

Draft Version Only

Contractor : ~~MOUNTAINS RECREATION AND CONSERVATION AUTHORITY (MRCA)~~
MOUNTAINS RECREATION AND CONSERVATION AUTHORITY

Project Title : Vista Hermosa

Los Angeles City Council File Number: 06-0100-S12 (Dated 12/20/06)
(PLEASE CONFIRM THIS IS CORRECT. WASN'T THERE MULTIPLE ACTIONS?)

Agreement Number (ASSIGNED BY CITY CLERK) of City Contracts

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AGREEMENT NUMBER (per City Clerk) OF CITY CONTRACTS

BETWEEN
THE CITY OF LOS ANGELES
AND

~~THE MOUNTAINS RECREATION AND CONSERVATION AUTHORITY (MRCA) (REINSERT)~~

RELATING TO
THE VISTA HERMOSA PROJECT

THIS AGREEMENT ("Agreement" or "Contract") is made and entered into by and between the City of Los Angeles, a municipal corporation, hereinafter called the City, and Mountains Recreation and Conservation Authority, a joint powers agency of the Santa Monica Mountains Conservancy, the Conejo Recreation and Park District and the Rancho Simi Recreation and Park District (please confirm this is correct...I got this from the lease language. Are they also a nonprofit corp?) ~~THE MOUNTAINS RECREATION AND CONSERVATION AUTHORITY (MRCA)~~, a California nonprofit corporation, hereinafter called the Contractor.

W I T N E S S E T H

WHEREAS, the City has entered into Grant Agreements with the United States Department of Housing and Urban Development, hereinafter called the Grantor or HUD, pursuant to Title I of the Housing and Community Development Act of 1974, as amended, to address the community development needs of the City, and also, pursuant to Title IV, Subtitle B of the Stewart B. McKinney Homeless Assistance Act of 1987, Public Law 100-77, to address the needs of homeless persons in the City; and

WHEREAS, the City's Community Development Department ("CDD") has been designated by the City to provide for proper planning, coordination and administration of certain projects funded by the City; and

WHEREAS, the ~~City's Community Development Department (CDD)~~ cooperates with private organizations, other agencies of the City and agencies of other governmental jurisdictions in carrying out certain functions and programs, ~~hereinafter called the Program~~, which are its responsibility ("Programs"); and

WHEREAS, the project which is the subject of this Agreement ("Project") has been established by the City as one of the above-described Programs, and has been approved by the Los Angeles City Council and the Mayor;

WHEREAS, City Council File Number 06-0100-S12 dated Dec. 20, 2006 authorized a total of \$ 400,000 in funding for the Project (please confirm if there are any other council action relevant, including time extensions); and

WHEREAS, the property on which the Contractor will undertake the Project ("Property") is currently owned by the Los Angeles Unified School District ("LAUSD") and has been leased by LAUSD to Contractor in contemplation of the construction of the Project pursuant to that certain Amended and Restated Vista Hermosa Park Lease and Joint Use Agreement dated as of September 20, 2005 by and between LAUSD and Contractor, including the First Amendment and Second Amendment thereto (collectively, the "LAUSD Lease"); and

WHEREAS, pursuant to the LAUSD Lease, upon completion of the Project and any other improvement to the Property, the Property, and any improvements made thereon, shall revert back to LAUSD and the LAUSD Lease shall terminate as it relates to the Property; and

WHEREAS, the City and LAUSD have entered into that certain Master Agreement Regarding Joint Use and that certain Site Specific Joint Use Agreement, both dated as of March 15, 2006 (collectively, the "Joint Use Agreements") and attached hereto as Attachment II, wherein the City has secured the right to the use of the Property and the improvements thereon after completion of the Project and until XXXXXX(PLEASE FIND OUT THE TERM) to satisfy certain HUD regulations regarding site use related to the Community Development Block Grant Program;

~~WHEREAS, the project, which is the subject of this agreement, hereinafter called the Agreement, has been established by the City as one of the above-described Programs, and has been approved by the Los Angeles City Council and the Mayor;~~

NOW, THEREFORE, the City and the Contractor agree as follows:

A G R E E M E N T

I. INTRODUCTION

§101. Parties to the Agreement

The parties of this Agreement are:

1. The City of Los Angeles, a municipal corporation, having its principal office at 200 North Spring Street, Los Angeles, California 90012.
2. The Contractor, **a nonprofit institution incorporated** under the laws of the State of California and known as MOUNTAINS RECREATION AND CONSERVATION AUTHORITY (MRCA) Having its principal office at 570 West Avenue 26, Suite 100, Los Angeles, CA 90065 (PLEASE REVISE ACCORDINGLY).

§102. Representatives of the Parties and Service of Notices

The representatives of the respective parties who are authorized to administer this Agreement and to whom formal notices, demands and communications shall be given are as follows:

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

Richard L. Benbow, General Manager
Community Development Department

1200 West Seventh Street, Sixth Floor
Los Angeles, CA 90017

With copies to (at same address):
Ernest Tidwell, Acting Director
Neighborhood Development Division

The City's representative (or designee) as stated above is the party to whom Contractor shall forward all documents, reports and records as required by the Agreement for the submitting to or the reviewing of "City", and is the party authorized to provide written approvals by City to Contractor in reference to matters addressed in this Agreement.

2. The representative of the Contractor shall be:

~~Barbara Romero, Director of Urban Projects
Mountains Recreation & Conservation Authority (MRCA)
570 W. Avenue 26, Suite 100
Los Angeles, CA 90065~~

(Please reinsert)

3. Formal notices, demands and communications to be given hereunder by either party shall be made in writing and may be effected by personal delivery or by registered or certified mail, postage prepaid, return receipt requested and shall be deemed communicated as of the date of mailing.
4. 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 accord with this section, within five (5) working days of said change.

§103. Time of Performance

The term of this Agreement shall commence on **December 20, 2006**

and end one (1) year thereafter (Please confirm!), and any additional period of time as is

required to complete any necessary close-out activities, and provided that said term is subject to the provisions of the general terms and conditions as detailed in §601 through §745 of this Agreement. Performance shall not commence until the Contractor has obtained the City's approval of all insurance as required by City (see Exhibit I - Insurance Requirements, attached hereto and incorporated herein by reference, and §701 - Indemnification and Insurance). If non-City grant funds are used herein, performance shall not commence until the date of release of funds for this Agreement by the grantor of the non-City funds.

The City may, at its discretion, agree to extend this Agreement for one additional period of one year. Funding for Agreement extensions will be based on the availability of Federal funds remaining in this Agreement and upon the Contractors' successful performance of all terms of this Agreement. Such an extension must be effectuated by an amendment to this Agreement.

§104. Conditions Precedent to Execution of this Agreement

Prior to the execution of this Agreement, the Contractor shall provide the City with copies of the following documents:

1. Contractor's Articles of Incorporation, and all amendments thereto, as filed with the Secretary of State.
2. Contractor's By-Laws, and all amendments thereto, as adopted by the Contractor and properly attested.
3. Resolutions or other corporate actions of the Contractor's Board of Directors, properly attested or certified, which specify the name (s) of the person (s) authorized to obligate the Contractor and execute contractual documents, if the authorized person is someone other than Contractor's Corporate President.
4. Affidavit regarding MBE/WBE.
5. Board of Director's List.
6. Non-Collusion Affidavit, if applicable.
7. Organizational Chart of project.
8. Resume of key staff.
9. Proof of insurance as required by the City in accordance with Section 701 of this Agreement and attached hereto as **Exhibit I** and made a part hereof.
10. A Certification Regarding Debarment, in accordance with §720, attached hereto as **Exhibit II** and made a part hereof.
11. A Certification and Disclosure Regarding Lobbying, in accordance with §725, attached hereto as **Exhibit III** and made a part hereof.
12. A current and valid license to do business with the City of Los Angeles.
13. An Internal Revenue Service taxpayer identification number.
14. An approved City of Los Angeles Affirmative Action plan in accordance with §729.

15. EXEMPTION from Living Wage Ordinance attached hereto as **Exhibit IV** and made a part hereof, if applicable.
16. A Notice of Prohibition Against Retaliation in accordance with Section 737 of this Agreement and attached hereto as **Exhibit V** and made a part hereof. Contractor shall post, at the project site, said notice, which shall incorporate the language set forth in **Exhibit V** in its entirety.
17. Determination-Compliance with Equal Benefits Ordinance and Slavery Disclosure Ordinance, attached hereto as **Exhibit VI** and made a part hereof.
18. Responsibility Questionnaire in accordance with the Contractor Responsibility Ordinance (see Section 743 of this Agreement).
19. The Contractor shall submit a Code of Conduct to the City for approval that must meet the requirements of Section 722 - Conflict of Interest - of the Agreement.

II. DUTIES AND POWERS OF THE CONTRACTOR

§201. Independent Contractor Status

The parties agree that the performance of Contractor's services hereunder shall be in the capacity of an independent Contractor and that no employees of the Contractor have been, are, or shall be employees of the City by virtue of this Agreement, and the Contractor shall so inform each employee organization, each employee, and, if applicable, each collaborating subcontractor agency hired or retained under this Agreement.

§202. Contractor Agreements

- A. The Contractor shall submit to the City a list of all grant or funding agreements entered into between the Contractor and other public or private organizations concerning the activities funded under this Agreement and of any termination, default, suspension or disallowed costs under said funding agreements. The Contractor shall inform the City in writing of all new sources of funding the Contractor may acquire during the term of this Agreement concerning the activities funded under Agreement.
- B. A copy of any of the above agreements shall be furnished to the City upon its request.

§203. Services to be Provided by the Contractor (PLEASE REVISE ACCORDINGLY)

Parkland improvements including a soccer field on vacant land leased from the Los Angeles Unified School District (LAUSD) at Central High School #11 and including terrace retaining walls, seating, and fencing that will annually serve local area residents from sunrise to sunset, Monday through Friday at 100 Toluca St., Los Angeles, CA 90026.

A. Identification of Project Eligibility/National Objectives (PLEASE CONFIRM)

1. This project is eligible under 24 CFR as follows:

201 (a-1) <input checked="" type="checkbox"/>	204 (a-c) _____
202 (a-e) _____	205 (a-b) _____
203 (a-b) _____	206 (a-g) _____

2. All projects funded with HCDBG funds must meet one of three national objectives. This project meets the following national objective (check only one):

- a. Activities benefiting very low and low income persons under 24CFR 570.208 (a)
 - 1) Area-wide benefit project affecting 51 percent very low and low income persons as indicated in the 2000 census.
 - 2) Limited-Clientele activities: 570.208(a)(2) A ; B ; C ; D
 - 3) Housing activities
 - 4) Job Creation/Retention activities that are designed to create or retain jobs for at least 51% very low and low income persons.

- b. Activities which aid in the prevention or elimination of slums or blight, under 24 CFR 570.208 (b).
 - 1) Activity is located in a slum or blighted area, which has been (check one):
 - designated as a Redevelopment Project Area;
 - approved by the CDC as a Slum or Blighted Area.

List conditions of slum or blight to be addressed by the project. (Complete only for projects qualifying under 570.208 (b)(1), prevention or elimination of slums or blight.)

 - 2) Activity is located outside a slum or blighted area, but qualifies under spot slum and blight conditions.
 - 3) Activity will address slum or blight in an urban renewal/redevelopment area.

- c. Activities designed to meet community development needs having a particular urgency, under 24CFR 570.208 (c).

B. General Requirements

- 1. The Contractor shall, in furtherance of this Agreement:
 - a. **Make park improvements on vacant land leased from LAUSD (Central HS #11); and (PLEASE REVISE ACCORDINGLY)**
 - b. All specific activities contained in Subsection C, Specific Requirements of the Contractor.

- 2. The Contractor shall use the funds provided in this Agreement as defined herein. It is further understood that there is neither an expressed nor implied assurance that the City will provide further funding to the Contractor beyond the completion of this Agreement.

C. Specific Requirements of the Contractor

In furtherance of the general requirements, the Contractor shall perform, but not be limited to, the following tasks:

- 1. Comply with the requirements delineated for the Contractor in its subcontracts with the Architect for architectural services and with the General Contractor for construction/rehabilitation services. Unless previously approved by the City,

the use of standard AIA (American Institute of Architects) Agreement B 141 between the Owner and Architect and between the owner and General Contractor (AIA) A101 shall be used. All subcontract agreements must be approved by the City prior to finalization of the subcontract; shall adhere to the terms and conditions set forth in §710 through §745 of this Agreement; and are superseded by this Agreement in case of conflicting requirements or obligations.

2. 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.
3. Require the Architect and/or the General Contractor to identify and provide corrective action on those issues or barriers which impede or delay the completion of the General Requirements of the Contractor, as defined in this Agreement; and notify the City, in writing, within ten (10) working days of discovering those issues or barriers, and providing a corrective action plan of resolution with sub-activities and milestone completion dates.
4. Assure that the Architect and/or the General Contractor and their 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 Requirement of the Contractor as defined in this Agreement.
5. Designate a person to act as the Contractor's representative prior to the execution of the Architect and General Contractor agreements to carry-out the responsibilities of the "Owner" in those agreements.
6. Assure that the Architect prepares the proposed plans so that construction can be completed within the available construction budget.

D. Description of Real Property (REVISE ACCORDINGLY AND CONFIRM)

The real property and improvements to be affected by this agreement are located at 100 Toluca St., Los Angeles, CA 90026 and is further described as:

(INCLUDE LEGAL DESCRIPTION)

E. SPECIFIC requirements of Construction/Renovation/Rehabilitation

The following construction/renovation/rehabilitation activities shall be completed (THIS SHOULD BE MORE COMPREHENSIVE AND SHOULD OUTLINE THE SCOPE OF WORK INVOLVED):

- a. Construction documents, permitted and stamped approved by Building & Safety Dept.
- b. New Construction of a soccer field according construction documents
- c. Certificate of Occupancy from Building & Safety Dept. or completion notice from LAUSD
- d. and other related activities.

Specific activities enumerated above can be eliminated, expanded or modified with prior City review and approval. It is understood by both parties that the City

makes no commitment to increase funding should conditions change which would preclude the completion of the elements listed as activities in this section.

F. Service Repayment/Promissory Note

~~**INTENTIONALLY OMITTED (See Attachment II)** Prior to the release of any funds under this Agreement, the Contractor shall execute a Promissory Note secured by a Deed of Trust with the power to sell the previously described real property in favor of the City of Los Angeles for an amount of _____, or the Contractor shall execute a Lease Agreement secured by a Conditional Consent to Assignment of Lessee's Interest in Lease with the power to assign the Contractor's interests in the lease to the City of Los Angeles for the amount of _____. Upon execution, the Promissory Note and Deed of Trust or Conditional Consent to Assignment of Lessee's Interest in Lease shall be recorded with the Office of the Los Angeles County Recorder.~~

~~The Promissory Note shall be repaid in the following manner:~~

~~1. SERVICE PAYBACK~~

~~_____ shall be repaid with services monitored by the City's Community Development Department, Human Services and Family Development Division. Said services and reporting requirements relating thereto are detailed in §203 and §601, respectively, of the Agreement. The Promissory Note shall be amortized at the rate of Forty Thousand Dollars (\$40,000) per year _____. However, in accordance with 24CFR570.503(b) (7), the service payback period shall be a minimum of five (5) years, as long as the Contractor is performing the services required pursuant to this Agreement. The City will not terminate its interest nor relinquish title in the real property described above until the service payback has been completed. Said amortization shall commence when the Contractor obtains a Certificate of Occupancy and/or records a Notice of Completion and begins utilizing the _____ to fulfill its service obligations as identified in this Agreement.~~

~~The contractor may purchase the City's interest at any time for the current market value in accordance with 24CFR570.503(b) (7).~~

~~When the Contractor has fully complied with all the aspects of this Agreement and the Promissory Note, the City's interest shall be zero and the City shall reconvey the aforesaid Deed of Trust or reassign the aforesaid Conditional Consent to Assignment of Lessee's Interest in Lease to the Contractor.~~

~~The Contractor shall maintain public liability and comprehensive fire insurance, naming the City as co-insured, covering the real property described herein. The insurance coverage shall be subject to approval by the City and comply with Exhibit I of this Agreement. This provision shall remain applicable throughout the period of the Promissory Note. The Contractor shall purchase the insurance coverage at its own expense.~~

G. Acquisition _____

~~**INTENTIONALLY OMITTED** Prior to making an offer to purchase real property, the Contractor shall determine the costs of acquiring the property by having the property appraised.~~

~~The Contractor shall select at least one (1) appraiser that is State certified or that is included in the City's list of approved appraisers. Contractor must enter into an appropriate subcontract for the appraisal. The City's approval is required prior to entering into the subcontract.~~

~~After receiving the City's approval, the Contractor shall make a written offer to purchase the selected property and enter into a purchase agreement with the owner of the property. The Contractor shall develop escrow instructions and submit them to the City for approval prior to entering into escrow.~~

~~If relocation is required, the costs of such relocation shall be paid from the funds provided through this Agreement. Relocation shall be conducted in compliance with pertinent federal, state and local requirements.~~

H. Subcontracting For Architectural Services (Not Applicable)

1. The Contractor shall select an architect licensed by the State of California to (PLEASE COMPLETE BELOW CONSISTENT WITH SCOPE OF WORK):
 - a. (AGENCY AND ANALYST TO COMPLETE USING AIA ARCHITECT AGREEMENT FORM AS GUIDE)
 - b.
2. The Contractor shall adhere to the competitive bid requirements for the selection of the Architect as defined in §711 through §713 of this Agreement. City's approval is required prior to entering into an agreement for architectural services between the Contractor and the Architect.

If the Contractor has already selected and entered into an agreement with an Architect prior to the execution of this agreement, and Contractor paid the Architect with its own funds, no further City approval is required provided that no City funds will be utilized. Should matching funds or HUD funds be used to partially or fully fund this agreement, the Contractor shall provide proof of compliance with bid requirements and the City must approve such process and must review and approve such agreement.

3. The subcontract shall require the selected architect to provide services including, but not limited to, the following:
 - a. Providing the basic architectural services as delineated in the standard AIA agreement including plans, schematics, specifications, working drawings, construction documents, bid package and provision of any additional architectural services as delineated in the final agreement.
 - b. Securing the Contractor's approval as well as the City's approval of the schematic design, plans, and construction documents including specifications, instructions and estimated cost.
 - c. Submitting the required design drawings and other documents to the City for review and approval, and making the required modifications as required by the City for approval.
 - d. Preparing the bid package for construction/renovation to include plans, specifications and bidding instructions to respective bidders utilizing required City forms and instructions.
 - e. Assisting the Contractor by preparing applications and securing all required building permits and other required documents for submission to City.
 - f. Informing the Contractor and City of the progress and quality of work including providing the City copies of the architect's field reports within five (5) working days of field visits.
 - g. Preparing Change Orders and Construction Change Directives with supporting documentation and data if deemed necessary for the Contractor's and City's approval and execution.

h. Conducting a minimum number of meetings required by and with the Contractor as established in the architect's agreement.

4. The subcontract shall require the selected architect to maintain a minimum of \$1,000,000 in errors and omission insurance with a twelve (12) month recovery period and must submit evidence of same for verification prior to the execution of the Contractor Agreement with the Architect.
5. The subcontract shall require the selected architect to insure that the design documents prepared meet all applicable requirements of the federal, state and local government agencies. The selected architect shall insure that the proposed plan does not exceed the cost of the construction budget provided for in this Agreement. In the event that construction bids are higher than the budgeted amount, the architect shall be required to modify the plans such that bids may be obtained from licensed reputable contractors for the budgeted amount. The modifications shall be made at architect's own expense.

I. Bidding and Construction

1. Upon receipt of a bid package approved by the City, the Contractor shall advertise for the solicitation of bids for a minimum of fifteen (15) days. The advertisement shall appear in appropriate publication (s).
2. Bids shall be opened at a public bid opening meeting as stipulated in the advertisement. The bid opening shall be conducted by the Contractor and attended by the architect, bidders, and a City representative.
3. The Contractor shall select the lowest responsive and most responsible bidder and forward the bidder's name, address, California Contractors license number, and its list of subcontractors to City for necessary HUD and City approval prior to the award of the construction contract.
4. Prior to and/or during the length of this Agreement, the Contractor shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy, or for permanent changes in the existing facilities.
5. Upon receipt of City approval, the Contractor shall enter into a Construction Agreement as delineated in the Standard AIA Agreement with the approved General Contractor. The Construction Agreement, together with the necessary Performance, Labor and Material bonds, Insurance and other required documents, shall be forwarded to City for approval prior to scheduling the pre-construction conference.
6. Upon City approval of the construction agreement, Contractor shall schedule a pre-construction meeting to enable City to explain the Federal Regulations and Reporting Requirements to the General Contractor and its sub-contractors. The City will then authorize the Contractor to issue the Notice to Proceed.

Upon City approval of the Construction Agreement, the General Contractor shall be required to submit the following documents to the Contractor, Architect, and City:

- i. Construction work schedule
- b. List of subcontractors and persons or entities who will furnish materials or equipment. (A prompt reply to the General Contractor is expected of the Contractor, in writing, stating whether or not the Contractor or its Architect, after due investigation, has reasonable objection to any such person or entity).

c. Reports regarding Minority and Women's Business Enterprise, Equal Employment Opportunity Officer, and certifications by the General and Subcontractors of Compliance.

d. List of job classifications to be utilized on the project.

7. During the term of the construction agreement, the Contractor, with the cooperation of the General Contractor, shall, within ten (10) working days after the close of the workweek, submit to the City all certifications, weekly payroll forms, employment utilization forms, code inspection reports and sign-off, and other related documents as required by the City and/or the Department of Housing and Urban Development (HUD). It is understood that failure to adhere to the reporting requirements may delay processing of requisitions and release of construction funds.

8. The Contractor, with the cooperation of the General Contractor shall, upon completion of construction and prior to the receipt of the final payment, submit to the City a completion report which shall contain, at minimum, the following:

- a. Certification from the applicable governmental agencies that the work was performed per required codes.
- b. A statement indicating the use of the contract funds.
- c. A statement that the contracted work has been completed generally in accordance with the plans and specifications previously approved by the Department of Building and Safety.
- d. Submission of recorded, unconditional lien releases from all subcontractors that performed construction activities and from suppliers and firms from which materials were purchased.
- e. All warranties, guarantees, service agreements, certifications, operational instructions, and manuals and other pertinent documents as required by the plans and specifications.

J. PREVAILING WAGE REQUIREMENTS

The Contractor shall cause all the Contractor's subcontractors to pay the higher of prevailing wages in the construction of the Project as those wages are determined pursuant to the State of California Labor Code Section 1720 et seq. and implementing regulations of the State of California Department of Industrial Relations, or as those wages are determined pursuant to the Davis-Bacon Act (40 USC 276a-7) (29 CFR, Part 5.0) and related Federal Acts. The Contractor shall and shall cause all the Contractor's subcontractors to comply with the other applicable provisions of the State Labor Code Sections 1720 et seq. and implementing regulations of the State Department of Industrial Relations. The Contractor shall and shall cause all subcontractors to keep and retain such records as are necessary to determine if such prevailing wages have been paid as required pursuant to State Labor Code Sections 1720 et seq. and/or by applicable federal laws and regulations. Copies of the currently applicable current per diem prevailing wages are available from the City of Los Angeles, Public Works Department. During the construction of the Project, the Contractor shall or shall cause all the Contractor's subcontractors to post at the Project property the applicable prevailing rates of per diem wages. Contractor shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the City) the City against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including the Contractor and all its subcontractors) to pay prevailing wages as determined pursuant to Labor Code Section 1720 et seq. and implementing regulations, as well as applicable federal laws and regulations, or the failure to comply with other applicable provisions of Labor Code Section 1720 et seq. and implementing regulations of the Department of Industrial Relations, as well as applicable federal regulations, in connection with Project construction or any other work undertaken or in connection with the Project property.

K. City's Interest in the Continued Use of the Facilities and Improvements

~~INTENTIONALLY OMITTED (See Attachment II) The parties recognize that it is in the best interest of all concerned that the expanded facility be utilized for the intended purpose of providing services to City residents of primarily low and moderate income or limited clientele in accordance with Part IV, Section 570.208 of the Community Development Block Grant Rules and Regulations, and without regard to race, religion, national origin, ancestry, sex, and where applicable, to age, or physical handicap. Any fees charged for services or donations must not restrict or limit accessibility or services to low and moderate income individuals or families.~~

~~1. The Contractor shall utilize the facility for the purpose of providing park services [REDACTED] from the date that the agency is issued a Certificate of Occupancy or Notice of Completion, [REDACTED].~~

~~2. The park services to be provided by the Contractor through the facility shall include, but not be limited to:~~

~~[REDACTED]~~

~~[REDACTED], and~~

~~The Contractor shall maintain and retain during the entire service repayment period, subject to City review, a record of each of the clients served which shall include, but not be limited to, the services rendered, residency status, the individual and/or family income, sex, age, ethnicity, and the fee and/or donations received in lieu of such fee.~~

~~3. The Contractor shall submit to City on a quarterly calendar period, the following reports of the activity on City approved reporting format, and which shall be due on the tenth (10th) day of the calendar month following the end of the preceding quarterly period:~~

~~a. The estimated number of park attendees served per quarter during the reporting period and their ethnicity.~~

~~j. The estimated number of park attendees served during the reporting period who are low and moderate income.~~

~~k. The types of park services provided including any modifications in services provided.~~

~~l. Status of any building upkeep or maintenance problems, that prevents or hampers the continuation of the aforementioned park service and, if any, a corrective action plan including costs, tasks, and timetables.~~

~~e. Status of any program modifications previously approved in the aforementioned park services and, if any, a corrective action plan including tasks, costs, and timetables.~~

~~4. If the facility is a shelter for homeless persons, Contractor shall assure that the facility and services have bi-lingual capability (English/Spanish). Contractor shall also provide an accessible resource to interpret the needs of shelter residents who are fluent in other languages but do not speak English. Said resource may be in the form of paid staff (regular or on call) or in the form of volunteer help. Contractor shall provide written policy directive to City detailing its method of providing bilingual assistance to its residents.~~

~~Contractor shall also provide a written policy to City detailing procedures for assuring that the shelter residents are free from the illegal use, possession and/or distribution of all non-medically prescribed drugs and/or consumption of any alcohol beverage.~~

~~5.3. Any modifications to the aforementioned types of community services, hours, and days of operation must be reviewed and approved by the City prior to the implementation by the Contractor of such modifications.~~

L. Termination of the City's Interest

~~INTENTIONALLY OMITTED (See Attachment II) The City shall terminate its interest when the Contractor completes adherence to the required service payback as stipulated in this Agreement. Upon evidence of complete adherence, the City shall notify the Contractor of the termination of the City's interest. In addition, the City shall:~~

~~1. Relinquish title or interest to the above described real property by duly reconveying or reassigning and properly recording such reconveyance or reassignment.~~

~~2. Relinquish the Contractor of further reporting requirements.~~

M. Volunteers

Contractor must receive prior City approval for use of volunteers in conducting acquisition or construction-related activities provided for in this Agreement. Such use shall be subject to all federal, state and local laws and regulations and other restrictions as determined by the City.

N. Accounting Services

The Contractor shall maintain records for every expenditure incurred directly or indirectly by this Agreement and shall include, but not be limited to, documentation of all budgeted expenditures, e.g.: time cards, requisitions for payment, 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 Contractor. Such records shall be maintained in a file and be made available for examination in accordance with §602, Maintenance of Records, and §603, Audits and Inspections.

O. Equipment Accountability

The Contractor shall assure that all non-expendable equipment purchased with funds provided by previous Agreements between the City and the Contractor, and any subsequent amendments thereto, and all such equipment having a City identification decal affixed to it and listed on the City's equipment inventory record card, together with all non-expendable equipment purchased under the terms of the Agreement, shall remain under the control of the Contractor during the term of this Agreement and shall be accounted for in accordance with the provisions of §604, Equipment Records.

P. Attendance at City Meetings and/or Training Sessions

The Contractor shall be required to attend all meetings and/or training sessions as identified by the City. The Contractor may be excused from attendance only by prior written consent of the City.

III. DUTIES OF THE CITY

§301. Compensation

- A. The City shall pay to the Contractor an amount not to exceed **four hundred thousand dollars (\$400,000.00)** (PLEASE CONFIRM) for complete and satisfactory performance of the terms of this Agreement, subject to the provisions of this Agreement. The following compensation is the total of the planned expenditures for the term of the Agreement identified in

§103, as set forth by the City approved Expenditure Plan in Attachment I, which is incorporated herein by reference, with funding as follows:

32nd Year HCDBG Funds (Midyear Reprog) \$ 400,000

12 Months Total Project Costs - \$ 400,000

- B. Funding as set forth by the foregoing subsection A is subject to change in accordance with the availability of Grant funds provided to the City by the Grantor and the City reserves the right to change the amount of Compensation set forth herein accordingly. Funding for all periods of this contract is subject to the continuing availability of federal funds for this program to the City. The contract may be terminated immediately upon written notice to the Contractor of a loss or reduction of federal grant funds.
- C. The City assumes no responsibility to pay for salaries or other expenses not specifically enumerated in this Agreement and as detailed in the City approved Expenditure Plan for this Agreement. It is understood by both parties that the City makes no commitment to fund this project beyond the term of this Agreement (PLEASE CONFIRM THAT ALL FUNDING IS IN PLACE TO COMPLETE PROJECT. IF NOT, WE MAY HAVE TO ADD A PRECONDITION TO FUNDING).
- D. The Contractor shall report to the City all other funding sources that supplement or augment activities set forth by this Agreement.
- E. Contractor warrants that any applicable discounts have been included in the costs to the City.

IV. METHOD AND TIME OF PAYMENT

§401. Payment to the Contractor

The Contractor shall be reimbursed for expenses authorized under the terms and conditions of this Agreement, subject to the availability of funds for this ~~P~~project and subject to all other provisions of this Agreement.

§402. Withheld Payments

- A. Unearned payments under this Agreement may be suspended or terminated if grant funds to the City are suspended or terminated, or if the Contractor refuses to accept additional conditions imposed on it by the Grantor or the City.
- B. The City has the authority to withhold funds under this Agreement pending a final determination by the City of questioned expenditures or indebtedness to the City arising from past or present agreements between the City and the Contractor. 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.
- C. Payments to the Contractor may be withheld by the City if the Contractor fails to comply with the provisions of this Agreement.

§403. Return of Unexpended Funds and Close-outs

- A. The Contractor shall, either upon completion or termination of this Agreement, immediately return any unexpended funds to the City Treasury; in no event later than forty-five (45) days after completion or termination of this Agreement. Funds

advanced by the City, determined by the City to be in excess of the amount actually required, shall also be immediately returned to the City.

- B. The Contractor shall submit to the City a complete and accurate final close-out invoice of costs and reimbursements for services performed under this Agreement, within forty-five (45) days following the termination or completion of this Agreement. Failure by Contractor to comply with the 45 day requirement may result in a unilateral close-out of this Agreement by City based on previous invoices filed with City, and/or the imposition of sanctions as specified in Section §503-508 of this Agreement.

§404. Receipt, Use, and Accountability of Other Than Budgeted Funds

The Contractor agrees that income funds realized as a result of activities which are funded by this Agreement shall be reported in writing to the City within five (5) working days following the receipt of such funds, except that income funds generated on a regular basis shall be reported as provided in §601 of this Agreement. The Contractor further agrees that all such income funds shall: (1) be the property of the City; (2) be used solely to offset the operating expenses of the activities funded by this Agreement; (3) not be expended without prior written approval of the City unless otherwise provided for by this Agreement; and, (4) be subject to all of the provisions of this Agreement.

§405. Deposit, Utilization, and Commingling Funds

- A. Funds paid to the Contractor pursuant to this Agreement shall be deposited only in the bank or banks approved by the City and shall be insured fully and continuously. All interest income earned on such funds shall accrue to the City for the benefit of the Grantor and be reported in compliance with this Agreement.
- B. Funds paid to the Contractor pursuant this Agreement shall be used exclusively for the activities set forth by this Agreement.
- C. Funds paid to the Contractor pursuant to this Agreement shall not be commingled with other funds administered by the Contractor

§406. Funding Reduction

- A. During the performance of this Agreement, the City shall have the authority to review the Contractor's actual project expenditures and work performance. Should the City determine that the Contractor is in noncompliance with any contractual obligations, the City shall, at its discretion, take appropriate action as provided by this Agreement.
- B. In the event that non-City grant funds are reduced, suspended or terminated by the Grantor, the City reserves the right to reduce, suspend or terminate the funds provided by this Agreement accordingly.

§407. Allowable and Unallowable Costs

- A. To be eligible for payment under this Agreement, costs must be made in compliance with Office of Management and Budget Circular (OMB) A-122, and with the principles set forth below:
 - 1. Be necessary and reasonable for the proper and efficient performance of this Agreement and in accordance with the City-approved Expenditure Plan, Attachment I of this Agreement. The City shall have final authority to determine in good faith whether an expenditure is "necessary and reasonable."
 - 2. Conform to the limitations within these General Conditions and to any governing statutes, regulations and ordinances.

3. Be fully documented and determined in accordance with standard accounting procedures.
 4. Not be included as a cost or used to meet cost sharing or matching requirements of any other government funding source in either the current or a prior period, except when permitted by the respective government funding sources.
 5. Be net of all applicable credits such as purchase discounts, rebates, sales or other income or refunds.
- B. When, in furtherance of this Agreement, the Contractor is granted compensation for the use of real property and/or equipment owned by the Contractor, such compensation shall be computed as provided by Office of Management and Budget Circulars (OMB) A-87 and A-122
- C. The following costs, among others, are specifically unallowable:
1. Bad Debts: Any losses arising from uncorrectable accounts and other claims, and related costs.
 2. Contingencies: Contributions to a contingency reserve or any similar provisions for unforeseen events.
 3. Contributions and donations.
 4. Entertainment: Costs of amusements, social activities and incidental costs, such as meals, beverages, lodging and gratuities relating to entertainment, or any political or lobby activity.
 5. Fines and Penalties: Costs resulting from violations of, or failure to comply with, Federal, State, and local laws and regulations.
 6. Interest and Other Financial Costs: Interest or borrowings (however represented), bond discounts, cost of financing and refinancing operations, and legal and professional fees paid in connection therewith.
 - ~~6.4.~~ Membership Expenses: Costs of membership in any organization which devotes a substantial part of its activities to influencing legislation.
 - ~~7.5.~~ Travel: The difference in cost between first-class air accommodations and less-than-first-class air accommodations are not available.
 - ~~8.6.~~ Meeting Attendance: Costs of attending meetings directly related to the performance of this Agreement which are not open for attendance on a non-segregated basis.
 - ~~9.7.~~ Non-competitive Subcontracts: Payments under a subcontract not obtained under competitive bidding procedure, unless specifically waived by the City.
- D. Advancements or reimbursements for expenditures which are determined by the City to be unallowable must be immediately returned to the City.

V. REMEDIES

§501. Amendments

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

Contractor. The Contractor agrees to comply with all future City Directives, or any rules, amendments or requirements promulgated by the City affecting this Contract.

§502. Waivers

- A. Waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the City or the Contractor.
- B. No waiver by the City of a breach of any provision of these conditions shall be deemed for any purpose to be a waiver of a breach of any other provision hereof, or of a continuing or subsequent breach of the same provision.

§503. Defaults

Should the Contractor fail for any reason to comply with the contractual obligations of this Agreement within the time specified by this Agreement or the Contractor is in breach of any provisions of the LAUSD Lease, the City reserves the right to:

- 1. Reduce the total budget;
- 2. Make any changes in the general scope of this Agreement;
- 3. Place the Contractor on probation status in accordance with §504 of this Agreement;
- 4. Suspend project operations in accordance with §505 of this Agreement; or
- 5. Terminate the Agreement.

§504. Probation

- A. The City may place the Contractor on probation for failure to comply with the terms and conditions of this Agreement or the LAUSD Lease by giving written notice, which shall be effective upon receipt.
- B. Said notice shall set forth the period of probation, the reason for probation, and the specific conditions of non-compliance.
- C. Within five (5) working days the Contractor shall reply in writing setting forth the corrective actions which will be undertaken, subject to City approval in writing.

§505. Suspension

- A. The City may suspend all or part of the project operations for failure of the Contractor to comply with the terms and conditions of this Agreement or the LAUSD Lease 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 Contractor shall reply in writing setting forth the corrective actions which will be undertaken, subject to City approval in writing.
- D. Performance under this Agreement shall be automatically suspended without any notice from the City as of the date the Contractor is not fully insured in compliance with §701 (Insurance) in Part II of this Agreement. Performance shall not resume without the prior written approval of City.

§506. Termination

- A. The parties agree that at any time during the term of this Agreement the City may terminate this Agreement or any part hereof upon giving the Contractor at least

thirty (30) days written notice prior to the effective date of such termination, which date shall be specified in such notice.

- B. All property, documents, data, studies, reports and records purchased or prepared by the Contractor under this Agreement shall be disposed of according to City directives.
- C. In the event that the Contractor ceases to operate (i.e. dissolution of corporate status, declaration of bankruptcy, etc.), Contractor shall provide to the City copies of all records relating to this Agreement.
- D. Upon satisfactory completion of all termination activities, the City shall determine the total amount of compensation that shall be paid to the Contractor for any unreimbursed expenses reasonably and necessarily incurred in the satisfactory performance of this Agreement.
- E. The City may withhold any payments due to the Contractor until such time as the exact amount of damages due to the City of Los Angeles from the Contractor is determined.
- F. The foregoing Subsections B, C, D, and E shall also apply to Agreements terminating upon the date specified in §103 or upon completion of performance of this Agreement.

§507. Notices of Suspension or Termination

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

§508. Breach

In the event any party fails to perform, in whole or in part, any promise, covenant, or agreement herein, or should any representation 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.

VI. REPORTS, RECORDS AND AUDITS

§601. Reporting Requirement

- A. At such times in such forms as the City may require, there shall be furnished to the City such statements, records, reports, data and information as the City may request pertaining to matters covered by this Agreement.
- B. For any exceptions to the provisions of subsection A of Reporting Requirement, Contractor shall have obtained written approval from the City.
- C. If Contractor's reports or other documentation are not submitted as required, the City reserves the right to withhold payments to the Contractor or to impose other sanctions, at the City's sole discretion.

§602. Maintenance of Records

- A. Records, in their original form, shall be maintained in accordance with requirements prescribed by the Grantor and the City with respect to all matters covered by this Agreement. Such records shall be retained for a period of four (4) years with the following qualifications:

1. If any litigation, claim or audit is started before the expiration of the 4-year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.
 2. Records for non-expendable property acquired with Federal funds shall be retained for 4 years after its final disposition.
 3. When records are transferred to or maintained by the City, the 4-year retention requirement is not applicable to the Contractor.
- B. The retention period starts from the date of the submission of the final expenditure report.
- C. Records in their original form pertaining to matters covered by this Agreement shall at all times be retained within the Los Angeles area unless authorization to remove them is granted in writing by the City.

§603. Audits and Inspections

- A. At any time during normal business hours and as often as the Grantor, the U.S. Comptroller General, Auditor General of the State of California or the City may deem necessary, the Contractor shall make available for examination all of its records that support all matters covered by this Agreement.
- B. The Contractor shall conduct or have conducted on an annual basis, and within nine (9) months after the close of Contractor's fiscal year, an audit in accordance with OMB Circular A-133 and City Council action, and any implementing administrative regulations or field memos.
1. The audit is to be conducted annually on an organization-wide basis to test the fiscal integrity of financial transactions, as well as compliance with the terms and conditions of the Federal grant and this Agreement.
 2. Contractors receiving funds from two or more sources shall annually subcontract with a qualified independent auditor.
 3. Contractors receiving funds solely from the City shall annually subcontract with a qualified independent auditor unless notified in writing by the Community Development that an auditor will be provided.
 4. The Contractor, no later than fifteen (15) days of receipt of the final audit report and within nine (9) months after the close of Contractor's fiscal year, shall submit three copies of the report to the Audit Section of the Community Development Department.
 5. The City reserves the right to impose sanctions for Contractor's failure to comply with this section and other provisions of this Agreement.
- C. In the event the Contractor has only Performance Based or Fixed Unit Price Contracts, a written request may be made to the City for permission to have an annual audit performed using alternative audit requirements.

The alternative audit requirements of the City require an audit that shall result in the following reports from the independent auditor:

1. Report on the Schedule of Federal Financial Assistance (Grant funds earned through contract performance);
2. Report on internal controls (accounting and Administrative) that were evaluated, the scope of the auditor's assessment work and any significant weaknesses found;

3. Opinion on compliance with contract provisions and specific requirements applicable to Federal financial assistance;
 3. Report on compliance with general requirements applicable to Federal financial assistance; and
 4. Schedule of findings and questioned costs.
- D. The City reserves the right to impose any or all of the following sanctions for Contractor's failure to comply with the requirements of the Single Audit Act and the provisions of this Agreement.
1. Withhold a percentage of assistance payments, at the City's sole discretion, until the audit is completed satisfactorily and submitted to the CDD;
 2. Withhold or disallow and require return of overhead and administrative costs;
 3. Suspend payments due to Contractor until the audit is completed satisfactorily and submitted to the City; and/or
 4. Impose the Default, Probation, Suspension and Termination provisions of this Agreement as set forth herein.
- E. City, Auditor General of the State of California, Grantor, and the U.S. Comptroller General shall have the authority to audit, examine and make excerpts or transcripts from the records, including contracts, invoices, participant records and other records supporting this Agreement. Audits of earned funds are limited to determining if such funds were earned in accordance with this Agreement.
1. City may require a Contractor that has inadequate fiscal or administrative procedures to use any or all of the City's accounting or administrative procedures used in the planning, controlling, monitoring and reporting of fiscal matters relating to this Agreement, or to secure at Contractor's expense the service of independent experts.
 2. City shall have the authority to make physical inspections and to require such physical safeguarding devices as locks, alarms, safes, fire extinguishers, sprinkler systems, etc., to safeguard property, records and/or equipment used in the performance of this Agreement.
 3. Should a fiscal audit determine that the Contractor has earned funds which are questioned under the criteria set forth herein, the Contractor shall be notified and given the opportunity to justify questioned expenditures prior to the City's final determination of disallowed costs.

§604. Equipment Records

Non-expendable personal property (herein referred to as equipment) acquired pursuant to this Agreement, shall be properly maintained and accounted for as set forth below.

1. A record shall be maintained for each item of equipment acquired for the program. Equipment is non-expendable property which is not consumed or does not lose its identity by being incorporated into another item of equipment, which costs \$5,000 or more per unit, or is expected to have a useful life of one (1) year or more. A grouping of like items, such as chairs, with an aggregate cost in excess of \$5,000 shall also be controlled and accounted for as equipment, even though the cost of a single item is less than \$5,000. The record shall include: (a) description of the item of equipment, including model and serial number, if applicable; (b) date of acquisition cost or assigned value to the program; and (c) source of acquisition.

2. The record shall indicate whether the item of equipment was new or used at the time of acquisition. The aggregate of the individual costs shown on the record cards shall equal the balance of the subsidiary cost account for equipment.
3. All equipment obtained under this Agreement shall have a City identification decal affixed to it. The identification decal, when practical, shall be affixed where it is readily visible.
4. A physical inventory shall be taken by the Contractor and reconciled with the record card annually or at such other times as the City shall prescribe.

§605. Accounting Practices

- A. The Contractor shall maintain a system of internal control in accordance with standard accounting practices. Internal control comprises the plan or organization and all of the coordinate methods and measures adopted within an organization to safeguard its assets, check the adequacy and the reliability of its accounting data, promote operating efficiency and assure adherence to prescribed management policies.
- B. The Contractor's system of accounting procedures shall be submitted to the City prior to any disbursement of funds to the Contractor.

§606. Documentation of Expenditures

Expenditures shall be supported by properly executed 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.

§607. Validity of Financial Documentation Submissions

Financial reports required to be prepared and submitted by the Contractor 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 Contractor secure the services of a licensed accounting firm. Cost of such accounting services are to be borne by the Contractor and are not to be reimbursed from the funds authorized by this Agreement, unless specifically agreed to between the Contractor and the City in a written amendment.

§608. Disposition of Program Income

- A. The Contractor shall, within 45 days of the expiration of this Agreement, transmit to the City Treasury any, and all, program income directly generated by grant funds provided by this Agreement. Program Income is defined in 24 CFR 85.25 and 24 CFR 570.500(a). Any program income on hand when the Agreement expires, or received after the Agreement's expiration, shall be paid to the City as required by 24 CFR 85.25 and 24 CFR 570.504.

§609. Reversion of Assets

- A. The Contractor shall, within 45 days of the expiration of this Agreement, transfer to the City Treasury any, and all, grant funds on hand at the time of expiration and any, and all, accounts receivable attributable to the use of grant funds provided under this Agreement.
- B. Any real property under the Contractor's control that was acquired or improved in whole or in part with grant funds provided under this Agreement in excess of \$25,000 shall either be:

1. Used to meet one of the national objectives set forth in 24 CFR 570.208 until five (5) years after the expiration of this Agreement, or such longer period of time as determined appropriate by the City; or
2. Disposed of in a manner which results in the City being reimbursed in the amount of the current fair market value of the property, less any portion thereof attributable to expenditures of non-grant funds for acquisition of, or improvement to, the property. Such reimbursement is not required after the period of time specified in accordance with 1.) above.

VII. GENERAL TERMS AND CONDITIONS

§701. Indemnification and Insurance Requirements

A. Indemnification

Except for the active negligence or willful misconduct of City, or any of its Board, Officers, Agents, Employees, Assigns and Successors in Interest, Contractor undertakes and agrees to defend, indemnify and hold harmless City and any of its Boards, Officers, Agents, Employees, Assigns, and Successors in Interest from and against all suits and causes of action, claims, losses, demands and expense, including, but not limited to, attorney's fees and cost of litigation, damage or liability of any nature whatsoever, for death or injury to any person, including Contractor'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 the negligent acts, errors, omissions or willful misconduct incident to the performance of this Contract by the Contractor or its subcontractors of any tier. The provisions of this paragraph survive expiration or termination of this Contract.

B. Insurance

1. General Conditions

During the term of this Agreement and without limiting Contractor's indemnification of City, Contractor shall provide and maintain, at its own expense, a program of insurance having the coverages and limits customarily carried and actually arranged by Contractor, but not less than the amounts and types listed on the Insurance Requirements Sheet (Form Gen 146/IR) in Exhibit I hereto, covering its operations hereunder. Such insurance shall conform to City requirements established by Charter, ordinance or policy, shall comply with the instructions set forth on Form General 133 and with the conditions set forth on the applicable City Special Endorsement form(s), copies of which are included in Exhibit I, and shall otherwise be in a form acceptable to the City Attorney. Specifically, such insurance shall: 1) protect City as an Insured or an Additional Interest Party, or a Loss Payee As Its Interests May Appear, respectively, when such status is appropriate and available depending on the nature of the applicable coverages; 2) provide City at least thirty (30) days advance written notice of cancellation, material reduction in coverage or reduction in limits when such change is made at the option of the insurer; and 3) be primary with respect to City's insurance program. Except when City is a named insured, Contractor's insurance is not expected to respond to claims which may arise from the acts or omissions of the City.

2. Modification of Coverage

City reserves the right at any time during the term of this Contract to change the amounts and types of insurance required hereunder by giving Contractor ninety (90) days advance written notice of such change. If such change should result in substantial additional cost to the Contractor, City agrees to negotiate additional compensation proportional to the increased benefit to City.

3. Failure to Procure Insurance

All required insurance must be submitted and approved by the City Attorney prior to the inception of any operations or tenancy by Contractor. The required coverages and limits are subject to availability on the open market at reasonable cost as determined by City. Non-availability or non-affordability must be documented by a letter from Contractor's insurance broker or agent, indicating a good faith effort to place the required insurance, and showing as a minimum the names of the insurance carriers and the declinations or quotations received from each.

Within the foregoing constraints, Contractor's failure to procure or maintain required insurance or a self-insurance program during the entire term of this Contract shall constitute a material breach of this Contract under which City may immediately suspend or terminate this Contract or, at its discretion, procure or renew such insurance to protect City's interests and pay any and all premiums in connection therewith and recover all monies so paid from Contractor.

4. Worker's Compensation

By signing this Contract, Contractor hereby certifies that it is aware of the provisions of Section 3700 et seq. of the Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and that it will comply with such provisions at all such times as they may apply during the performance of the work pursuant to this Contract.

A Waiver of Subrogation in favor of City will be required when work is performed on City premises under hazardous conditions.

§702. Prohibition Against Assignment

- A. The Contractor shall not assign this Agreement, nor assign or transfer any interest or obligation in this Agreement (whether by assignment or novation) without prior written consent of the City.
- B. The Contractor shall not enter into any agreement with any other party under which such other party shall become the recipient of claims due or to become due to the Contractor from the City without prior written consent of the City.

§703. Limitation of Expenditures

- A. The Contractor shall not expend funds provided under this Agreement prior to the commencement of this Agreement, or subsequent to suspension or termination of this Agreement.
- B. Expenditure shall be made in conformance with the City approved Expenditure Plan, and shall meet criteria established for "allowable costs" under §407 of this Agreement.
- C. Expenditures shall be in direct support of the project which is the subject of this Agreement. The Contractor shall notify the City in writing of any expenditures for items jointly used for any other project (s) and the expenditures shall be apportioned according to the percentage of direct use for this project.

§704. Limitation of Corporate Acts

The Contractor shall not amend its Articles of Incorporation or Bylaws, move to dissolve, transfer any assets derived from funds provided under §301 herein or take any other steps which may materially affect the performance of this Agreement

without first notifying the City in writing. The Contractor shall notify the City immediately in writing of any change in the Contractor's corporate name.

§705. Employment of Key Personnel

For the purpose of this Agreement, the Project Director and Chief Financial Officer needed in support of this Agreement shall be considered Key Personnel. Substitute or replacement personnel hired by Contractor or collaborating subcontractor agencies shall meet the same qualifications as staff identified in the proposal and in the Expenditure Plan. Contractor warrants that it shall replace all key personnel with equally or better qualified staff and shall notify City of any such change.

§706. Contractor Personnel

- A. The Contractor shall employ persons meeting the qualifications for those positions they hold.
- B. The Contractor shall not use Grant funds provided under this Agreement to pay salaries.
- C. Deviation of the foregoing limitations shall require written City approval before becoming effective.

§707. Property

- A. All real property, including fixtures, purchased with funds provided in Section 301 of this Agreement shall become the property of the Contractor at the termination of the service payback period and shall vest in the Contractor at the termination of the Agreement, provided that the Contractor has complied with all Agreement requirements and terms of the Promissory Note/Deed of Trust, if any.
- B. The property shall be used and maintained by the Contractor as follows:
 - 1. Property shall be used solely in the performance of this Agreement.
 - 2. No modification shall be made to the property without the prior written approval of City.
 - 3. The Contractor shall be liable for any and all loss, damage or destruction of property acquired under this Agreement during the period said property is under the control of the Contractor, except losses, damage or destruction resulting from reasonable wear and tear. Damage, loss or destruction of the property shall be immediately reported to the City.

§708. Site Selection and Lease

A. Site Selection

A written description giving full details of any site (s) selected by the Contractor for use pursuant to this Agreement shall be submitted to the City for review prior to renting, leasing or acquiring said site. The City shall only approve expenditures of Grant funds in the amount which is determined to be the fair market value.

B. Lease or Rental Agreement

- 1. A copy of the proposed lease or rental agreement shall be submitted to the City prior to leasing or renting.
- 2. After execution of the lease or rental agreement, the Contractor shall submit a copy to the City prior to payment.
- 3. Written amendments to executed lease or rental agreements shall comply with the conditions set forth herein.

§709. Purchase or Lease of Equipment, if applicable

- A. Prior to the purchase or lease of equipment the Contractor shall receive City approval in writing and shall comply with §711 of this Agreement.
- B. The term equipment as used in this Agreement shall be defined to mean personal property.
- C. Contractor shall notify the City in writing prior to using equipment for this Agreement which was or is to be purchased or leased with public funds not provided by this Agreement. Purchase or lease payments for such equipment shall not be made from funds under the terms of this Agreement.
- D. Lease of Equipment
 - 1. A copy of each executed equipment lease agreement shall be submitted to the City prior to payment.
 - 2. Written amendments to executed equipment lease agreements shall comply with the conditions set forth herein.
- E. Purchase of Equipment
 - 1. All personal property purchased under this Agreement with Funds provided in §301 of the foregoing Agreement shall become the property of the City and shall be returned to the City upon termination of this Agreement, except as otherwise provided.
 - 2. The property shall be used and maintained by the Contractor as follows:
 - a. Property shall be used solely in the performance of this Agreement.
 - b. No modification shall be made to the property without the prior written approval of the City.
 - c. The Contractor shall be liable for any and all loss, damage or destruction of property acquired under this Agreement during the period the said property is under the control of the Contractor, except losses, damages or destruction resulting from reasonable wear and tear. Damage, loss or destruction of the property shall be immediately reported to the City.
 - d. Information regarding purchase of depreciable equipment including, but not limited to, computer hardware and software and vehicles shall be maintained by the Contractor to be submitted to the City upon request.

§710. Subcontracts

- A. For the purpose of this Agreement, subcontracts shall include, but not be limited to, purchase agreement or lease or rental agreements (excluding real property agreements), third party agreements, consultant services subcontracts and construction 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.
 - 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.

§711. Competitive Bid Requirements

A. METHOD OF PROCUREMENT. Contractor shall use one of the following methods of procurement either by bid or proposal, as appropriate for each procurement action, before entering into contracts with Subcontractors. Contractors shall conduct procurements in a manner which provides full and open competition. Contractor shall perform a cost or price analysis in connection with every procurement action, including contract modifications, to determine that the expenditure is reasonable. When any purchase is made, it can only be for an allowable cost. Invitations for bids shall clearly set forth all requirements which the bidder must fulfill in order for his bid to be evaluated by the City and Contractor. Grievance process procedures shall be included in each of the following methods of advertised procurement. Specific requirements and procedures are set forth in 24 CFR §84.44 and §85.36 (as applicable), Los Angeles City Charter §371 through §372, Office of Management and Budget Circular A-110, and are incorporated herein by reference.

Prior to entering into any subcontract, the Contractor shall submit to the City evidence that it has received the required quotes/bids as described below in subsections 1 and 2, and justification for selection of the successful bidder or documentation to support the fact of the sole supplier. Records shall be maintained by the Contractor showing the parties solicited and the bids submitted.

1. Small Purchase Procedures. Small purchases are made from vendors for goods or services under \$100,000. Following the procedures for small purchases will constitute justification of the procurement method chosen. The requirements are:

Dollar Range of Purchase	Contacts and Method
\$0 to \$5,000	3 documented quotes**
\$5,000 to \$100,000	3 written quotes **

**Unless sole source justification exists, e.g., only one quote provided supported by an independent cost analysis per Sec. 711 A. 3. below.

For the 3 documented quotes, the documentation requires telephone contact with the vendors to obtain quotes for requested services. A Request for Quote (RFQ) is required for all small purchases. The RFQ indicates the quantity, time frames and all other requirements of the product or service sought. Quotes must be solicited from vendors that can reasonably be expected to provide the goods or services needed.

For 3 written quotes, the RFQ must either be provided in writing to the vendors or transmitted as uniformly as possible over the telephone. To be considered, the response must be signed and dated by the vendor.

2. Purchases/Services Over \$100,000

a. Sealed Bids - Formal Advertising. Contractor shall prepare an Invitation for Bid (IFB) or similar (solicitation) document, which includes full and clear definitions and descriptions of the items to be procured and key performance criteria, dimensions or specifications. Sealed bids shall be solicited publicly for procurement for a firm, fixed-price contract (lump sum or unit price) or other fixed-price arrangement.

- b. Competitive Proposals. Proposals shall normally be conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. Contractors shall ensure that they use a documented methodology for technical evaluations and shall award the contract to the responsible offeror whose proposals are most advantageous to the program with price, technical, and other factors considered.
- c. Noncompetitive Proposals - Sole Source. To conduct a noncompetitive procurement the criteria here must be met. Sole source contracts shall be procurement through solicitation of a proposal from only one source, the funding of an unsolicited proposal, or, after solicitation of a number of sources, when competition is determined inadequate.

Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and one of the following circumstances applies:

- 1) The item or service is available only from a single source; or
- 2) The public exigency or emergency need for the item or service does not permit a delay resulting from competitive solicitation and the procurement is for a limited time only; or
- 3) The awarding agency authorizes noncompetitive proposals; or
- 4) After solicitation of a number of sources, competition is determined inadequate.

3. Cost or Price Analysis

- a. Contractor shall establish standards for the performance of cost or price analysis.
- b. Contractor shall perform a cost or price analysis in connection with every procurement action, including contract modifications to determine that the expenditure is reasonable. The method and degree of analysis depends on the facts surrounding the particular procurement and pricing situation, but at a minimum, the Contractor shall make independent estimates before receiving bids or proposals.
 - 1) A cost analysis is necessary when the offeror is required to submit the elements of the estimated cost, when adequate competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. As part of its bid the offeror shall certify that to the best of its knowledge and belief, the cost data are accurate, complete and current at the time of agreement on price.
 - 2) Contracts or modifications negotiated in reliance on such data should provide the awarding agency a right to a price adjustment to exclude any significant sum by which the price was increased because the contractor had submitted data that were not accurate, complete or current as certified.
 - 3) Any indirect costs in a proposal must be carefully reviewed to ensure that costs are not duplicated by direct costs. Indirect costs must be allocated in accordance with an approved cost allocation plan.

- 4) If a bidder proposes to use a subcontractor as part of its proposal, all costs in the proposed subcontract must also be evaluated in the same manner as for the primary proposal.
- 5). Cost analysis must carefully evaluate salaries of owners of sole proprietorships or partnerships who submit offers to ensure that they are in line with the services to be performed.

c. A price analysis shall be used in all other instances to determine the reasonableness of the proposed contract price. The following price analysis techniques shall be used: i) comparison of proposed prices received; ii) comparison of prior prices received with current contract proposed prices for the same or similar requirement; iii) application of rough yardsticks (e.g., dollars per square feet, dollars per placement); iv) comparison with competitive published price lists and published market prices; and v) comparison with agency's independently developed cost estimates.

- 1) The following cost analysis steps shall be used: a) verify cost or pricing data and evaluate cost elements; b) evaluate the effect of the offeror's current practices on future cost; c) compare proposed costs for individual cost elements; d) verify that offeror's cost submissions are in accordance with cost principles (allowable/allocable); and e) review to determine that all necessary cost or pricing data have been submitted.

B. CONTRACT PROVISIONS: All contracts must contain at a minimum the following provisions:

1. Specific deliverables and the basis for payment;
2. Provisions requiring compliance with Community Development Block Grant (CDBG) regulations;
3. Provisions which describe remedies for breach;
4. Provisions which describe CDBG patent and copyright rules;
5. Provisions for termination for cause and convenience;
6. Access to records for audit purpose;
7. Audit requirements;
8. Provisions for payment and delivery;
9. Provisions describing contract amendment procedures;
10. Provisions against assignment;
11. Provisions for equal opportunity and non-discrimination;
12. Provisions prohibiting conflicts of interest.

\$712 Consultant Services

Prior to the execution of a subcontract for consultant services, the Contractor shall submit to the City in writing a bid package and proposed subcontract which contains the following items:

1. The solicitation for bids.

2. The list of persons or firms to which the solicitation announcement was sent.
3. A minimum of three bids.
4. Specific reasons for this selection of the prospective consultant. A resume or job application, which fully describes the consultant'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 Consultant.
 - b. The length of time the Consultant will be retained.
 - c. The fee to be paid to the Consultant indicating whether an hourly, weekly or job completion date is to be the basis for payment.

§713. Construction Subcontracts

- A. All construction subcontracts shall comply with City bidding procedures (Section 371 through 372 of the Los Angeles City Charter) and to the extent federal funds are involved, with Office of Management and Budget Circular A-110, Attachment O, provided that if there is a conflict, the federal provisions shall prevail. The Contractor shall submit a copy of the Invitation for Bid (IFB), or Request for Proposal (RFP), whichever is applicable, to the City for its written approval prior to publication of the IFB or RFP.
- B. Subsequent to the solicitation for bid procedure, the Contractor shall make a recommendation to the City for its approval of the award of the subcontract.
- C. Applicable labor standard provisions including, but not limited to, City and/or Federal Affirmative Action requirements, the Davis-Bacon Act, as amended, the Contract Work Hours and Safety Standards Act, the Copeland "Anti Kickback Act" as well as all regulations issued pursuant to these act and other Federal laws and the General Conditions shall be a part of all construction subcontracts awarded pursuant to this Agreement. Bidding procedures, Section 386 of the City Charter and labor provisions referenced hereinabove may be obtained from the City on request.

§714. Records and Audits of Subcontracts

- A. Records shall be maintained in accordance with requirements prescribed by the City with respect to all matters covered by any subcontract. Such records shall be retained within the Los Angeles Area for a period of four (4) years after receipt of final payment under this Agreement, unless authorization to remove them is granted in writing by the City.
- B. Expenditures pertaining to subcontracts shall be supported by properly executed documents evidencing in detail the nature of the charges.
- C. At such times and in such forms as the City may require, there shall be furnished to the City such statements, records, reports, data and information as the City may request pertaining to matters covered by any subcontract.
- D. These records shall be made available to the City for copying, audit, and inspection at any time during normal business hours.

§715. Cost-Plus-a-Percentage-of-Cost-Subcontracting

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

§716. Restriction on Disbursements

No money received pursuant to this Agreement by the Contractor shall be disbursed to any subcontractor except pursuant to a written agreement which incorporates the applicable General Contract Conditions as set forth in §711 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.

§717. Overtime Work

Unless specifically stated within this Agreement or authorized by the City in writing, overtime work expenditures shall not be incurred by the Contractor under this Agreement.

§718. Travel

Any travel to be incurred by the Contractor and/or its employees under this Agreement that requires the use of private or public transportation outside the limits of Los Angeles County shall first be approved in writing by the City.

§719. Restriction on Disclosures

Any reports, analysis, studies, drawings, information, or data generated as a result of this Agreement are to be considered as confidential. Such information shall not be made available to any individual, agency, or organization except as provided for in this Agreement or as provided by law.

- A. RIGHTS IN DATA: City reserves the right to use, duplicate and disclose, in whole or in part, in any manner, for any purpose whatsoever, and to authorize other to do so, all writings, drawings, pictorial reproductions, or other graphical representations and works of a similar nature except those sections labeled "Consultant Proprietary," produced by Contractor as a result of activities supported by this Agreement. If the material is subject to copyright, City reserves the right to copyright such and the Contractor agrees not to copyright such material.
- B. TRADE SECRETS: Recognizing that City has no way to safeguard trade secrets or proprietary information, Contractor shall and does hereby keep and bear City harmless from all damages, costs, and expenses by reason of any disclosure by City of trade secrets and proprietary information. City shall not require Contractor to provide technical information that is proprietary, except as is requested by City to successfully complete the project which is the subject of this Agreement.

§720. Compliance with Statutes and Regulations

- A. The Contractor 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 City of Los Angeles, including laws and regulations pertaining to labor, wages, hours, and other conditions of employment and the City's anti-discrimination provisions and Affirmative Action Plan, and abatement of Asbestos Containing Materials (ACM) and Lead-Base Paint (LBP) including insuring all personnel involved in the abatement or removal process of all ACM and LBP will wear the necessary, legally-required protective clothing and respiratory gear. If archaeological sites are determined to be located in the project vicinity, a halt-work condition is required to allow a state-certified archaeologist to assess findings and allow work to continue in non-archaeological areas. 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 Contractor for compliance thereto. These conditions shall be made an integral part of any subcontract arising out of this Agreement. Contractor further warrants and certifies

that is shall comply with 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. Office of Management and Budget (OMB), Circular A-122, Cost Principles for Non-profit Organizations;
2. Office of Management and Budge (OMB) Circular A-87, Cost Principles Applicable to Grants and Contracts With State and Local Governments;
3. Executive Order Number 11,063 dated November 20, 1962;
4. Copeland "Anti-Kickback" Act (18 USC 874,4042,4121-4128,4162, as supplemented in Department of Labor regulations, (29 CFR, Part 3, 40 USC §§ 276c);
5. Davis-Bacon Act (40 USC 276a et seq.) (29 CFR, Part 5); State Prevailing Wage Requirements pursuant to California Labor Code Section 1720 et seq.;
6. Sections 103 and 107 Contract Work Hours and Safety Standards Act (40 USC 327-333,as supplemented by Department of Labor regulations (29 CFR, Part 5);
7. Clean Air Act, as amended (42 USC 1857, et seq.);
8. Federal Pollution Control Act, as amended (33 USC 1251, et seq.);
9. Title VI of the Civil Rights Act of 1964, (PL 88-352, as amended), and implementing regulations;
10. 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;
11. Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, and implementing regulations issued at 45 CFR, Part 84;
12. The Americans with Disabilities Act (ADA), PL 101-336 and all applicable regulations;
13. The Age Discrimination Act of 1975, as amended, (42 USC 6101, et seq.) and implementing regulations;
14. The assurance made by the City to the U.S. Department of Housing and Urban Development in its application for funds under Title I of the Housing and Community Development Act of 1974, as amended;
15. The Grant Agreement between the City and the U.S. Department of Housing and Urban Development pursuant to Title I of the Housing and Community Development Act of 1974, as amended, including its General Terms and Conditions, which are hereby incorporated by reference (Provisions therein include "Section 3" compliance, Flood Disaster Protection, Equal Employment Opportunity, Lead-Based Paint Hazards, Compliance with Air and Water Acts, Federal Labor Standards, Nondiscrimination, Interest of Certain Federal Officials and Other Public Officials, Prohibition against Payments of Bonus or Commission);
16. The federal regulations and the Code of Federal Regulations and the Federal Register provisions applicable to the Community Development Block Grant program;
17. HUD Handbook 1900.23, Letter of Credit Procedures-Treasury Original Disbursing Office System (Recipient Organizations) as supplemented by procedural instructions as issued by City;

18. 24 CFR Part 570 CDBG Entitlement Program, particularly 24 CFR Section 570.503 Agreements with Subrecipients;
19. Omnibus Budget Reconciliation Act of 1981 which established the Community Services Block Grant Act (42 USC 9901, et seq.) and implementing regulations (e.g., 45 CFR 500, et seq.);
20. Title VII, Subtitle D of the City to the Stewart B. McKinney Homeless Assistance Act of 1987, Public Law 100-77 (Emergency Community Services Homeless Grant Program);
21. The assurances made by the City and the U.S. Department of Housing and Urban Development in its application for funds under the Stewart B. McKinney Homeless Assistance Act of 1987;
22. The Grant Agreement between the City and the U.S. Department of Housing and Urban Development pursuant to Title IV, Subtitle B of the Stewart B. McKinney Homeless Assistance Act of 1987, including its General Terms and Conditions of 24 CFR Part 576 which are hereby incorporated by references;
23. 24 CFR Part 85 Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments particularly 24 CFR Section 85.36 (I), Contract Provisions 1-13;
24. Federal regulations regarding debarment as contained in Executive Order Number 12549 and 24 CFR Part 24, Section 24.510, and any amendment thereto.
25. City of Los Angeles Ordinance 164244 relating to the 1% fee for public art.
26. The Energy Policy and Conservation Act (P.L. 94-163, December 22, 1975, 42 USC Section 6201 et seq., as amended).
27. Intergovernmental Personnel Act of 1970 (42 USC §§ 4728-4763, Appendix A of OPM's Standards for a Merit System of Personnel Administration, 5 CFR 900, Subpart F); the Federal Fair Labor Standards Act, 29 USC §§ 201; Title IX of the Education Amendments of 1972, as amended (20 USC §§ 1681-1683 and 1685-1686); the Drug Abuse Office and Treatment Act of 1972, as amended (PL 92-255; the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended (PL 91-616; Sections 523 and 527 of the Public Health Service Act of 1912, as amended (42 USC §§ 290 dd-3 and 290 ee-3); Title VIII of the Civil Rights Act of 1968 (42 USC §§ 3601 et seq.), as amended; Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (PL 91-646); Hatch Act (5 USC §§ 1501-1508 and 7324-7328).
28. Section 102(a) of the Flood Disaster Protection Act of 1973 (PL 93-234); National Environmental Policy Act of 1969 (PL 91-190, Executive Order 11514); Notification of Violating Facilities (Executive Order 11738); Protection of wetlands pursuant to Executive Order 11990; Evaluation of Flood Hazards in Floodplains (Executive Order 11988); Assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 USC §§ 1451 et seq.); Safe Drinking Water Act of 1974, as amended (PL 93-523); Endangered Species Act of 1973, as amended (PL 93-205); Wild and Scenic Rivers Act of 1968 (16 USC §§ 1271 et. seq.); Section 106 of the National Historical Preservation Act of 1966, as amended (16 USC § 470); Executive Order 11593 (identification and protection of historic properties); Archaeological and Historic Preservation Act of 1974 (USC §§ 469a-1 et seq.); PL 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance; Laboratory Animal Welfare Act of 1966, as amended (PL 89-544, 7 USC §§ 2131 et. seq.); Lead-Based Paint Poisoning Prevention Act (42 USC §§ 4801 et seq.); Coastal Barrier Resources Act, PL 97-348 dated October 19, 1982, 16 USC §§ 3501 et seq.
29. 24 CFR 85.22, Allowable Costs; 48 CFR Part 31, Federal Acquisition Regulation (FAR).

§721. Permits and Licenses

- A. The Contractor shall obtain all permits and licenses necessary to the performance of this Agreement. The Contractor shall pay all normal fees for permits, licenses, inspections or any other certification or service required in the performance of this Agreement. Among the permits and licenses which may be required are Conditional Use Permits; B-Permits, Building Permits, Incorporation Fees or State Licensing Fees of any kind. The City is not permitted to waive any fees for services, except as otherwise required by law.
- B. The Contractor represents that it has obtained and presently holds the Business Tax Registration Certificate (s) required by the City's Business Tax Ordinance (Article 1, Chapter 2, Section 21.00 and following, of the Los Angeles Municipal Code). The Contractor shall maintain, or obtain as necessary, all such Certificates required of it under said Ordinance and shall not allow any such Certificate to be revoked or suspended.

§722. Conflict of Interest

A. No City-funded Employees as Board Members

The City will not execute any Agreements and/or Amendments with Contractors where an employee (an individual who is paid or receives any financial benefit from funds from the Agreement with the City), is a member of the Board of Directors. The Board minutes must reflect this requirement.

B. Code of Conduct

The City requires that all Contractors/Sub-Contractors adopt a Code of Conduct which at minimum reflects the constraints discussed in this Directive. No Agreements and/or Amendments will be executed without City approval of this Code of Conduct.

Further, the City requires compliance with the following conflict of interest requirements for all City funded contractors.

1. Conflict of Interest

- a. Prior to obtaining the City's approval of any subcontract, the Contractor shall disclose to the City any relationship, financial or otherwise, direct or indirect, of the Contractor or any of its officers, directors or employees or their immediate family with the proposed subcontractor and its officers, directors or employees.
- b. The Contractor 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 subcontractor; or where the selection of 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 domestic partner or organization has a financial interest in the subcontract;
 - 2. The subcontractor is someone with whom such person has or is negotiating any prospective employment; or
 - 3. The participation of such person would be prohibited by the California Political Reform Act, California Government Code §87100 et seq. if such person

were a public officer, because such person would have a "financial or other interest" in the subcontract.

C. Definitions:

1. The term "immediate family" includes but is not limited to domestic partner and/or 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, sister-in-law, son-in-law, 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 interests 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 directors or governing body.

3. A subcontract is any agreement entered into by Contractor for the purchase of goods or services with any funds provided by this Agreement.

D. Minutes of Board Meetings must reflect disclosure of transactions where Board Members may have had a direct or indirect interest/benefit in the action.

E. No director, officer, employee (or agent) of the Contractor may be on the Board of Directors if they receive any financial benefit provided by any City Agreement.

F. The Contractor further covenants that no officer, director, employee, or agent shall solicit or accept gratuities, favors, anything of monetary value from any 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).

G. The Contractor 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 Contractor.

H. 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, State of California, and Federal regulations regarding conflict of interest.

I. The Contractor 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.

J. The Contractor covenants that no member, officer or employee of Contractor shall have interest, direct or indirect, in any contract or subcontract or 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.

K. The Contractor shall incorporate the foregoing subsections of this Section into every agreement that its enters into in connection with this project and shall substitute the term "subcontractor" for the term "Contractor" and "sub-subcontractor" for "Subcontractor".

- L. The Contractor warrants that it has adopted and shall comply with the Code of Conduct, as approved by the City, that meets the foregoing requirements.

§723. Inventions, Patents and Copyrights

A. Reporting Procedure for Inventions

If any project produces any invention or discovery ("Invention") patentable or otherwise under Title 35 of the U.S. Code, including, without limitation, processes and business methods made in the course of work under this Agreement, the Contractor shall report the fact and disclose the Invention promptly and fully to the City. The City shall report the fact and disclose the Invention to the Grantor. Unless there is a prior agreement between the City and the Grantor, the Grantor shall determine whether to seek protection on the Invention. The Grantor shall determine how the rights in the Invention, including rights under any patent issued thereon, will be allocated and administered in order to protect the public interest consistent with the policy ("Policy") embodied in the Federal Acquisition Regulations System, which is based on Ch. 18 of Title 35 U.S.C. Sections 200 et seq. (Pub. L. 95-517, Pub. L. 98-620, 37 CFR part 401; Presidential Memorandum on Government Patent Policy to the Heads of the Executive Departments and Agencies, dated 2/18/1983; and Executive Order 12591, 4/10/87, 52 FR 13414, 3 CFR, 1987 Comp., p. 220 (as amended by Executive Order 12618, 12/22/87, 52 FR 48661, 3 CFR, 1987 Comp., p. 262)). Contractor hereby agrees to be bound by the Policy, and will contractually require its personnel to be bound by the Policy.

B. Rights to Use Inventions

City shall have an unencumbered right, and a non-exclusive, irrevocable, royalty-free license, to use, manufacture, improve upon, and allow others to do so for all government purposes, any Invention developed under this Agreement.

C. Copyright Policy

1. Unless otherwise provided by the terms of the Grantor or of this Agreement, when copyrightable material ("Material") is developed under this Agreement, the author or the City, at the City's discretion, may copyright the Material. If the City declines to copyright the Material, the City shall have an unencumbered right, and a non-exclusive, irrevocable, royalty-free license, to use, manufacture, improve upon, and allow others to do so for all government purposes, any Material developed under this Agreement.
2. The Grantor shall have an unencumbered right, and a non-exclusive, irrevocable, royalty-free license, to use, manufacture, improve upon, and allow others to do so for all government purposes, any Material developed under this Agreement or any copyright purchased under this Agreement.
3. Contractor shall comply with 29 CFR 97.34.

D. Rights to Data

The Grantor and the City shall have unlimited rights or copyright license to any data first produced or delivered under this Agreement. "Unlimited rights" means the right to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform and display publicly, or permit others to do so, as required by 48 CFR 27.401. Where the data are not first produced under this Agreement or are published copyrighted data with the notice of 17 U.S.C. Section 401 or 402, the Grantor acquires the data under a copyright license as set forth in 48 CFR 27.404(f)(2) instead of unlimited rights (48 CFR 27.404(a)).

E. Trade Secrets

Recognizing that City has no way to safeguard trade secrets or proprietary information, Contractor shall and does hereby keep and bear City harmless from all damages, costs, and expenses by reason of any disclosure by City of trade secrets and proprietary information. City shall not require Contractor to provide technical information that is proprietary to him, except as is requested by City to successfully complete the project that is the subject of this Agreement.

F. Obligations Binding on Subcontractors

Contractor shall require all subcontractors to comply with the obligations of this section by incorporating the terms of this section into all subcontracts.

§724. 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.

§725. Lobbying Prohibited

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.

If this Agreement provides for more than \$100,000 in federal grant funds or more than \$150,000 in federal loan funds, Contractor shall submit to City a fully executed Certification Regarding Lobbying (Exhibit III) and a disclosure form if required, in accordance with Section 1352, Title 31, U.S. Code. No funds will be released to Contractor until the Certification is filed.

Contractor 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 Contractor.

§726. Installation of Financial Assistance Sign

The Contractor shall allow to be installed for public display upon the project premises, a sign identifying the Contractor as a recipient of financial assistance from the City. The signage shall read as follows: "Community Development Block Grant funding provided by the U.S. Department of Housing and Urban Development through the Community Development Department of the City of Los Angeles".

§727 Public Information

In all communication with the press, television, radio or any other means of communicating with the general community, the Contractor shall make specific reference to the City of Los Angeles Community Development Department as a/the sponsoring agency of the project.

§728 Discrimination Prohibited

No person shall on the ground of race, religion, ancestry, color, national origin, sex, sexual preference, age, physical handicap, marital status or domestic partner status be excluded from participation in, be denied the benefit of, or be subjected to discrimination under this program/project. For purposes of this Section, Title 24 Code of Federal Regulations Section 570.601 (b) defines specific discriminatory actions which are prohibited and corrective action which shall be taken in situations as defined therein.

§729. Nondiscrimination, Equal Employment Practices and Affirmative Action Program

The Contractor shall comply with the nondiscrimination 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 Contractor shall not discriminate in its employment practices against any employee, or applicant for employment because of such person's, religion, ancestry, color, national origin, sex, sexual preference, age, mental disability, mental condition, physical handicap, marital status or domestic partner status. The Contractor shall comply with the provisions of Los Angeles Administrative Code Section 10.8 through 10.13, to the extent applicable hereto. If this Agreement contains a consideration in excess of \$1,000 but not more than \$100,000, the Equal Employment Practices provisions of this Agreement shall be the mandatory contract provisions set forth in Los Angeles Administrative Code Section 10.8.3, in which event said provisions are incorporated herein by this reference. If this Agreement contains a consideration in excess of \$100,000, the Affirmative Action Program of this Agreement shall be the mandatory contract provisions set for in Los Angeles Administrative Code Section 10.8.4, in which event said provisions are incorporated herein by this reference. The Contractor shall also comply with all rules, regulations, and policies of the Office of Contract Compliance relating to nondiscrimination and affirmative action, including the filing of all forms required by said Office. Any subcontract entered into by the Contractor relating to this Agreement, to the extent allowed hereunder, shall be subject to the provisions of this paragraph.

§730. Employment Opportunities for Business and Lower Income Persons

Any Project/program funded in part or in whole with Housing and Community Development funds shall comply with the following provisions (referred to as a Section 3 clause):

1. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
2. The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.
3. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number of job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the persons(s) taking applications for each of the positions; and the anticipated date the work shall begin.
4. The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.

5. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.
6. Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
7. With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preferences in the award of contracts and subcontracts shall be given to Indian Organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

§731. Participation of Minorities, Women and Small Businesses

To the fullest extent possible in the administration of this Agreement, Contractor agrees to provide opportunities for minorities, women and small businesses to participate in procurements under this Agreement.

§732. Captions

The section headings appearing herein shall not be deemed to govern, limit, modify or any way affect the scope, meaning of intent of these conditions.

§733. Effect of Legal Judgement

Should any covenant, condition or provision herein contained be held to be invalid by final judgement in any court of competent jurisdiction, the invalidity of such covenant, condition or provision shall not in any way affect any other covenant, condition or provision herein contained.

§734. Choice of Law Governing this Agreement

This Agreement shall be governed by and construed in accordance with the laws of the State of California.

§735. Prohibition of Legal Proceedings

The Contractor is prohibited from using Grant 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.

§736. Faith-Based Activities

Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to participate in the CDBG program. However, a Contractor that participates in a CDBG funded program shall comply with the following provisions if it is deemed to be a religious or faith-based organization:

1. Contractor may not engage in inherently religious activities, such as worship, religious instruction or proselytization, as part of the programs or services funded under this Agreement.

If Contractor conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded under this Agreement, and participation in such programs or services must be voluntary for the beneficiaries of the CDBG-funded programs or services.

2. A religious or faith-based Contractor will retain its independence from Federal, State and local governments, and may continue to carry out its mission, including the definition, practice and expression of its religious beliefs, provided that it does not use direct CDBG funds to support any inherently religious activities, such as worship, religious instruction or proselytization.

A religious or faith-based Contractor may use space in their facilities to provide CDBG-funded services, without removing religious art, icons, scriptures or other religious symbols.

A religious or faith-based Contractor retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

3. A religious or faith-based Contractor shall not, in providing program assistance, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.
4. CDBG funds may not be used for the acquisition, construction or rehabilitation of structures to the extent that those structures are used for inherently religious activities.

CDBG funds may be used for the acquisition, construction or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under this Section. Where a structure is used for both eligible and inherently religious activities, CDBG funds may not exceed the cost of those portions of the acquisition, construction or rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to CDBG funds herein. Sanctuaries, chapels or other rooms that a CDBG funded religious congregation uses as its principal place of worship, however, are ineligible for CDBG funded improvements. Disposition of real property after the term of the grant, or any change in use of the property during the term of the grant, is subject to government-wide regulations governing real property dispositions.

§737. Living Wage Ordinance

Living Wage Ordinance and Service Contractor Worker Retention Ordinance

- A. Unless otherwise exempt in accordance with the provisions of these Ordinance, this Agreement is subject to the applicable provisions of the Living Wage Ordinance (LWO), Section 10.37 et seq. of the Los Angeles Administrative Code, as amended from time to time, and the Service Contractor Worker Retention Ordinance (SCWRO), Section 10.36 et seq., of the Los Angeles Administrative Code, as amended from time to time.
 1. Contractor assures payment of a minimum initial wage rate to employees as defined in the LWO and as may be adjusted each July 1 and provision of benefits as defined in the LWO.
 2. Contractor further pledges that it will comply with federal law proscribing retaliation for union organizing and will not retaliate for activities related to the LWO. Contractor shall require each of its subcontractors within the meaning of the LWO to pledge to comply with the terms of federal law proscribing retaliation for union organizing. Contractor shall deliver the executed pledges from each such subcontractor to the City within ninety (90) days of the execution of

the subcontract. Contractor's delivery of executed pledges from each such subcontractor shall fully discharge the obligation of the Contractor with respect to such pledges and fully discharge the obligation of the Contractor to comply with the provision in the LWO contained in Section 10.37.6 (c) concerning compliance with such federal law.

3. The Contractor, whether an employer, as defined in the LWO, or any other person employing individuals, shall not discharge, reduce in compensation, or otherwise discriminate against any employee for complaining to the City with regard to the employer's compliance or anticipated compliance with the LWO, for opposing any practice proscribed by the LWO, for participating in proceedings related to the LWO, for seeking to enforce his or her rights under the LWO by any lawful means, or otherwise asserting rights under the LWO. Contractor shall post the Notice of Prohibition Against Retaliation provided by the City.
 4. Any subcontract entered into by the Contractor relating to this Agreement, to the extent allowed hereunder, shall be subject to the provisions of LWO and the SCWRO, and shall incorporate the "Living Wage Ordinance and Service Contractor Worker Retention Ordinance" language.
 5. Contractor shall comply with all rules, regulations and policies promulgated by the designated administrative agency, which may be amended from time to time.
- B. Under the provisions of Section 10.36.3(c) and Section 10.37.5 (c) of the Los Angeles Administrative Code, the City shall have the authority, under appropriate circumstances, to terminate this Agreement and otherwise pursue legal remedies that may be available if the City determines that the subject Contractor has violated provisions of either the LWO or the SCWRO or both.
- C. Where under the LWO Section 10.37.6(d), the designated administrative agency has determined (a) that the Contractor is in violation of the LWO in having failed to pay some or all of the living wage, and (b) that such violation has gone uncured, the awarding authority in such circumstances may impound monies otherwise due the Contractor in accordance with the following procedures. Impoundment shall mean that from monies due the Contractor, the awarding authority may deduct the amount determined to be due and owing by the Contractor to its employees. Such monies shall be placed in the holding account referred to in LWO Section 10.37.6 (d)(3) and disposed of under procedures described therein through final and binding arbitration. Whether the Contractor is to continue work following an impoundment shall remain in the unfettered discretion of the awarding authority. The Contractor may not elect to discontinue work either because there has been an impoundment or because of the ultimate disposition of the impoundment by the arbitrator.

Earned Income Tax Credit

This Agreement is subject to the provisions of Section 10.37.4 of the Los Angeles Administrative Code, requiring employers to inform employees making less than Twelve Dollars (\$12.00) per hour of their possible right to the federal Earned Income Tax Credit (EITC). Employers must further make available to employees the forms required to secure advance EITC payments from employers.

§738. Child Support Assignment Orders

This Agreement is subject to Section 10.10 of the Los Angeles Administrative Code, Child Support Assignment Orders Ordinance. Pursuant to this Ordinance, Contractor certifies that it will (1) fully comply with all State and Federal employment reporting requirements applicable to Child Support Assignment

Orders; (2) that the principal owner(s) of Contractor are in compliance with any Wage and Earnings Assignment Orders and Notices of Assignment applicable to them personally; (3) fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment in accordance with California Family Code Section 5230 et seq.; and (4) maintain such compliance throughout the term of this Agreement. Pursuant to Section 10.10(b) of the Los Angeles Administrative Code, failure of Contractor to comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignment Orders and Notices of Assignment or the failure of any principal owner(s) of Contractor to comply with any Wage and Earnings Assignment Orders and Notices of Assignment applicable to them personally shall constitute a default by the Contractor under the terms of this Agreement, subjecting this Agreement to termination where such failure shall continue for more than ninety (90) days after notice of such failure to Contractor by the City. Any subcontract entered into by the Contractor relating to this Agreement, to the extent allowed hereunder, shall be subject to the provisions of this paragraph and shall incorporate the provisions of the Child Support Assignment Orders Ordinance. Failure of the Contractor to obtain compliance of its subcontractors shall constitute a default by the Contractor under the terms of this Agreement, subjecting this Agreement to termination where such failure shall continue for more than ninety (90) days after notice of such failure to Contractor by the City.

Contractor shall comply with the Child Support Compliance Act of 1998 of the State of California Employment Development Department. Contractor assures 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 subdivision (1) of the Public Contract Code 7110.

§739.

Equal Benefits Ordinance

Unless otherwise exempted in accordance with the provisions of the Equal Benefits Ordinance (EBO), Section 10.8.2.1 of the Los Angeles Administrative Code, this Agreement is subject to the provisions of the EBO as amended from time to time.

- (1) During the performance of this Agreement, the Contractor certifies and represents that the Contractor will comply with the EBO. The Contractor agrees to post the following statement in conspicuous places at its place of business available to employees and applicant for employment:

"During the performance of a contract with the City of Los Angeles, the contractor will provide equal benefits to employees with spouses and its employees with domestic partners. Additional information about the City of Los Angeles' Equal Benefits Ordinance may be obtained from the Department of Public Works, Bureau of Contract Administration, Office of Contract Compliance at (213) 847-6480."

- (2) The failure of the Contractor to comply with the EBO, will be deemed to be a material breach of this Agreement by the awarding authority.
- (3) If the Contractor fails to comply with the EBO the awarding authority may cancel, terminate or suspend this Agreement, in whole or in part, and all monies due or to become due under this Agreement may be retained by the City. The City may also pursue any and all other remedies at law or in equity for any breach.
- (4) Failure to comply with the EBO may be used as evidence against the Contractor in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40 et seq., Contractor Responsibility Ordinance.

- (5) If the City determines that the Contractor has set up or used its contracting entity for the purpose of evading the intent of the EBO, the awarding authority may terminate this Agreement on behalf of the City. Violation of this provision maybe used as evidence against the Contractor in actions taken pursuant to the provisions of the Los Angeles Administrative Code Section 10.40 et seq., Contractor Responsibility Ordinance.

§740. Pro-Children Act of 1994

Contractor must comply with Public Law 103-227, Part C-Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act). This Act requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State and local governments. Federal programs include grants, cooperative agreements, loans or loan guarantees, and contracts. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug and alcohol treatment.

Contractor further agrees that the above language will be included in any subcontracts that contain provisions for children's services and that all subcontractors shall certify compliance accordingly.

§741. American-Made Equipment/Products

Contractor shall assure, pursuant to Public Law 103-333, §507, to the extent practicable, that all equipment and products purchased with funds made available under this Agreement shall be American made.

§742. Contract Administration

Contractor shall administer this Agreement in accordance with OMB requirements Contained in the following Circulars: Common Rule, Subpart C, for public agencies Or A-110 for nonprofit organizations.

§743. Contractor Responsibility Ordinance

Unless otherwise exempt in accordance with the provisions of the Ordinance, this Agreement is subject to the provisions of the Contractor Responsibility Ordinance, Section 10.40 et seq., of Article 14, Chapter 1 of Division 10 of the Los Angeles Administrative Code, which requires Contractor 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 Contractor's fitness and ability to continue performing this Agreement. In accordance with the provisions of this Ordinance, by signing this Agreement, Contractor pledges, under penalty of perjury, to comply with all applicable federal, state and local laws in the performance of this Agreement, including but not limited to, laws regarding health and safety, labor and employment, wage and hours, and licensing laws which affect employees. The Contractor further agrees to: (1) notify the awarding authority within thirty calendar days after receiving notification that any government agency has initiated an investigation which may result in a finding that the Contractor is not in compliance with all applicable federal, state and local laws in performance of this Agreement; (2) notify the awarding authority within thirty calendar days of all findings by a government agency or court of competent jurisdiction that the Contractor has violated the provisions of Section. 10.40.3 (a) of the Ordinance; (3) ensure that its subcontractor(s), as defined in the Ordinance, submit a Pledge of Compliance to awarding authorities; and (4) ensure that its subcontractors, as defined in the Ordinance, comply with the requirement of the Pledge of Compliance and the requirement to notify awarding authorities 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 Ordinance in performance of the subcontract.

§744. Slavery Disclosure Ordinance

Unless otherwise exempt in accordance with the provisions of this Ordinance, this Agreement is subject to the Slavery Disclosure Ordinance, Section 10.41 of the Los Angeles Administrative Code, as may be amended from time to time. Contractor certifies that it has complied with the applicable provisions of this Ordinance. Failure to fully and accurately complete the affidavit may result in termination of this Agreement.

§745. Americans with Disabilities Act

The Contractor hereby certifies that it will comply with the Disabilities Act 42, U.S.C. Section 12101 et seq., and its implementing regulations. The Contractor will provide reasonable accommodations to allow qualified individuals with disabilities to have access to and to participate in its programs, services and activities in accordance with the provisions of the Disabilities Act. The Contractor will not discriminate against persons with disabilities nor against persons due to their relationship to or association with a person with a disability. Any subcontract entered into by the Contractor relating to this Agreement, to the extent allowed hereunder, shall be subject to the provisions of this paragraph.

VIII. ENTIRE AGREEMENT

§801. Complete Agreement

This Agreement contains the full and complete Agreement between the two parties. No verbal agreement nor conversation with any officer or employee of either party shall affect or modify any of the terms and conditions of this Agreement.

§802. Number of Pages and Attachments

This Agreement is executed in two (2) duplicate originals, each of which is deemed to be an original, and includes forty three (43) pages (PLEASE CONFIRM), one (1) attachment and six (6) exhibits which constitute the entire understanding and agreement of the parties.

IN WITNESS WHEREOF, the City of Los Angeles and the Contractor have caused this Agreement to be executed by their duly authorized representatives.

APPROVED AS TO FORM AND LEGALITY:

ROCKARD J. DELGADILLO, City Attorney

Execute this _____ day of

_____, 2007

For: THE CITY OF LOS ANGELES

By: _____
(THIRD)
Deputy/Assistant City Attorney

Richard L. Benbow
General Manager
Community Development Department

Date: _____, 2007

ATTEST:

FRANK T. MARTINEZ, City Clerk

By: _____
(SECOND)

By: _____
(FOURTH)
Deputy City Clerk

Date: _____, 2007

Executed this _____ day of

_____, 2007

For:

City Business Tax Registration
Certificate Number: _____

Internal Revenue Service ID Number: _____

(Contractor's
Corporate Seal)

By: _____
Corporate Officer

ATTEST:

By: _____
Corporate Secretary

Council File Number: 06-0100-S12 (PLEASE CONFIRM); Date Council Adopted: 12/20/06

Said Agreement is Number _____ of City Contracts.

ATTACHMENT I : EXPENDITURE PLAN

BUDGET SUMMARY BY COST CATEGORY

Agreement Number _____ of City Contracts; Amendment Number _____ ; Contractor Mountains Recreation and Conservation Authority (MRCA)

BUDGET SUMMARY BY COST CATEGORY

COST CATEGORIES	HCDBG Share		Non-Federal Share	Program Income	ESTIMATED TOTAL COST	FISCAL NOTES:
1000 - Personnel Costs						32nd Year Con Plan Midyear Reprogramming, CF 06-0100-S12 \$400,000, Acct A728 <i>Leveraged Funding:</i> LAUSD (2007) \$453,500 MRCA PRIVATE FUNDS (2007) \$406,878 AAF/Weingart \$650,000 Prop K (Pending 2007) \$515,000 Total Leveraged Funding: \$2,025,378
2000 - Direct Costs						
3000 - Equipment Costs						
4000 - Indirect Costs						
5000 - Capital Costs	\$400,000		\$2,025,378		\$400,000	
TOTAL CATEGORY COSTS	\$400,000		\$2,025,378		\$400,000	

ATTACHMENT II : JOINT USE AGREEMENTS

EXHIBIT I INSURANCE REQUIREMENTS

Name Mountain Recreation and Conservation Authority (MRCA) Date: _____, 2007

Agreement/Reference: Vista Hermosa

Evidence of coverages checked off below which have as a minimum the limits shown must be submitted and approved prior to occupancy/start of operations. Amounts shown are Combined Single Limits ("CSL"). Split limits may be substituted if the total per occurrence equals or exceeds the CSL amount.

		<u>Limits</u>
<u>X</u>	Workers' Compensation (Statutory Limit) Employer's Liability	<u>\$1,000,000</u>
_____	Waiver of Subrogation in Favor of City (If contractor has employees)	
<u>X</u>	General Liability	<u>\$1,000,000</u>
	(x) Premises and Operations () Fire Legal Liability	
	(x) Contractual Liability (x) Independent Contractors	
	(x) Products/Completed Operations () Collapse and Underground	
	(x) Personal Injury	
_____	Automobile Liability (if vehicle is used for this contract, other than commuting to/from work)	<u>\$1,000,000</u>
	(x) Owned Automobiles	
	(x) Non-owned Automobiles	
	(x) Hired Automobiles	
_____	Professional Liability (Errors and Omissions)	<u>\$1,000,000</u>
	Professional Licensed staff, i.e. doctors, attorney, nurses, Psychologists, architects , etc.	
	Discovery Period 12 months after completion of work or from date of Termination of the contract / agreement.	
<u>X</u>	Property Insurance to cover value of structure (as determined by City or insurance company)	
	(X) All Risk Coverage (90% replacement value) () Flood \$ _____	
	() Boiler and Machinery () Earthquake \$ _____	
	() Extended Coverage	
	() Debris Removal	
_____	Pollution Liability	\$ _____
_____	Fidelity Bond Surety Bond	\$ _____

EXHIBIT I
INSURANCE REQUIREMENTS

(Share this information with your insurance agent or broker.)

PERSON TO CONTACT Direct all correspondence, questions, requests for additional forms, etc., to the contact person listed here or to the department that administers your contract, lease or permit:

NAME *Community Development Dept.*
Contact *Brad Dumm (213) 744-7372*
HSND/Neighborhood Development
ADDRESS 1200 W 7th St., 6th Floor
Los Angeles, CA 90017
TEL (213) 744-7372 FAX (213) 744-9327

GENERAL INFORMATION

1. **Project ID** All submissions must identify the nature of your business with the CITY. Clearly show any assigned number of a bid, contract, lease, permit, etc. or give the project name and the job site or street address to ensure that your submission will be properly credited. Provide the **types of coverage and dollar amounts** specified on the Insurance Requirements Sheet (Form Gen. 146) included in your CITY documents.
2. **When to submit** Normally, no work or occupancy may begin until a CITY Attorney insurance approval number has been obtained, so documents should be submitted as early as practicable. For **As-needed Contracts**, insurance need not be submitted until a specific job has been awarded. **Design Professionals** coverage for new construction work may be submitted simultaneously with final plans and drawings but before construction commences.
3. **Availability of Insurance** Coverages and limits are subject to availability on the open market at reasonable cost as determined by the CITY. For requirements to be relaxed or waived, your broker or agent must document non-availability or non-affordability in a letter to the CITY. It must show a good faith effort to place the required insurance, must list the names of the insurance carriers contacted and show the declinations or cost indications received from each.
4. **Alternative Programs/Self-Insurance** Risk financing mechanisms such as Risk Retention Groups, Risk Purchasing Groups, off-shore carriers, captive insurance programs and self-insurance programs are subject to separate approval after the CITY has reviewed their financial statements.

ADMINISTRATIVE REQUIREMENTS

5. **California Licensee** All insurance must be provided by an insurer admitted to do business in California or written through a California-licensed surplus lines broker. Non-admitted coverage must contain a **Service of Suit** clause in which the underwriters agree to submit as necessary to the jurisdiction of a California court in the event of a coverage dispute. Service of process for this purpose must be allowed upon an agent in California designated by the insurer or upon the California Insurance Commissioner.
6. **Aggregate Limits/Impairment** If any of the required insurance coverages contain annual aggregate limits, you must give the CITY written notice of any pending claim or lawsuit which may diminish the aggregate within thirty (30) days of knowledge of same. You must take steps to restore the impaired aggregates or provide replacement insurance protection within thirty (30) days knowledge of same. The CITY has the option to specify the minimum acceptable aggregate limit for each line of coverage required. No substantial reductions in scope of coverage which may affect CITY'S protection are allowed without CITY'S prior written consent.
7. **Signature** All submissions must bear the manual autograph in ink of a person with authority to bind coverage. Signatures which are rubber stamped, mechanically reproduced, initialed by others or photocopied are not acceptable.

POLICY CONDITIONS

8. **Additional Insured/Loss Payee** The CITY must be included as an additional insured in applicable liability policies to cover the CITY'S vicarious liability for the acts or omissions of the named insured. Such coverage is not expected to respond to the active negligence of the CITY. The CITY is to be named a Loss Payee As Its Interests May Appear in property insurance in which the CITY has an interest, e.g., as a lien holder.
9. **Notice of Cancellation** You agree contractually to maintain all required insurance in full force for the duration of your business with the CITY. By ordinance, all required insurance must provide at least 30 days' prior notice directly to the CITY by receipted delivery (certified mail, courier or in-person delivery) if your *insurance company* elects to cancel or reduce coverage prior to the policy expiration date. This also applies when the **scope of coverage** which affects the CITY'S interest is to be

reduced or when the **dollar limits** of coverage are to be reduced for any reason except impairment of an aggregate limit due to prior claims. Submissions not meeting this requirement will be rejected.

EXHIBIT I – Cont. INSURANCE REQUIREMENTS

10. **Primary Coverage** The coverage must be primary with respect to any insurance or self insurance of the CITY. The CITY'S program shall be excess of this insurance and non-contributing.

11. **Separation of Insureds** (Severability of Interest) In **construction contracts**, the CITY must be able to retain its rights as a potential claimant as well as to be protected as an additional insured for vicarious liability to third party claimants except with respect to the insurance company's limits of liability.

PROCEDURES

12. **Acceptable Evidence and Approval CITY Special Endorsement** forms completed by your insurance company or its designee are the preferred form of evidence of insurance. (**Note:**The CITY forms are acceptable to the California Department of Insurance from *any* insurance carrier. They need not be re-filed by individual insurance companies.) Altered forms may not be accepted but the "Other Provisions" box on the CITY forms, may be used, as necessary, to provide pertinent information such as important exclusions, specific provisions or scheduled locations/equipment. Additional pages may be attached for this purpose, as well. If they are, make note of it in this box. An acceptable alternative to the Special Endorsement form is a **certified copy of full insurance policy** which contains a 30-day cancellation notice provision and additional-insured or loss-payee status, when appropriate, for the CITY. **Binders and Cover Notes** are also acceptable as interim evidence for up to 90 days. However, non-binding documents such as broker letters and **Certificates of Insurance are not acceptable as stand-alone evidence of coverage**. Certificates *are* acceptable for the following purposes: 1) supplemental information to accompany endorsements; renewals or extensions of coverage already on file with the CITY; 2) for the naming of third-party, additional insureds; 3) as an indication of compliance with statute, such as Workers' Compensation Law or the California Financial Responsibility Law for Automobile Liability, 4) as proof of coverage beyond CITY requirements or which does not directly relate to the CITY'S interests.

13. **Renewal** When an existing policy is timely renewed, submit a renewal endorsement or a manually-signed Certificate of Insurance. However, if your policy number changes or you use a different underwriting company (insurer) you must submit new evidence which meets the policy conditions listed in Sections 8 through 11 of this information sheet.

COVERAGE INFORMATION

14. **Dollar Limits** of required insurance are sometimes set by statute or ordinance. When there is no specific amount required by law, limits are based on the amount of risk to the CITY from the contractor, vendor or permittee's activities.

15. **General Liability** insurance covering your operations (and products, where applicable) is required whenever the CITY is at risk of third party claims which may arise out of your work or your presence on CITY premises. **Contractual liability** coverage is a required inclusion in this insurance. (See separate information sheet on the CITY'S SPARTA program as an optional source of low-cost insurance which meets all requirements.)

16. **Automobile Liability** insurance is required only where vehicles are used in performing the work of your Contract or where they are driven off-road on CITY premises; it is not required for simple commuting unless CITY is paying mileage. However, compliance with California law requiring auto liability insurance is a contractual requirement.

17. **Errors and Omissions** coverage will be specified on a project-by-project basis if you are working as a licensed professional. The length of the claims discovery period required will vary with the circumstances of the individual job.

18. **Workers' Compensation and Employer's Liability** insurance are not required for single-person contractors. However, under state law these coverages (or a copy of the state's Consent To Self Insure) must be provided if you have any employees at any time during the period of this contract. **Waiver of Subrogation** on the coverage is required only for jobs where your employees are working on CITY premises under hazardous conditions, e.g., uneven terrain, scaffolding, caustic chemicals, toxic materials, power tools, etc.

19. **Property Insurance** is required for persons having exclusive use of premises or equipment owned or controlled by the CITY. **Fire Legal Liability** is required for persons occupying a portion of CITY premises.

20. **Surety** coverage may be required to guarantee performance of work. A **Fidelity bond** may be required to handle CITY funds, high value property and under certain other conditions. **Specialty coverages** may be needed for certain operations.

EXHIBIT II

CERTIFICATION REGARDING
DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION
LOWER TIER COVERED TRANSACTION

This certification is required by the regulations implementing executive Order 12549, Debarment and Suspension, 24 CFR Part Section 24.510, Participants' responsibilities.

(READ ATTACHED INSTRUCTIONS FOR CERTIFICATION BEFORE COMPLETING)

1. The prospective recipient of Federal assistance funds certifies that neither its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the prospective recipient of Federal assistance funds is unable to certify to any the statements in this certification, such prospective participant shall attach an explanation to this proposal.

AGREEMENT NUMBER _____

~~MOUNTAINS RECREATION AND CONSERVATION AUTHORITY (MRCA)~~
CONTRACTOR/BORROWER/AGENCY

NAME AND TITLE OF AUTHORIZED REPRESENTATIVE

SIGNATURE

_____, 2007
DATE

EXHIBIT II (Con't)

INSTRUCTION FOR CERTIFICATION

1. By signing and submitting this document, the prospective recipient of Federal assistance funds is providing the certification as set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective recipient of Federal assistance funds knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective recipient of Federal assistance funds shall provide immediate written notice to the person to which this agreement is entered, if at any time the prospective recipient of Federal assistance funds learns that its certification was erroneous, when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended" ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549.
5. The prospective recipient of Federal assistance funds agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective recipient of Federal assistance funds further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction" without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by not required to, check the List of Parties Excluded from Procurement or Non-Procurement Programs.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order rendered in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntary excluded from participation in this transaction in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

EXHIBIT III

CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans
And Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant the making of Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying" in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, a8/97s under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
4. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352 Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less that \$10,000 and not more than \$100,000 for each such failure.

AGREEMENT NUMBER _____

~~MOUNTAINS RECREATION AND CONSERVATION AUTHORITY (MRCA)~~

CONTRACTOR/BORROWER/AGENCY

NAME AND TITLE OF AUTHORIZED REPRESENTATIVE

SIGNATURE

_____, 2007
DATE

EXHIBIT IV

EXEMPTION FROM LIVING WAGE ORDINANCE

EXHIBIT V

City of Los Angeles

Public Works Bureau of Contract Administration

Office of Contract Compliance

600 S. Spring Street, Ste 1300

Los Angeles, CA 90014

Phone: (213) 847-6475

NOTICE TO EMPLOYEES WORKING ON CITY CONTRACTS RE: LIVING WAGE ORDINANCE AND PROHIBITION AGAINST RETALIATION

“Section 10.37.5 Retaliation Prohibited” of the Living Wage Ordinance (LWO) provides that any employer that has a contractual relationship with the City may not discharge, reduce the pay of, or discriminate against his or her employees working under the City contract for any of the following reasons:

1. Complaining to the City if your employer is not complying with the Ordinance.
2. Opposing any practice prohibited by the Ordinance.
3. Participating in proceedings related to the Ordinance, such as serving as a witness and testifying in a hearing.
4. Seeking to enforce your rights under this Ordinance by any lawful means.
5. Asserting your rights under the Ordinance.

Also, you may not be fired, lose pay or be discriminated against for asking your employer questions about the Living Wage Ordinance, or asking the City about whether your employer is doing what is required under the LWO. If you are fired, lose pay, or discriminated against, you have the right to file a complaint with the City’s Living Wage Section, as well as file a claim in court.

For more information, or to obtain a complaint form, please call the Contractor Enforcement Section at (213) 847-6475

EXHIBIT VI

**DETERMINATION FORM- EQUAL BENEFITS AND SLAVERY
DISCLOSURE ORDINANCE**