontractor shall pay all his/her employees based upon prevailing wages and the General Conditions shall be a part of all construction subcontracts awarded pursuant to this Agreement.
- C. The construction subcontract shall require the construction subcontractor to comply with the provisions under §202 *Specific Requirements of the CONSULTANT*.
- D. Upon award of the construction subcontract, the construction subcontractor shall develop and submit to the CONSULTANT, the Architect, and the City a Proposed CONSTRUCTION PAYMENT SCHEDULE of Work for approval before starting the construction work. The Proposed CONSTRUCTION PAYMENT SCHEDULE of Work shall describe in details the sequence of the cost loaded construction activities, the dates, the locations, trades and number of workers, materials to be placed, and types of equipment to be used to complete the contract in the form of tabulations or scheduling charts.
- E. CONSULTANT will require the construction subcontractor to provide a Performance Bond in the amount of 100% of the contract amount and in a form acceptable to the CITY to guaranty faithful performance of all work, within the time prescribed, in a manner satisfactory to the City, and that all materials and workmanship will be free from original or developed defects. The bond must remain in effect until the end of all warranty periods set forth in the Contract. CONSULTANT will also require the construction subcontractor to provide a Payment Bond in the amount of 100% of the contract amount and in a form acceptable by the CITY to satisfy claims of material suppliers and mechanics and laborers employed by it on the Work. The bond shall be maintained by the subcontractor in full force and effect until the Work is accepted by the City and until all claims for materials and labor are paid, and shall otherwise comply with the Civil Code.
- F. If the construction subcontractor desires to make a major change in the PAYMENT SCHEDULE after commencing, or if the PAYMENT SCHEDULE fails to reflect the actual progress, the construction subcontractor shall submit to the CONSULTANT, the Architect, and the City a revised PAYMENT SCHEDULE in advance of beginning revised operations.

§609 Subconsultant/subcontractor Services

For any new subcontracts entered into after the execution of this Agreement, the CONSULTANT shall submit to the City the following items:

1. The solicitation for proposals, if required pursuant to Section 604 (or sole source justification).
2. The list of persons or firms to which the solicitation announcement was sent if required pursuant to Section 604.

3. A minimum of three proposals (if required pursuant to Section 604).
4. Specific reasons for the selection of the prospective subcontractor. A resume or job application which fully describes the subcontractor's previous experience, particularly as it relates to the services to be performed under the subcontract.
5. The proposed subcontract which includes the following:
 - a. Full description of the work activities that will be performed by the subcontractor.
 - b. The length of time the subcontractor will be retained.
 - c. The fee to be paid to the subcontractor indicating whether an hourly, rate, weekly rate, or job completion date is to be the basis for payment.

§610 Consultant Personnel

- A. The CONSULTANT shall employ persons meeting the qualifications for those positions they hold.
- B. With prior written approval from the City, the CONSULTANT may use funds provided under this Agreement to pay for labor costs for the CONSULTANT's own employees that perform maintenance, design or construction services specifically for the Project.
- C. Deviation of the foregoing limitations shall require written City approval before becoming effective.

§611 Cost-Plus-a-Percentage-of-Cost-Subcontracting

Under no circumstances shall the CONSULTANT enter into Cost-Plus-a-Percentage-of-Cost subcontracts.

§612 Intentionally Not Used

§613 Claims for Labor and Materials

CONSULTANT shall promptly pay when due all amounts owed for labor and materials furnished in the performance of this Agreement so as to prevent any lien or other claim under any provision of law from arising against any City property (including reports, documents, and other tangible or intangible matter produced by CONSULTANT hereunder), and shall pay all amounts due under the Unemployment Insurance Act or any other applicable law with respect to labor used to perform under this Agreement.

§614 Indemnification

Except for the active negligence or willful misconduct of the City or any of their boards,

officers, agents, employees, assigns and successors in interest, the CONSULTANT shall defend, indemnify and hold harmless the City, State, and any of their boards, officers, agents, employees, assigns, and successors in interest from and against all lawsuits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the City and/or State, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever, for death or injury to any person, including the CONSULTANT's employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of an act, error, or omission by the CONSULTANT, subcontractors of any tier, or their boards, officers, agents, employees, assigns, and successors in interest in connection with the performance of this Agreement. The rights and remedies of the City and/or State provided in this Section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement. This provision will survive expiration or termination of this Agreement.

§615 Intellectual Property Indemnification

The CONSULTANT, at its own expense, shall defend, indemnify, and hold harmless the City and State and any of their boards, officers, agents, employees, assigns, and successors in interest from and against all lawsuits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the City and State including but not limited to, costs of experts and consultants), damages or liability of any nature arising out of the infringement, actual or alleged, direct or contributory, of any intellectual property rights, including, without limitation, patent, copyright, trademark, trade secret, right of publicity, and proprietary information: (1) on or in any design, medium, matter, article, process, method, application, equipment, device, instrumentation, software, hardware, or firmware used by the CONSULTANT, or its Subcontractors, in performing the work under this Agreement; or (2) as a result of the City's actual or intended use of any Work Product (as defined in §618 *Ownership and License*) furnished by the CONSULTANT, or its subcontractors of any tier, under this Agreement. The rights and remedies of the City provided in this Section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement. This provision will survive expiration or termination of this Agreement.

§616 Intellectual Property Warranty

The CONSULTANT represents and warrants that its performance of all obligations under this Agreement does not infringe in any way, directly or contributorily, upon any third party's intellectual property rights, including, without limitation, patents, copyrights, trademarks, trade secrets, rights of publicity and proprietary information.

§617 Ownership and License

Unless otherwise provided for herein, all finished and unfinished artworks, tangible or not, created or constructed under this Agreement (each a "Work Product"; collectively "Work Products") are covered under a separate contract between the CONSULTANT and the Artist. That separate contract includes provisions regarding goodwill, copyright, trademark, patent, trade secret and all other intellectual property rights worldwide in any Work Products.

CONSULTANT shall comply with the Revocable Permit Conditions for the Project and bear any costs in order to comply. In the event that artwork is removed or damaged in the public right of way, CONSULTANT shall maintain or repair the artwork at no cost to the City. If CONSULTANT chooses to remove physical artwork (ie exhibit or sculpture), then the structure shall be removed and the right-of-way restored as per instructions included in the Revocable Permit. CONSULTANT shall provide the City at least 60 days notice prior to removal of any physical artwork associated with the Project.

While any artwork is installed in the public right of way or on other public property, the City shall have a non-exclusive license to reproduce the artwork for any noncommercial use.

§618 Data Protection

- A. The CONSULTANT shall protect, using the most secure means and technology that is commercially available, City-provided data or consumer-provided data acquired in the course and scope of this Agreement, including but not limited to customer lists and customer credit card or consumer data, (collectively, the "City Data"). The CONSULTANT shall notify the City in writing as soon as reasonably feasible, and in any event within twenty-four hours, of the CONSULTANT's discovery or reasonable belief of any unauthorized access of City Data (a "Data Breach"), or of any incident affecting, or potentially affecting City Data related to cyber security (a "Security Incident"), including, but not limited to, denial of service attack, and system outage, instability or degradation due to computer malware or virus. The CONSULTANT shall begin remediation immediately. The CONSULTANT shall provide daily updates, or more frequently if required by the City, regarding findings and actions performed by the CONSULTANT until the Data Breach or Security Incident has been effectively exresolved to the City's satisfaction. The CONSULTANT shall conduct an investigation of the Data Breach or Security Incident and shall share the report of the investigation with the City. At the City's sole discretion, the City and its authorized agents shall have the right to lead or participate in the investigation. The CONSULTANT shall cooperate fully with the City, its agents and law enforcement.
- B. If the City is subject to liability for any Data Breach or Security Incident, then the CONSULTANT shall fully indemnify and hold harmless the City and State and defend against any resulting actions.

§619 Insurance

During the term of this Agreement and without limiting the CONSULTANT's obligation to indemnify, hold harmless and defend the City and State the CONSULTANT shall provide and maintain at its own expense a program of insurance having the coverages and limits not less than the required amounts and types as determined by the Office of the City Administrative Officer of Los Angeles, Risk Management (*Exhibit A – Insurance Requirements* attached hereto). The insurance must: (1) conform to the City's requirements; (2) comply with the Insurance Contractual Requirements (*Exhibit A* attached hereto); and (3) otherwise be in a form acceptable to the Office of the City Administrative Officer, Risk Management. The CONSULTANT shall comply with all Insurance Contractual Requirements shown on *Exhibit A* hereto and made a part of this Agreement.

§620 Limitations of Corporate Acts

The CONSULTANT shall not amend its Articles of Incorporation or Bylaws, move to dissolve, transfer any assets derived from funds provided under §106 *Compensation* herein or take any other steps which may materially affect the performance of this Agreement without first notifying the City in writing. The CONSULTANT shall notify the City immediately in writing of any change in the CONSULTANT's organizational name.

§621 Limitations of Expenditures

- A. The CONSULTANT shall not expend funds provided under this Agreement prior to the commencement of this Agreement, during suspension or subsequent to termination of this Agreement.
- B. Expenditures shall be made in conformance with the City approved PAYMENT SCHEDULE, and shall meet criteria established for allowable costs under §401 *Allowable and Unallowable Costs* of this Agreement.

§622 Lobbying Prohibited

- A. None of the funds provided under this Agreement shall be used for any purpose designed to support or defeat any pending legislation or administrative regulation.
- B. The CONSULTANT and its subcontractors shall file a disclosure form at the end of each calendar quarter in which there occurs any event requiring disclosure or which materially effects the accuracy of the information contained in any disclosure form previously filed by the CONSULTANT.

§623 Mandatory Provisions Pertaining to Non-Discrimination in Employment

Unless otherwise exempt, this Agreement is subject to the applicable non-discrimination, equal benefits, equal employment practices, and affirmative action program provisions in LAAC Section 10.8 *et seq.*, as amended from time to time.

- A. The CONSULTANT shall comply with the applicable non-discrimination and affirmative action provisions of the laws of the United States of America, the State of California, and the City. In performing this Agreement, The CONSULTANT shall not discriminate in any of its hiring or employment practices against any employee or applicant for employment because of such person's race, color, religion, national origin, ancestry, sex, sexual orientation, gender, gender identity, age, disability, domestic partner status, marital status or medical condition.
- B. The requirements of Section 10.8.2.1 of the LAAC, the Equal Benefits Ordinance, and the provisions of Section 10.8.2.1(f) are incorporated and made a part of this Agreement by reference.
- C. The provisions of Section 10.8.3 of the LAAC are incorporated and made a part of this Agreement by reference and will be known as the "Equal Employment Practices" provisions of this Contract.
- D. The provisions of Section 10.8.4 of the LAAC are incorporated and made a part of this Agreement by reference and will be known as the "Affirmative Action Program" provisions of this Agreement.

Any subcontract entered into by the CONSULTANT for work to be performed under this Agreement must include an identical provision.

§624 Participation of Minority, Women and Other Business Enterprises

To the fullest extent possible in the administration of this Agreement, CONSULTANT agrees to provide opportunities for minority owned, women and other businesses enterprises to participate in procurements under this Agreement.

§625 Permits

The CONSULTANT and its directors, officers, partners, agents, employees, and Subcontractors, shall obtain and maintain all licenses, permits, certifications and other documents necessary for the CONSULTANT's performance of this Agreement and shall pay any fees required therefore. The CONSULTANT shall immediately notify within two (2) business days, the City of any suspension, termination, lapses, non-renewals, or restrictions of licenses, permits, certificates, or other documents that relate to the CONSULTANT's performance of this Agreement.

§626 Los Angeles City Business Tax Registration Certificate Required

For the duration of this Agreement, the CONSULTANT shall maintain valid Business Tax Registration Certificate(s) as required by the City's Business Tax Ordinance, Section 21.00 *et seq.*, of the Los Angeles Municipal Code ("LAMC"), and shall not allow the Certificate to lapse or be revoked or suspended.

§627 Political Activity Prohibited

None of the funds, materials, property or services provided directly or indirectly under this Agreement shall be used for any partisan political activity, or to further the election or defeat of any candidate for public office.

§628 Assignment and Delegation

The CONSULTANT may not, unless it has first obtained the written permission of the City:

- A. Assign or otherwise alienate any of its rights under this Agreement, including the right to payment; or,
- B. Delegate, subcontract, or otherwise transfer any of its duties under this Agreement.

§629 Prohibition of Legal Procedures

The CONSULTANT is prohibited from using the funds received under this Agreement, or funds realized as a result of this Agreement, for the purpose of instituting legal proceedings against the City or their official representatives.

§630 Public Information

In all communications with the press, television, radio or any other means of communicating with the general community as deemed appropriate by CONSULTANT, the communication shall make specific reference to the City of Los Angeles and State as a/the sponsoring agency of the Project.

§631 Restriction on Disbursements

No money received pursuant to this Agreement by the CONSULTANT shall be disbursed to any subcontractor except pursuant to a written contract in accordance with the provision of this Agreement and unless the subcontractor is in compliance with City requirements with regard to accounting and fiscal matters, to the extent that they are applicable.

§632 Confidentiality

All documents, information and materials provided to the CONSULTANT by the City or developed by the CONSULTANT pursuant to this Agreement (collectively "Confidential Information") are confidential. The CONSULTANT shall not provide or disclose any Confidential Information or their contents or any information therein, either orally or in writing, to any person or entity, except as authorized by the City or as required by law. The CONSULTANT shall immediately notify the City of any attempt by a third party to obtain access to any Confidential Information. This provision will survive expiration or termination of this Agreement.

§633 Subcontracts

- A. For the purpose of this Agreement, subcontracts shall include, but not be limited to, third party agreements, consultant services subcontracts, and subcontracts.
- B. Subcontracts entered into in the performance of this Agreement shall:
1. Be subject to the terms and conditions set forth in this Agreement. City may require incorporation of the applicable provisions in a written agreement. These provisions include, but are not limited to the following
 - a. City of Los Angeles Worker Retention and Living Wage Ordinance. Section 10.36 *et seq.*, and Section 10.37 *et seq.*, of the Los Angeles Administrative Code (LAAC).
 - b. City of Los Angeles First Source Hiring Ordinance. Section 10.44 *et seq.*, of the Los Angeles Administrative Code
 - c. City of Los Angeles Contractor Responsibility Ordinance. Section 10.40 *et seq.*, of the Los Angeles Administrative Code
 - d. Iran Contracting Act of 2010 Compliance Affidavit.
 - e. City Contractors' Use of Criminal History for Consideration of Employment Applications. Section 10.48 of the Los Angeles Administration Code.
 - f. City of Los Angeles Non-Discrimination, Equal Employment Practices, and Affirmative Action Program Provisions. (Section 10.8 of the Los Angeles Administrative Code.)
 2. Specifically prohibit assignment or transfer of interest without prior written approval by the City.
 3. Specifically provide proof, when applicable, of the appropriate permits and/or business licenses.
- C. A copy of each executed subcontract, or amendment(s) thereto, shall be submitted to the City prior to payment.

§634 Amendments

- A. Either party may request an amendment to this Agreement. Amendments to this Agreement must be mutually agreed in writing and properly executed by both the City and the CONSULTANT.

§635 Waivers

- A. Waivers of any provision of this Agreement must be in writing and signed by the appropriate authorities of the City or the CONSULTANT.
- B. A waiver of a default of any part, term or provision of this Agreement shall not be construed as a waiver of any succeeding default or as a waiver of the part, term or provision itself. A party's performance after the other party's default shall not be

construed as a waiver of that default.

§636 Complete Agreement

This Agreement and the exhibits incorporated herein by reference contain the full and complete agreement between the two parties. No verbal Agreement or conversation with any officer or employee of either party shall affect or modify any of the terms and conditions of this Agreement.

§637 Number of Originals and Exhibits and Counterparts

This Agreement is executed in three (3) duplicate originals, each of which is deemed to be an original.

This Agreement may be executed, including electronic signatures, in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

§638 Severability

If any term, covenant or condition of this Agreement shall, to any extent, be invalid, void, illegal or unenforceable, the remainder of this Agreement shall not be affected thereby, and each other term, covenant or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

§639 Excusable Delays

Neither party shall be liable for its delay or failure to perform any obligation under and in accordance with this Agreement, if the delay or failure arises out of fires, floods, earthquakes, epidemics, quarantine restrictions, other natural occurrences, strikes, lockouts (other than a lockout by the party or any of the party's Subcontractors), freight embargoes, terrorist acts, insurrections or other civil disturbances, or other similar events to those described above, but in each case the delay or failure to perform must be beyond the control and without any fault or negligence of the party delayed or failing to perform (these events are referred to in this provision as "Force Majeure Events").

Notwithstanding the foregoing, a delay or failure to perform by a Subcontractor of the CONSULTANT shall not constitute a Force Majeure Event, unless the delay or failure arises out of causes beyond the control of both the CONSULTANT and Subcontractor, and without any fault or negligence of either of them. In such case, the CONSULTANT shall not be liable for the delay or failure to perform, unless the goods or services to be furnished by the Subcontractor were obtainable from other sources in sufficient time to permit the CONSULTANT to perform timely. As used in this Agreement, the term "Subcontractor" means a subcontractor at any tier.

In the event the CONSULTANT's delay or failure to perform arises out of a Force Majeure

Event, the CONSULTANT agrees to use commercially reasonable best efforts to obtain the goods or services from other sources, and to otherwise mitigate the damages and reduce the delay caused by the Force Majeure Event.

§640 Child Support Assignment Orders

This Contract is subject to the Child Support Assignment Orders Ordinance, LAAC Section 10.10, as amended from time to time. Pursuant to the Child Support Assignment Orders Ordinance, CONSULTANT will fully comply with all applicable State and Federal employment reporting requirements for CONSULTANT'S employees. CONSULTANT shall also agree (1) that the Principal Owner(s) of CONSULTANT are in compliance with any Wage and Earnings Assignment Orders and Notices of Assignment applicable to them personally; (2) that CONSULTANT will fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment in accordance with Section 5230 et seq. of the California Family Code; and (3) that CONSULTANT will maintain such compliance throughout the term of this Contract.

Pursuant to LAAC Section 10.10(b), the failure of CONSULTANT to comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignment Or Notices Of Assignment, or the failure Of any Principal Owner(s) of CONSULTANT to comply with any Wage and Earnings Assignment or Notices of Assignment applicable to them personally, shall constitute a default by the CONSULTANT under this Contract. Failure of the CONSULTANT to cure the default within ninety days of notice of such default by the CITY shall subject this Contract to termination.

Any subcontract entered into by CONSULTANT, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract. Failure of CONSULTANT to obtain compliance of its subcontractors shall constitute a default by CONSULTANT under this Contract. Failure of the CONSULTANT to cure the default within ninety days of notice of such default by the CITY shall subject this Contract to termination.

§641 Living Wage Ordinance

Unless otherwise exempt, this Contract is subject to the applicable provisions of the Living Wage Ordinance, LAAC Section 10.37 et seq., as amended from time to time, and CONSULTANT agrees to comply with all applicable provisions. CONSULTANT further agrees that it shall comply with federal law proscribing retaliation for union organizing. A violation of this article shall constitute a material breach thereof and entitle the Awarding Authority to terminate this Contract and otherwise pursue legal remedies that may be available.

The Living Wage Ordinance is incorporated herein. The text of Ordinance is available at the City's website www.lacity.org.

§642 Worker Retention Ordinance

Unless otherwise exempt, this Contract is subject to all applicable provisions of the Service Contractor Worker Retention Ordinance, LAAC 10.36 et seq., as amended from time to time and CONSULTANT agrees to comply with such applicable provisions. A violation of these provisions shall entitle the CITY to terminate the Contract and otherwise pursue legal remedies that may be available.

The Service Contractor Worker Retention Ordinance is incorporated herein. The text of the Ordinance is available at the City's website www.lacity.org.

§643 Access and Accommodations

The CONSULTANT represents and certifies that:

- A. The CONSULTANT shall comply with the Americans with Disabilities Act, as amended, 42 U.S.C. Section 12101 *et seq.*, the Rehabilitation Act of 1973, as amended, 29 U.S.C. Section 701 *et seq.*, the Fair Housing Act, and its implementing regulations and any subsequent amendments, and California Government Code Section 11135;
- B. The CONSULTANT shall not discriminate on the basis of disability or on the basis of a person's relationship to, or association with, a person who has a disability;
- C. The CONSULTANT shall provide reasonable accommodation upon request to ensure equal access to City-funded programs, services and activities;
- D. Construction will be performed in accordance with the Uniform Federal Accessibility Standards (UFAS), 24 C.F.R. Part 40; and

The CONSULTANT understands that the City is relying upon these certifications and representations as a condition to funding this Agreement. Any subcontract entered into by the CONSULTANT for work to be performed under this Agreement must include an identical provision.

§644 Contractor Responsibility Ordinance

Unless otherwise exempt, this Contract is subject to the provisions of the Contractor Responsibility Ordinance, LAAC Section 10.40 et seq., as amended from time to time, which requires CONSULTANT to update its responses to the responsibility questionnaire within thirty calendar days after any change to the responses previously provided if such change would affect CONSULTANT'S fitness and ability to continue performing this Contract.

In accordance with the provisions of the Contractor Responsibility Ordinance, by signing this Contract, CONSULTANT pledges, under penalty of perjury, to comply with all

applicable federal, state and local laws in the performance of this Contract, including but not limited to, laws regarding health and safety, labor and employment, wages and hours, and licensing laws which affect employees. CONSULTANT further agrees to: (1) notify the CITY within thirty calendar days after receiving notification that any government agency has initiated an investigation which may result in a finding that CONSULTANT is not in compliance with all applicable federal, state and local laws in performance of this Contract; (2) notify the CITY within thirty calendar days of all findings by a government agency or court of competent jurisdiction that CONSULTANT has violated the provisions of Section 10.40.3(a) of the Contractor Responsibility Ordinance; (3) unless exempt, ensure that its subcontractor(s), as defined in the Contractor Responsibility Ordinance, submit a Pledge of Compliance to the CITY; and (4) unless exempt, ensure that its subcontractor(s), as defined in the Contractor Responsibility Ordinance, comply with the requirements of the Pledge of Compliance and the requirement to notify the CITY within thirty calendar days after any government agency or court of competent jurisdiction has initiated an investigation or has found that the subcontractor has violated Section 10.40.3(a) of the Contractor Responsibility Ordinance in performance of the subcontract.

§645 Iran Contracting Act of 2010

In accordance with California Public Contract Code Sections 2200-2208, all contractors entering into, or renewing contracts with the City for goods and services estimated at \$1,000,000 or more are required to complete, sign, and submit the "Iran Contracting Act of 2010 Compliance Affidavit."

§646 Warranty and Responsibility of Consultant

The CONSULTANT warrants that the work performed hereunder shall be completed in a manner consistent with professional standards practiced among those firms within the CONSULTANT's or its subcontractors' profession, doing the same or similar work under the same or similar circumstances.

§647 Slavery Disclosure Ordinance

Unless otherwise exempt, this Contract is subject to the Slavery Disclosure Ordinance, LAAC Section 10.41 et seq., as amended from time to time. CONSULTANT certifies that it has complied with the applicable provisions of the Slavery Disclosure Ordinance. Failure to fully and accurately complete the affidavit may result in termination of this Contract.

§648 Restrictions on Campaign Contributions and Fundraising in City Elections

Unless otherwise exempt, if the Contract is valued at \$100,000 or more and requires approval by an elected CITY office, the CONSULTANT, the CONSULTANT'S principals, the CONSULTANT'S subcontractors expected to receive at least \$100,000 for performance under the Contract, and the principals of those subcontractors (the "Restricted Persons") are obligated to fully comply with Charter Section 470(c)(12) and LAMC Section 49.7.35. Failure to comply entitles the CITY to terminate this Contract and

to pursue all available legal remedies. Charter Section 470(c)(12) and LAMC Section 49.7.35 limit the ability of the Restricted Persons to make campaign contributions to and engage in fundraising for certain elected CITY officials or candidates for elected CITY office for twelve (12) months after this Contract is signed. Additionally, a CONSULTANT subject to Charter Section 470(c)(12) is required to comply with disclosure requirements by submitting a completed and signed Ethics Commission Form 55 and to amend the information in that form as specified by law. Any CONSULTANT subject to Charter Section 470(c)(12) shall include the following notice in any contract with a subcontractor expected to receive at least \$100,000 for performance under this Contract.

"Notice Regarding Restrictions on Campaign Contributions and Fundraising in City Elections

You are a subcontractor on City of Los Angeles Contract # _____. Pursuant to the City of Los Angeles Charter Section 470(c)(12) and related ordinances, you and your principals are prohibited from making campaign contributions to and fundraising for certain elected City of Los Angeles ("CITY") officials and candidates for elected CITY office for twelve (12) months after the CITY contract is signed. You are required to provide the names and contact information of your principals to the CONSULTANT and to amend that information within ten business days if it changes during the twelve (12) month time period. Failure to comply may result in termination of this Contract and any other available legal remedies. Information about the restrictions may be found online at ethics.lacity.org or by calling the Los Angeles City Ethics Commission at (213) 978-1960."

§649 Limitation of City's Obligation to Make Payment to Consultant

Notwithstanding any other provision of this Agreement, including any exhibits or attachments incorporated therein, and in order for the City to comply with its governing legal requirements, the City shall have no obligation to make any payments to the CONSULTANT unless the City has received State funds from equal to or in excess of its obligation to make any payments as provided in this Agreement. The CONSULTANT agrees that any services provided by the CONSULTANT, purchases made by the CONSULTANT or expenses incurred by the CONSULTANT in excess of the appropriation(s) shall be free and without charge to the City and the City shall have no obligation to pay for the services, purchases or expenses.

§650 Compliance with Identity Theft Laws and Payment Card Data Security Standards

The CONSULTANT shall comply with all identity theft laws including without limitation, laws related to: (1) payment devices; (2) credit and debit card fraud; and (3) the Fair and Accurate Credit Transactions Act ("FACTA"), including its requirement relating to the content of transaction receipts provided to Customers. The CONSULTANT also shall comply with all requirements related to maintaining compliance with Payment Card

Industry Data Security Standards ("PCI DSS"). During the performance of any service to install, program or update payment devices equipped to conduct credit or debit card transactions, including PCI DSS services, the CONSULTANT shall verify proper truncation of receipts in compliance with FACTA.

§651 Intentionally Not Used

§652 Possessory Interests Tax

Rights granted to the CONSULTANT by the City may create a possessory interest. The CONSULTANT agrees that any possessory interest created may be subject to California Revenue and Taxation Code Section 107.6 and a property tax may be levied on that possessory interest. If applicable, the CONSULTANT shall pay the property tax. The CONSULTANT acknowledges that the notice required under California Revenue and Taxation Code Section 107.6 has been provided.

§653 City Contractors Use of Criminal History for Consideration of Employment Applications

CONSULTANT shall comply with the City Contractors' Use of Criminal History for Consideration of Employment Applications Ordinance, LAAC Section 10.48 et seq., as amended from time to time. Any subcontract entered into by CONSULTANT for work to be performed under this Agreement must include an identical provision.

§654 Disclosure of Border Wall Contracting Ordinance

CONSULTANT shall comply with Los Angeles Administrative Code Section 10.50 et seq., 'Disclosure of Border Wall Contracting.' City may terminate this Agreement at any time if City determines that CONSULTANT failed to fully and accurately complete the required affidavit and disclose all Border Wall Bids and Border Wall Contracts, as defined in LAAC Section 10.50.1.

§655 Intentionally Not Used

§656 First Source Hiring Ordinance

CONSULTANT shall comply with the First Source Hiring Ordinance, Los Angeles Administrative Code Section 10.44 et seq., as amended from time to time. Any subcontract entered into by CONSULTANT for work to be performed under this Agreement must include an identical provision.

[Signature page follows.]

IN WITNESS WHEREOF, the parties here to have executed Agreement on the day and year written below:

APPROVED AS TO FORM:

MICHAEL N. FEUER

City Attorney

By: 
Assistant City Attorney

Date: 11/22/2022

FOR THE CITY OF LOS ANGELES

APPROVED AND AGREED TO:

By: 
Aura Garcia
President, Board of Public Works

Date: 12-2-2022

ATTEST:

HOLLY L. WOLCOTT

City Clerk

By:  
Deputy City Clerk

Date: 12/2/2022

FOR THE CITY OF LOS ANGELES

APPROVED AND AGREED TO:

By: 
Ted Allen, PE
City Engineer

Date: 12/07/2022

FOR THE CONSULTANT:

LOS ANGELES NEIGHBORHOOD INITIATIVE

APPROVED AND AGREED TO:

By*: 

Print Name: VERONICA HAHN

Print Title: EXECUTIVE DIRECTOR

Date: 7/20/2021

* The signature of President, Chairman of the Board, or Vice President is required here.

City of Los Angeles Business Tax Registration Certificate No.: [INSERT NUMBER HERE]
Council File No.: [INSERT COUNCIL FILES HERE]

SUPPLEMENTAL AGREEMENT NO. 1

to

AGREEMENT NO. C-142056

for the

OLYMPIC GATEWAY PROJECT

Between

CITY OF LOS ANGELES

and

LOS ANGELES NEIGHBORHOOD INITIATIVE (LANI)

Transmittal No. 3

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SUPPLEMENTAL AGREEMENT NO. 1 TO AGREEMENT NO. C-142056 (“AGREEMENT” OR “CONTRACT”), FOR DESIGN AND CONSTRUCTION SERVICES FOR THE OLYMPIC GATEWAY PROJECT BETWEEN THE CITY OF LOS ANGELES AND LOS ANGELES NEIGHBORHOOD INITIATIVE (LANI).

This Supplemental Agreement No. 1 modifies the Agreement executed on December 2, 2022, between the City of Los Angeles, California, a municipal corporation acting by order and through its Department of Public Works, Bureau of Engineering (hereinafter referred to as “City” or “BOE”), and Los Angeles Neighborhood Initiative, a 501(c)3 non-profit agency (hereinafter referred to as the “CONSULTANT”).

WITNESSETH

WHEREAS, LANI was created by the Los Angeles Mayor’s Office as a “City Partner” to expedite transit and pedestrian projects, and serves as a liaison between the City and economically challenged transit-dependent communities throughout the City of Los Angeles; and

WHEREAS, LANI uses its nationally recognized community engagement process to provide comprehensive outreach and consensus planning, design, and construction of transit and pedestrian improvements, urban greening projects, business district revitalization, and the development and support of community organizations; and

WHEREAS, in 2014, the CRA/LA-DTLA, the City’s former redevelopment agency, hired LANI to provide project administration/management services for public outreach, design, and construction services for the Olympic Gateway Project (Project) within the Wilshire Center/Koreatown Recovery Redevelopment Project Area. Since then, LANI has spearheaded the Project by completing community outreach, design, and interagency planning of the proposed Project. LANI’s contract with CRA/LA ended as a result of the dissolution of redevelopment and funding was transferred from CRA/LA to the City for continuation of the Project. Under a City contract, LANI would continue to serve as Project Manager, finalize design and engineering of the improvements, and manage and implement construction of the Project including obtaining all necessary permits and environmental clearances; and

WHEREAS, due to the limited scope of work and the extensive experience of LANI on the Project and in providing community neighborhood improvement projects with stakeholders, it is more feasible and economical for this work to be done by a contractor than by City employees; and

WHEREAS, a Motion was introduced by Council District (CD) 10 on June 28, 2019, to transfer/appropriate \$1,500,000 in AB1290 Funds for the construction of the Project; and

WHEREAS, a Motion was introduced by CD 10 on December 10, 2019, to transfer/appropriate \$1,755,166 plus Interest from CRA/LA Excess Bond Proceeds (EBP) for the construction of the Olympic Gateway Project; and

WHEREAS, the City authorized the City Engineer to approve, negotiate, and execute an agreement with the Grantee subject to the approval of the Board of Public Works; and,

WHEREAS, the BOE will reimburse Grantee on a milestone basis with proper documentation of adequate vouchers and receipts submitted to the BOE; and

WHEREAS, Grantee will be responsible to complete the Project within two (2) years from the date of attestation by the City Clerk; and

WHEREAS, the City and CONSULTANT have agreed to extend the term of the Agreement by **two (2) additional years through December 1, 2026;**

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth herein and the mutual benefits to be derived therefrom, the CITY and CONSULTANT mutually agree as follows:

I. INTRODUCTION

§101 Section Headings and Construction of Provisions and Titles Herein

All titles, subtitles, and/or section headings appearing herein have been inserted for convenience and shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning, intent or construction of any of the terms or provisions hereof. The language of this Agreement shall be construed according to its fair meaning and not strictly for or against the CITY or the CONSULTANT. The singular shall include the plural; use of the feminine, masculine, or neutral genders shall be deemed to include the genders not used. The terms "include" and "including" do not exclude items not enumerated that are in the same general class.

§102 Conditions Precedent to Execution of Contract

Prior to the execution of this Agreement, the CONSULTANT shall provide the City with copies, or signed original documents as required, of the following documents:

- a. CONSULTANT's documentation of its 501(c)(3) status.
- b. Acceptable evidence of evidence of insurance, with original signature(s), covering general liability, professional liability, automobile liability, workers compensation, and others as required in *Exhibit A – Insurance Requirements* (Form Gen. 133 and Form Gen. 146) and §619 *Insurance* of this Agreement as submitted to the City. The evidence of insurance will be reviewed and is subject to approval by the City Risk Manager. Hard copies must also be sent to the Department of Public Works.
 1. Throughout the term of this Agreement, the CONSULTANT must submit to the BOE, hard copies of all proofs of insurance or proofs of renewal of insurance that the CONSULTANT has submitted online to the City Risk Manager.
- c. An executed Certification Regarding Compliance with the Americans with Disabilities Act (42 U.S.C. 11201 *et seq.*), and its implementing regulations which is attached hereto as *Exhibit B – Certification of Compliance with Americans with Disabilities Act (ADA)* and which is incorporated herein by this reference.
- d. Contractor Responsibility Ordinance Compliance Forms – *Exhibit C*
- e. Current and valid Business Tax Registration Certificate required by the City's Business Tax Ordinance to do business within the City or evidence of exemption. For the term covered by this agreement, the CONSULTANT shall maintain, or obtain as necessary, all such Certificate(s) required of it under the Business Tax Ordinance or evidence of exemption and shall not allow any such Certificate or exemption to be revoked or suspended.

f. **City Contractors' Use of Criminal History for Consideration of Employment Applications – *Exhibit D***

All items listed above shall be kept current, and the City shall be notified of, or provided with, in accordance with the reporting requirement identified in §103 Contract Administration and Representative of the Parties herein, any changes to, updates of or non-compliance with, any below listed item.

§103 Contract Administration and Representatives of the Parties

A. The representative of the City shall be, unless otherwise stated in the Agreement:

Alfred Mata, Interim City Engineer
Department of Public Works, Bureau of Engineering
1149 South Broadway, 7th Floor
Los Angeles, CA 90015
Attention: Nur Malhis, Division Manager
Phone: (213) 485-4737
Email: nur.malhis@laCity.org

The City Engineer or his/her designee shall have full authority to act on behalf of the City in the administration of this Agreement, consistent with the provisions herein. The City Engineer is also named the repository for all reporting requirements identified in this Agreement.

The City Engineer is the party to whom the CONSULTANT shall forward all documents, reports and records as required by this Agreement for submittal to, or review by the "City", and is the party authorized to provide written approvals by the City to the CONSULTANT in reference to matters addressed in this Agreement.

B. The representative of the CONSULTANT shall be:

Veronica Hahni, Executive Director
Los Angeles Neighborhood Initiative
800 S. Figueroa Street, Suite 970
Los Angeles, CA 90017
veronica@lani.org

§104 Service of Notices

Formal notices, demands, and communications to be given hereunder by either party shall be made in writing and shall be affected by either personal delivery or by private expressed carrier or registered or certified mail, prepaid postage, return receipt requested and shall be deemed communicated and effective as of the date of mailing unless otherwise stated in the notices, demands or communications. If the name of the person designated to receive the notices, demands or communications or the address of such

person is changed, written notice shall be given, in accordance with this Section, within five (5) working days of said change.

All documents, correspondence, invoices, etc., transmitted to the City shall be in writing. Payment requests shall be made both in written and electronic formats, on a form to be provided by the City. Documents shall be delivered to the City via U.S. mail or private express carrier or via email to nur.malhis@laCity.org.

§105 Term of Agreement and Time of Performance

A. Term of Services

The term of this Agreement shall commence on the date of full execution. All design and construction hereunder shall be completed within two (2) years from the date of attestation by the City and the renewal term of the Agreement by two (2) additional years through December 1, 2026 under the same terms and conditions unless terminated as provided under §505 *Termination* or extended by a duly approved amendment or change order to this Agreement and signed by the parties. Due to the need to advance the project in a timely manner, CONSULTANT has performed services under the Agreement prior to the execution of this Agreement. To the extent that such services were performed in accordance with the terms and conditions of the Agreement, the City hereby acknowledges the services previously performed by CONSULTANT and ratifies CONSULTANTS performance of said services under the Agreement.

The date of full execution is deemed to be the date when all the following events have occurred:

- This Agreement has been signed on behalf of CONSULTANT by the person or persons authorized to bind CONSULTANT hereto;
- This Agreement has been approved by the City Council, by the Mayor, or by the BOARD, officer or employee authorized to give such approval;
- The Office of the City Attorney has indicated in writing its approval of this Agreement as to form; and,
- This Agreement has been signed on behalf of the CITY by the person designated by the City Council, or by the BOARD, officer, or employee authorized to enter into this Agreement.
- This Agreement has been attested by the City Clerk.

B. Performance shall not commence until the CONSULTANT has obtained the City's approval of all insurance as required by the City (see *Exhibit A – Insurance Requirements*, attached thereto and incorporated herein by reference, and §619 *Insurance*).

C. If the CONSULTANT fails to complete the project within the time required in this Agreement, then the CITY may terminate this Agreement as specified in *Article V - Remedies* of this Agreement.

§106 Scope of Project

The CONSULTANT will use the funds to design and construct an illuminated cultural gateway consisting of a twisting cable structure spanning diagonally between two approximately 50-foot pole structures at the intersection of Normandie Avenue and Olympic Boulevard. The CONSULTANT has completed 60% design plans for the project (See Exhibit F). The scope of the project as described above includes, but is not limited to:

1. Project Administration / Outreach
2. Design/Engineering
3. Permitting
4. Construction
5. General Conditions / General Requirements
6. Site Protection
7. Demolition
8. Dewatering
9. Erosion Control
10. Drilled Piles
11. Earthwork
12. Asphalt Concrete Paving
13. Site Concrete
14. Rebar
15. Concrete
16. Structural Steel
17. Painting
18. Electrical
19. Utility Pole Relocation

As part of the scope of work, the CONSULTANT shall also submit a Maintenance Plan for the Olympic Gateway Project, twisting cable structure. This Maintenance Plan shall include but not be limited to: a maintenance schedule, instructions on how to perform maintenance, a list of parts, and manufacturers product data sheets.

§107 Compensation

The total compensation for this Agreement shall not exceed \$3,630,933 for the scope of the Project. Under no condition shall the liability of the City and the State exceed the respective amounts in this section. The CONSULTANT will be compensated based on the PAYMENT SCHEDULE, attached hereto as *Exhibit E*. The use of the Public Funds from the two public agencies are as follows:

1. State, CRA/LA Excess Bond Proceeds (\$2,130,933) - Any disbursement of the State Funds shall be subject to a determination that such expenditure is consistent with the PAYMENT SCHEDULE and is for an Eligible Cost toward the design and installation of public improvements in the public right-of-way or on publicly owned property as set forth under *§401 Allowable and Unallowable Costs and §403 Limitation of Expenditures*;
 2. City, AB1290 (\$1,500,000) - Any disbursement of City Funds shall be subject to a determination that such expenditure is consistent with the Project Budget and is for an Eligible Cost toward the design and installation of public improvements in the public right-of-way or on publicly owned property as set forth under *§401 Allowable and Unallowable Costs and §403 Limitation of Expenditure*.
- A. The City shall authorize the expenditure of an amount not to exceed \$3,630,933 in consideration of, and on the condition that the sum be expended in carrying out the purposes set forth in the Scope of Services and for the complete and satisfactory performance of the terms of this Agreement.
 - B. The City's liability under this Agreement shall only be to the extent of the present City appropriation to fund the contract.
 - C. The CONSULTANT shall bear sole responsibility to complete all required design and construction/improvements as described in §106 of this Agreement. It is understood by both parties that the City makes no commitment to increase funding for the Project should conditions change which would impair the completion of the Project in its entirety.
 - D. The City and the CONSULTANT agree that the CONSULTANT shall hire a single construction subcontractor (GENERAL CONTRACTOR) for construction services. If bid proposals for construction services exceed the amount provided by this contract as indicated on the PAYMENT SCHEDULE (see Exhibit E), then the CONSULTANT may propose scope reductions to allow for the project to be constructed within the amount provided for construction of the project. However, proposed scope reductions must be approved by the Bureau of Engineering prior to reducing scope. Additionally, at the City's discretion, the City may terminate this Contract as set forth under section §505 – Termination for Convenience

II. DUTIES OF CONSULTANT**§201 Duties and Requirements****A. General Statement of Work to be Performed by CONSULTANT**

Pursuant to this Agreement, the Public Funds shall be used toward the design and construction of a twisting cable structure that is illuminated and programmable, stretching diagonally between two 50'-0" pole structures at the intersection of Normandie Avenue and Olympic Boulevard as depicted in Exhibit F. In addition, any affected area by this work shall be upgraded to current code requirements not limited to street work, utility relocation, sidewalk, etc.as required by the required permits.

B. General Requirements

The CONSULTANT shall use the Public Funds for eligible project costs for public improvements in the public right-of-way or on publicly-owned property, subject to the terms and conditions of this Agreement. Funds shall be used solely to carry out the purposes set forth in the General Statement of Work set forth above, and in accordance with the PAYMENT SCHEDULE. Any deviation from the General Statement of Work, the Project Budget, or PAYMENT SCHEDULE must be submitted in writing to the City in advance of any financial commitment for review and approval. The City shall review any such request for deviation within 10 business days of receipt, and that approval shall not unreasonably be withheld. Failure to submit and obtain prior written approval from the City may result in future disbursements being withheld.

§202 Specific Requirements

In furtherance of the general requirements, the CONSULTANT shall do the following:

- A. The CITY and the CONSULTANT agree that the CONSULTANT shall hire a single construction subcontractor (GENERAL CONTRACTOR) to implement the contract. Comply with the requirements delineated for the CONSULTANT in its subcontracts with the Architect for design services and with the GENERAL CONTRACTOR for construction services. Unless previously approved by the City, the use of standard AIA (American Institute of Architects) Agreement B141 between the Owner and Architect and between the Owner and General Contractor A101, shall be used. All construction work on this project shall be performed by a licensed General Contractor. Also, the current edition of "Green Book", Standard Specifications for Public Works Construction as well as the AIA's "General Conditions of the Contract for Construction," current (2003 or later) edition (AIA Form A 201) shall be cited as part of the contract with the Architect and GENERAL CONTRACTOR. If the CONSULTANT has already selected and entered into a contract with subcontractors prior to the execution of this Agreement, then the CONSULTANT shall provide a copy of subcontractor contracts to the City upon execution of this Agreement. Upon the execution of this Agreement, all new contracts entered with subcontractors must be approved by the City prior to execution of the

subcontractor contract; shall adhere to the terms and conditions set forth in §205 – *Subcontracting*, and are superseded by this Agreement in case of conflicting requirements or obligations. The City shall review any such request for new, or modified subcontracts in a timely manner, and that approval shall not unreasonably be withheld.

- B. Submit monthly reports, in an acceptable form by both parties, to the Department of Public Works Bureau of Contract Administration (Attn: Brett McReynolds; Address: 1149 S Broadway, 3rd Floor, Los Angeles, CA 90015) concerning local hiring efforts for the Project. As this is a Public Works project, the CONSULTANT and subconsultants is encouraged to comply with the City's Project Labor Agreement, which promotes workforce development through establishing local hiring and disadvantage worker employment opportunities.
- C. Assure that reports, permits, forms, certifications, and other documents required by federal, state, and local requirements be expeditiously submitted to various governing or regulatory bodies to avoid delays in completing the general requirements of this Agreement.
- D. Identify and provide corrective action on those issues or barriers that impede or delay the completion of the Project as defined in this Agreement. CONSULTANT shall notify the City, in writing, within 10 working days of discovering those issues or barriers and provide a corrective action plan of resolution with sub-activities and milestone completion dates.
- E. Assure that the Architect and the GENERAL CONTRACTOR and their respective subcontractors comply with all applicable United States, State of California, County of Los Angeles, and City statutes, rules, regulations, and reporting requirements in the completion of the General Requirements as defined in this Agreement.
- F. Designate a person to act as the CONSULTANT's representative prior to the execution of the Architect and GENERAL CONTRACTOR contracts to carry out the responsibilities of the "Owner" in those contracts.
- G. Prepare the proposed plans and specifications so that construction can be completed within the available construction budget and PAYMENT SCHEDULE.
- H. Ensure that the GENERAL CONTRACTOR constructs the Project in conformance with the City's construction standards (included but not limited to City of Los Angeles Standard Plans and the latest edition and supplements of the Standard Specifications for Public Works Construction as adopted by the Board of Public works of the City of Los Angeles and as modified by the corresponding issue of the "Brownbook"). The CONSULTANT shall ensure the Project is in full conformance with all applicable local, State, and federal statutes, regulations, and building codes.

§203 Accounting Services

The CONSULTANT shall maintain records for every expenditure incurred directly or indirectly by this Agreement; such records shall include, but not be limited to, documentation of all budgeted expenditures, e.g.: time cards, requisitions for payments, rentals, leases, invoices and any other documents pertinent to the expenditures. In addition, a log of all expenditures by line item shall be maintained by the CONSULTANT. Such records shall be maintained in a file and be made available for examination by the City.

§204 Independent Contractor Status

The CONSULTANT is an independent contractor and not an agent or employee of the City. The CONSULTANT 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.

§205 Subcontracting

CONSULTANT shall not use subcontractors to assist in the performance of this Agreement without the prior written approval of the CITY. If the CONSULTANT has already selected and entered into a contract with subcontractors prior to the execution of this Agreement, then the CONSULTANT shall obtain CITY's written approval of the subcontractor within ten (10) business days from the date of execution of this Agreement. Additionally, if the CONSULTANT notifies the City of any future subcontracting agreement prior to the execution of such agreement, the City shall review it, and that approval shall not unreasonably be withheld. The City shall review any such request for new, or modified subcontracts within 10 business days of receipt, and that approval shall not unreasonably be withheld. If the CONSULTANT uses subcontractors, CONSULTANT shall remain responsible for performing all aspects of this Agreement. The CITY reserves the right to request replacement of subcontractors. The CITY does not have any obligation to pay CONSULTANT'S subcontractors, and nothing herein creates any privity of contract between the CITY and the subcontractors. CONSULTANT shall comply with the following:

- Require that the architect and any contractors or subcontractors for the Project be licensed by the State of California;
- Require the architect, GENERAL CONTRACTOR, and subcontractor(s) to maintain insurance as required by the City; and,
- Meet all applicable requirements of federal, state and local government agencies for Project design documents.

A. Senate Bill 854 and Department of Industrial Relations (construction work)

All contractors and subcontractors shall be registered with the State of California Department of Industrial Relations (DIR) pursuant to California Labor Code section 1725.5, to be qualified to bid on, be listed in a bid proposal, subject to the requirements

of Section 4104 of the Public Contract Code, or engage in the performance of any public works contract.

CONSULTANT is advised of the following change made by California State Senate Bill 854 (Stat. 2014, chapter 28) to the DIR: No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the DIR pursuant to Labor Code Section 1725.5. DIR maintains an up-to-date listing of registered contractors.

- B. The subcontract shall require the selected architect or GENERAL CONTRACTOR to maintain a minimum insurance amount as provided in *Exhibit A* in errors and omission insurance with a twelve (12) month recovery period and the CONSULTANT must submit evidence of same to the City for verification prior to the execution of the CONSULTANT’s Agreement with the architect or GENERAL CONTRACTOR.

III. DUTIES AND POWERS OF THE CITY

The City represents, warrants, and covenants as follows:

- A. That it is a municipal corporation, duly organized and validly existing and in good standing under the laws of the State of California;
- B. That it has the power and authority to carry on its function as a City, to enter into this Agreement, and to consummate the transaction herein contemplated; and
- C. That all actions to be taken by or on behalf of the City to authorize it to make, deliver and implement the terms of this Agreement have been duly and properly taken prior to the execution of this Agreement.

IV. PAYMENT AND FISCAL CONTROLS

§401 Allowable and Unallowable Costs

Allowable Costs

- A. To be eligible for payment under this Agreement, expenditures must be made in compliance with all of the principles set forth below:
 - 1. Clearly defined costs for the design, construction or installation of public improvements in the public right of way or on publicly owned property;
 - a. Clearly defined costs shall specifically identify the public improvement, including details of the location of the improvement;
 - b. Should the CONSULTANT propose to use funds under this Agreement for improvements located on privately owned property, the CONSULTANT will

be required to obtain approval of the CITY prior to authorizing the use of funds. The CITY will make a determination whether a public benefit is derived from the use of the funds. The CONSULTANT may be required to provide the City with information to assist with the determination.

2. Be necessary and reasonable for the proper and efficient performance of this Agreement. The City shall have final authority to determine in good faith whether an expenditure is “necessary and reasonable.” Eligible costs may include, but are not limited to the following:
 - a. Plan Check fees, Building Permit fees, and construction inspection fees.
 - b. Project management costs, including inspection to oversee the design and construction.
3. Conform to the limitations within this Agreement and to any governing statutes, regulations and ordinances.
4. Be fully documented and determined to be in accordance with standard accounting procedures.
5. Not to be billed to any other private or government funding source.
6. Costs incurred prior to the date of execution of this Agreement which have been expressly approved by the City, subject to eligibility as set forth in this Agreement.
7. Community outreach staff costs including e mails, telephone calls, and presentations to Neighborhood Council meetings and other interested Community Organizations, and one on one meetings with Stakeholders. The cost of community outreach shall not exceed \$34,500.

Unallowable Costs

- B. The following costs, among others, are specifically not allowable:
1. Contributions and donations.
 2. Travel and entertainment: Costs of travel, amusements, social activities and incidental costs, such as meals, beverages, lodging and gratuities relating to entertainment, or any political or lobbying activity.
 3. Fines and Penalties: Costs resulting from violations of, or failure to comply with federal, state, and local laws and regulations.
 4. Interest and Other Financial Costs: Interest or borrowings (however represented), bond discounts, refinancing of property or of facilities, cost of financing and refinancing operations, and legal and professional fees paid in connection therewith, other than those specifically allowed in advance.

5. Community engagement reimbursement costs (non-staff costs, including but not limited to, reprographic costs, travel time, supplies, etc).
6. Interest due to late payment of construction subcontractor (GENERAL CONTRACTOR) invoices or any tier construction sub-subcontractor invoices.
7. Membership Expenses: Membership expenses are specifically disallowed.
8. Meeting Attendance: CONSULTANT's staff costs of attending meetings with the City, and/or its consultants, and CONSULTANT's staff and/or subcontractors.
9. Losses: Due to theft, vandalism and/or misconduct of CONSULTANT or subcontractor of any tier.
10. Losses due to delay: Lack of scheduling, coordinating, and monitoring.
11. Subcontracts not approved by the City.
12. Costs incurred prior to the date of execution of this Agreement which have not been expressly approved by the City, subject to eligibility as set forth in this Agreement.
13. Operating license fees.
14. CONSULTANT's program staffing and personnel costs other than direct costs under this contract.
15. Non-maintenance equipment costs.
16. Furnishings.
17. Utilities.
18. Personal hygiene products such as: toilet paper, tissue, hand towels, bars of soap, and liquid soap except for such personal hygiene projects that will be included in the construction General Conditions/General Requirements such as porta-potties.
19. Maintenance or service costs.
20. Pension, health, vacation, sick leave, or other benefits for staff other than direct costs under this contract.

Reimbursements or payments for expenditures which are determined by the City to be unallowable must be immediately returned to the City. If not returned to the City promptly, City may withhold any unpaid amount from future City's future payment to CONSULTANT.

§402 Disbursement

A. Disbursement

1. The CONSULTANT shall be reimbursed on a milestone basis (See Exhibit E), no later than sixty (60) days after receipt by the CITY of a completed and approved invoice for expenses authorized for material furnished, service rendered, or work completed under the terms and conditions of this Agreement, subject to the availability of funds for this project and subject to all other provisions of this Agreement. Project progress payments shall be certified by the CONSULTANT. All charges and expenses shall be properly documented with adequate vouchers and receipts. Only those expenses that are eligible and relate directly to the scope and intent of this project shall be authorized and approved for reimbursement.
2. The CONSULTANT acknowledges that it is aware of liabilities resulting from submitting a false claim for payment by the City under the False Claims Act (Cal. Gov. Code §§ 12650 et seq.), including treble damages, costs of legal actions to recover payments, and civil penalties.
3. The CONSULTANT will withhold 5% of the total contracted amount from the GENERAL CONTRACTOR as retention against their payment(s) to the GENERAL CONTRACTOR. The retention is withheld to ensure that the GENERAL CONTRACTOR completes the Project.
4. Payment Retention - All disbursements to CONSULTANT shall be subject to withholding of a five percent (5%) retention until the CONSULTANT provides documentation to City showing that the Project has been completed to the City's satisfaction and upon meeting the following conditions:
 - a. Payment of B-permit and R-Permit fees;
 - b. Submittal of proof of payments, including supporting backup documentation, for all project related costs;
 - c. Submittal of lien releases from all contractors and subcontractors;
 - d. Submission of a Maintenance Plan for the improvements in the public right-of-way; and,
 - e. Submission of signed released forms from each artist involved, which will provide evidence that each artist has received full and fair compensation for the work and releases the City from any and all future liability (*Exhibit G*);
 - f. Written confirmation submitted by the CONSULTANT that they have received all assurances, and warranties for the project from the construction contractor.
 - g. Upon verification by BOE of the following:
 - i. That all employees of the GENERAL CONTRACTOR and all sub-

contractors were paid appropriately (i.e. prevailing wage, living wage and/or minimum wage);

- ii. The number of employees (i.e. GENERAL CONTRACTOR, all sub-contractors, and CONSULTANT staff) working on the Project that reside locally; and,
- iii. Final close-out fiscal report as required by the City within forty-five (45) days of completion of the Project. The report should include the following:
 - Evidence from the applicable governmental agencies that the work was performed per required codes such as Notice of Completion, Certificate of Occupancy or Certificate of Completion, as appropriate, etc.;
 - A statement that the contracted work has been completed generally in accordance with the plans and specifications previously approved by the Department of Public Works; and,
 - A statement indicating the use of the funds and final close-out fiscal report showing final expenditures, including supporting documents.

B. Invoices shall be prepared in such form and supported by such copies of invoices, payrolls, time sheets, and other documents of proof as may be required by CITY to establish the amount of such invoices for allowable expenses. To expedite the approval process, the CONSULTANT is encouraged to submit draft invoices for review before submitting a final invoice.

C. During the term of this agreement, the CONSULTANT shall require the GENERAL CONTRACTOR, within five (5) working days after the close of the work week, submit to the City, all certifications, weekly payroll forms, employment utilization forms, code inspection reports, sign-offs, and other related documents that are required by the City. It is understood that failure to adhere to the reporting requirements may delay release of construction funds.

§403 Limitation of Expenditures

A. The CONSULTANT shall not expend funds provided under this Agreement prior to the commencement of this Agreement unless specifically allowed hereunder, or subsequent to suspension or termination of this Agreement.

B. Expenditure shall be made in conformance with the PAYMENT SCHEDULE, and shall meet criteria established for “allowable costs” under §401 of this Agreement. Expenditures shall not be made on “non-allowable costs” as established under §401 of this Agreement.

- C. Expenditures shall be in direct support of the Project that is the subject of this Agreement. Expenditures for improvements that are on private property (such as facade improvements) shall require one of the following:
 - 1. A finding of public benefit approved by the City Council prior to the expenditure of any funds on private property; and/or,
 - 2. A comparable financial benefit provided to the City for any expenditure of funds. This benefit shall be confirmed in writing by BOE and City Attorney prior to commitment to fund improvements on private property.

- D. Any payment of funds shall be used exclusively for the activities set forth under this Agreement and shall not be commingled with other funds from other sources administered by the CONSULTANT.

§404 Return of Unexpended Funds and Close-outs

- A. Funds granted by the City, determined by the City to be in excess of the amount actually required, shall be immediately returned to the City. If not returned to the City promptly, City may withhold any unpaid amount from City’s future payment to CONSULTANT.

- B. On or before the date specified in §105 *Term of Agreement and Time of Performance* of this Agreement, the CONSULTANT shall submit to the City, a complete and accurate final close-out invoice of costs eligible for payment under this Agreement. Failure by the CONSULTANT to comply with this requirement may result in a unilateral close-out of this Agreement by the City, based on previous invoices filed with the City, and/or the imposition of sanctions as specified in *Article V - Remedies* of this Agreement.

§405 Schedule of Payments

The CONSULTANT, upon submittal of an acceptable invoice and required documents as set forth under the Disbursement section of §402 *Disbursement*, shall be paid or reimbursed based upon the PAYMENT SCHEDULE as specified in *Exhibit E* or as amended by the City.

The CONSULTANT shall require the GENERAL CONTRACTOR to submit to the CONSULTANT, the Architect, and the City a Proposed CONSTRUCTION PAYMENT SCHEDULE and updated CONSTRUCTION PAYMENT SCHEDULES as described in §608 *Construction Subcontracts*.

§406 Withheld Payments

- A. The City has the authority to withhold funds under this Agreement pending a final determination by the City of questionable expenditures or indebtedness to the City arising from past or present agreements between the City and the CONSULTANT. Upon final determination by the City of disallowed expenditures or indebtedness, the

City may deduct and retain the amount of the disallowance or indebtedness from the amount of the withheld funds.

- B. Payments to the CONSULTANT may be withheld by the City if the CONSULTANT fails to comply with the provisions of this Agreement, including but not limited to all requirement under applicable prevailing wage laws.

§407 Audits and Inspections

At any time during normal business hours and as often as the City or State may deem necessary, the CONSULTANT shall make available for examination and audit, all of its records that support all matters covered by the Agreement. Any subcontract entered into by CONSULTANT for work to be performed under this Agreement must include an identical provision.

§408 Documentation of Construction Expenditures

Construction expenditures shall be supported and verified by properly executed GENERAL CONTRACTOR's and subcontractors' payrolls, time records, invoices, vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. Checks, payrolls, invoices, vouchers, orders or other accounting documents shall be clearly identified and readily accessible. The City may require additional substantiation of costs before making payment. All evidence of costs incurred or to be incurred shall identify or bear identification of the budget account to be charged.

§409 Maintenance of Records

- A. Records, in their original form, shall be maintained in accordance with requirements prescribed by the City with respect to all matters covered by this Agreement. Such records shall be retained for a period of three (3) years with the following qualifications:
1. If any litigation, claim or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.
 2. When records are requested and transferred to be maintained by the City, the 3-year retention requirement is not applicable to the CONSULTANT.
- B. The retention period starts following (1) final payment made by CITY, (2) the expiration of this contract, or (3) termination of this Contract.
- C. Records in their original form pertaining to matters covered by this Agreement shall at all times be retained within Los Angeles County unless written authorization to remove them is granted by the City. The records will be subject to examination and audit by authorized CITY personnel or CITY'S representatives at any time.
- D. Any subcontract entered into by CONSULTANT for work to be performed under this Agreement must include an identical provision.

E. In lieu of retaining the records for the term as prescribed in this provision, CONSULTANT may, upon City's written approval, submit the required information to City in an electronic format, e.g. USB flash drive, at the expiration or termination of this Agreement.

§410 Reporting Requirement

- A. At a minimum quarterly, and in such forms as the City may require, there shall be furnished to the City such statements, records, reports, data and information in both paper documents and electronic files, as the City may request pertaining to matters covered by this Agreement.
- B. For any exceptions to the provision of this Section, the CONSULTANT shall have obtained written approval from the City.
- C. If the CONSULTANT's reports or other documentation are not submitted as required, the City reserves the right to withhold payments to the CONSULTANT or to impose other sanctions, at the City's sole discretion.

§411 Validity of Financial Documentation Submission

Financial reports required to be prepared and submitted by the CONSULTANT to the City shall be accurate and correct in all respects. Should inaccurate reports be submitted to the City, the City may elect to have the CONSULTANT secure the services of a licensed accounting firm. Cost of such accounting services are to be borne by the CONSULTANT and are not to be reimbursed from the funds authorized by this Agreement, unless specifically agreed to between the CONSULTANT and the City in a written agreement.

V. REMEDIES

§501 Breach

In the event any party fails to perform, in whole or in part, any promise, covenant, or agreement herein, or should any representations made by it be untrue, any aggrieved party may avail itself of all rights and remedies, at law or equity, in the courts of law. Said rights and remedies are cumulative of those provided for herein with respect to termination, if any, except that it in no event shall any party recover more than once, suffer a penalty or forfeiture, or be unjustly compensated.

§502 Defaults

- A. Should the CONSULTANT fail for any reason(s) to comply with the contractual obligations of this Agreement, the City reserves the right to exercise any of the following remedies:
 - 1. Reduce the total budget and funding to conform to the CONSULTANT's actual

performance.

2. Suspend project operations in accordance with *§504 Suspension* of the Agreement.
 3. Terminate the Agreement in accordance with *§505 Termination* of this Agreement.
 4. Recover spent funds.
 5. Assume the management of activities covered under this Agreement, either directly or by contract.
 6. Direct CONSULTANT to assert any applicable rights under the Performance Bond and Payment Bond from its construction subcontractor that may be necessary in order to complete the Project.
- B. The City shall provide written notice of default to the CONSULTANT as provided in this Agreement and the CONSULTANT shall have fifteen (15) calendar days to cure the default. In the event the CONSULTANT fails to cure the default within fifteen (15) calendar days, City may avail itself of all right or remedies available at law or equity, including but not limited to those referred to in this Agreement. In the event the CONSULTANT commences to cure default which reasonably requires more than fifteen (15) days to cure and the CONSULTANT diligently pursues curing the default, the CONSULTANT will not be held in default so long as the CONSULTANT is diligently pursuing their actions to cure and completing the cure in a reasonable time period.

§503 Notices of Suspension or Termination

In the event that this Agreement is suspended or terminated, the CONSULTANT shall immediately notify all affected employees and participants and shall notify in writing all other parties contracted under the terms of this Agreement within five (5) working days.

§504 Suspension

- A. At City's sole discretion, City may suspend all or part of the project operations for failure of the CONSULTANT to comply with the terms and conditions of this Agreement by providing CONSULTANT with written notice of suspension. Upon receipt of the notice of suspension, CONSULTANT shall immediately cease the services suspended and shall not incur any additional obligations, costs or expenses to City until City gives written notice to recommence the services.
- B. Said notice shall set forth the specific conditions of non-compliance and the period provided for corrective action.
- C. Within five (5) working days, the CONSULTANT shall reply in writing setting forth the corrective actions which will be undertaken, subject to written approval.

- D. Performance under this Agreement shall be automatically suspended without any notice from the City as of the date the CONSULTANT is not fully insured in compliance with §619 Insurance of this Agreement. Performance shall not resume without the prior written approval of the City.

§505 Termination**A. Termination for Convenience**

CITY may terminate this Contract for CITY'S convenience at any time by providing CONSULTANT thirty days written notice. Upon receipt of the notice of termination, CONSULTANT shall immediately take action not to incur any additional obligations, costs or expenses, except as may be necessary to terminate its activities. CITY shall pay CONSULTANT its reasonable and allowable costs through the effective date of termination and those reasonable and necessary costs incurred by CONSULTANT to effect the termination. Thereafter, CONSULTANT shall have no further claims against CITY under this Contract. All finished and unfinished documents and materials procured for or produced under this Contract, including all intellectual property rights CITY is entitled to, shall become CITY property upon the date of the termination. CONSULTANT agrees to execute any documents necessary for CITY to perfect, memorialize, or record CITY'S ownership of rights provided herein.

B. Termination for Breach of Contract

1. Except as provided in §639, if CONSULTANT fails to perform any of the provisions of this Contract or so fails to make progress as to endanger timely performance of this Contract, CITY may give CONSULTANT written notice of the default. CITY'S default notice will indicate whether the default may be cured and the time period to cure the default to the sole satisfaction of CITY. Additionally, CITY'S default notice may offer CONSULTANT an opportunity to provide CITY with a plan to cure the default, which shall be submitted to CITY within the time period allowed by CITY. At CITY'S sole discretion, CITY may accept or reject CONSULTANT'S plan. If the default cannot be cured or if CONSULTANT fails to cure within the period allowed by CITY, then CITY may terminate this Contract due to CONSULTANT'S breach of this Contract.
2. If the default under this Contract is due to CONSULTANT'S failure to maintain the insurance required under this Contract, CONSULTANT shall immediately: (1) suspend performance of any services under this Contract for which insurance was required; and (2) notify its employees and Subconsultants of the loss of insurance coverage and Consultant's obligation to suspend performance of services. CONSULTANT shall not recommence performance until CONSULTANT is fully insured and in compliance with CITY'S requirements.
3. If a federal or state proceeding for relief of debtors is undertaken by or against CONSULTANT, or if CONSULTANT makes an assignment for the benefit of creditors, then CITY may immediately terminate this Contract.

4. If CONSULTANT engages in any dishonest conduct related to the performance or administration of this Contract or violates CITY'S laws, regulations or policies relating to lobbying, then CITY may immediately terminate this Contract.
5. Acts of Moral Turpitude
 - a. CONSULTANT shall immediately notify CITY if CONSULTANT or any Key Person, as defined below, is charged with, indicted for, convicted of, pleads nolo contendere to, or forfeits bail or fails to appear in court for a hearing related to, any act which constitutes an offense involving moral turpitude under federal, state, or local laws ("Act of Moral Turpitude").
 - b. If CONSULTANT or a Key Person is convicted of, pleads nolo contendere to, or forfeits bail or fails to appear in court for a hearing related to, an Act of Moral Turpitude, CITY may immediately terminate this Contract.
 - c. If CONSULTANT or a Key Person is charged with or indicted for an Act of Moral Turpitude, CITY may terminate this Contract after providing CONSULTANT an opportunity to present evidence of CONSULTANT'S ability to perform under the terms of this Contract.
 - d. Acts of Moral Turpitude include, but are not limited to: violent felonies as defined by Penal Code Section 667.5, crimes involving weapons, crimes resulting in serious bodily injury or death, serious felonies as defined by Penal Code Section 1192.7, and those crimes referenced in the Penal Code and articulated in California Public Resources Code Section 5164(a)(2); in addition to and including acts of murder, rape, sexual assault, robbery, kidnapping, human trafficking, pimping, voluntary manslaughter, aggravated assault, assault on a peace officer, mayhem, fraud, domestic abuse, elderly abuse, and child abuse, regardless of whether such acts are punishable by felony or misdemeanor conviction.
 - e. For the purposes of this provision, a Key Person is a principal, officer, or employee assigned to this Contract, or owner (directly or indirectly, through one or more intermediaries) of ten percent or more of the voting power or equity interests of CONSULTANT.
6. In the event CITY terminates this Contract as provided in this section, CITY may procure, upon such terms and in the manner as CITY may deem appropriate, services similar in scope and level of effort to those so terminated, and CONSULTANT shall be liable to CITY for all of its costs and damages, including, but not limited to, any excess costs for such services.
7. If, after notice of termination of this Contract under the provisions of this section, it is determined for any reason that CONSULTANT was not in default under the provisions of this section, or that the default was excusable under the terms of this Contract, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to §505(A) Termination for Convenience.

- 8. The rights and remedies of CITY provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

- C. In the event that this Contract is terminated, CONSULTANT shall immediately notify all employees and Subconsultants, and shall notify in writing all other parties contracted with under the terms of this Contract within five working days of the termination.

VI. GENERAL TERMS AND CONDITIONS AND CONTRACTING PROVISIONS

§601 General

The following specifically identified exhibits and attachments shall hereby be incorporated herein by reference.

§602 Construction of Provisions and Titles Herein

All titles, subtitles, or headings in this Agreement have been inserted for convenience and shall not be deemed to affect the meaning or construction of any of the terms or provisions of this Agreement. The language of this Agreement shall be construed according to its fair meaning and not strictly for or against the City or the CONSULTANT. The word "CONSULTANT" includes the party or parties identified in this Agreement. The singular shall include the plural and if there is more than one CONSULTANT, unless expressly stated otherwise, their obligations and liabilities shall be joint and several. Use of the feminine, masculine, or neuter genders shall be deemed to include the genders not used.

§603 Applicable Law, Interpretation and Enforcement

Each party's performance shall comply with all applicable laws of the United States of America, the State of California, and the CITY, including but not limited to, laws regarding health and safety, labor and employment, wage and hours and licensing. This Agreement shall be enforced and interpreted under the laws of the State of California without regard to conflict of law principles. The CONSULTANT shall comply with new, amended, or revised laws, regulations, and/or procedures that apply to the performance of this Agreement with no additional compensation paid to the CONSULTANT.

In any action arising out of this Agreement, CONSULTANT consents to personal jurisdiction, and agrees to bring all such actions, exclusively in state or federal courts located in Los Angeles County, California.

If any part, term or provision of this Agreement is held void, illegal, unenforceable, or in conflict with any federal, state or local government law or regulation, the validity of the remaining parts, terms or provisions of this Agreement shall not be affected.

§604 Competitive Proposal Requirement

Upon the execution of Agreement, any new subcontracts entered into by the CONSULTANT exceeding the amount of One Hundred Thousand Dollars (\$100,000) shall be let only by competitive proposals, except where using a sole supplier of services or materials, which is justified and approved in advance by the City. The CONSULTANT shall submit to the City evidence that it has received a minimum of three (3) verifiable proposals for such subcontract and justification for selection of the successful proposer or documentation to support the fact of the sole supplier. Consideration shall be given to local proposers and/or proposers with a demonstrated record of hiring local workers. Records shall be maintained by the CONSULTANT showing the successful proposer or documentation to support the fact of the sole supplier. Records shall be maintained by the CONSULTANT showing the parties solicited and the proposals submitted.

§605 Compliance with Prevailing Wages Laws

The CONSULTANT warrants and certifies that any contract awarded hereunder will require the Contractor to comply with the provisions of the Labor Code of the State of California, relating to Public Works wages. These provisions require the Contractor to pay not less than the "General Prevailing Wage Rates" to all workers employed in the execution of the contract and to post a copy of the "General Prevailing Wage Rates" at the job-site, in a conspicuous place available to all employees and applicants for employment.

The "General Prevailing Wage Rates" shall be those rates as determined by the Director of the Department of Industrial Relations of the State of California. Copies of these rates are on file in the Office of Contract Compliance, Bureau of Contract Administration, telephone (213) 847-1922.

Information regarding prevailing wage rates may be obtained from the Office of Policy, Research and Legislation, Prevailing Wage Unit, P.O. Box 420603, San Francisco, CA 94142, Telephone: (415) 703-4774, Email: Statistics@dir.ca.gov.

The CONSULTANT AND/OR GENERAL CONTRACTOR shall submit Certified Payroll Records to the Office of Contract Compliance on a weekly basis using the City's On-Line Certified Payroll System (OCPS) throughout the project until completion of the project. In addition, the contractor shall employ apprentices in the ratio to journeymen as required by Section 1777.5 of the California Labor Code.

The CONSULTANT, GENERAL CONTRACTOR, and all subcontractors of any tier, shall cooperate in allowing approved Compliance Group Representatives access to the project job site for the purpose of conducting worker interviews to insure compliance with the requirement to pay proper prevailing wages on City projects. This will be done in order to comply with the Board of Public Works' August 20, 2004 adoption of a Joint Labor Compliance Monitoring Program.

Each Compliance Group Representative must wear their City-issued Joint Labor Compliance Monitoring Program identification badge at all times while on the job site and must restrict their actions to interviewing workers employed on the project. For a copy of the Joint Labor Compliance Monitoring Program board report, or for any questions,

contact the Office of Contract Compliance at (213) 847-2662.

If there are any questions regarding prevailing wage or the City's policy and/or procedure to monitor publicly funded construction projects, please contact the Bureau of Contract Administration at (213) 847-2662.

§606 Compliance with Statutes and Resolutions

- A. The CONSULTANT warrants and certifies that in the performance of this Agreement, it shall comply with all applicable statutes, rules, regulations and orders of the United States, the State of California, the County and the City of Los Angeles, including laws and regulations pertaining to labor, wages, hours, and other conditions of employment; the City's non-discrimination provisions and Affirmative Action Plan; and abatement of Asbestos Containing Materials (ACM) and Lead-Based Paint (LBP), including insuring that all personnel involved in the abatement or removal process of all ACMs and LBP will wear the necessary, legally-required protective clothing and respiratory gear and that the work done by properly licensed personnel. If during the course of this Agreement, the City receives or promulgates new or revised laws, regulations and/or procedures that apply to the performance of this Agreement, such data shall be submitted to the CONSULTANT for compliance thereto. These conditions shall be made an integral part of any subsequent amendment arising out of new, amended, or revised laws, regulations, and/or procedures that apply to the performance of this Agreement.
- B. Applicable statutes, rules, or regulations may include, but are not limited to, the following:
1. Clean Air Act, as amended (42 USC 1857, *et seq.*);
 2. Federal Pollution Control Act, as amended (33 USC 1251, *et seq.*);
 3. Title VI of the Civil Rights Act of 1964, (42 USC 2000d), and implementing regulations;
 4. Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972, (42 USC 2000e), and implementing regulations;
 5. Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, (29 USC 794), and implementing regulations issued at 45 CFR, Part 84;
 6. The Americans with Disabilities Act (ADA), PL 101-336 and all applicable regulations;
 7. The Age Discrimination Act of 1975, as amended, (42 USC 6101, *et seq.*) implementing regulations.

§607 Conflict of Interest

A. The CONSULTANT covenants that none of its directors, officers, employees, or agents shall participate in selecting, or administrating any subcontract supported (in whole or in part) by City funds (regardless of source) where such person is a director, officer, employee or agent of the contractor or subcontractor; or where the selection of contractors or subcontractors is or has the appearance of being motivated by a desire for personal gain for themselves or others such as family business, etc.; or where such person knows or should have known that:

1. A member of such person’s immediate family, or partner, or organization has a financial interest in the subcontract;
2. The subcontractor is an entity or someone with whom such person has or is negotiating any prospective employment; or
3. The participation of such persons would be prohibited by the California Political Reform Act, California Government Code Section 87100 *et seq.* If such person were a public officer, because such person would have a “financial or other interests” in the subcontract.

B. Definitions

1. The term “immediate family” includes but is not limited to those persons related by blood or marriage, such as husband, wife, father, mother, brother, sister, son, daughter, father-in-law, mother-in-law, brother-in-law, son-in-law, and daughter-in-law.
2. The term “financial or other interest” includes but is not limited to:
 - a. Any direct or indirect financial interest in the specific contract, including a commission or fee, a share of the proceeds, prospect of a promotion or of future employment, a profit, or any other form of financial reward.
 - b. Any of the following interest in the subcontractor ownership: partnership interest or other beneficial interest of five percent or more; ownership of five percent or more of the stock; employment in a managerial capacity or membership on the board of director or governing body.

C. The CONSULTANT further covenants that no officer, director, employee, or agent shall solicit or accept gratuities, favors, anything of monetary value from an actual or potential subcontractor, supplier, a party to a sub-agreement, (or persons who are otherwise in a position to benefit from the actions of any officer, employee, or agent).

D. The CONSULTANT shall not subcontract with a former director, officer, or employee within a one-year period following the termination of the relationship between said person and the CONSULTANT.

E. Prior to obtaining the City’s approval of any subcontract, the CONSULTANT shall disclose to the City any relationship, financial or otherwise, direct or indirect, of the

CONSULTANT or any of its officers, directors or employees or their immediate family with the proposed subcontractor and its officers, directors or employees.

- F. For further clarification of the meaning of any of the terms used herein, the parties agree that references shall be made to the guidelines, rules, and laws of the City of Los Angeles and State of California regulations regarding conflict of interest.
- G. The CONSULTANT warrants that it has not paid or given and will not pay or give to any third person, any money or other consideration for obtaining this Agreement.
- H. The CONSULTANT covenants that no member, officer or employee of the CONSULTANT shall have any interest, direct or indirect, in any contract or subcontract of the proceeds thereof for work to be performed in connection with this project during his/her tenure as such employee, member or officer or for one year thereafter.
- I. The CONSULTANT shall incorporate the foregoing Subsections of this Section into every agreement that it enters into in connection with this Project and shall substitute the term "subcontractor" for the term "CONTRACTOR" or "CONSULTANT."

§608 Construction Subcontracts

- A. If the CONSULTANT has already selected and entered into a contract with a GENERAL CONTRACTOR to assist in the performance of this Agreement prior to the execution of this Agreement, then the CONSULTANT shall obtain City's written approval within 10 business days from the date of execution of this Agreement.
- B. CONSULTANT shall amend any existing subcontract entered into prior to the execution of this Agreement to reflect the licensing and labor standard provisions if those requirements are not already included, and as consistent with this Agreement.
- C. Applicable labor standard provisions including assurances that the GENERAL CONTRACTOR shall pay all his/her employees based upon prevailing wages and the General Conditions shall be a part of all construction subcontracts awarded pursuant to this Agreement, including but not limited to the City's right to review records to demonstrate compliance.
 - 1. Construction subcontracts shall include a requirement that the applicable subcontractors, including but not limited to the GENERAL CONTRACTOR, submit Certified Payroll Records to the CONSULTANT consistent with and to facilitate CONSULTANT'S compliance with the requirements of §605 of this Agreement.
 - 2. Construction subcontracts shall include a requirement that applicable subcontractors, including but not limited to the GENERAL CONTRACTOR, shall cooperate in allowing approved Compliance Group Representatives access to the project job site for the purpose of conducting work interviews to ensure compliance with the requirement to pay proper prevailing wages on

CITY projects. This will be done in order to comply with the Board of Public Works' August 20, 2004 adoption of a Joint Labor Compliance Monitoring Program.

- D. The construction subcontract shall require the GENERAL CONTRACTOR to comply with the provisions under §202 *Specific Requirements*.
- E. Upon award of the construction subcontract, the GENERAL CONTRACTOR shall develop and submit to the CONSULTANT, the Architect, and the City a Proposed CONSTRUCTION PAYMENT SCHEDULE of Work for approval before starting the construction work. The Proposed CONSTRUCTION PAYMENT SCHEDULE of Work shall describe in details the sequence of the cost loaded construction activities, the dates, the locations, trades and number of workers, materials to be placed, and types of equipment to be used to complete the contract in the form of tabulations or scheduling charts.
- F. CONSULTANT will require the GENERAL CONTRACTOR to provide a Performance Bond in the amount of 100% of the contract amount and in a form acceptable to the CITY to guarantee faithful performance of all work, within the time prescribed, in a manner satisfactory to the City, and that all materials and workmanship will be free from original or developed defects. The bond must remain in effect until the end of all warranty periods set forth in the Contract. CONSULTANT will also require the GENERAL CONTRACTOR to provide a Payment Bond in the amount of 100% of the contract amount and in a form acceptable by the CITY to satisfy claims of material suppliers and mechanics and laborers employed by it on the Work. The bond shall be maintained by the GENERAL CONTRACTOR in full force and effect until the Work is accepted by the City and until all claims for materials and labor are paid and shall otherwise comply with the Civil Code.
- G. If the GENERAL CONTRACTOR desires to make a major change in the PAYMENT SCHEDULE after commencing, or if the PAYMENT SCHEDULE fails to reflect the actual progress, the GENERAL CONTRACTOR shall submit to the CONSULTANT, the Architect, and the City a revised PAYMENT SCHEDULE in advance of beginning revised operations.

§609 Subconsultant/subcontractor Services

For any new subcontracts entered into after the execution of this Agreement, the CONSULTANT shall submit to the City the following items:

- 1. The solicitation for proposals, if required pursuant to §604 (or sole source justification).
- 2. The list of persons or firms to which the solicitation announcement was sent if required pursuant to §604.
- 3. A minimum of three proposals (if required pursuant to §604).

- 4. Specific reasons for the selection of the prospective subcontractor. A resume or job application which fully describes the subcontractor's previous experience, particularly as it relates to the services to be performed under the subcontract.
- 5. The proposed subcontract which includes the following:
 - a. Full description of the work activities that will be performed by the subcontractor.
 - b. The length of time the subcontractor will be retained.
 - c. The fee to be paid to the subcontractor indicating whether an hourly, rate, weekly rate, or job completion date is to be the basis for payment.

§610 Consultant Personnel

- A. The CONSULTANT shall employ persons meeting the qualifications for those positions they hold.
- B. With prior written approval from the City, the CONSULTANT may use funds provided under this Agreement to pay for labor costs for the CONSULTANT's own employees that perform maintenance, design or construction services specifically for the Project.
- C. Deviation of the foregoing limitations shall require written City approval before becoming effective.

§611 Cost-Plus-a-Percentage-of-Cost-Subcontracting

Under no circumstances shall the CONSULTANT enter into Cost-Plus-a-Percentage-of-Cost subcontracts.

§612 Intentionally Not Used

§613 Claims for Labor and Materials

CONSULTANT shall promptly pay when due all amounts owed for labor and materials furnished in the performance of this Agreement so as to prevent any lien or other claim under any provision of law from arising against any City property (including reports, documents, and other tangible or intangible matter produced by CONSULTANT hereunder), and shall pay all amounts due under the Unemployment Insurance Act or any other applicable law with respect to labor used to perform under this Agreement.

§614 Indemnification

Except for the active negligence or willful misconduct of the CITY or any of their boards, officers, agents, employees, assigns and successors in interest, the CONSULTANT shall

defend, indemnify, and hold harmless the CITY, State, and any of their boards, officers, agents, employees, assigns, and successors in interest from and against all lawsuits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the CITY, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever, for death or injury to any person, including the CONSULTANT's employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of an act, error, or omission by the CONSULTANT, subcontractors of any tier, or their boards, officers, agents, employees, assigns, and successors in interest in connection with the performance of this Agreement. The rights and remedies of the City provided in this Section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement. This provision will survive expiration or termination of this Agreement.

§615 Intellectual Property Indemnification

CONSULTANT, at its own expense, shall defend, indemnify, and hold harmless the CITY, State, and any of its boards, officers, agents, employees, assigns, and successors in interest from and against all lawsuits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the City and State, including but not limited to, costs of experts and consultants), damages or liability of any nature arising out of the infringement, actual or alleged, direct or contributory, of any intellectual property rights, including, without limitation, patent, copyright, trademark, trade secret, right of publicity, and proprietary information: (1) on or in any design, medium, matter, article, process, method, application, equipment, device, instrumentation, software, hardware, or firmware used by CONSULTANT, or its Subconsultants, in performing the work under this Agreement; or (2) as a result of City's actual or intended use of any Work Product (as defined in §617 *Ownership and License*) furnished by CONSULTANT, or its Subconsultants of any tier, under this Agreement. The rights and remedies of the City provided in this Section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement. This provision will survive expiration or termination of this Agreement.

§616 Intellectual Property Warranty

The CONSULTANT represents and warrants that its performance of all obligations under this Agreement does not infringe in any way, directly or contributorily, upon any third party's intellectual property rights, including, without limitation, patents, copyrights, trademarks, trade secrets, rights of publicity and proprietary information.

§617 Ownership and License

Unless otherwise provided for herein, all finished and unfinished works, tangible or not, created or constructed under this Agreement (each a "Work Product"; collectively "Work Products") are covered under a separate contract between the CONSULTANT and the Artist. That separate contract includes provisions regarding goodwill, copyright,

trademark, patent, trade secret and all other intellectual property rights worldwide in any Work Products.

CONSULTANT shall comply with the Revocable Permit Conditions for the Project and bear any costs in order to comply. In the event that artwork is removed or damaged in the public right of way, CONSULTANT shall maintain or repair the artwork at no cost to the CITY. If CONSULTANT chooses to remove physical artwork (i.e. exhibit or sculpture), then the structure shall be removed and the right-of-way restored as per instructions included in the Revocable Permit. CONSULTANT shall notify the CITY in writing at least 60 days prior to removal of any physical artwork associated with the Project.

All forms of Work Products originated and prepared by the CONSULTANT and Subconsultants under this Agreement shall be and remain the exclusive property of City for its use in any manner City deems appropriate, unless otherwise described in §617 for artwork covered under a separate contract between the CONSULTANT and Artist. While any artwork is installed in the public right of way or on other public property, the City shall have a non-exclusive license to reproduce the artwork for any noncommercial use.

§618 Data Protection

- A. The CONSULTANT shall protect, using the most secure means and technology that is commercially available, CITY-provided data or consumer-provided data acquired in the course and scope of this Agreement, including but not limited to customer lists and customer credit card or consumer data, (collectively, the "CITY Data"). The CONSULTANT shall notify the CITY in writing as soon as reasonably feasible, and in any event within twenty-four hours, of the CONSULTANT's discovery or reasonable belief of any unauthorized access of CITY Data (a "Data Breach"), or of any incident affecting, or potentially affecting CITY Data related to cyber security (a "Security Incident"), including, but not limited to, denial of service attack, and system outage, instability or degradation due to computer malware or virus. The CONSULTANT shall begin remediation immediately. The CONSULTANT shall provide daily updates, or more frequently if required by the CITY, regarding findings and actions performed by the CONSULTANT until the Data Breach or Security Incident has been effectively resolved to the CITY's satisfaction. The CONSULTANT shall conduct an investigation of the Data Breach or Security Incident and shall share the report of the investigation with the CITY. At the CITY's sole discretion, the CITY and its authorized agents shall have the right to lead or participate in the investigation. The CONSULTANT shall cooperate fully with the CITY, its agents and law enforcement.
- B. If the CITY is subject to liability for any Data Breach or Security Incident, then the CONSULTANT shall fully indemnify and hold harmless the CITY and State and defend against any resulting actions.

§619 Insurance

During the term of this Agreement and without limiting the CONSULTANT's obligation to indemnify, hold harmless and defend the CITY and State the CONSULTANT shall provide and maintain at its own expense a program of insurance having the coverages and limits

not less than the required amounts and types as determined by the Office of the City Administrative Officer of Los Angeles, Risk Management (*Exhibit A – Insurance Requirements* attached hereto). The insurance must: (1) conform to the CITY’s requirements; (2) comply with the Insurance Contractual Requirements (*Exhibit A* attached hereto); and (3) otherwise be in a form acceptable to the Office of the City Administrative Officer, Risk Management. The CONSULTANT shall comply with all Insurance Contractual Requirements shown on *Exhibit A* hereto and made a part of this Agreement. CONSULTANT must require in any subcontracts with the GENERAL CONTRACTOR or other subcontractors all insurance requirements as determined by the Office of the City Administrative Officer, Risk Management.

§620 Limitations of Corporate Acts

The CONSULTANT shall not amend its Articles of Incorporation or Bylaws, move to dissolve, transfer any assets derived from funds provided under §107 *Compensation* herein or take any other steps which may materially affect the performance of this Agreement without first notifying the CITY in writing. The CONSULTANT shall notify the CITY immediately in writing of any change in the CONSULTANT’s organizational name.

§621 Limitations of Expenditures

- A. The CONSULTANT shall not expend funds provided under this Agreement prior to the commencement of this Agreement, during suspension or subsequent to termination of this Agreement.
- B. Expenditures shall be made in conformance with the CITY approved PAYMENT SCHEDULE and shall meet criteria established for allowable costs under §401 *Allowable and Unallowable Costs* of this Agreement.

§622 Lobbying Prohibited

- A. None of the funds provided under this Agreement shall be used for any purpose designed to support or defeat any pending legislation or administrative regulation.
- B. The CONSULTANT and its subcontractors shall file a disclosure form at the end of each calendar quarter in which there occurs any event requiring disclosure or which materially effects the accuracy of the information contained in any disclosure form previously filed by the CONSULTANT.

§623 Mandatory Provisions Pertaining to Non-Discrimination in Employment

Unless otherwise exempt, this Agreement is subject to the applicable non-discrimination, equal benefits, equal employment practices, and affirmative action program provisions in LAAC Section 10.8 *et seq.*, as amended from time to time.

- A. The CONSULTANT shall comply with the applicable non-discrimination and affirmative action provisions of the laws of the United States of America, the State of California, and the CITY. In performing this Agreement, The CONSULTANT shall not

discriminate in any of its hiring or employment practices against any employee or applicant for employment because of such person’s race, color, religion, national origin, ancestry, sex, sexual orientation, gender, gender identity, age, disability, domestic partner status, marital status or medical condition.

- B. The requirements of Section 10.8.2.1 of the LAAC, the Equal Benefits Ordinance, and the provisions of Section 10.8.2.1(f) are incorporated and made a part of this Agreement by reference.
- C. The provisions of Section 10.8.3 of the LAAC are incorporated and made a part of this Agreement by reference and will be known as the “Equal Employment Practices” provisions of this Agreement.
- D. The provisions of Section 10.8.4 of the LAAC are incorporated and made a part of this Agreement by reference and will be known as the “Affirmative Action Program” provisions of this Agreement.

Any subcontract entered into by the CONSULTANT for work to be performed under this Agreement must include an identical provision §623(A) to (D).

§624 Business Inclusion Program

To the fullest extent possible in the administration of this Agreement, CONSULTANT agrees to provide opportunities for minority-owned, women-owned, small, emerging, disabled veteran-owned, and other business enterprises to participate in procurements under this Agreement.

§625 Permits

The CONSULTANT and its directors, officers, partners, agents, employees, contractors, and subcontractors, shall obtain and maintain all licenses, permits, certifications and other documents necessary for the CONSULTANT’s performance of this Agreement and shall pay any fees required therefore. The CONSULTANT shall immediately notify within two (2) business days, the City of any suspension, termination, lapses, non-renewals, or restrictions of licenses, permits, certificates, or other documents that relate to the CONSULTANT’s performance of this Agreement.

CONSULTANT shall comply with the Revocable Permit Conditions for the Project and bear any costs in order to comply. In the event that artwork is removed or damaged in the public right of way, CONSULTANT shall maintain or repair the artwork at no cost to the CITY. If CONSULTANT chooses to remove physical artwork (i.e. exhibit or sculpture), then the structure shall be removed, and the right-of-way restored as per instructions included in the Revocable Permit. CONSULTANT shall notify the CITY in writing at least 60 days prior to removal of any physical artwork associated with the Project.

§626 Los Angeles City Business Tax Registration Certificate Required

For the duration of this Agreement, the CONSULTANT shall maintain valid Business Tax

Registration Certificate(s) as required by the CITY’s Business Tax Ordinance, Section 21.00 *et seq.*, of the Los Angeles Municipal Code (“LAMC”), and shall not allow the Certificate to lapse or be revoked or suspended.

§627 Political Activity Prohibited

None of the funds, materials, property or services provided directly or indirectly under this Agreement shall be used for any partisan political activity, or to further the election or defeat of any candidate for public office.

§628 Assignment and Delegation

The CONSULTANT may not, unless it has first obtained the written permission of the CITY:

- A. Assign or otherwise alienate any of its rights under this Agreement, including the right to payment; or,
- B. Delegate, subcontract, or otherwise transfer any of its duties under this Agreement.

§629 Prohibition of Legal Procedures

The CONSULTANT is prohibited from using the funds received under this Agreement, or funds realized as a result of this Agreement, for the purpose of instituting legal proceedings against the CITY or their official representatives.

§630 Public Information

In all communications with the press, television, radio or any other means of communicating with the general community as deemed appropriate by CONSULTANT, the communication shall make specific reference to the CITY and State as a/the sponsoring agency of the Project.

§631 Restriction on Disbursements

No money received pursuant to this Agreement by the CONSULTANT shall be disbursed to any subcontractor except pursuant to a written contract in accordance with the provision of this Agreement and unless the subcontractor is in compliance with CITY requirements with regard to accounting and fiscal matters, to the extent that they are applicable.

§632 Confidentiality

§632 is hereby amended in its entirety to read as follows:

All documents, information, City Data (as that term is defined in §618 Data Protection), and materials provided to CONSULTANT by CITY or developed by CONSULTANT pursuant to this Contract (collectively “Confidential Information”) are confidential. The

CONSULTANT shall not provide, and shall prohibit its employees and subcontractors from providing or disclosing, any Confidential Information or their contents or any information therein either orally or in writing, to any person or entity, except as authorized by CITY or as required by law. CONSULTANT shall immediately notify CITY of any attempt by a third party to obtain access to any Confidential Information. This provision will survive expiration or termination of this Agreement.

§633 Subcontracts

- A. For the purpose of this Agreement, subcontracts shall include, but not be limited to, third party agreements, consultant services subcontracts, and subcontracts.

- B. Subcontracts entered into in the performance of this Agreement shall:
 - 1. Be subject to the terms and conditions set forth in this Agreement. CITY may require incorporation of the applicable provisions in a written agreement. These provisions include, but are not limited to the following
 - a. City of Los Angeles Worker Retention and Living Wage Ordinance. Section 10.36 *et seq.*, and Section 10.37 *et seq.*, of the Los Angeles Administrative Code (LAAC).
 - b. City of Los Angeles First Source Hiring Ordinance. Section 10.44 *et seq.*, of the Los Angeles Administrative Code
 - c. City of Los Angeles Contractor Responsibility Ordinance. Section 10.40 *et seq.*, of the Los Angeles Administrative Code
 - d. Iran Contracting Act of 2010 Compliance Affidavit.
 - e. City Contractors' Use of Criminal History for Consideration of Employment Applications. Section 10.48 of the Los Angeles Administration Code.
 - f. City of Los Angeles Non-Discrimination, Equal Employment Practices, and Affirmative Action Program Provisions. (Section 10.8 of the Los Angeles Administrative Code.)
 - 2. Specifically prohibit assignment or transfer of interest without prior written approval by the CITY.
 - 3. Specifically provide proof, when applicable, of the appropriate permits and/or business licenses.

- C. A copy of each executed subcontract, or amendment(s) thereto, shall be submitted to the CITY prior to payment.

§634 Amendments

Either party may request an amendment to this Agreement. Amendments to this Agreement must be mutually agreed in writing and properly executed by both the CITY and the CONSULTANT.

§635 Waivers

- A. Waivers of any provision of this Agreement must be in writing and signed by the appropriate authorities of the CITY or the CONSULTANT.
- B. A waiver of a default of any part, term or provision of this Agreement shall not be construed as a waiver of any succeeding default or as a waiver of the part, term or provision itself. A party's performance after the other party's default shall not be construed as a waiver of that default.

§636 Complete Agreement

This Agreement sets forth all of the rights and duties of the parties with respect to the subject matter of this Agreement, and replaces any and all previous Agreements or understandings, whether written or oral, relating thereto. This Agreement may be amended only as provided for in the provisions of §634 Amendment hereof.

§637 Number of Originals and Exhibits and Counterparts

This Agreement is executed in three (3) duplicate originals, each of which is deemed to be an original.

This Agreement may be executed, including electronic signatures, in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

§638 Severability

If any term, covenant or condition of this Agreement shall, to any extent, be invalid, void, illegal or unenforceable, the remainder of this Agreement shall not be affected thereby, and each other term, covenant or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

§639 Excusable Delays

Neither party shall be liable for its delay or failure to perform any obligation under and in accordance with this Agreement, if the delay or failure arises out of fires, floods, earthquakes, epidemics, quarantine restrictions, other natural occurrences, strikes, lockouts (other than a lockout by the party or any of the party's Subcontractors), freight embargoes, terrorist acts, insurrections or other civil disturbances, or other similar events to those described above, but in each case the delay or failure to perform must be beyond the control and without any fault or negligence of the party delayed or failing to perform (these events are referred to in this provision as "Force Majeure Events").

Notwithstanding the foregoing, a delay or failure to perform by a Subcontractor of the CONSULTANT shall not constitute a Force Majeure Event, unless the delay or failure arises out of causes beyond the control of both the CONSULTANT and Subcontractor, and without any fault or negligence of either of them. In such case, the CONSULTANT shall not be liable for the delay or failure to perform, unless the goods or services to be furnished by the Subcontractor were obtainable from other sources in sufficient time to permit the CONSULTANT to perform timely. As used in this Agreement, the term "Subcontractor" means a subcontractor at any tier.

In the event the CONSULTANT's delay or failure to perform arises out of a Force Majeure Event, the CONSULTANT agrees to use commercially reasonable best efforts to obtain the goods or services from other sources, and to otherwise mitigate the damages and reduce the delay caused by the Force Majeure Event.

§640 Child Support Assignment Orders

This Contract is subject to the Child Support Assignment Orders Ordinance, LAAC Section 10.10, as amended from time to time. Pursuant to the Child Support Assignment Orders Ordinance, CONSULTANT will fully comply with all applicable State and Federal employment reporting requirements for CONSULTANT'S employees. CONSULTANT shall also agree (1) that the Principal Owner(s) of CONSULTANT are in compliance with any Wage and Earnings Assignment Orders and Notices of Assignment applicable to them personally; (2) that CONSULTANT will fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment in accordance with Section 5230 et seq. of the California Family Code; and (3) that CONSULTANT will maintain such compliance throughout the term of this Agreement.

Pursuant to LAAC Section 10.10(b), the failure of CONSULTANT to comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignment Or Notices Of Assignment, or the failure Of any Principal Owner(s) of CONSULTANT to comply with any Wage and Earnings Assignment or Notices of Assignment applicable to them personally, shall constitute a default by the CONSULTANT under this Agreement. Failure of the CONSULTANT to cure the default within ninety days of notice of such default by the CITY shall subject this Agreement to termination.

Any subcontract entered into by CONSULTANT, to the extent allowed hereunder, shall include a like provision for work to be performed under this Agreement. Failure of CONSULTANT to obtain compliance of its subcontractors shall constitute a default by CONSULTANT under this Agreement. Failure of the CONSULTANT to cure the default within ninety days of notice of such default by the CITY shall subject this Agreement to termination.

CONSULTANT certifies that, to the best of its knowledge, it is fully complying with the Earnings Assignment Orders of all employees, and is providing the names of all new employees to the New Hire Registry maintained by the Employment Development Department as set forth in Section 7110(b) of the California Public Contract Code.

§641 Living Wage Ordinance

Unless otherwise exempt, this Agreement is subject to the applicable provisions of the Living Wage Ordinance, LAAC Section 10.37 et seq., as amended from time to time, and CONSULTANT agrees to comply with all applicable provisions. CONSULTANT further agrees that it shall comply with federal law proscribing retaliation for union organizing. A violation of this article shall constitute a material breach thereof and entitle the Awarding Authority to terminate this Agreement and otherwise pursue legal remedies that may be available. Any subcontract entered into by CONSULTANT for work to be performed under this Agreement must include an identical provision.

The Living Wage Ordinance is incorporated herein. The text of Ordinance is available at the City's website www.laCity.org

§642 Service Contractor Worker Retention Ordinance

CONSULTANT shall comply with the Service Contractor Worker Retention Ordinance, LAAC Section 10.36 et seq., as amended from time to time. Any subcontract entered into by CONSULTANT for work to be performed under this Agreement must include an identical provision.

§643 Access and Accommodations

§643 is hereby amended to add a paragraph after §643(D) to read as follows:

- E. The buildings and facilities used to provide services under this Contract are in compliance with the federal and state standards for accessibility as set forth in the 2010 ADA Standards, California Title 24, Chapter 11, or other applicable federal and state law.

The CONSULTANT represents and certifies that:

- A. The CONSULTANT shall comply with the Americans with Disabilities Act, as amended, 42 U.S.C. Section 12101 *et seq.*, the Rehabilitation Act of 1973, as amended, 29 U.S.C. Section 701 *et seq.*, the Fair Housing Act, and its implementing regulations and any subsequent amendments, and California Government Code Section 11135;
- B. The CONSULTANT shall not discriminate on the basis of disability or on the basis of a person's relationship to, or association with, a person who has a disability;
- C. The CONSULTANT shall provide reasonable accommodation upon request to ensure equal access to City-funded programs, services and activities
- D. Construction will be performed in accordance with the Uniform Federal Accessibility Standards (UFAS), 24 C.F.R. Part 40; and

E. The buildings and facilities used to provide services under this Contract are in compliance with the federal and state standards for accessibility as set forth in the 2010 ADA Standards, California Title 24, Chapter 11, or other applicable federal and state law.

The CONSULTANT understands that the CITY is relying upon these certifications and representations as a condition to funding this Agreement. Any subcontract entered into by the CONSULTANT for work to be performed under this Agreement must include an identical provision.

§644 Contractor Responsibility Ordinance

Unless otherwise exempt, this Contract is subject to the provisions of the Contractor Responsibility Ordinance, LAAC Section 10.40 et seq., as amended from time to time, which requires CONSULTANT to update its responses to the responsibility questionnaire within thirty calendar days after any change to the responses previously provided if such change would affect CONSULTANT'S fitness and ability to continue performing this Agreement.

In accordance with the provisions of the Contractor Responsibility Ordinance, by signing this Agreement, CONSULTANT pledges, under penalty of perjury, to comply with all applicable federal, state and local laws in the performance of this Contract, including but not limited to, laws regarding health and safety, labor and employment, wages and hours, and licensing laws which affect employees. CONSULTANT further agrees to: (1) notify the CITY within thirty calendar days after receiving notification that any government agency has initiated an investigation which may result in a finding that CONSULTANT is not in compliance with all applicable federal, state and local laws in performance of this Contract; (2) notify the CITY within thirty calendar days of all findings by a government agency or court of competent jurisdiction that CONSULTANT has violated the provisions of Section 10.40.3(a) of the Contractor Responsibility Ordinance; (3) unless exempt, ensure that its subcontractor(s), as defined in the Contractor Responsibility Ordinance, submit a Pledge of Compliance to the CITY; and (4) unless exempt, ensure that its subcontractor(s), as defined in the Contractor Responsibility Ordinance, comply with the requirements of the Pledge of Compliance and the requirement to notify the CITY within thirty calendar days after any government agency or court of competent jurisdiction has initiated an investigation or has found that the subcontractor has violated Section 10.40.3(a) of the Contractor Responsibility Ordinance in performance of the subcontract.

§645 Iran Contracting Act of 2010

In accordance with California Public Contract Code Sections 2200-2208, all contractors entering into, or renewing contracts with the City for goods and services estimated at \$1,000,000 or more are required to complete, sign, and submit the "Iran Contracting Act of 2010 Compliance Affidavit".

§646 Warranty and Responsibility of Consultant

The CONSULTANT warrants that the work performed hereunder shall be completed in a manner consistent with professional standards practiced among those firms within the CONSULTANT's or its subcontractors' profession, doing the same or similar work under the same or similar circumstances.

§647 Slavery Disclosure Ordinance

Unless otherwise exempt, this Contract is subject to the Slavery Disclosure Ordinance, LAAC Section 10.41 et seq., as amended from time to time. Any subcontract entered into by CONSULTANT for work to be performed under this Contract must include an identical provision. CONSULTANT certifies that it has complied with the applicable provisions of the Slavery Disclosure Ordinance. Failure to fully and accurately complete the affidavit may result in termination of this Contract.

§648 Restrictions on Campaign Contributions and Fundraising in City Elections

Unless otherwise exempt, if the Contract is valued at \$100,000 or more and requires approval by an elected CITY office, the CONSULTANT, the CONSULTANT'S principals, the CONSULTANT'S subcontractors expected to receive at least \$100,000 for performance under the Contract, and the principals of those subcontractors (the "Restricted Persons") are obligated to fully comply with Charter Section 470(c)(12) and LAMC Section 49.7.35. Failure to comply entitles the CITY to terminate this Contract and to pursue all available legal remedies. Charter Section 470(c)(12) and LAMC Section 49.7.35 limit the ability of the Restricted Persons to make campaign contributions to and engage in fundraising for certain elected CITY officials or candidates for elected CITY office for twelve (12) months after this Contract is signed. Additionally, a CONSULTANT subject to Charter Section 470(c)(12) is required to comply with disclosure requirements by submitting a completed and signed Ethics Commission Form 55 and to amend the information in that form as specified by law. Any CONSULTANT subject to Charter Section 470(c)(12) shall include the following notice in any contract with a subcontractor expected to receive at least \$100,000 for performance under this Contract.

"Notice Regarding Restrictions on Campaign Contributions and Fundraising in City Elections

You are a subcontractor on City of Los Angeles Contract #_____. Pursuant to the City of Los Angeles Charter Section 470(c)(12) and related ordinances, you and your principals are prohibited from making campaign contributions to and fundraising for certain elected City of Los Angeles ("CITY") officials and candidates for elected CITY office for twelve (12) months after the CITY contract is signed. You are required to provide the names and contact information of your principals to the CONSULTANT and to amend that information within ten business days if it changes during the twelve (12) month time period. Failure to comply may result in termination of this Contract and any other available legal remedies. Information about the restrictions may be found online at ethics.laCity.org or by calling the Los Angeles City Ethics Commission at (213) 978-1960."

§649 Limitation of City's Obligation to Make Payment to Consultant

Notwithstanding any other provision of this Agreement, including any exhibits or attachments incorporated therein, and in order for the City to comply with its governing legal requirements, the CITY shall have no obligation to make any payments to the CONSULTANT unless the CITY has received State Funds from equal to or in excess of its obligation to make any payments as provided in this Agreement. The CONSULTANT agrees that any services provided by the CONSULTANT, purchases made by the CONSULTANT or expenses incurred by the CONSULTANT in excess of the appropriation(s) shall be free and without charge to the CITY and the CITY shall have no obligation to pay for the services, purchases or expenses. CONSULTANT shall have no obligation to provide any services, provide any equipment or incur any expenses in excess of the appropriated amount(s) until CITY appropriates additional funds for this Contract.

§650 Compliance with Identity Theft Laws and Payment Card Data Security Standards

The CONSULTANT shall comply with all identity theft laws including without limitation, laws related to: (1) payment devices; (2) credit and debit card fraud; and (3) the Fair and Accurate Credit Transactions Act (“FACTA”), including its requirement relating to the content of transaction receipts provided to Customers. The CONSULTANT also shall comply with all requirements related to maintaining compliance with Payment Card Industry Data Security Standards (“PCI DSS”). During the performance of any service to install, program or update payment devices equipped to conduct credit or debit card transactions, including PCI DSS services, the CONSULTANT shall verify proper truncation of receipts in compliance with FACTA.

§651 Intentionally Not Used

§652 Possessory Interests Tax

Rights granted to the CONSULTANT by the City may create a possessory interest. The CONSULTANT agrees that any possessory interest created may be subject to California Revenue and Taxation Code Section 107.6 and a property tax may be levied on that possessory interest. If applicable, the CONSULTANT shall pay the property tax. The CONSULTANT acknowledges that the notice required under California Revenue and Taxation Code Section 107.6 has been provided.

§653 Consultants’ Use of Criminal History for Consideration of Employment Applications

CONSULTANT shall comply with the City Contractors’ Use of Criminal History for Consideration of Employment Applications Ordinance, LAAC Section 10.48 et seq., as amended from time to time. Any subcontract entered into by CONSULTANT for work to be performed under this Agreement must include an identical provision.

§654 Disclosure of Border Wall Contracting Ordinance

CONSULTANT shall comply with Los Angeles Administrative Code Section 10.50 *et seq.*, 'Disclosure of Border Wall Contracting.' City may terminate this Agreement at any time if City determines that CONSULTANT failed to fully and accurately complete the required affidavit and disclose all Border Wall Bids and Border Wall Contracts, as defined in LAAC Section 10.50.1.

§655 Intentionally Not Used

§656 First Source Hiring Ordinance

CONSULTANT shall comply with the First Source Hiring Ordinance, Los Angeles Administrative Code Section 10.44 *et seq.*, as amended from time to time. Any subcontract entered into by CONSULTANT for work to be performed under this Agreement must include an identical provision.

The Agreement is hereby modified to include the following Sections (§):

§657 Bonds

All bonds required by City shall be filed with the Office of the City Administrative Officer, Risk Management for its review and acceptance in accordance with Los Angeles Administrative Code ("LAAC") Sections 11.47 *et seq.*, as amended from time to time.

§658 Best Terms

Throughout the term of this Contract, CONSULTANT, shall offer City the best terms, prices, and discounts that are offered to any of CONSULTANT'S customers for similar goods and services provided under this Contract.

§659 Compliance with California Public Resources Code Section 5164

California Public Resources Code Section 5164 prohibits a public agency from hiring a person for employment or as a volunteer to perform services at any park, playground, or community center used for recreational purposes in a position that has supervisory or disciplinary authority over any minor, if the person has been convicted of certain crimes as referenced in the Penal Code, and articulated in California Public Resources Code Section 5164(a)(2).

If applicable, CONSULTANT shall comply with California Public Resources Code Section 5164, and shall additionally adhere to all rules and regulations that have been adopted or that may be adopted by City. CONSULTANT is required to have all employees, volunteers and Subconsultants (including all employees and volunteers of any Subconsultant) of CONSULTANT working on premises to pass a fingerprint and background check through the California Department of Justice at CONSULTANT'S sole expense, indicating that such individuals have never been convicted of certain crimes as referenced in the Penal Code and articulated in California Public Resources Code Section 5164(a)(2), if the individual will have supervisory or disciplinary authority over any minor.

§660 Contractor Data Reporting

If CONSULTANT is a for-profit, privately owned business, CONSULTANT shall, within 30 days of the effective date of the Contract and on an annual basis thereafter (i.e., within 30 days of the annual anniversary of the effective date of the Contract), report the following information to City via the Regional Alliance Marketplace for Procurement ("RAMP") or via another method specified by City: Consultant's and any subconsultant's annual revenue, number of employees, location, industry, race/ethnicity and gender of majority owner ("Contractor/Subcontractor Information"). Consultant shall further request, on an annual basis, that any subconsultant input or update its business profile, including the Contractor/Subcontractor Information, on RAMP or via another method prescribed by City.

DRAFT ONLY

TRANSMITTAL NO. 3

EXCEPT AS EXPRESSLY MODIFIED HEREIN, the Agreement executed on December 2, 2022 remains unchanged.

IN WITNESS WHEREOF, the parties hereto have executed this Supplemental Agreement No. 1 on the day and year written below.

FOR THE CONSULTANT:
LOS ANGELES NEIGHBORHOOD INITIATIVE

By: _____

Print Name: _____

Print Title: _____

Date: _____

FOR THE CITY OF LOS ANGELES
Board of Public Works

By: _____
Steve Kang
President, Board of Public Works

Date: _____

APPROVE AS TO FORM:
HYDEE FELDSTEIN SOTO
City Attorney

By: _____
Deputy City Attorney

Date: _____

FOR THE CITY OF LOS ANGELES
Bureau of Engineering

By: _____
Alfred Mata, P.E.
Interim City Engineer

Date: _____

ATTEST:
PETTY SANTOS
Interim City Clerk

By: _____
Deputy City Clerk

Date: _____