

APPROVED
JUL 15 2021
BOARD OF RECREATION
AND PARK COMMISSIONERS

BOARD REPORT

NO. 21-129

DATE July 15, 2021

C.D. 13

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: HOLLYWOOD CENTRAL PARK PROJECT – ENVIRONMENTAL IMPACT ANALYSIS AND RELATED TECHNICAL STUDIES – TERMINATION OF CONTRACT WITH FRIENDS OF HOLLYWOOD CENTRAL PARK AND FCS INTERNATIONAL, INC. dba FIRSTCARBON SOLUTIONS

AP Diaz	_____	M. Rudnick	_____
H. Fujita	_____	for* C. Santo Domingo	<u>SP</u>
J. Kim	_____	N. Williams	_____



General Manager

Approved X Disapproved _____ Withdrawn _____

RECOMMENDATIONS

1. Authorize the Department of Recreation and Parks' (RAP) General Manger, or designee, to terminate Contract No. 3692 (Contract) between the City of Los Angeles, Friends of the Hollywood Central Park (FHCP), a California non-profit corporation, and FCS International, Inc. dba as FirstCarbon Solutions (FCS), a California corporation, for the preparation of environmental impact analysis, and related technical studies and reports, for the proposed Hollywood Central Park project (Project); and
2. Authorize RAP staff to make technical corrections as necessary to carry out the intent of this Report.

SUMMARY

The Hollywood Central Park Project (Project) proposes to cover an approximately one mile portion of the United States (U.S.) 101 Freeway, between Bronson Avenue and Santa Monica Boulevard, in order to create a 44-acre community park. As this section of the U.S. 101 Freeway between Bronson Avenue and Santa Monica Boulevard is below the level of the street, the Project is proposed to be constructed on a deck above the freeway, which would allow the development of a street-level park. Once implemented, the Project would provide a new public park in a neighborhood where a large percentage of residents do not live in close proximity to a public park or recreational facility and would help reconnect neighborhoods that were divided by the construction of the U.S. 101 Freeway.

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On July 11, 2018, the Board of Recreation and Park Commissioners (Board) approved a contract (No. 3692) with Friends of the Hollywood Central Park (FHCP), a California non-profit corporation, and FCS International, Inc. dba FirstCarbon Solutions (FCS) to complete the required environmental analyses, and appropriate California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA) documentation, for the Project (Report No. 18-144) (Attachment No. 1).

Background

In January 2007, the Los Angeles City Council approved \$100,000 in funding, provided by the Community Redevelopment Agency of Los Angeles (former CRA/LA), to help fund a detailed feasibility study for the proposed Project (Council File No. 06-2791). A Request for Proposals (RFP) for the feasibility study was issued by the former CRA/LA and a consultant team, led by EDAW (a part of AECOM), was selected to complete it. As a part of the feasibility study, a number of stakeholder meetings were held in order to help develop a preferred plan based on feedback from both the local community and technical experts. In October 2008, the feasibility study for the Project was completed. The feasibility study determined that the proposed Project was both technically and functionally feasible.

Due to the size, scope, and location of the proposed project size, and potential funding sources and mechanisms for eventual project implementation, it was determined at that time that both CEQA and NEPA compliance will likely be required. This would require the preparation of an extensive Environmental Impact Report/Environmental Impact Study (EIR/EIS), and associated technical studies, for the project in order to best facilitate efficient environmental review at the Federal, State, and Local levels.

In December 2008, following the completion of this feasibility study, FHCP was created by advocates and supporters of the proposed Project in order to raise funds, community interest and support for the development of the Project. One of the priority objectives for FHCP was to identify and secure the estimated \$2,000,000 in funding needed for the environmental analysis and the associated technical documentation for the proposed Project.

In November 2011, the former CRA/LA approved \$2,000,000.00 in funding for the Department of Public Works, Bureau of Engineering (BOE) for the EIR/EIS for the Hollywood Central Park Project (Council File No. 11-2115-S1). However, on February 1, 2012, the former CRA/LA was dissolved pursuant to AB X1-26, and the \$2,000,000 in funding was no longer available for the Project.

On July 3, 2012, the Los Angeles City Council approved the transfer and appropriation of a total of \$825,000.00, from various funding sources, to BOE, to fund a portion of the identified costs for the preparation of environmental analyses for the proposed Project (Council File No. 12-0600-S120). At that time, BOE staff estimated that \$300,000 of the \$825,000 in funding would be needed to pay City Departments' staff costs associated with the preparation and review of the environmental documents for the Project and the remaining \$525,000 would be needed to pay for the necessary environmental consultants.

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In August 2012, FHCP received a \$1,200,000 donation from the Aileen Getty Foundation to help fund the environmental impact analysis and related technical studies for the Project. Following the receipt of that donation, it was determined by BOE and FHCP that FHCP's funds, in combination with the \$825,000.00 in funding provided to BOE by the City, were sufficient to engage a consultant team and pay a contractor to provide the necessary environmental documentation and analysis for the proposed Project.

In November 2012, FHCP released an RFP for the preparation of the environmental impact analysis and related technical studies and documents for the proposed Project. In February 2013 FHCP selected a consultant team, led by FCS International, Inc. dba FirstCarbon Solutions (FCS), to prepare the environmental documentation for the Project.

On February 28, 2013, the State of California Department of Transportation (Caltrans) the State agency responsible for highway and bridge planning, construction, and maintenance, issued a memorandum delegating CEQA Lead Agency status for the Hollywood Central Park Project to the City. In that memorandum, Caltrans elucidated that the delegation of CEQA Lead Agency status should be accompanied by an executed cooperative agreement between Caltrans and the City so Caltrans can provide independent quality assurance on the preparation of the environmental documentation.

In October 2013, the Los Angeles City Council approved a report designating RAP as the Lead City Agency for the preparation of the EIR/EIS, and the associated technical documents, for the proposed Project; transferring \$785,000.00 in funding from BOE to RAP for costs associated with the preparation of the documents; instructing RAP to seek approval for one additional position of Principal Project Coordinator to manage the City's efforts to coordinate and review the EIR/EIS; and, requesting RAP to enter into a contract with FHCP, in the amount of \$525,000.00, to provide services in connection with the preparation of the EIR/EIS (Council File No. 13-1248).

First Contract (No. 3498) with Friends of the Hollywood Central Park and FCS International, Inc. dba FirstCarbon Solutions

On June 11, 2014, the Board approved a contract with FCS and FHCP, in the amount of \$525,000, to provide services in connection with the preparation of the environmental impact analysis, and related technical studies for the project (Report No. 14-138). That contract (Contract No. 3498) between FCS and FHCP was executed on August 28, 2014 and the contract was for a term of eighteen (18) months, with two six (6) month extensions.

Following the execution of Contract No. 3498, FCS and FHCP began the preparation of the environmental impact analysis, and the various related technical studies. As a part of this work, RAP, FCS, and FHCP reached out to Caltrans to identify and determine the roles and responsibilities of the City and of Caltrans relative to the development of the Project and Project EIR/EIS; to obtain concurrence with Caltrans on the purpose and scope of the Project; and, to document the process necessary to obtain Caltrans' approval to initiate the environmental process.

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On August 21, 2014, the City published an Initial Study for the Project (Document NP-14-004-RP) and distributed a Notice of Preparation to applicable responsible agencies and interested parties. On September 6, 2014, a public scoping meeting for the Project was held at Helen Bernstein High School in Hollywood.

On April 26, 2016, RAP and Caltrans entered into a Cooperative Agreement (Co-Op Agreement) (Agreement 07-4990) for the Project (Attachment No. 2). The Co-Op Agreement identifies the activities and responsibilities of the City and of Caltrans regarding the preparation and review of the environmental documentation for the Project. The Co-Op Agreement identifies that the City is responsible for the preparation of any environmental documentation, including studies and reports, for the Project and that Caltrans, as NEPA Lead Agency for the Project, will review, comment, and approve all environmental documentation at appropriate stages of development prior to approval and public availability.

Based on discussions with Caltrans, FCS and FHCP identified a number of new documents, reports, technical studies, and special studies that would need to be completed and transmitted to Caltrans for its review and approval. FHCP determined that additional funding would be needed in order to complete the EIR/EIS for the Project. In March 2018, the Los Angeles City Council approved a report authorizing RAP to utilize up to \$1,529,000.00 in Community Redevelopment Agency of the City of Los Angeles (CRA/LA) Excess Bond Proceeds available to Council District 13 within the Hollywood Redevelopment Project Area to assist in the cost of development, preparation and review of the EIR/EIS and associated technical studies for Project (Council File No. 14-1174-S32).

Only one of the performance milestones of Contract No. 3498 was met prior to its expiration, and just \$50,000 of the total contract amount of \$525,000 was paid to FHCP.

Second Contract (No. 3692) with Friends of the Hollywood Central Park and FCS International, Inc. dba FirstCarbon Solutions

On July 11, 2018, the Board approved a second contract with FCS and FHCP to complete the required environmental analyses, and appropriate CEQA and NEPA documentation, for the Project (Report No. 18-144). The contract (Contract No. 3692) between RAP, FCS, and FHCP was executed on December 12, 2018 (Attachment No. 3). The contract is for a term of for thirty-six (36) months from date of execution, with an option to extend the term for two additional eighteen month (18) month periods.

Under Contract No. 3692, RAP agreed to pay FHCP no more than \$2,004,000 for services in connection with the preparation of the environmental analysis, and associated technical studies, in accordance with performance milestones and the related payment schedule that are set forth in Appendix B of the Contract. FHCP is responsible for disbursing any funds to be paid to FCS, for the environmental analysis services FCS will be providing. RAP is not responsible for disbursing any payments to FCS. The funding for Contract No. 3692 comes from a combination of the \$475,000 in funding that remained unspent from Contract No. 3498 and the \$1,529,000 in CRA/LA Excess Bond Proceeds approved for the project by the Los Angeles City Council.

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Contract No. 3692 requires FHCP to provide, for RAP's independent review and consideration, all necessary and required environmental documentation and technical studies. It defines the specific roles and responsibilities for RAP, FCS, and FHCP relative to the preparation of the environmental impact analysis, and related technical studies, for the proposed Project. Pursuant to Contract No. 3692, FHCP is to use the funds it has independently secured, along with the City funds being paid to the FHCP pursuant to the Contract, to pay for environmental services rendered by FCS and the environmental consultant team and to ensure completion of all performance milestones in the Contract. Additionally, FHCP is obligated and responsible for securing and managing the consultant team preparing the environmental analyses, an EIR/EIS, and appropriate CEQA and NEPA documentation, for the Project. Further, FCS is obligated under the contract to initiate and provide a number of technical documents and special studies required by Caltrans (Caltrans Required Technical Studies) in accordance with the City's Co-Op Agreement and to incorporate that information into the environmental documentation.

RAP staff's role under Contract No. 3692 is to work in coordination with FHCP and FCS on the timely preparation of the required documents and review all final work products prepared by FCS and the consultant team to ensure they have been appropriately prepared and are in accordance with City standards and requirements. Furthermore, and as required by the City's Co-Op Agreement, RAP is to provide any final documentation, reports, technical, or special studies submitted to and approve by RAP to Caltrans for their review prior to releasing any documentation for public review.

On December 13, 2018, FHCP notified RAP that the Initiation of the Caltrans Required Technical Studies milestone had been completed, in conformance with the first performance milestone set forth in Appendix B of the Contract. RAP paid FHCP a total of \$860,000 for the completion of this milestone.

On April 26, 2019, FCS submitted the Administrative Draft EIR to RAP. On that same day FHCP notified RAP that the Administrative Draft EIR milestone had been completed, in conformance with the second performance milestone set forth in Appendix B of the Contract. RAP paid FHCP a total of \$824,000 for the completion of this milestone.

Administrative Draft EIR.

The Administrative Draft EIR is an administrative internal working document that is to be reviewed and revised by City staff, and other agencies and departments, as appropriate and required. The purpose of this internal review is to identify and correct any deficiencies or errors in the environmental document and related studies prior to the document being made ready for publication as a Draft EIR. This review process can require multiple rounds of revisions and this review phase is not considered to be finished until such time that it is determined by the City that the document is ready for publication. Only after the Administrative Draft EIR is finalized internally is the environmental document ready to be released as a Draft EIR.

Following the submission of the Administrative Draft EIR to RAP in April 2019, RAP staff began its review of the document and RAP and FHCP met to discuss next steps. FHCP advised RAP that it communicated to FCS staff on the need to discuss necessary revisions to the Administrative

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Draft EIR. FHCP and FCS staff met on June 13, 2019 to discuss the environmental documents. At that point it remained RAP's understanding from FHCP that updates to the Administrative Draft EIR would be forthcoming and that FHCP would continue to direct the work of FCS to do so.

In August 2019, FCS reached out directly to RAP to express its position about the status of the review of the Administrative Draft EIR. Soon after, RAP became aware of a dispute between FHCP and FCS regarding their contractual relationship (which RAP is not party to) and that on August 15, 2019, FHCP had sent a letter to FCS outlining its comments on the document. RAP was advised at that point by FHCP that they would continue to work with FCS to try to resolve the outstanding concerns. In October 2019, RAP staff communicated to FHCP and FCS staff that RAP was continuing its review of the Administrative Draft EIR and that the City would provide comments directly to FCS in order to assist with moving the document forward.

On October 17, 2019, the Project was presented and discussed by FHCP and RAP at a "Major Development Services Meeting". This meeting contained representatives from the various City Departments and Agencies that review major projects and that would ultimately be assisting with or be involved in some way with Project approvals. The purpose of the meeting is for the Project to be presented to City staff, and for City staff to identify information needs, potential challenges, and how best to facilitate the Project's progression through the City's review process. At that meeting City staff reiterated and highlighted the importance of providing the Administrative Draft EIR to appropriate City staff as soon as it was ready for review.

On March 4, 2020, FCS reached out to RAP requesting an update on the status of the review and processing of the Administrative Draft EIR. On March 5, 2020 RAP provided FCS with its comments on the Administrative Draft EIR and FCS acknowledged receipt of such. RAP's comments identified a number of areas of the document that needed to be revised, improved, and addressed.

Separately, in March 2020, RAP directed FHCP to send the Administrative Draft EIR, the related technical studies, and a project schedule, to Caltrans staff in order for Caltrans staff to be able to begin to review and provide some preliminary comments and input on the document. While the Administrative Draft EIR was still in need of revision, this was done in order to continue to move the review of the document forward. When FHCP sent the documentation to Caltrans, they advised Caltrans staff that they should expect a revised document and finalized technical studies to be submitted directly to them by RAP once said revised documents were ready.

On May 1, 2020, RAP staff met with FCS staff to discuss, in more detail, RAP's Administrative Draft EIR comments, RAP's understanding of the role of the parties under Contract 3692, and RAP's suggestions on how best to move the project forward. On June 11, 2020, FCS sent RAP a letter following up on that conversation and outlining its position on the status of the environmental document and its relationship with FHCP. RAP staff had a follow up meeting with FCS on June 12, 2020 and subsequently connected with FHCP in order to organize a meeting between the parties to outline a path forward, clarify roles in the review and revision on the document, and determine if and when RAP could expect updates and edits to the Administrative Draft EIR.

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On July 6, 2020, RAP, FHCP, and FCS met to discuss the status of Administrative Draft EIR and the related technical studies. At the meeting it was discussed how to move forward with the submission of future comments; that FHCP and FCS would clarify with each other any outstanding data or information; and, that an updated project timeline and work plan would be provide to RAP. It was agreed at the meeting that once any missing data or information was identified and provided to/from FHCP and FCS, the parties would work to complete the necessary revisions to the Administrative Draft EIR as quickly as possible.

Following the meeting, FCHP and FCS continued to communicate regarding data needs and the status of the revisions to the Administrative Draft EIR. On August 8, 2020, FCS sent RAP and FHCP its proposed work plan for the completion of the Administrative Draft EIR. That communication also identified information, documentation, and clarifications that FCS believed it would need from FHCP to complete the requested work. It also noted that FCS would be unable to proceed further with revisions to the document pending the receipt of the requested information. Additionally, it should be noted that FCS' submitted work plan also contained a request for additional funding for FCS for continued work on the Project.

On September 11, 2020, RAP, FHCP, and FCS met to discuss FCS's submitted work plan and request for funding. In that meeting FCS indicated it would send to FHCP a detailed breakdown of their request for additional funding, and FCS did so on September 14, 2020. RAP reminded FHCP and FCS in that meeting that RAP was not party to any prior agreements or contracts between FCS and FHCP and, further, that, as it pertains to payments for services provided under Contract No. 3692, payments are made by RAP to FHCP pursuant to the identified milestones only and RAP is not responsible for disbursing any payments to FCS.

In the following months, FCS and FHCP exchanged additional communications and held further discussions regarding both the data needs that FCS identified in their various communications as well as the disposition of FCS' request for funding from FHCP.

However, in March 2021, FHCP advised RAP staff that they believed they had reached an impasse with FCS in regards to FCS' requests and that FHCP believed that no further progress, or any revisions, would be made on the Administrative Draft EIR by FHCP and/or FCS.

Termination

Section 8.0 of Contract No. 3692 provides that the Contract may be terminated pursuant to the provisions of PSC-9 of the Standard Conditions for City Contracts (Rev. 10/17)[v.3], which are included as Appendix A of the Contract. PSC-9 of the Standard Conditions for City Contracts identifies various reasons why the City may terminate the Contract, including for Breach of Contract. As it pertains to Termination for Breach of Contract, PSC-9.B.1 states the following:

“Except as provided in PSC-6, if CONTRACTOR fails to perform any of the provisions of this Contract or so fails to make progress as to endanger timely performance of this Contract, CITY may give CONTRACTOR written notice of the default. CITY’S default notice will indicate whether the default may be cured and the time period to cure the default

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to the sole satisfaction of CITY. Additionally, CITY'S default notice may offer CONTRACTOR an opportunity to provide CITY with a plan to cure the default, which shall be submitted to CITY within the time period allowed by CITY. At CITY'S sole discretion, CITY may accept or reject CONTRACTOR'S plan. If the default cannot be cured or if CONTRACTOR fails to cure within the period allowed by CITY, then CITY may terminate this Contract due to CONTRACTOR'S breach of this Contract."

It should be noted that Section 7.0 of Contract No. 3692 states that "[f]or purposes of the Standard Provisions, the term "CONTRACTOR" shall mean each of FCS and FHCP."

As detailed in this report, the Administrative Draft EIR was submitted to RAP in April 2019 and since that time has not yet been revised or updated by FHCP and FCS. Revisions to the Administrative Draft EIR and related technical studies are necessary before the document is ready for RAP staff, staff from other City Department agencies and departments, and staff from Caltrans to review. While FHCP is responsible to direct and manage the work of FCS per Contract No. 3692, RAP has made extensive efforts to engage directly with both FHCP and FCS to move the review of the document forward. Despite these efforts, no substantive progress had been made to revise and finalize the document.

Therefore, RAP is requesting the Board authorize RAP's General Manger, or designee, to terminate Contract No. 3692 between the RAP, FHCP, and FCS. If such authority is granted by the Board, RAP will provide FHCP and FCS with written notice of default and advise FHCP and FCS if and how the default can be cured. This notice may provide FHCP and FCS with a limited time period in which to address the identified issues, but would clearly state that RAP intends to terminate Contract No. 3692 if the identified issues cannot be resolved to RAP's satisfaction.

ENVIRONMENTAL IMPACT

The proposed Board's action to authorize RAP's General Manager to terminate the Contract will not have direct or indirect or reasonably foreseeable indirect physical change in the environment. Therefore, staff has determined that the action does not qualify as a project subject to CEQA pursuant to California Public Resources Code (PRC) section 21065 and it is not subject to CEQA review pursuant to CEQA Guidelines Section 15060(c).

FISCAL IMPACT

The termination of this Contract will have no impact on RAP's General Fund.

STRATEGIC PLAN INITIATIVES AND GOALS

Approval of this Board Report advances RAP's Strategic Plan by supporting:

Goal No. 3: Create and Maintain World Class Parks and Facilities

Outcome No. 1: Newly developed open space park projects and the redesign of signature City Parks

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Result: The termination of this contract will allow the City to pursue alternate options to facilitate the delivery of the proposed Hollywood Central Park Project.

LIST OF ATTACHMENTS

Attachment 1 – Report No. 18-144

Attachment 2 – Contract 3692

Attachment 3 – Caltrans Cooperative Agreement

This Report was prepared by Darryl Ford, Superintendent, Planning, Maintenance and Construction Branch.

APPROVED

JUL 11 2018

BOARD OF RECREATION AND PARK COMMISSIONERS

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DATE July 11, 2018

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BOARD OF

SUBJECT: HOLLYWOOD CENTRAL PARK PROJECT – ENVIRONMENTAL IMPACT ANALYSIS AND RELATED TECHNICAL STUDIES – CONTRACT WITH FRIENDS OF HOLLYWOOD CENTRAL PARK AND FIRSTCARBON SOLUTIONS

AP Diaz	_____	V. Israel	_____
<i>fer</i> *R. Barajas	<u>CSD</u>	S. Piña-Cortez	_____
H. Fujita	_____	N. Williams	_____

Ramon Barajas

General Manager

Approved X Disapproved _____ Withdrawn _____
With Corrections

RECOMMENDATIONS

1. Approve a proposed Contract (Contract), substantially in the form attached as **FCS** Attachment 1 to this Report, between the City of Los Angeles, **Friends of the Hollywood International, Central Park (FHCP)**, a non-profit organization, and **FirstCarbon Solutions (FCS)**, a **Inc. dba** California corporation, for the amount of Two Million, Four Thousand Dollars (\$2,004,000.00), to provide and fund the preparation of the Environmental Impact Report/Environmental Impact Study (EIR/EIS), and related reports and technical studies, for the proposed Hollywood Central Park Project (Project), subject to the approval of the Mayor and the City Council, and the approval of the City Attorney as to form;
2. Authorize the Department of Recreation and Parks' (RAP) General Manager to execute any documents between RAP, as the Lead City Agency under California Environmental Quality Act (CEQA), and any Responsible Agency under CEQA, including but not limited to the State of California Department of Transportation (Caltrans), as may be necessary to enable FHCP and FCS to provide and coordinate the preparation of the EIR/EIS, and related reports and technical studies, for the proposed Project, subject to approval of the City Attorney as to form and the Mayor and City Council as may be necessary;
3. Find, in accordance with Charter Section 1022, that RAP does not have, available in its employ, personnel with sufficient time or the necessary expertise to undertake these specialized professional tasks, that the work can be performed more economically or feasibly by FHCP than by City employees because FHCP will act as a facilitator and raise and donate additional funding to ensure completion of the environmental documents that will be submitted to the City for the City's consideration and approval;
4. Find, in accordance with Charter Section 371(e)(2) and as set forth in the Charter Section 371 Finding in the Summary of this Report, that the professional and special

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fundraising services to be provided by FHCP are of a temporary and occasional character for which competitive bidding is not practical or advantages because FHCP was created for the sole purpose of raising funds, interest and support for the Project;

5. Find, in accordance with Charter Section 371(e)(10) and as set forth in the Charter Section 371 Finding in the Summary of this Report, that the use of competitive bidding would be undesirable, impractical or impossible because acquisition of the environmental documentation and analyses necessary for the Project would not be possible without FHCP securing the additional funding necessary to fund the preparation the EIR/EIS and related reports and studies;
6. Find, in accordance with Charter Section 371(e)(2) and as set forth in the Charter Section 371 Finding in the Summary of this Report, that the EIR/EIS and related technical studies and reports to be provided by FCS for the Project are professional, expert, technical services of a temporary and occasional character for which competitive bidding would be undesirable;
7. Find, in accordance with Charter Section 371(e)(10) and as set forth in the Charter Section 371 Finding in the Summary of this Report, that the EIS/EIS and related technical studies and reports to be provided by FCS for the Project are professional, expert, technical services for which the use of competitive bidding would be undesirable, impractical or impossible or where the common law otherwise excuses compliance with competitive bidding requirements;
8. Find, in accordance with Charter Section 372 and as set forth in the Charter Section 372 Finding in the Summary of this Report, that obtaining competitive proposals or bids for the work that may be performed pursuant to this Contract is not reasonably practicable or compatible with the City's interests to obtain proposals or bids;
9. Direct the Board of Recreation and Park Commissioners (Board) Secretary to transmit forthwith the proposed Contract to the City Council for approval, and to City Attorney for review and approval as to form; and,
10. Authorize the Board President and Secretary to execute forthwith the Contract, upon receipt of the necessary approvals.

SUMMARY

The Hollywood Central Park Project (Project) proposes to cover an approximately one mile portion of the United States (U.S.) 101 Freeway, between Bronson Avenue and Santa Monica Boulevard, in order to create a 44-acre community park. As the section of the U.S. 101 Freeway between Bronson Avenue and Santa Monica Boulevard is below the level of the street, the Project is proposed to be constructed on a deck above the freeway, which would allow the development of a street-level park. If implemented, the Project would provide a new public park in a neighborhood where a large percentage of residents do not live in close proximity to a

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public park or recreational facility and would reconnect neighborhoods that were divided by the construction of the U.S. 101 Freeway.

Background

In January 2007, the Los Angeles City Council approved \$100,000.00 in funding, provided by the Community Redevelopment Agency of Los Angeles (former CRA/LA), to help fund a detailed feasibility study for the proposed Project (Council File No. 06-2791). A Request for Proposals (RFP) for the feasibility study was issued by the former CRA/LA and a consultant team, led by EDAW (a part of AECOM), was selected to complete it. As a part of the feasibility study, a number of stakeholder meetings were held in order to help develop a preferred plan based on feedback from both the local community and technical experts. In October 2008, the feasibility study for the Project was completed. The feasibility study determined that the proposed Project was both technically and functionally feasible.

Due to the size, scope, and location of the proposed project size, and potential funding sources and mechanisms for eventual project implementation, it was determined at that time that both CEQA and NEPA compliance will likely be required. This would require the preparation of an extensive Environmental Impact Report/Environmental Impact Study (EIR/EIS), and associated technical studies, for the project in order to best facilitate efficient environmental review at the Federal, State, and Local levels.

In December 2008, following the completion of the feasibility study, FHCP, a non-profit corporation, was created by advocates and supporters of the proposed Project in order to raise funds, community interest, and support for the development of the Project. One of the priority objectives for the FHCP has been to identify and secure Two Million Dollars (\$2,000,000.00) in funding for the EIR/EIS and the associated technical documentation, for the proposed Project.

In November 2011, the former CRA/LA approved Two Million Dollars (\$2,000,000.00) in funding for the Bureau of Engineering (BOE) for the EIR/EIS for the Hollywood Central Park Project (Council File No. 11-2115-S1). However, on February 1, 2012, the former CRA/LA was dissolved pursuant to Assembly Bill (AB) X1-26, and the Two Million Dollars (\$2,000,000.00) in funding was no longer available for the project.

On July 3, 2012, the City Council approved the transfer and appropriation of a total of Eight Hundred Twenty-Five Thousand Dollars (\$825,000.00), from various funding sources, to BOE, to fund a portion of the identified costs for the preparation of EIS/EIS for the proposed Project (Council File No. 12-0600-S120). At that time, BOE staff estimated that Three Hundred Thousand Dollars (\$300,000.00) of the Eight Hundred Twenty-Five Thousand Dollars (\$825,000.00) in funding would be needed to pay City Departments' staff costs associated with the preparation and review of the environmental documents for the project and the remaining Five Hundred Twenty-Five Thousand Dollars (\$525,000.00) would be needed to pay for the necessary environmental consultants.

In August 2012, FHCP received a One Million, Two Hundred Thousand Dollar (\$1,200,000.00) donation from the Aileen Getty Foundation to help fund the environmental impact analysis and

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related technical studies for the Hollywood Central Park Project. Following the receipt of that donation, it was determined by BOE and FHCP that FHCP's funds, in combination with the Eight Hundred Twenty-Five Thousand Dollars (\$825,000.00) in funding provided to BOE by the City, were sufficient to engage a consultant team and pay a contractor to provide the necessary environmental documentation and analysis for the proposed Project.

In November 2012, FHCP released a Request For Proposal (RFP) for the preparation of the EIR/EIS and related technical studies and documents for the proposed Project. In February 2013 FHCP selected a consultant team, led by FirstCarbon Solutions (FCS), to prepare the environmental documentation for the Project.  FCS International, Inc. dba

On February 28, 2013, the State of California Department of Transportation (Caltrans), the State agency responsible for highway and bridge planning, construction, and maintenance, issued a memorandum delegating CEQA Lead Agency status for the Hollywood Central Park Project to the City (Exhibit A). In that memorandum, Caltrans elucidated that the delegation of CEQA Lead Agency status should be accompanied by an executed cooperative agreement between Caltrans and the City so Caltrans can provide independent quality assurance on the preparation of the environmental documentation.

In October 2013, City Council approved a report designating RAP as the Lead City Agency for the preparation of the EIR/EIS, and the associated technical documents, for the proposed Project; transferring Seven Hundred Eighty-Five Thousand Dollars (\$785,000.00) in funding from BOE to RAP for costs associated with the preparation of the documents; instructing RAP to seek approval for one additional position of Principal Project Coordinator to manage the City's efforts to coordinate and review the EIR/EIS; and, requesting RAP to enter into a Contract with FHCP, in the amount of Five Hundred Twenty-Five Thousand Dollars (\$525,000.00), to provide services in connection with the preparation of the EIR/EIS (Council File No. 13-1248).

On June 11, 2014, the Board approved a proposed contract with FCS and FHCP, in the amount of Five Hundred Twenty-Five Thousand Dollars (\$525,000.00), to provide services in connection with the preparation of the EIR/EIS, and related technical studies and reports for the project (Report No. 14-138). The contract (Contract No. 3498) between RAP, FCS, and FHCP was executed on August 28, 2014. The contract (which is now expired) was for a term of eighteen (18) months, with two six (6) month extensions.

Upon execution of the Contract No. 3498, FCS and FHCP immediately begin the preparation of the EIR/EIS, and the various related technical studies and documentation. As a part of this work, RAP, FCS, and FHCP reached out to Caltrans to identify and determine the roles and responsibilities of the City and of Caltrans relative to the development of the Project and Project EIR/EIS; to obtain concurrence with Caltrans on the purpose and scope of the Project; and, to document the process necessary to obtain Caltrans' approval to initiate the environmental process.

On August 21, 2014, the City published an Initial Study for the Project (Document NP-14-004-RP) and distributed a Notice of Preparation to applicable responsible agencies and interested

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parties. On September 6, 2014, a public scoping meeting for the Project was held at Helen Bernstein High School in Hollywood.

On April 26, 2016, after significant discussion and numerous meetings, RAP and Caltrans entered into a Cooperative Agreement (Co-Op Agreement) (Agreement 07-4990) for the Project. The Co-Op Agreement identifies the activities and responsibilities of the City and of Caltrans regarding the preparation and review of the environmental documentation for the Project. The Co-Op Agreement identifies that the City is responsible for the preparation of any environmental documentation, including studies and reports, for the Project and that Caltrans, as NEPA Lead Agency for the Project, will review, comment, and approve all environmental documentation at appropriate stages of development prior to approval and public availability. Based on discussions with Caltrans, FCS and FHCP identified a number of new documents, reports, technical studies, and special studies that would need to be completed and transmitted to Caltrans for its review and approval.

Based on the additional documents, reports, technical studies, and special studies identified by Caltrans, it was determined that additional funding would be needed in order to complete the EIR/EIS for the Project.

In March 2018, City Council approved a report authorizing RAP to utilize up to One Million, Five Hundred Twenty-Nine Thousand Dollars (\$1,529,000.00) in Community Redevelopment Agency of the City of Los Angeles (CRA/LA) Excess Bond Proceeds available to Council District 13 within the Hollywood Redevelopment Project Area to assist in the cost of development, preparation and review of the EIR/EIS and associated technical studies for Project (Council File No. 14-1174-S32). This additional funding, which is managed by the Economic and Workforce Development Department, will come from tax-exempt CRA/LA Excess Non-Housing Bond Proceeds.

 **FCS International, Inc. dba**

New Contract with Friends of the Hollywood Central Park and FirstCarbon Solutions

As previously noted, Contract No. 3498 between RAP, FCS, and FHCP is expired. As only one of the performance milestones of that Contract No. 3498 was met prior to its expiration, just Fifty Thousand Dollars (\$50,000.00) of the total contract amount of Five Hundred Twenty-Five Thousand Dollars (\$525,000.00) was paid to FHCP.

RAP is recommending that Board approve a new Contract between RAP, FCS, and FHCP in order to complete the required EIR/EIS, and appropriate CEQA and NEPA documentation, for the Project.

The proposed Contract defines the specific roles and responsibilities for RAP, FCS, and FHCP relative to the preparation of the EIR/EIS, and related technical studies, for the proposed Project.

Pursuant to the Contract, FHCP will use the funds it has secured, along with the City funds that are being distributed pursuant to the Contract, to pay for environmental services rendered by FCS and the environmental consultant team and to ensure completion of all performance

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milestones in the Contract. FHCP is obligated and responsible for securing and managing the consultant team preparing the environmental analyses, an EIR/EIS, and appropriate CEQA and NEPA documentation, for the Project. FHCP shall provide, for the Board's, independent review and consideration, all necessary and required environmental documentation and technical studies. RAP staff will work in coordination with FHCP and FCS on the preparation of the required documents. RAP and City staff will review all final work products prepared by FCS and the consultant team to ensure they have been appropriately prepared and are in accordance with City standards and requirements. As required by the Co-Op Agreement, RAP shall provide any other documentation, reports, technical, or special studies submitted to RAP to Caltrans for their review.

RAP shall pay FHCP no more than Two Million, Four Thousand Dollars (\$2,004,000.00) for services in connection with the preparation of the EIR/EIS, and associated technical studies, in accordance with performance milestones and the related payment schedule that are set forth in Appendix B of the Contract. FHCP shall be responsible for disbursing those funds, along with funds it has secured, to FCS, for the environmental analysis services FCS will be providing. RAP will not be responsible for disbursing any payments to FCS.

The funding for the Contract will come from a combination of the Four Hundred Seventy-Five Thousand Dollars (\$475,000.00) in funding that remains unspent from Contract No. 3498 and the One Million, Five Hundred Twenty-Nine Thousand Dollars (\$1,529,000.00) in CRA/LA Excess Bond Proceeds recently approved for the project by the Los Angeles City Council

The term of the Contract shall be three (3) years from the date of execution, and may be extended for two (2) additional eighteen (18) month periods, subject to the written approval of RAP, FHCP, and FCS.

As RAP has been designated by the City Council as the Lead City Agency for the preparation of the EIR/EIS for the proposed Hollywood Central Park Project, the environmental analysis, and any required CEQA and NEPA findings and environmental assessments reports produced for this Project pursuant to this Contract would be presented to the Board for review in a subsequent report.

Charter Section 1022 Finding

Los Angeles City Charter Section 1022 prohibits contracting out work that could be done by City employees unless the Board determines it is more economical and/or feasible to contract out the service.

The Personnel Department has completed a Charter Section 1022 review and determined that there are City classifications that could provide some of the professional services required prepare the environmental analysis, and associated technical studies, for the proposed Project. However, none of the City Departments, including RAP, that have the City classifications that could provide some of the professional services have sufficient staff available at this time to do so. Additionally, due to budgetary constraints RAP is unable to obtain the personnel necessary to perform these specialized tasks.

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Therefore, staff has determined that it is more feasible to secure the necessary services through an independent contractor.

Charter Section 371 Finding

Los Angeles City Charter Section 371(a) requires a competitive bid or proposal process unless there is an applicable exception under Section 371(e).

Los Angeles City Charter Section 371(e)(2) provides an exception that “[c]ontracts, as determined by the contracting authority, for the performance of professional, scientific, expert, technical, or other special services of a temporary and occasional character for which the contracting authority finds that competitive bidding is not practicable or advantageous”.

Los Angeles City Charter Section 371(e)(10) provides an exception that “[s]ubject to the requirements of Section 1022, contracts (including without limitation those, as determined by the contracting authority, for the performance of professional, scientific, expert, technical or other special services), where the contracting authority finds that the use of competitive bidding would be undesirable, impractical or impossible or where the common law otherwise excuses compliance with competitive bidding requirements”.

If a competitive bid or proposal process is initiated to prepare environmental analyses, an EIR/EIS, and appropriate CEQA and NEPA documentation for the proposed Project, it is highly unlikely that the City will be able to identify organizations as uniquely situated as FHCP and FCS are to facilitate the preparation of the environmental documentation. FHCP was created to raise funds, community interest, and support for this proposed project and is familiar with the Federal, State, and Local agencies, organizations, and stakeholder entities that will need to be involved in the preparation of the environmental documentation for the project. FHCP has already secured, and is able manage, a consultant team, led by FCS, that has and can provide the professional, expert, technical services necessary to prepare the environmental documentation for the Project and to provide the results of that effort to the City for its independent consideration.

Furthermore, even if a suitable consultant could be identified through a competitive bid process, the City would be unlikely to find one that could prepare the necessary environmental documentation with the amount of City funding that is available to produce the required environmental analysis and technical studies. At this time, only FHCP has secured, and is willing to provide, the amount of private, non-City, funding and resources necessary to complete the extensive environmental documentation required for the proposed Project. The acquisition of the environmental documentation and analyses necessary for the Project would not be possible without FHCP securing the majority of the funding. Additionally, FHCP and FCS have already completed a significant amount of work, documentation, and technical studies related to the EIR/EIS, and has been working closely with Caltrans staff since 2014. It would likely take significant time and resources for a new consultant team to restart the EIR/EIS and reengage with Caltrans staff.

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Finally, as was noted previously in this Report, City Council requested that RAP negotiate and execute an agreement with FHCP for services related to the preparation of the required environmental documentation for this Project.

The preparation and completion of an the environmental analysis for the proposed Project would provide the City with the environmental review documents needed to evaluate the potential environmental impacts of the project in accordance with the environmental documentation and review requirements of CEQA and NEPA. Without the required environmental documentation, the Project cannot be appropriately evaluated by the City.

Therefore, staff has determined that competitive bidding for preparation of the environmental analyses, EIR/EIS, and appropriate CEQA and NEPA documentation, for the proposed Project would be undesirable at this time.

Charter Section 372 Finding

Los Angeles City Charter Section 372 requires that, except as otherwise provided by ordinance, in all cases where bids are not required by the Charter, competitive proposals or bids shall be obtained as far as reasonably practicable and compatible with the City's interests.

FHCP has already secured, and is able manage, a consultant team to prepare the environmental documentation for the Project. FHCP has demonstrated that its consultant team, led by FCS, has the necessary contacts, experience, and resources available to complete the environmental analysis for the proposed Project. Additionally, FHCP and FCS has already completed a substantial portion of the necessary environmental analysis and associated technical studies for the proposed Project.

Therefore, staff has determined that it is not reasonably practicable and compatible with the City's interests to obtain proposals because FHCP and FCS are the organizations that have agreed to provide, obtain, and secure all the services necessary for this Project at this time.

Environmental Review

Staff has determined that the action of entering into a contract for the purpose of coordinating the preparation of EIR/EIS and associated technical studies, for the proposed Project is not subject to CEQA pursuant to CEQA Guidelines Section 15060(c) as an activity that will not result in a direct or reasonably foreseeable indirect physical change in the environment is not a project under CEQA Guidelines Section 15378.

FISCAL IMPACT STATEMENT

Funding for this Contract is provided from Fund 302, Department 89, General Capital Account 89270K, sub-account HP, Hollywood Central Park and from Excess Non-Housing Bond Proceeds Fund No. 57D, Account No. 22L9FN Hollywood

Approval of this Contract will have no impact on the RAP's General Fund.

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This Report was prepared by Darryl Ford, Senior Management Analyst II, Planning, Maintenance and Construction Branch.

LIST OF ATTACHMENTS

- 1) Proposed Contract
- 2) Attachment 2 – Report No. 14-138
- 3) Attachment 3 – Contract 3498
- 4) Attachment 4 – Caltrans Cooperative Agreement

CONTRACT
BETWEEN
THE CITY OF LOS ANGELES
AND
FIRSTCARBON SOLUTIONS
FCS International, Inc. (formerly known as Michael Brandman Associates
AND
FRIENDS OF HOLLYWOOD CENTRAL PARK
TO PROVIDE AND FUND THE PREPARATION OF
THE ENVIRONMENTAL IMPACT ANALYSIS AND RELATED TECHNICAL STUDIES
FOR THE HOLLYWOOD CENTRAL PARK PROJECT

This CONTRACT ("Contract" or "Agreement") is made and entered into this ____ day of _____ 20____, by and between the CITY OF LOS ANGELES, a municipal corporation, (hereinafter referred to as "**CITY**") acting by and through its BOARD OF RECREATION AND PARK COMMISSIONERS (hereinafter referred to as "**BOARD**"), Michael Brandman Associates, a California corporation wholly owned by FCS Global Corporation and operating under the name FirstCarbon Solutions **FCS International, Inc. (formerly known as Michael Brandman Associates)**, (hereinafter referred to as "**CONTRACTOR**" or "**FCS**") and FRIENDS OF HOLLYWOOD CENTRAL PARK, a California non-profit corporation, (hereinafter referred to as "**FHCP**"). CITY, CONTRACTOR and FHCP shall be referred to individually as a "**Party**" and collectively as "**the PARTIES**".

RECITALS

WHEREAS, the Department of Recreation and Parks of the City of Los Angeles (hereinafter referred to as "**DEPARTMENT**") owns various park and recreational facilities and infrastructure throughout the City of Los Angeles and is responsible for the development, operation, maintenance, and improvement of such facilities and infrastructure; and

WHEREAS, **CITY** has general land use authority over approvals for the Hollywood Central Park project ("**Project**") and **DEPARTMENT** will be the Lead Agency for processing the environmental review documents and compliance with the California Environmental Quality Act ("**CEQA**"); and

WHEREAS, **DEPARTMENT** requires the services of an experienced and responsible consultant to perform or secure environmental impact analysis related services for the **DEPARTMENT** for the **Project**; and

WHEREAS, the Los Angeles City Council, as adopted in Council File No. 12-0600-S120, approved the transfer and appropriation of a total of Eight Hundred Twenty-Five Thousand Dollars (\$825,000.00) from various funding sources, to the Bureau of Engineering (“**BOE**”) for the preparation of environmental analyses for the Project of which Three Hundred Thousand Dollars (\$300,000.00) would be needed to pay City Department’s staff costs for the preparation and review of the environmental documents and the remaining would be available to pay for environmental consultants; and

WHEREAS, the Los Angeles City Council, as adopted in Council File No. 13-1248, requested the **DEPARTMENT** to negotiate and execute an agreement with **FHCP**, in the amount of Five Hundred Twenty-Five Thousand Dollars (\$525,000.00), to provide services in connection with the preparation of the Environmental Impact Report (“**EIR**”) / Environmental Impact Study (“**EIS**”), or applicable NEPA documentation, and associated technical studies for the Project; and

WHEREAS, the **DEPARTMENT**, has entered into a Cooperative Agreement (hereinafter referred to as “**CO-OP AGREEMENT**”) (Agreement 07-4990) with the State of California, acting through its Department of Transportation, referred to as **CALTRANS**, which identifies the roles and responsibilities of **CITY** and **CALTRANS** relative to the development of **Project** and **EIR/EIS**, and identifies specific services and documentation that shall be provided by **DEPARTMENT**; and,

WHEREAS, the **DEPARTMENT**, negotiated and executed a contract (Contract No.3498) agreement with **FHCP** and **CONTRACTOR**, in the amount of Five Hundred Twenty-Five Thousand Dollars (\$525,000.00), to provide services in connection with the preparation of the **EIR/EIS**, and said contract has since expired ;and

WHEREAS, the Los Angeles City Council, as adopted in Council File No. 14-1174-S32, approved up to One Million Five Hundred Twenty Nine Thousand Dollars (\$1,529,000.00) in tax-exempt CRA/LA Excess Non-Housing Bond Proceeds for the **EIR** and requested the **DEPARTMENT** to negotiate and execute an agreement with **FHCP**, in connection with the preparation of the **EIR/EIS**, or applicable NEPA documentation, and associated technical studies for the **Project**; and

WHEREAS, in 2008 a feasibility study for the Hollywood Central Park was completed, which determined that the proposed Hollywood Central Park is both technically and functionally feasible; and

WHEREAS, the **FHCP**, a non-profit corporation, was created to raise funds, community interest and support for the development of the proposed Hollywood Central Park; and

WHEREAS, the **Project** is an approximately 44-acre park proposed to be built on top of an approximately one mile below grade segment of the US 101 Hollywood Freeway in the general vicinity of and between Bronson Avenue and Santa Monica Boulevard; and

WHEREAS, FHCP has secured private funding to prepare the necessary environmental documentation and analyses for the proposed park, including a \$1,200,000.00 donation from the Aileen Getty Foundation, to fund the **EIR/EIS** for the **Project** which will be combined with other funds, including the City's funds, to engage a consultant team and to pay the **CONTRACTOR** to provide the necessary environmental documentation and analyses; and

WHEREAS, FHCP has conducted a Request for Proposals process and hired **CONTRACTOR** to provide the necessary environmental documentation and analyses; and

WHEREAS, the BOARD, as the contract awarding authority, finds pursuant to Charter Section 371(e)(2) that the professional and special fundraising services to be provided by **FHCP** are of a temporary and occasional character for which competitive bidding is not practical or advantages because **FHCP** was created for the sole purpose of raising funds, interest and support for the **Project**; and

WHEREAS, the BOARD as the contract awarding authority, finds in accordance with Charter Section 371(e)(10) that the use of competitive bidding would be undesirable, impractical or impossible because acquisition of the environmental documentation and analyses necessary for the **Project** would not be possible without **FHCP** securing the majority of the funding; and

WHEREAS, the funds secured by **FHCP** will be used together with the City's funds for **CONTRACTOR's** compensation under this Contract, to ensure completion of all performance milestones, and to engage professional service firms and environmental consultants that will contribute expertise and work products valuable to the environmental review process associated with the **Project**; and

WHEREAS, the BOARD as the contract awarding authority, finds pursuant to Charter Section 1022 that the work can be performed more economically or feasibly by **FHCP** than by City employees because **FHCP** will act as a facilitator and raise and donate additional funding to ensure completion of environmental documents that will be submitted to the **CITY** for the City's consideration and approval; and

WHEREAS, FHCP has secured **CONTRACTOR** and will manage a consultant team to prepare environmental analyses, the **EIR/EIS**, associated technical studies, and appropriate **CEQA** and National Environmental Policy Act ("**NEPA**") documentation, for the Project that will be submitted to the **DEPARTMENT** for consideration and approval; and

WHEREAS, FHCP will use funds dispersed by the **CITY** under this Contract exclusively to pay for the environmental services rendered by **CONTRACTOR** to ensure completion of all performance milestones, and

WHEREAS, FHCP and **CONTRACTOR** are subject to the specified Standard Provisions for City Contracts attached hereto and incorporated herein in by reference as Appendix A; and

WHEREAS, the PARTIES expressly acknowledge and agree that the **DEPARTMENT** will exercise its independent discretion in review of all environmental documents related to the **Project** whether produced by **CONTRACTOR** pursuant to this Contract or by any other agency or entity involved in environmental review of the **Project**; and

WHEREAS, the BOARD, as the contract awarding authority, finds, in accordance with Charter Section 1022, that **DEPARTMENT** does not have, available in its employ, personnel with sufficient time or necessary expertise to undertake these specialized professional tasks and that it is more economical or feasible to secure these services by independent contractors than by City employees; and,

WHEREAS, the BOARD, as the contract awarding authority, finds pursuant to Charter Section 371(e)(2), that the EIR/EIS and related technical studies and documentation to be provided by **CONTRACTOR** for the **Project** are professional, expert, technical services of a temporary and occasional character for which competitive bidding would be undesirable; and

WHEREAS, the BOARD, as the contract awarding authority, finds pursuant to Charter Section 371(e)(10), that the EIR/EIS and related technical studies and documentation to be provided by **CONTRACTOR** for the **Project** are professional, expert, technical services for which the use of competitive bidding would be undesirable, impractical or impossible or where the common law otherwise excuses compliance with competitive bidding requirements; and

WHEREAS, the BOARD, as the contract awarding authority finds pursuant to Charter Section 372 that obtaining competitive proposals or bids for the work that may be performed pursuant to this Contract is not reasonably practicable or compatible with the **CITY's** interests to obtain proposals or bids as **CONTRACTOR** and **FHCP** are the organizations that have agreed to provide, obtain, and secure all the services necessary for this Contract.

NOW, THEREFORE, CITY, CONTRACTOR, AND FHCP in consideration of the recitals above and of the terms, covenants, and conditions contained herein, agree as follows:

1.0 PARTIES TO CONTRACT, REPRESENTATIVES AND NOTICE

1.1 Parties

The parties to this Contract are:

CITY – The City of Los Angeles, a municipal corporation, acting by and through its BOARD OF RECREATION AND PARK COMMISSIONERS on behalf of the Department of Recreation and Parks having its principal office located at 221 North Figueroa Street, Suite 300, Los Angeles, California 90012.

CONTRACTOR – ~~FirstCarbon Solutions~~ **FCS International, Inc.**, a California corporation, having its principal office located at 220 **250** Commerce, Suite 200 **250**, Irvine, California 92602. **FHCP** – Friends of Hollywood Central Park, a California Non-profit corporation, having its principal office located at 6464 Sunset Boulevard, Suite 770, Hollywood, California 90028.

1.2 Representatives

The representatives of the parties who are authorized to administer this Contract and to whom formal notices, demands and communications will be given for as follows:

CITY's representative will be:
Michael A. Shull, General Manager
City of Los Angeles, Department of Recreation and Parks
221 North Figueroa Street, Suite 350
Los Angeles, California 90012

With copies to:

Cathie Santo-Domingo
Superintendent
Planning, Construction and Maintenance Branch
City of Los Angeles, Department of Recreation and Parks
221 North Figueroa Street, Suite 400
Los Angeles, California 90012
Telephone Number: (213) 202-2661
Fax Number: (213) 202-2612

CONTRACTOR's representative will be:

~~Robert Francisco~~ **Patrick Schultz**
President **COO**
~~FirstCarbon Solutions~~ **FCS International, Inc.**
220 **250** Commerce, Suite 200 **250**
Irvine, California 92602
Telephone Number: (714) 508-4100

With a copy to:

Jennifer M. Guenther, Esq., General Counsel
650 E. Hospitality Lane, Suite 125
San Bernardino, CA 92408
Telephone Number: (888) 826-5814 ext. 1211
Fax Number: (909) 884-2113

FHCP's representative will be:
Laurie Goldman
President
6464 Sunset Boulevard, Suite 770
Hollywood, California 90028
Telephone Number: (310) 274-8682
Fax Number: (310) 274-8627

With a copy to:
Alfred Fraijo Jr., Esq.
Sheppard, Mullin, Richter, & Hampton LLP
333 South Hope Street, 43rd Floor
Los Angeles, California 90071-1422
Telephone Number: (213) 617-5567
Fax Number: (213) 443-2855

1.3 Notices

Formal notices, demands and communications to be given hereunder by either party will be made in writing and may be effected by personal delivery or certified mail, return receipt requested, and will be deemed communicated as of the date of receipt.

If the person designated to receive the notices, demands or communications or the address of such person is changed, written notice of such change shall be given, in accordance with this Section, within five (5) working days of the change.

2.0 TERM OF CONTRACT

2.1 Term

The term of this contract shall be thirty six (36) months from the date of execution ("**Term**").

2.2 Extension

The PARTIES may mutually agree to extend the **Term** for two (2) additional eighteen (18) month periods, subject to the approval of **the PARTIES**. The **Term** may be extended only by written amendment to this Contract. If the **PARTIES** cannot agree upon such an extension, this Contract shall automatically terminate.

3.0 INTERACTION OF PARTIES

3.1 Good Faith Dealings

A. **The PARTIES** and their consultants, staff, and management, shall diligently and in good faith pursue timely completion of environmental review for the **Project** and shall cooperate in conducting related activities to achieve the Performance Milestones, attached hereto and incorporated herein as provided in Appendix B.

B. **The PARTIES** shall make available their consultants, staff, management, and other necessary resources as may be required for the timely resolution of issues that may arise during the environmental review process and for the expeditious review of documents submitted during environmental review.

C. **The PARTIES** acknowledge and agree that they, and their consultants, staff, and management, shall be deemed to be acting in good faith so long as they make reasonable efforts to attend scheduled meetings, direct consultants to cooperate with the other Party, provide information necessary to the duties of the other Party, and use commercially reasonable efforts to review and timely return with comments all correspondence, reports, documents, or contracts received from the other Party.

D.

4.0 SERVICES TO BE PROVIDED BY THE CONTRACTOR AND FHCP

4.1 Environmental Impact Analysis

A. **CONTRACTOR** will provide, for the **DEPARTMENT's** sole and independent consideration, the environmental review documents that evaluate the potential environmental impacts of the Project in accordance with the environmental documentation and review requirements of **CEQA** and **NEPA**.

B. **CONTRACTOR** will provide, for the **DEPARTMENT's** sole and independent consideration, applicable **CEQA** documentation including Initial Studies, Negative Declarations, Mitigated Negative Declaration, and Environmental Impact Reports as applicable.

C. **CONTRACTOR** will provide, for the **DEPARTMENT's** sole and independent consideration, applicable **NEPA** documentation including Findings of No Significant Impacts, Environmental Assessments, or Environmental Impact Statements as applicable.

D. **CONTRACTOR** will provide, for the **DEPARTMENT's** sole and independent consideration, any other technical studies required to assess the extent and magnitude of the **Project's** potential impacts on air quality, cultural resources, geology and soils, hydrology and water quality, noise, transportation and traffic, or any other environmental resource areas

identified in the **CEQA** Initial Study Checklist and the **NEPA** Environmental Assessment Checklist as applicable.

E. ~~CONTRACTOR~~ will **FCS will initiate and** provide, for the **DEPARTMENT**'s sole and independent consideration, any other documentation, reports, technical, or special studies required by **CALTRANS** in accordance with the **CO-OP AGREEMENT** ("**CALTRANS Required Technical Studies**") and ~~environmental documentation and review requirements~~ **CONTRACTOR** will incorporate all applicable data and information from these **CALTRANS Required Technical Studies** in the **environmental documentation** as required by **CEQA** and **NEPA**. These **CALTRANS Required Technical Studies** include, but may not be limited to:

- (a) Crime and Public Safety Considerations Study Report
- (b) Preliminary Capped Freeway Systems Report
- (c) Intelligent Transportation Systems (ITS) Preliminary Plans
- (d) Project Management Plan
- (e) Project Communication Plan,
- (f) Status Reports on Cost, Scope, and Schedule
- (g) Quality Management Plan.
- (h) Draft Project Report
- (i) Economic Impact Analysis Technical Report
- (j) Capital Construction Cost Estimate
- (k) Risk Management; Financing Tools
- (l) Project Cost Feasibility Report
- (m) Preliminary Plans
- (n) Geometric Design Technical Engineering Report
- (o) EA/NEPA Social Justice Compliance
- (p) Construction Staging Report
- (q) Various State Grants Technical Reports or Studies
- (r) Value Analysis Report
- (s) Initial Design Technical Studies

4.2 Timely Completion

FHCP shall use all best efforts to have **CONTRACTOR** timely reach the milestones provided in the Performance Milestones, attached hereto and incorporated herein as Appendix B, which includes the key milestones in the environmental review process for the **Project**.

5.0 SERVICES TO BE PROVIDED BY THE CITY

5.1 The **DEPARTMENT** agrees that, upon reasonable notice, as from time to time requested by **CONTRACTOR** or **FHCP**, the **DEPARTMENT** shall provide progress reports to **CONTRACTOR** or **FHCP** regarding the status of review and processing of documents related to the **Project**.

6.0 COMPENSATION AND INVOICING

6.1 Compensation

CITY will pay **FHCP** Two Million, Four Thousand Dollars (\$2,004,000.00) to pay for costs related to environmental services and to coordinate the preparation of the environmental impact analysis, and associated technical studies, for the **Project** in accordance with the terms and provisions of this Contract. The total for this Contract will not exceed Two Million, Four Thousand Dollars (\$2,004,000.00). Payments from **CITY** to **FHCP**, according to Appendix B – Performance Milestones, only will be provided to **FHCP** after **CITY** has determined, in its sole and independent discretion that the environmental documentation associated with each performance milestone is complete. **CITY** will not be liable to **CONTRACTOR** for any payments due under this Contract, and **CONTRACTOR** shall look only to **FHCP** for full payment of services rendered under this Contract.

6.2 Invoicing

FHCP shall invoice **CITY** within thirty (30) days of completion of each milestone provided in Appendix B – Performance Milestones by submitting two (2) copies of the invoice, which shall demonstrate that the milestone has been achieved.

FHCP shall submit invoices to:

City of Los Angeles, Department of Recreation and Parks
Attention: Darryl Ford
Planning, Construction and Maintenance Branch
221 North Figueroa Street, Suite 400
Los Angeles, California 90012

All invoices shall be submitted on **FHCP**'s letterhead, containing **FHCP**'s official logo, or other unique and identifying information, such as the name and address of **FHCP**. Evidence that documents the task has been completed, in the form of transmittal correspondence for completed environmental documents, public or hearing notices, reports, brochures or photographs, shall be attached to all invoices.

Invoices, evidence, and supporting documentation shall be prepared at the sole expense and responsibility of **FHCP**. **CITY** will not compensate **FHCP** for costs incurred in invoice preparation. **CITY** may request changes to the content and format of the invoice, evidence, and supporting documentation at any time.

Failure to adhere to these policies may result in nonpayment pursuant to Charter Section 262(a), which requires the City Controller to inspect the quality, quantity, and condition of services, labor, materials, supplies, or equipment received by any City office or department, and to approve demands before they are drawn on the Treasury.

DEPARTMENT shall promptly review the content and format of invoices, evidence, and supporting documentation to determine if the associated milestone has been achieved and if the invoice has been properly submitted by **FHCP**. **DEPARTMENT** shall provide prompt notice to **FHCP** of any **CITY** requested changes to the content and format of the invoice, evidence, and supporting documentation.

DEPARTMENT shall notify **FHCP** of date of receipt of a properly submitted invoice.

The **CITY** shall pay invoices properly submitted by **FHCP** within thirty (30) days of date of receipt of a properly submitted invoice.

7.0 INCORPORATION OF DOCUMENTS

7.1 Entire Contract

This Contract and appendices represent the entire integrated Contract of **the PARTIES** and supersedes all prior written or oral representations, discussions, and contracts. This Contract may not be changed or modified in any manner except by formal, written amendment fully executed by both **CITY**, **CONTRACTOR** and **FHCP**. The following documents are incorporated and made a part hereof by reference:

Appendix A. Standard Provisions for City Contracts (Rev. 10/17)[v.3]
Appendix B. Performance Milestones

7.2 Standard Provisions for City Contracts

In the event of a conflict between provisions of this Contract and those of the Standard Provisions for City Contracts (Rev. 10/17)[v.3] (“Standard Provisions”), the language of this Contract is controlling. For purposes of the the Standard Provisions, the term “**CONTRACTOR**” shall mean each of **FCS** and **FHCP**.

8.0 TERMINATION

8.1 Termination

This Contract may be terminated pursuant to the provisions of PSC-9 (“Termination”) of the Standard Conditions for City Contracts (Rev. 10/17)[v.3] (Appendix A).

If this Contract is terminated pursuant to the provisions of PSC-9.A (“Termination for Convenience”) of the Standard Conditions for City Contracts (Rev. 10/17)[v.3], **CITY** shall defend and hold **CONTRACTOR** harmless from all claims, costs, and liabilities related to **CITY’s** use of unfinished documents produced pursuant to this Contract on this **Project**.

(Signature Page to Follow)

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

THE CITY OF LOS ANGELES, a municipal corporation, acting by and through its BOARD OF RECREATION AND PARK COMMISSIONERS

Date: _____

By _____
PRESIDENT

Date: _____

By _____
SECRETARY

~~FIRSTCARBON SOLUTIONS~~ **FCS INTERNATIONAL, INC.**, a California corporation

Date: _____

By _____
PRESIDENT

Date: _____

VICE PRESIDENT

FRIENDS OF HOLLYWOOD CENTRAL PARK,

a California Non-profit corporation

Date: _____

By _____
EXECUTIVE DIRECTOR

Approved as to Form:

Date: _____

MICHAEL N. FEUER, City Attorney

By _____
STEVEN H. HONG
Deputy City Attorney

APPENDIX A – STANDARD PROVISIONS FOR CITY CONTRACTS (Rev. 10/17)[v.3]

APPENDIX B – PERFORMANCE MILESTONES

This appendix sets forth the performance milestones for completion of the Project's environmental review documents and the related payment schedule for each milestone.

Milestone	Payments
Publish Initial Study and Notice of Preparation	N/A (Included as FYI only. Milestone was Completed Under Contract No. 3498)
Initiation of CALTRANS Required Technical Studies (As Identified in Section 4.1E of Contract)	\$860,000
Completion of Administrative Draft EIR	\$824,000
Completion of Draft EIR and all Technical Studies	\$200,000
Completion of Administrative Draft Final EIR (including responses to comments)	\$50,000
Completion of Final EIR (including Findings, and Statement of Overriding Considerations, if required)	\$70,000

APPROVED
JUN 11 2014

REPORT OF GENERAL MANAGER

NO. 14-138

DATE: June 11, 2014

**BOARD OF RECREATION
AND PARK COMMISSIONERS**

C.D. 13

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: HOLLYWOOD CENTRAL PARK PROJECT – ENVIRONMENTAL IMPACT ANALYSIS AND RELATED TECHNICAL STUDIES – CONTRACT WITH FIRSTCARBON SOLUTIONS AND FRIENDS OF HOLLYWOOD CENTRAL PARK

R. Adams _____

V. Israel _____

for R. Barajas CSD

K. Regan _____

H. Fujita _____

N. Williams _____


General Manager

Approved _____

Disapproved _____

Withdrawn _____

RECOMMENDATIONS:

That the Board:

1. Approve a proposed Contract (Contract), substantially in the form on file in the Board Office, between the City of Los Angeles (City), FirstCarbon Solutions (FCS), a California corporation, and Friends of the Hollywood Central Park (FHCP), a non-profit organization, for the amount of \$525,000.00, to provide and fund the preparation of an environmental impact analysis, and related technical studies, for the proposed Hollywood Central Park project (Project), subject to the approval of the Mayor and the City Attorney as to form;

2. Authorize the General Manager to execute any documents between the Department of Recreation and Parks (RAP), as the Lead City Agency under California Environmental Quality Act (CEQA), and any Responsible Agency under CEQA, including but not limited to the California Department of Transportation (CalTrans), as may be necessary to enable FCS and FHCP to provide and coordinate the preparation of an environmental impact analysis, and related technical studies, for the proposed Project, subject to approval of the City Attorney as to form;

REPORT OF GENERAL MANAGER

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NO. 14-138

3. Find, in accordance with Charter Section 1022, that RAP does not have, available in its employ, personnel with sufficient time or the necessary expertise to undertake these specialized professional tasks, that the work can be performed more economically or feasibly by FHCP than by City employees because FHCP will act as a facilitator and raise and donate additional funding to ensure completion of the environmental documents that will be submitted to the City for the City's consideration and approval;
4. Find, in accordance with Charter Section 371(e)(2) that the professional and special fundraising services to be provided by FHCP are of a temporary and occasional character for which competitive bidding is not practical or advantages because FHCP was created for the sole purpose of raising funds, interest and support for the Project;
5. Find, in accordance with Charter Section 371(e)(10) that the use of competitive bidding would be undesirable, impractical or impossible because acquisition of the environmental documentation and analyses necessary for the Project would not be possible without FHCP securing the majority of the funding;
6. Find, in accordance with Charter Section 371(e)(2), that the environmental impact analysis and related technical studies to be provided by FCS for the Project are professional, expert, technical services of a temporary and occasional character for which competitive bidding would be undesirable;
7. Find, in accordance with Charter Section 371(e)(10), that the environmental impact analysis and related technical studies to be provided by FCS for the Project are professional, expert, technical services for which the use of competitive bidding would be undesirable, impractical or impossible or where the common law otherwise excuses compliance with competitive bidding requirements;
8. Find, in accordance with Charter Section 372 that obtaining competitive proposals or bids for the work that may be performed pursuant to this Contract is not reasonably practicable or compatible with the City's interests to obtain proposals or bids as FCS and FHCP are the only organizations that have agreed to provide, obtain, and secure all the services necessary for this Contract;
9. Direct the Board Secretary to transmit forthwith the proposed Contract to the Mayor in accordance with Executive Directive No. 3 and, concurrently, to the City Attorney for review and approval as to form; and,
10. Authorize the Board President and Secretary to execute forthwith the Contract, upon receipt of the necessary approvals.

REPORT OF GENERAL MANAGER

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SUMMARY:

The Project proposes to cover an approximately one (1) mile portion of the United States (U.S.) 101 Freeway, between Bronson Avenue and Santa Monica Boulevard, in order to create a forty-four (44) acre community park. As the section of the U.S. 101 Freeway between Bronson Avenue and Santa Monica Boulevard is below the level of the street, the Project is proposed to be constructed on a deck above the freeway, which would allow the development of a street-level park. If implemented, the Project would provide a new public park in a neighborhood where a large percentage of residents do not live in close proximity to a public park or recreational facility and would reconnect neighborhoods that were divided by the construction of the U.S. 101 Freeway.

In October 2013, the Los Angeles City Council approved a motion designating the RAP as the lead City agency for the preparation of the Environmental Impact Report/Environmental Impact Study (EIR/EIS), and the associated technical documents, for the proposed Project; transferring \$785,000.00 in funding from Department of Public Works, Bureau of Engineering (BOE) to RAP for costs associated with the preparation of the documents; instructing RAP to seek approval for one (1) additional position of Principal Project Coordinator to manage the City's efforts to coordinate and review the EIR/EIS; and, requesting that RAP negotiate and execute an agreement with FHCP, in the amount of \$525,000.00, to provide services in connection with the preparation of the EIR/EIS, or applicable California Environmental Quality Act (CEQA) and/or National Environmental Policy Act (NEPA) documentation, and associated technical studies for the Project (Council File No. 13-1248).

Background

In January 2007, the Los Angeles City Council approved \$100,000.00 in funding, provided by the Community Redevelopment Agency of Los Angeles (former CRA/LA), to help fund a detailed feasibility study for the proposed Project (Council File No. 06-2791). A Request for Proposals (RFP) for the feasibility study was issued by the former CRA/LA and a consultant team, led by EDAW (a part of AECOM), was selected to complete it. As a part of the feasibility study, a number of stakeholder meetings were held in order to help develop a preferred plan based on feedback from both the local community and technical experts. In October 2008, the feasibility study for the Project was completed. The feasibility study determined that the proposed Project was both technically and functionally feasible.

Due to the size, scope, and location of the proposed project size, and potential funding sources and mechanisms for eventual project implementation, it was determined at that time that both CEQA and NEPA compliance will likely be required. This would require the preparation of an extensive EIR/EIS, and associated technical studies, for the project in order to best facilitate efficient environmental review at the Federal, State, and Local levels.

REPORT OF GENERAL MANAGER

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In December 2008, following the completion of the feasibility study, FHCP, a non-profit corporation, was created by advocates and supporters of the proposed Project in order to raise funds, community interest and support for the development of the Project. One of the priority objectives for the FHCP has been to identify and secure \$2,000,000.00 in funding for the environmental analysis and the associated technical documentation, for the proposed Project.

In November 2011, the former CRA/LA approved \$2,000,000.00 in funding for the BOE for the EIR/EIS for the Hollywood Central Park Project (Council File No. 11-2115-S1). However, on February 1, 2012, the former CRA/LA was dissolved pursuant to AB 1x-26, and the \$2,000,000.00 in funding was no longer available for the project.

On July 3, 2012, the Los Angeles City Council approved the transfer and appropriation of a total of \$825,000.00, from various funding sources, to BOE, to fund a portion of the identified costs for the preparation of environmental analyses for the proposed Project (Council File No. 12-0600-S120). At that time, BOE staff estimated that \$300,000.00 of the \$825,000.00 in funding would be needed to pay City Departments' staff costs associated with the preparation and review of the environmental documents for the project and the remaining \$525,000.00 would be needed to pay for the necessary environmental consultants.

In August 2012, FHCP received a \$1,200,000.00 donation from the Aileen Getty Foundation to help fund the environmental impact analysis and related technical studies for the Hollywood Central Park Project. Following the receipt of that donation, it was determined by BOE and FHCP that FHCP's funds, in combination with the \$825,000.00 in funding provided to BOE by the City, were sufficient to engage a consultant team and pay a contractor to provide the necessary environmental documentation and analysis for the proposed Project.

In November 2012, FHCP released an RFP for the preparation of the environmental impact analysis and related technical studies and documents for the proposed Project. In February 2013, FHCP selected a consultant team, led by FirstCarbon Solutions (FCS), to prepare the environmental documentation for the Project.

On February 28, 2013, CalTrans, the State agency responsible for highway and bridge planning, construction, and maintenance, issued a memorandum delegating CEQA Lead Agency status for the Hollywood Central Park Project to the City (Exhibit A). In that memorandum, Caltrans elucidated that the delegation of CEQA Lead Agency status should be accompanied by an executed cooperative agreement between Caltrans and the City so Caltrans can provide independent quality assurance on the preparation of the environmental documentation.

REPORT OF GENERAL MANAGER

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In October 2013, the Los Angeles City Council approved a motion designating RAP as the Lead City Agency for the preparation of the EIR/EIS, and the associated technical documents, for the proposed Project; transferring \$785,000.00 in funding from BOE to RAP for costs associated with the preparation of the documents; instructing RAP to seek approval for one (1) additional position of Principal Project Coordinator to manage the City's efforts to coordinate and review the EIR/EIS; and, instructing RAP to enter into an Contract with FHCP, in the amount of \$525,000.00, to provide services in connection with the preparation of the EIR/EIS (Council File No. 13-1248). It should be noted that only \$745,885.23 of the \$785,000.00 in funding that the Los Angeles City Council directed BOE to transfer to RAP, as adopted in Council File No. 13-1248, was ultimately transferred from BOE to RAP. The Department of Public Works reduced the amount of funding being transferred in order to fully reimburse BOE staff for expenses they incurred from December 20, 2012 through September 18, 2013 while they were working as the Lead City Agency for the project.

Contract with FirstCarbon Solutions and Friends of the Hollywood Central Park

The proposed Contract defines the specific roles and responsibilities for RAP, FCS, and FHCP relative to the preparation of the environmental impact analysis, and related technical studies, for the proposed Project.

Pursuant to the Contract, FHCP will use the funds it has secured, along with the City funds that are being distributed pursuant to the Contract, to pay for environmental services rendered by FCS and the environmental consultant team and to ensure completion of all performance milestones in the Contract. FHCP is obligated and responsible for securing and managing the consultant team preparing the environmental analyses, an EIR/EIS, and appropriate CEQA and NEPA documentation, for the Project. FHCP shall provide, for the Board of Recreation and Park Commissioners (Board) independent review and consideration, all necessary and required environmental documentation and technical studies. RAP staff will work in coordination with FHCP and FCS on the preparation of the required documents. RAP and City staff will review all final work products prepared by FCS and the consultant team to ensure they have been appropriately prepared and are in accordance with City standards and requirements. RAP shall pay FHCP no more than \$525,000.00 for services in connection with the preparation of the environmental analysis, and associated technical studies, in accordance with performance milestones and the related payment schedule that are set forth in the Contract. FHCP shall be responsible for disbursing those funds, along with funds it has secured, to FCS, for the environmental analysis services FCS will be providing. RAP will not be responsible for disbursing any payments to FCS. The term of the Contract shall be eighteen (18) months from the date of execution, and may be extended for two (2) additional six (6) month periods, subject to the written approval of RAP, FHCP and FCS.

REPORT OF GENERAL MANAGER

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NO. 14-138

As RAP has been designated by the City Council as the Lead City Agency for the preparation of the EIR/EIS for the proposed Hollywood Central Park Project, the environmental analysis, and any required CEQA and NEPA findings and environmental assessments reports produced for this Project pursuant to this Contract, would be presented to the Board for review in a subsequent report.

Charter Section 1022 Finding

Los Angeles City Charter Section 1022 prohibits contracting out work that could be done by City employees unless the Board determines it is more economical and/or feasible to contract out the service.

The Personnel Department has completed a Charter Section 1022 review and determined that there are City classifications that could provide some but not all of the professional services required to prepare the environmental analysis, and associated technical studies, for the proposed Project. However, none of the City Departments, including RAP, that have the City classifications that could provide some of the professional services have sufficient staff available at this time to do so. Additionally, due to the City's current budgetary constraints and the ongoing hiring freeze, RAP is unable to obtain the personnel necessary to perform these specialized tasks.

Therefore, staff has determined that it is more feasible to secure the necessary services through an independent contractor.

Charter Section 371 Finding

Los Angeles City Charter Section 371(a) requires a competitive bid or proposal process unless there is an applicable exception under Section 371(e).

Los Angeles City Charter Section 371(e)(2) provides an exception that "contracts, as determined by the contracting authority, for the performance of professional, scientific, expert, technical, or other special services of a temporary and occasional character for which the contracting authority finds that competitive bidding is not practicable or advantageous".

Los Angeles City Charter Section 371(e)(10) provides an exception that "subject to the requirements of Section 1022, contracts (including without limitation those, as determined by the contracting authority, for the performance of professional, scientific, expert, technical or other special services), where the contracting authority finds that the use of competitive bidding would be undesirable, impractical or impossible or where the common law otherwise excuses compliance with competitive bidding requirements".

REPORT OF GENERAL MANAGER

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If a competitive bid or proposal process is initiated to prepare environmental analyses, an EIR/EIS, and appropriate CEQA and NEPA documentation, for the proposed Project it is highly unlikely that the City will be able to identify organizations as uniquely situated as FHCP and FCS are to facilitate the preparation of the environmental documentation. FHCP was created to raise funds, community interest, and support for this proposed project and is familiar with the Federal, State, and Local agencies, organizations, and stakeholder entities that will need to be involved in the preparation of the environmental documentation for the project. FHCP has already secured, and is able manage, a consultant team, led by FCS, that has and can provide the professional, expert, technical services necessary to prepare the environmental documentation for the Project and to provide the results of that effort to the City for its independent consideration.

Furthermore, even if a suitable consultant could be identified through a competitive bid process, the City would be unlikely to find one that could prepare the necessary environmental documentation with the amount of City funding that is available to produce the required environmental analysis and technical studies. At this time, only FHCP has secured, and is willing to provide, the amount of private, non-City, funding and resources necessary to complete the extensive environmental documentation required for the proposed Project. The acquisition of the environmental documentation and analyses necessary for the Project would not be possible without FHCP securing the majority of the funding.

Finally, as was noted previously in this Report, the Los Angeles City Council requested that RAP negotiate and execute an agreement with FHCP for services related to the preparation of the required environmental documentation for this project.

The preparation and completion of the environmental analysis for the proposed Project would provide the City with the environmental review documents needed to evaluate the potential environmental impacts of the project in accordance with the environmental documentation and review requirements of CEQA and NEPA. Without the required environmental documentation, the Project cannot be appropriately evaluated by the City.

Therefore, staff has determined that competitive bidding for preparation of the environmental analyses, EIR/EIS, and appropriate CEQA and NEPA documentation, for the proposed Project would be undesirable at this time.

Charter Section 372 Finding

Los Angeles City Charter Section 372 requires that, except as otherwise provided by ordinance, in all cases where bids are not required by the Charter, competitive proposals or bids shall be obtained as far as reasonably practicable and compatible with the City's interests.

REPORT OF GENERAL MANAGER

PG. 8

NO. 14-138

FHCP has already secured, and is able to manage, a consultant team to prepare the environmental documentation for the Project. FHCP has demonstrated that its consultant team, led by FCS, has the necessary contacts, experience, and resources available to complete the environmental analysis for the proposed Project.

Therefore, staff has determined that it is not reasonably practicable and compatible with the City's interests to obtain proposals because FHCP and FCS are the organizations that have agreed to provide, obtain, and secure all the services necessary for this Project at this time.

Environmental Review

Staff has determined that the action of entering into a contract for the purpose of coordinating the preparation of environmental analysis and associated technical studies for the proposed Project, is not subject to CEQA pursuant to CEQA Guidelines Section 15060(c) as an activity that will not result in a direct or reasonably foreseeable indirect physical change in the environment is not a project under CEQA Guidelines Section 15378.

FISCAL IMPACT STATEMENT:

The funding for this Contract is provided in Fund 302, Department 89, General Capital Account 89270K-HP (Hollywood Central Park). Approval of this Contract will have no impact on the RAP's General Fund.

This Report was prepared by Darryl Ford, Management Analyst II, Planning, Construction, and Maintenance Branch.

Memorandum

*Flex your power!
Be energy efficient!*

To: MICHAEL MILES
District Director, District 7

From: RONALD KOSINSKI
Deputy District Director
Division of Environmental
Planning

Date: February 28, 2013

07-LA-101-PM 5.60/6.60
Hollywood Freeway
Central Park Project, City
of Los Angeles

Subject: Lead Agency Decision Paper Addressing Hollywood Freeway Central
Park Project in the City of Los Angeles on U.S. 101.

Action Request

The City of Los Angeles requested Caltrans to delegate its responsibility as CEQA Lead Agency to the City on the subject project via a letter dated February 1, 2013. This written justification Memorandum is provided pursuant to Caltrans guidelines on CEQA Lead Agency, elucidated in a June 24, 2004 memo from Gary Winters, Chief, Caltrans Division of Environmental Analysis. CEQA Lead Agency delegation requires written determination from the District Director as recommended by the Deputy District Director for Environmental Planning. The delegation should be accompanied or followed by an executed cooperative agreement between Caltrans and the agency to which Caltrans is delegating CEQA Lead Agency status. For this project, Caltrans proposes to allow the City of Los Angeles to act as CEQA Lead Agency.

Background

The Hollywood Freeway Central Park Project (Freeway Cap) is proposing to build a park on top of a depressed one-mile long section of U.S. 101 Freeway in the general vicinity of and between U.S. 101 intersections with Santa Monica Blvd. and Hollywood Blvd. The project's proposed scope of work will primarily include the construction of a new bridge structure over the freeway, add park landscape and amenities, explore potential upgrades to the freeway to current standards, and possibly modify freeway access ramps and adjacent interchanges and local street network. Construction of park/recreation related uses including sports fields and an amphitheater will also be considered.

Justification & Benefits

The Hollywood Central Park Cap proposal is an urban development project, not a transportation project. The proponents are focused on analyzing land use development issues including park access, parking, pedestrian movement, landscaping, urban gardens and community views. Caltrans' major concerns involve constructability, maintenance, traffic engineering and safety. Our concerns are more appropriately addressed in Caltrans Design and Engineering documents, not in our CEQA documents. All subsequent permits, including Caltrans encroachment and airspace permits would still be required. With the City of Los Angeles as CEQA Lead Agency, the involvement of local urban design departments within the City will facilitate environmental review.

Caltrans District 7 has been consulting with the proponents of this cap since 2007. Staff will work closely with the local environmental document preparation team and provide Quality Assurance "Oversight" to CEQA process. This will ensure that the proposed project scope, purpose and need--and its evaluation criteria will adequately address the potential impacts to the environment. Caltrans staff will ensure that freeway operations, maintenance issues, safety issues, right-of-way policies, long-range transportation plans, and other applicable Caltrans objectives directly influence the decision making process. All parties involved in this proposed project will benefit from this delegation.

Recommended Approach

As Responsible Agency under CEQA, at key decision points, Caltrans will participate in coordination meetings to ensure that all reasonable environmental considerations and freeway related issues are addressed to a satisfactory level. This includes, but not limited to schedule, mitigation, and rights-of-way proposals. Failure to comply with these considerations will void this CEQA delegation agreement. This delegation is being recommended to develop a successful product in the most cost effective manner possible.

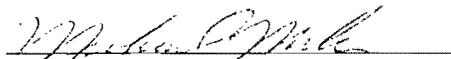
Based on the foregoing information, I have determined that it is in Caltrans' best interest to delegate CEQA Lead Agency status for the Hollywood Freeway Central Park Project in the City of Los Angeles on U.S. 101 to the City of Los Angeles.



RONALD KOSINSKI

Deputy District Director, District 7 Environmental Planning

I concur,



MICHAEL MILES

District Director, District 7

BOARD OF RECREATION AND
PARK COMMISSIONERS

SYLVIA PATSAOURAS
PRESIDENT

IRIS ZUÑIGA
VICE PRESIDENT

LYNN ALVAREZ
MISTY M. SANFORD

LATONYA D. DEAN
COMMISSION EXECUTIVE ASSISTANT II

CITY OF LOS ANGELES
CALIFORNIA



ERIC GARCETTI
MAYOR

Attachment 3
DEPARTMENT OF
RECREATION AND PARKS

221 N. FIGUEROA STREET
SUITE 1510
LOS ANGELES, CA 90012

(213) 202-2640
FAX: (213) 202-2610
RAP.Commissioners@LACity.org

MICHAEL A. SHULL
GENERAL MANAGER

August 29, 2014

Friends of the Hollywood Central Park
1680 North Vine Street, Suite 1000
Hollywood, California 90028

Attention: Laurie Goldman,
Executive Director

Gentlepersons:

Enclosed is Contract No. 3498, executed on August 28, 2014, between the City of Los Angeles, by and through its Board of Recreation and Park Commissioners, and your firm to provide and fund preparation of the environmental impact analysis and related technical studies.

Very truly yours,

BOARD OF RECREATION AND
PARK COMMISSIONERS

LATONYA D. DEAN
Commission Executive Assistant

Enclosure

cc: City Controller (w/enclosure)
City Attorney (w/enclosure)
Darryl Ford (w/enclosure)
Departmental Chief Accountant (w/ enclosure)



BOARD OF RECREATION AND
PARK COMMISSIONERS

SYLVIA PATSAOURAS
PRESIDENT

IRIS ZUÑIGA
VICE PRESIDENT

LYNN ALVAREZ
MISTY M. SANFORD

LATONYA D. DEAN
COMMISSION EXECUTIVE ASSISTANT II

CITY OF LOS ANGELES
CALIFORNIA



ERIC GARCETTI
MAYOR

DEPARTMENT OF
RECREATION AND PARKS

221 N. FIGUEROA STREET
SUITE 1510
LOS ANGELES, CA 90012

(213) 202-2640
FAX: (213) 202-2610
RAP.Commissioners@LACity.org

MICHAEL A. SHULL
GENERAL MANAGER

August 29, 2014

FirstCarbon Solutions/Michael Brandman Associates
220 Commerce, Suite 200
Irvine, CA 92602

Gentlepersons:

Enclosed is Contract No. 3498, executed on August 28, 2014, between the City of Los Angeles, by and through its Board of Recreation and Park Commissioners, and your firm to provide and fund preparation of the environmental impact analysis and related technical studies.

Very truly yours,

BOARD OF RECREATION AND
PARK COMMISSIONERS

LATONYA D. DEAN
Commission Executive Assistant

Enclosure

cc: City Controller (w/enclosure)
City Attorney (w/enclosure)
Darryl Ford (w/enclosure)
Departmental Chief Accountant (w/ enclosure)

**CONTRACT
BETWEEN
THE CITY OF LOS ANGELES
AND
FIRSTCARBON SOLUTIONS
AND
FRIENDS OF HOLLYWOOD CENTRAL PARK
TO PROVIDE AND FUND THE PREPARATION OF
THE ENVIRONMENTAL IMPACT ANALYSIS AND RELATED TECHNICAL STUDIES
FOR THE HOLLYWOOD CENTRAL PARK PROJECT**

This CONTRACT is made and entered into this 28th day of August 2014, by and between the CITY OF LOS ANGELES, a municipal corporation, (hereinafter referred to as "CITY") acting by and through its BOARD OF RECREATION AND PARK COMMISSIONERS (hereinafter referred to as "BOARD"), Michael Brandman Associates, a California corporation wholly owned by FCS Global Corporation and operating under the name FirstCarbon Solutions | Michael Brandman Associates, (hereinafter referred to as "CONTRACTOR" or "FCS") and FRIENDS OF HOLLYWOOD CENTRAL PARK, a California non-profit corporation, (hereinafter referred to as "FHCP"). CITY, CONTRACTOR and FHCP shall be referred to hereinafter collectively as "the PARTIES".

RECITALS

WHEREAS, the Department of Recreation and Parks of the City of Los Angeles (hereinafter referred to as "**DEPARTMENT**") owns various park and recreational facilities and infrastructure throughout the City of Los Angeles and is responsible for the development, operation, maintenance, and improvement of such facilities and infrastructure; and

WHEREAS, CITY has general land use authority over approvals for the Hollywood Central Park project ("**Project**") and **DEPARTMENT** will be the Lead Agency for processing the environmental review documents and compliance with the California Environmental Quality Act ("**CEQA**"); and

WHEREAS, **DEPARTMENT** requires the services of an experienced and responsible consultant to perform or secure environmental impact analysis related services for the **DEPARTMENT** for the Project; and

WHEREAS, the Los Angeles City Council, as adopted in Council File No. 12-0600-S120, approved the transfer and appropriation of a total of Eight Hundred Twenty-Five Thousand Dollars (\$825,000.00) from various funding sources, to the Bureau of Engineering ("**BOE**") for the preparation of environmental analyses for the Project of which Three Hundred Thousand Dollars (\$300,000.00) would be needed to pay City Department's staff costs for the preparation and review of the environmental documents and the remaining would be available to pay for environmental consultants; and

WHEREAS, the Los Angeles City Council, as adopted in Council File No. 13-1248, requested the **DEPARTMENT** to negotiate and execute an agreement with **FHCP**, in the amount of Five Hundred Twenty-Five Thousand Dollars (\$525,000.00), to provide services in connection with the preparation of the Environmental Impact Report (“**EIR**”)/ Environmental Impact Study (“**EIS**”), or applicable NEPA documentation, and associated technical studies for the **Project**; and

WHEREAS, in 2008 a feasibility study for the Hollywood Central Park was completed, which determined that the proposed Hollywood Central Park is both technically and functionally feasible; and

WHEREAS, the **FHCP**, a non-profit corporation, was created to raise funds, community interest and support for the development of the proposed Hollywood Central Park; and

WHEREAS, the **Project** is an approximately 44-acre park proposed to be built on top of an approximately one mile below grade segment of the US 101 Hollywood Freeway in the general vicinity of and between Bronson Avenue and Santa Monica Boulevard; and

WHEREAS, **FHCP** has estimated that \$2,000,000.00 in funding would be needed to prepare the necessary environmental documentation and analyses for the proposed park, has received a \$1,200,000.00 donation from the Aileen Getty Foundation to fund the **EIR** for the **Project** which will be combined with other funds, including the City’s funds, to engage a consultant team and to pay the **CONTRACTOR** to provide the necessary environmental documentation and analyses; and

WHEREAS, **FHCP** has conducted a Request For Proposals process and hired **CONTRACTOR** to provide the necessary environmental documentation and analyses; and

WHEREAS, the **BOARD**, as the contract awarding authority, finds pursuant to Charter Section 371(e)(2) that the professional and special fundraising services to be provided by **FHCP** are of a temporary and occasional character for which competitive bidding is not practical or advantages because **FHCP** was created for the sole purpose of raising funds, interest and support for the **Project**; and

WHEREAS, the **BOARD** as the contract awarding authority, finds in accordance with Charter Section 371(e)(10) that the use of competitive bidding would be undesirable, impractical or impossible because acquisition of the environmental documentation and analyses necessary for the **Project** would not be possible without **FHCP** securing the majority of the funding; and

WHEREAS, the funds secured by **FHCP** will be used together with the City’s funds for **CONTRACTOR**’s compensation under this Contract, to ensure completion of all performance milestones, and to engage professional service firms and environmental consultants that will contribute expertise and work products valuable to the environmental review process associated with the **Project**; and

WHEREAS, the **BOARD** as the contract awarding authority, finds pursuant to Charter Section 1022 that the work can be performed more economically or feasibly by **FHCP** than by City employees because **FHCP** will act as a facilitator and raise and donate additional funding to ensure completion of environmental documents that will be submitted to the **CITY** for the City's consideration and approval; and

WHEREAS, **FHCP** has secured **CONTRACTOR** and will manage a consultant team to prepare environmental analyses, the **EIR**, associated technical studies, and appropriate **CEQA** and National Environmental Policy Act ("**NEPA**") documentation, for the Project that will be submitted to the **DEPARTMENT** for consideration and approval; and

WHEREAS, **FHCP** will use funds dispersed by the **CITY** under this Contract exclusively to pay for the environmental services rendered by **CONTRACTOR** to ensure completion of all performance milestones, and

WHEREAS, **CONTRACTOR** is subject to the specified Standard Provisions for City Contracts attached hereto and incorporated herein in by reference as Appendix A; and

WHEREAS, the **PARTIES** expressly acknowledge and agree that the **DEPARTMENT** will exercise its independent discretion in review of all environmental documents related to the **Project** whether produced by **CONTRACTOR** pursuant to this Contract or by any other agency or entity involved in environmental review of the **Project**; and

WHEREAS, the **BOARD**, as the contract awarding authority, finds, in accordance with Charter Section 1022, that **DEPARTMENT** does not have, available in its employ, personnel with sufficient time or necessary expertise to undertake these specialized professional tasks and that it is more economical or feasible to secure these services by independent contractors than by City employees; and

WHEREAS, the **BOARD**, as the contract awarding authority, finds pursuant to Charter Section 371(e)(2), that the environmental impact analysis and related technical studies to be provided by **CONTRACTOR** for the **Project** are professional, expert, technical services of a temporary and occasional character for which competitive bidding would be undesirable; and

WHEREAS, the **BOARD**, as the contract awarding authority, finds pursuant to Charter Section 371(e)(10), that the environmental impact analysis and related technical studies to be provided by **CONTRACTOR** for the **Project** are professional, expert, technical services for which the use of competitive bidding would be undesirable, impractical or impossible or where the common law otherwise excuses compliance with competitive bidding requirements; and

WHEREAS, the **BOARD**, as the contract awarding authority finds pursuant to Charter Section 372 that obtaining competitive proposals or bids for the work that may be performed pursuant to this Contract is not reasonably practicable or compatible with the **CITY's** interests to obtain proposals or bids as **CONTRACTOR** and **FHCP** are the organizations that have agreed to provide, obtain, and secure all the services necessary for this Contract.

NOW, THEREFORE, CITY, CONTRACTOR, AND FHCP in consideration of the recitals above and of the terms, covenants, and conditions contained herein, mutually agree as follows:

1.0 PARTIES TO CONTRACT, REPRESENTATIVES AND NOTICE

1.1 Parties

The parties to this Contract are:

CITY – The City of Los Angeles, a municipal corporation, acting by and through its **BOARD OF RECREATION AND PARK COMMISSIONERS** on behalf of the Department of Recreation and Parks having its principal office located at 221 North Figueroa Street, 15th Floor, Los Angeles, California 90012.

CONTRACTOR – FirstCarbon Solutions/Michael Brandman Associates, a California corporation, having its principal office located at 220 Commerce, Suite 200, Irvine, California 92602.

FHCP – Friends of Hollywood Central Park, a California Non-profit corporation, having its principal office located at 1680 North Vine Street, Suite 1000, Hollywood, California 90028.

1.2 Representatives

The representatives of the parties who are authorized to administer this Contract and to whom formal notices, demands and communications will be given for as follows:

CITY's representative will be:

Michael A. Shull, General Manager
City of Los Angeles, Department of Recreation and Parks
221 North Figueroa Street, Suite 1550
Los Angeles, California 90012

With copies to:

Cathie Santo-Domingo, Superintendent
City of Los Angeles, Department of Recreation and Parks
Planning, Construction and Maintenance Branch
221 North Figueroa Street, Suite 100
Los Angeles, California 90012

Telephone Number: (213) 202-2668
Fax Number: (213) 202-2612

CONTRACTOR's representative will be:

Robert Francisco, President
FirstCarbon Solutions/Michael Brandman Associates
220 Commerce, Suite 200
Irvine, California 92602

Telephone Number: (714) 508-4100

FHCP's representative will be:

Laurie Goldman, Executive Director
Friends of the Hollywood Central Park
1680 North Vine Street, Suite 1000
Hollywood, California 90028

Telephone Number: (310) 274-8682
Fax Number: (310) 274-8627

With a copy to:

Alfred Fraijo Jr., Esq.
Sheppard, Mullin, Richter, & Hampton LLP
333 South Hope Street, 43rd Floor
Los Angeles, California 90071-1422

Telephone Number: (213) 617-5567
Fax Number: (213) 443-2855

1.3 Notices

Formal notices, demands and communications to be given hereunder by either party will be made in writing and may be effected by personal delivery or certified mail, return receipt requested, and will be deemed communicated as of the date of receipt.

If the person designated to receive the notices, demands or communications or the address of such person is changed, written notice of such change shall be given, in accordance with this Section, within five (5) working days of the change.

2.0 TERM OF CONTRACT

2.1 Term

The term of this contract shall be eighteen (18) months from the date of execution ("Term").

2.2 Extension

The **PARTIES** may mutually agree to extend the **Term** for two (2) additional six (6) month periods, subject to the approval of the **PARTIES**. The **Term** may be extended only by written amendment to this Contract. If the **PARTIES** cannot agree upon such an extension, this Contract shall automatically terminate.

3.0 INTERACTION OF PARTIES

3.1 Good Faith Dealings

- A. The **PARTIES** and their consultants, staff, and management, shall diligently and in good faith pursue timely completion of environmental review for the **Project** and shall cooperate in conducting related activities to achieve the Performance Milestones, attached hereto and incorporated herein as provided in Appendix B.
- B. The **PARTIES** shall make available their consultants, staff, management, and other necessary resources as may be required for the timely resolution of issues that may arise during the environmental review process and for the expeditious review of documents submitted during environmental review.
- C. The **PARTIES** acknowledge and agree that they, and their

consultants, staff, and management, shall be deemed to be acting in good faith so long as they make reasonable efforts to attend scheduled meetings, direct consultants to cooperate with the other Party, provide information necessary to the duties of the other Party, and use commercially reasonable efforts to review and timely return with comments all correspondence, reports, documents, or contracts received from the other Party.

4.0 SERVICES TO BE PROVIDED BY THE CONTRACTOR AND FHCP

4.1 Environmental Impact Analysis

- A. **CONTRACTOR** will provide, for the **DEPARTMENT's** sole and independent consideration, the environmental review documents that evaluate the potential environmental impacts of the Project in accordance with the environmental documentation and review requirements of **CEQA** and **NEPA**.
- B. **CONTRACTOR** will provide, for the **DEPARTMENT's** sole and independent consideration, applicable **CEQA** documentation including Initial Studies, Negative Declarations, Mitigated Negative Declaration, and Environmental Impact Reports as applicable.
- C. **CONTRACTOR** will provide, for the **DEPARTMENT's** sole and independent consideration, applicable **NEPA** documentation including Findings of No Significant Impacts, Environmental Assessments, or Environmental Impact Statements as applicable.
- D. **CONTRACTOR** will provide, for the **DEPARTMENT's** sole and independent consideration, any other technical studies required to assess the extent and magnitude of the **Project's** potential impacts on air quality, cultural resources, geology and soils, hydrology and water quality, noise, transportation and traffic, or any other environmental resource areas identified in the **CEQA** Initial Study Checklist and the **NEPA** Environmental Assessment Checklist as applicable.

4.2 Timely Completion

FHCP shall use all best efforts to have **CONTRACTOR** timely reach the milestones provided in the Performance Milestones, attached hereto and incorporated herein as Appendix B, which includes the key milestones in the environmental review process for the **Project**.

5.0 SERVICES TO BE PROVIDED BY THE CITY

5.1 The **DEPARTMENT** agrees that, upon reasonable notice, as from time to time requested by **CONTRACTOR** or **FHCP**, the **DEPARTMENT** shall provide progress reports to **CONTRACTOR** or **FHCP** regarding the status of review and processing of documents related to the **Project**.

6.0 COMPENSATION AND INVOICING

6.1 Compensation

CITY will pay **FHCP** \$525,000.00 to pay **CONTRACTOR** to provide environmental services and to coordinate the preparation of the environmental impact analysis, and associated technical studies, for the **Project**. The total for this Contract will not exceed \$525,000.00. Payments from **CITY** to **FHCP**, according to Appendix B – Performance Milestones, only will be provided to **FHCP** after **CITY** has determined, in its sole and independent discretion that the environmental documentation associated with each performance milestone is complete. **CONTRACTOR** shall look only to **FHCP** for full payment of services rendered under this Contract.

6.2 Invoicing

FHCP shall invoice **CITY** within thirty (30) days of completion of each milestone provided in Appendix B – Performance Milestones by submitting two (2) copies of the invoice, which shall demonstrate that the milestone has been achieved.

FHCP shall submit invoices to:

Attention: Darryl Ford
City of Los Angeles, Department of Recreation and Parks
Planning, Construction and Maintenance Branch
221 North Figueroa Street, Suite 100
Los Angeles, California 90012

All invoices shall be submitted on **FHCP's** letterhead, containing **FHCP's** official logo, or other unique and identifying information, such as the name and address of **FHCP**. Evidence that documents the task has been completed, in the form of transmittal correspondence for completed environmental documents, public or hearing notices, reports, brochures or photographs, shall be attached to all invoices.

Invoices, evidence, and supporting documentation shall be prepared at the sole expense and responsibility of **FHCP**. **CITY** will not compensate **FHCP** for costs incurred in invoice preparation. **CITY** may request changes to the content and format of the invoice, evidence, and supporting documentation at any time.

Failure to adhere to these policies may result in nonpayment pursuant to Charter Section 262(a), which requires the City Controller to inspect the quality, quantity, and condition of services, labor, materials, supplies, or equipment received by any City office or department, and to approve demands before they are drawn on the Treasury.

DEPARTMENT shall promptly review the content and format of invoices, evidence, and supporting documentation to determine if the associated milestone has been achieved and if the invoice has been properly submitted by **FHCP**. **DEPARTMENT** shall provide prompt notice to **FHCP** of any **CITY** requested changes to the content and format of the invoice, evidence, and supporting documentation.

DEPARTMENT shall notify **FHCP** of date of receipt of a properly submitted invoice.

The **CITY** shall pay invoices properly submitted by **FHCP** within thirty (30) days of date of receipt of a properly submitted invoice.

7.0 INCORPORATION OF DOCUMENTS

7.1 Entire Contract

This Contract and appendices represent the entire integrated Contract of the **PARTIES** and supersedes all prior written or oral representations, discussions, and contracts. Contract may not be changed or modified in any manner except by formal, written amendment fully executed by both **CITY**, **CONTRACTOR** and **FHCP**. The following documents are incorporated and made a part hereof by reference:

Appendix A. Standard Provisions for City Contracts (Rev. 3/09)
Appendix B. Performance Milestones

7.2 Standard Provisions for City Contracts

In the event of a conflict between provisions of this Contract and those of the Standard Conditions for City Contracts (Rev. 3/09), the language of this Contract is controlling.

CONTRACTOR agrees to comply with all of the Standard Conditions for City Contracts (Rev. 3/09).

FHCP is required to comply with the following Provisions for Standard Contracts (PSC) Numbers: PSC 16 - Current Los Angeles City Business Tax Registration Certificate Required; PSC 28 – Equal Employment Practices; PSC 29 – Affirmative Action, PSC 32 - Americans With Disabilities Act; and, PSC 36 – Slavery Disclosure Ordinance.

8.0 TERMINATION

8.1 Termination

This Contract may be terminated pursuant to the provisions of PSC-10 ("Termination") of the Standard Conditions for City Contracts (Rev. 3/09) (Appendix A).

If this Contract is terminated pursuant to the provisions of PSC-10.A ("Termination for Convenience") of the Standard Conditions for City Contracts (Rev. 3/09), **CITY** shall defend and hold **CONTRACTOR** harmless from all claims, costs, and liabilities related to **CITY's** use of unfinished documents produced pursuant to this Contract on this **Project**.

their respective duly authorized representatives.

THE CITY OF LOS ANGELES, a
municipal corporation, acting by and
through its BOARD OF RECREATION
AND PARK COMMISSIONERS

Date: 8/26/14

By *Alycia Paterson*
PRESIDENT

Date: 8/28/14

By *Katya Delli*
SECRETARY

FIRSTCARBON SOLUTIONS/
MICHAEL BRANDMAN ASSOCIATES,
a California corporation

Date: 8/12/14

By *Tom Funn*
PRESIDENT

Date: 8/13/14

By *James*
VICE PRESIDENT

FRIENDS OF HOLLYWOOD CENTRAL
PARK,
a California Non-profit corporation

Date: 8/7/2014

By *James Goldman*
EXECUTIVE DIRECTOR

Approved as to Form:

Date: 8-28-14

MICHAEL N. FEUER, City Attorney

By *Arletta Maria Brimsey*
ARLETTA MARIA BRIMSEY *for*
Deputy City Attorney

APPENDIX A – STANDARD PROVISIONS FOR CITY CONTRACTS (Rev. 3/09)

APPENDIX A

STANDARD PROVISIONS FOR CITY CONTRACTS

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STANDARD PROVISIONS FOR CITY CONTRACTS

PSC-1. CONSTRUCTION OF PROVISIONS AND TITLES HEREIN

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

PSC-2. NUMBER OF ORIGINALS

The number of original texts of this Contract shall be equal to the number of the parties hereto, one text being retained by each party. At the **CITY'S** option, one or more additional original texts of this Contract may also be retained by the City.

PSC-3. APPLICABLE LAW, INTERPRETATION AND ENFORCEMENT

Each party's performance hereunder shall comply with all applicable laws of the United States of America, the State of California, and the **CITY**, including but not limited to, laws regarding health and safety, labor and employment, wage and hours and licensing laws which affect employees. This Contract shall be enforced and interpreted under the laws of the State of California without regard to conflict of law principles. **CONTRACTOR** shall comply with new, amended, or revised laws, regulations, and/or procedures that apply to the performance of this Contract.

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

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

PSC-4. TIME OF EFFECTIVENESS

Unless otherwise provided, this Contract shall take effect when all of the following events have occurred:

- A. This Contract has been signed on behalf of **CONTRACTOR** by the person or persons authorized to bind **CONTRACTOR** hereto;
- B. This Contract has been approved by the City Council or by the board, officer or employee authorized to give such approval;
- C. The Office of the City Attorney has indicated in writing its approval of this Contract as to form; and
- D. This Contract has been signed on behalf of the **CITY** by the person designated by the City Council, or by the board, officer or employee authorized to enter into this Contract.

PSC-5. INTEGRATED CONTRACT

This Contract sets forth all of the rights and duties of the parties with respect to the subject matter hereof, and replaces any and all previous Contracts or understandings, whether written or oral, relating thereto. This Contract may be amended only as provided for in paragraph PSC-6 hereof.

PSC-6. AMENDMENT

All amendments to this Contract shall be in writing and signed and approved pursuant to the provisions of PSC-4.

PSC-7. EXCUSABLE DELAYS

In the event that performance on the part of any party hereto is delayed or suspended as a result of circumstances beyond the reasonable control and without the fault and negligence of said party, none of the parties shall incur any liability to the other parties as a result of such delay or suspension. Circumstances deemed to be beyond the control of the parties hereunder include, but are not limited to, acts of God or of the public enemy; insurrection; acts of the Federal Government or any unit of State or Local Government in either sovereign or contractual capacity; fires; floods; earthquakes; epidemics; quarantine restrictions; strikes; freight embargoes or delays in transportation, to the extent that they are not caused by the party's willful or negligent acts or omissions, and to the extent that they are beyond the party's reasonable control.

PSC-8. BREACH

Except for excusable delays as described in PSC-7, if any party fails to perform, in whole or in part, any promise, covenant, or agreement set forth 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 except that in no event shall any party recover more than once, suffer a penalty or forfeiture, or be unjustly compensated.

PSC-9. WAIVER

A waiver of a default of any part, term or provision of this Contract shall not be construed as a waiver of any succeeding default or as a waiver of the part, term or provision itself. A party's performance after the other party's default shall not be construed as a waiver of that default.

PSC-10. TERMINATION

A. TERMINATION FOR CONVENIENCE

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

B. TERMINATION FOR BREACH OF CONTRACT

1. Except for excusable delays as provided in PSC-7, if **CONTRACTOR** fails to perform any of the provisions of this Contract or so fails to make progress as to endanger timely performance of this Contract, the **CITY** may give **CONTRACTOR** written notice of such default. If **CONTRACTOR** does not cure such default or provide a plan to cure such default which is acceptable to the **CITY** within the time permitted by the **CITY**, then the **CITY** may terminate this Contract due to **CONTRACTOR'S** breach of this Contract.
2. If a federal or state proceeding for relief of debtors is undertaken by or against **CONTRACTOR**, or if **CONTRACTOR** makes an assignment for the benefit of creditors, then the **CITY** may immediately terminate this Contract.
3. If **CONTRACTOR** engages in any dishonest conduct related to the performance or administration of this Contract or violates the

CITY'S lobbying policies, then the **CITY** may immediately terminate this Contract.

4. In the event the **CITY** terminates this Contract as provided in this section, the **CITY** may procure, upon such terms and in such manner as the **CITY** may deem appropriate, services similar in scope and level of effort to those so terminated, and **CONTRACTOR** shall be liable to the **CITY** for all of its costs and damages, including, but not limited, any excess costs for such services.
5. All finished or unfinished documents and materials produced or procured under this Contract, including all intellectual property rights thereto, shall become **CITY** property upon date of such termination. **CONTRACTOR** agrees to execute any documents necessary for the **CITY** to perfect, memorialize, or record the **CITY'S** ownership of rights provided herein.
6. If, after notice of termination of this Contract under the provisions of this section, it is determined for any reason that **CONTRACTOR** was not in default under the provisions of this section, or that the default was excusable under the terms of this Contract, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to PSC-10(A) Termination for Convenience.
7. The rights and remedies of the **CITY** provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

PSC-11. INDEPENDENT CONTRACTOR

CONTRACTOR is acting hereunder as an independent contractor and not as an agent or employee of the **CITY**. **CONTRACTOR** shall not represent or otherwise hold out itself or any of its directors, officers, partners, employees, or agents to be an agent or employee of the **CITY**.

PSC-12. CONTRACTOR'S PERSONNEL

Unless otherwise provided or approved by the **CITY**, **CONTRACTOR** shall use its own employees to perform the services described in this Contract. The **CITY** shall have the right to review and approve any personnel who are assigned to work under this Contract. **CONTRACTOR** agrees to remove personnel from performing work under this Contract if requested to do so by the **CITY**.

CONTRACTOR shall not use subcontractors to assist in performance of this Contract without the prior written approval of the **CITY**. If the **CITY** permits the use of subcontractors, **CONTRACTOR** shall remain responsible for performing all aspects of

this Contract. The CITY has the right to approve **CONTRACTOR'S** subcontractors, and the CITY reserves the right to request replacement of subcontractors. The CITY does not have any obligation to pay **CONTRACTOR'S** subcontractors, and nothing herein creates any privity between the CITY and the subcontractors.

PSC-13. PROHIBITION AGAINST ASSIGNMENT OR DELEGATION

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

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

PSC-14. PERMITS

CONTRACTOR and its directors, officers, partners, agents, employees, and subcontractors, to the extent allowed hereunder, shall obtain and maintain all licenses, permits, certifications and other documents necessary for **CONTRACTOR'S** performance hereunder and shall pay any fees required therefor. **CONTRACTOR** certifies to immediately notify the CITY of any suspension, termination, lapses, non-renewals, or restrictions of licenses, permits, certificates, or other documents.

PSC-15. CLAIMS FOR LABOR AND MATERIALS

CONTRACTOR shall promptly pay when due all amounts payable for labor and materials furnished in the performance of this Contract so as to prevent any lien or other claim under any provision of law from arising against any CITY property (including reports, documents, and other tangible or intangible matter produced by **CONTRACTOR** hereunder), against **CONTRACTOR'S** rights to payments hereunder, or against the CITY, and shall pay all amounts due under the Unemployment Insurance Act with respect to such labor.

PSC-16. CURRENT LOS ANGELES CITY BUSINESS TAX REGISTRATION CERTIFICATE REQUIRED

If applicable, **CONTRACTOR** represents that it has obtained and presently holds the Business Tax Registration Certificate(s) required by the CITY'S Business Tax Ordinance, Section 21.00 *et seq.* of the Los Angeles Municipal Code. For the term covered by this Contract, **CONTRACTOR** shall maintain, or obtain as necessary, all such Certificates required of it under the Business Tax Ordinance, and shall not allow any such Certificate to be revoked or suspended.

PSC- 17. RETENTION OF RECORDS, AUDIT AND REPORTS

CONTRACTOR shall maintain all records, including records of financial transactions, pertaining to the performance of this Contract, in their original form, in accordance with

requirements prescribed by the CITY. These records shall be retained for a period of no less than three years following final payment made by the CITY hereunder or the expiration date of this Contract, whichever occurs last. Said records shall be subject to examination and audit by authorized CITY personnel or by the CITY'S representative at any time during the term of this Contract or within the three years following final payment made by the CITY hereunder or the expiration date of this Contract, whichever occurs last. CONTRACTOR shall provide any reports requested by the CITY regarding performance of this Contract. Any subcontract entered into by CONTRACTOR, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract.

PSC-18. FALSE CLAIMS ACT

CONTRACTOR acknowledges that it is aware of liabilities resulting from submitting a false claim for payment by the CITY under the False Claims Act (Cal. Gov. Code §§ 12650 *et seq.*), including treble damages, costs of legal actions to recover payments, and civil penalties of up to \$10,000 per false claim.

PSC-19. BONDS

All bonds which may be required hereunder shall conform to CITY requirements established by Charter, ordinance or policy, and shall be filed with the Office of the City Administrative Officer, Risk Management for its review and acceptance in accordance with Sections 11.47 through 11.56 of the Los Angeles Administrative Code.

PSC-20. INDEMNIFICATION

Except for the active negligence or willful misconduct of the CITY, or any of its Boards, Officers, Agents, Employees, Assigns and Successors in Interest, CONTRACTOR undertakes and agrees to defend, indemnify and hold harmless the 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 expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the CITY, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever, for death or injury to any person, including 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 CONTRACTOR or its subcontractors of any tier. Rights and remedies available to the CITY under this provision are cumulative of those provided for elsewhere in this Contract and those allowed under the laws of the United States, the State of California, and the CITY. The provisions of PSC-20 shall survive expiration or termination of this Contract.

PSC-21. INTELLECTUAL PROPERTY INDEMNIFICATION

CONTRACTOR, at its own expense, undertakes and agrees to defend, indemnify, and hold harmless the 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 expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the **CITY**, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever arising out of the infringement, actual or alleged, direct or contributory, of any intellectual property rights, including, without limitation, patent, copyright, trademark, trade secret, right of publicity and proprietary information right (1) on or in any design, medium, matter, article, process, method, application, equipment, device, instrumentation, software, hardware, or firmware used by **CONTRACTOR**, or its subcontractors of any tier, in performing the work under this Contract; or (2) as a result of the **CITY'S** actual or intended use of any Work Product furnished by **CONTRACTOR**, or its subcontractors of any tier, under the Agreement. Rights and remedies available to the **CITY** under this provision are cumulative of those provided for elsewhere in this Contract and those allowed under the laws of the United States, the State of California, and the **CITY**. The provisions of PSC-21 shall survive expiration or termination of this Contract.

PSC-22. INTELLECTUAL PROPERTY WARRANTY

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

PSC-23. OWNERSHIP AND LICENSE

Unless otherwise provided for herein, all Work Products originated and prepared by **CONTRACTOR** or its subcontractors of any tier under this Contract shall be and remain the exclusive property of the **CITY** for its use in any manner it deems appropriate. Work Products are all works, tangible or not, created under this Contract including, without limitation, documents, material, data, reports, manuals, specifications, artwork, drawings, sketches, computer programs and databases, schematics, photographs, video and audiovisual recordings, sound recordings, marks, logos, graphic designs, notes, websites, domain names, inventions, processes, formulas matters and combinations thereof, and all forms of intellectual property. **CONTRACTOR** hereby assigns, and agrees to assign, all goodwill, copyright, trademark, patent, trade secret and all other intellectual property rights worldwide in any Work Products originated and prepared by **CONTRACTOR** under this Contract. **CONTRACTOR** further agrees to execute any documents necessary for the **CITY** to perfect, memorialize, or record the **CITY'S** ownership of rights provided herein.

For all Work Products delivered to the **CITY** that are not originated or prepared by **CONTRACTOR** or its subcontractors of any tier under this Contract, **CONTRACTOR** hereby grants a non-exclusive perpetual license to use such Work Products for any **CITY** purposes.

CONTRACTOR shall not provide or disclose any Work Product to any third party without prior written consent of the **CITY**.

Any subcontract entered into by **CONTRACTOR** relating to this Contract, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract to contractually bind or otherwise oblige its subcontractors performing work under this Contract such that the **CITY'S** ownership and license rights of all Work Products are preserved and protected as intended herein. Failure of **CONTRACTOR** to comply with this requirement or to obtain the compliance of its subcontractors with such obligations shall subject **CONTRACTOR** to the imposition of any and all sanctions allowed by law, including but not limited to termination of **CONTRACTOR'S** contract with the **CITY**.

PSC-24. INSURANCE

During the term of this Contract and without limiting **CONTRACTOR'S** indemnification of the **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 Required Insurance and Minimum Limits sheet (Form General 146 in Exhibit 1 hereto), covering its operations hereunder. Such insurance shall conform to **CITY** requirements established by Charter, ordinance or policy, shall comply with the Insurance Contractual Requirements (Form General 133 in Exhibit 1 hereto) and shall otherwise be in a form acceptable to the Office of the City Administrative Officer, Risk Management. **CONTRACTOR** shall comply with all Insurance Contractual Requirements shown on Exhibit 1 hereto. Exhibit 1 is hereby incorporated by reference and made a part of this Contract.

PSC-25. DISCOUNT TERMS

CONTRACTOR agrees to offer the **CITY** any discount terms that are offered to its best customers for the goods and services to be provided hereunder and apply such discount to payments made under this Contract which meet the discount terms.

PSC-26. WARRANTY AND RESPONSIBILITY OF CONTRACTOR

CONTRACTOR warrants that the work performed hereunder shall be completed in a manner consistent with professional standards practiced among those firms within **CONTRACTOR'S** profession, doing the same or similar work under the same or similar circumstances.

PSC-27. NON-DISCRIMINATION

Unless otherwise exempt, this Contract is subject to the non-discrimination provisions in Sections 10.8 through 10.8.2 of the Los Angeles Administrative Code, as amended from time to time. The **CONTRACTOR** shall comply with the applicable non-discrimination and affirmative action provisions of the laws of the United States of America, the State of California, and the **CITY**. In performing this Contract, **CONTRACTOR** shall not

discriminate in its employment practices against any employee or applicant for employment because of such person's race, religion, national origin, ancestry, sex, sexual orientation, age, disability, domestic partner status, marital status or medical condition. Any subcontract entered into by **CONTRACTOR**, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract.

Failure of **CONTRACTOR** to comply with this requirement or to obtain the compliance of its subcontractors with such obligations shall subject **CONTRACTOR** to the imposition of any and all sanctions allowed by law, including but not limited to termination of **CONTRACTOR'S** contract with the **CITY**.

PSC-28. EQUAL EMPLOYMENT PRACTICES

Unless otherwise exempt, this Contract is subject to the equal employment practices provisions in Section 10.8.3 of the Los Angeles Administrative Code, as amended from time to time.

- A. During the performance of this Contract, **CONTRACTOR** agrees and represents that it will provide equal employment practices and **CONTRACTOR** and each subcontractor hereunder will ensure that in his or her employment practices persons are employed and employees are treated equally and without regard to or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
 - 1. This provision applies to work or service performed or materials manufactured or assembled in the United States.
 - 2. Nothing in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.
 - 3. **CONTRACTOR** agrees to post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.
- B. **CONTRACTOR** will, in all solicitations or advertisements for employees placed by or on behalf of **CONTRACTOR**, state that all qualified applicants will receive consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
- C. As part of the **CITY'S** supplier registration process, and/or at the request of the awarding authority, or the Board of Public Works, Office of Contract Compliance, **CONTRACTOR** shall certify in the specified format that he or she has not discriminated in the performance of **CITY** contracts against any employee or applicant for employment on the basis or because of

race, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status or medical condition.

- D. **CONTRACTOR** shall permit access to and may be required to provide certified copies of all of his or her records pertaining to employment and to employment practices by the awarding authority or the Office of Contract Compliance for the purpose of investigation to ascertain compliance with the Equal Employment Practices provisions of **CITY** contracts. On their or either of their request **CONTRACTOR** shall provide evidence that he or she has or will comply therewith.
- E. The failure of any **CONTRACTOR** to comply with the Equal Employment Practices provisions of this Contract may be deemed to be a material breach of **CITY** contracts. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made or penalties assessed except upon a full and fair hearing after notice and an opportunity to be heard has been given to **CONTRACTOR**.
- F. Upon a finding duly made that **CONTRACTOR** has failed to comply with the Equal Employment Practices provisions of a **CITY** contract, the contract may be forthwith canceled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the **CITY**. In addition thereto, such failure to comply may be the basis for a determination by the awarding authority or the Board of Public Works that the **CONTRACTOR** is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Charter of the City of Los Angeles. In the event of such a determination, **CONTRACTOR** shall be disqualified from being awarded a contract with the **CITY** for a period of two years, or until **CONTRACTOR** shall establish and carry out a program in conformance with the provisions hereof.
- G. Notwithstanding any other provision of this Contract, the **CITY** shall have any and all other remedies at law or in equity for any breach hereof.
- H. Intentionally blank.
- I. Nothing contained in this Contract shall be construed in any manner so as to require or permit any act which is prohibited by law.
- J. At the time a supplier registers to do business with the **CITY**, or when an individual bid or proposal is submitted, **CONTRACTOR** shall agree to adhere to the Equal Employment Practices specified herein during the performance or conduct of **CITY** Contracts.

- K. Equal Employment Practices shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:
1. Hiring practices;
 2. Apprenticeships where such approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;
 3. Training and promotional opportunities; and
 4. Reasonable accommodations for persons with disabilities.
- L. Any subcontract entered into by **CONTRACTOR**, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract. Failure of **CONTRACTOR** to comply with this requirement or to obtain the compliance of its subcontractors with all such obligations shall subject **CONTRACTOR** to the imposition of any and all sanctions allowed by law, including but not limited to termination of the **CONTRACTOR'S** Contract with the **CITY**.

PSC-29. AFFIRMATIVE ACTION PROGRAM

Unless otherwise exempt, this Contract is subject to the affirmative action program provisions in Section 10.8.4 of the Los Angeles Administrative Code, as amended from time to time.

- A. During the performance of a **CITY** contract, **CONTRACTOR** certifies and represents that **CONTRACTOR** and each subcontractor hereunder will adhere to an affirmative action program to ensure that in its employment practices, persons are employed and employees are treated equally and without regard to or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
1. This provision applies to work or services performed or materials manufactured or assembled in the United States.
 2. Nothing in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.
 3. **CONTRACTOR** shall post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.
- B. **CONTRACTOR** will, in all solicitations or advertisements for employees placed by or on behalf of **CONTRACTOR**, state that all qualified applicants will receive consideration for employment without regard to

their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.

- C. As part of the **CITY'S** supplier registration process, and/or at the request of the awarding authority or the Office of Contract Compliance, **CONTRACTOR** shall certify on an electronic or hard copy form to be supplied, that **CONTRACTOR** has not discriminated in the performance of **CITY** contracts against any employee or applicant for employment on the basis or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
- D. **CONTRACTOR** shall permit access to and may be required to provide certified copies of all of its records pertaining to employment and to its employment practices by the awarding authority or the Office of Contract Compliance, for the purpose of investigation to ascertain compliance with the Affirmative Action Program provisions of **CITY** contracts, and on their or either of their request to provide evidence that it has or will comply therewith.
- E. The failure of any **CONTRACTOR** to comply with the Affirmative Action Program provisions of **CITY** contracts may be deemed to be a material breach of contract. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made except upon a full and fair hearing after notice and an opportunity to be heard has been given to **CONTRACTOR**.
- F. Upon a finding duly made that **CONTRACTOR** has breached the Affirmative Action Program provisions of a **CITY** contract, the contract may be forthwith cancelled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the **CITY**. In addition thereto, such breach may be the basis for a determination by the awarding authority or the Board of Public Works that the said **CONTRACTOR** is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Los Angeles City Charter. In the event of such determination, such **CONTRACTOR** shall be disqualified from being awarded a contract with the **CITY** for a period of two years, or until he or she shall establish and carry out a program in conformance with the provisions hereof.
- G. In the event of a finding by the Fair Employment and Housing Commission of the State of California, or the Board of Public Works of the City of Los Angeles, or any court of competent jurisdiction, that **CONTRACTOR** has been guilty of a willful violation of the California Fair Employment and Housing Act, or the Affirmative Action Program provisions of a **CITY** contract, there may be deducted from the amount payable to **CONTRACTOR** by the **CITY** under the contract, a penalty of ten dollars

(\$10.00) for each person for each calendar day on which such person was discriminated against in violation of the provisions of a **CITY** contract.

- H. Notwithstanding any other provisions of a **CITY** contract, the **CITY** shall have any and all other remedies at law or in equity for any breach hereof.
- I. Intentionally blank.
- J. Nothing contained in **CITY** contracts shall be construed in any manner so as to require or permit any act which is prohibited by law.
- K. **CONTRACTOR** shall submit an Affirmative Action Plan which shall meet the requirements of this chapter at the time it submits its bid or proposal or at the time it registers to do business with the **CITY**. The plan shall be subject to approval by the Office of Contract Compliance prior to award of the contract. The awarding authority may also require contractors and suppliers to take part in a pre-registration, pre-bid, pre-proposal, or pre-award conference in order to develop, improve or implement a qualifying Affirmative Action Plan. Affirmative Action Programs developed pursuant to this section shall be effective for a period of twelve months from the date of approval by the Office of Contract Compliance. In case of prior submission of a plan, **CONTRACTOR** may submit documentation that it has an Affirmative Action Plan approved by the Office of Contract Compliance within the previous twelve months. If the approval is 30 days or less from expiration, **CONTRACTOR** must submit a new Plan to the Office of Contract Compliance and that Plan must be approved before the contract is awarded.
 - 1. Every contract of \$5,000 or more which may provide construction, demolition, renovation, conservation or major maintenance of any kind shall in addition comply with the requirements of Section 10.13 of the Los Angeles Administrative Code.
 - 2. **CONTRACTOR** may establish and adopt as its own Affirmative Action Plan, by affixing his or her signature thereto, an Affirmative Action Plan prepared and furnished by the Office of Contract Compliance, or it may prepare and submit its own Plan for approval.
- L. The Office of Contract Compliance shall annually supply the awarding authorities of the **CITY** with a list of contractors and suppliers who have developed Affirmative Action Programs. For each contractor and supplier the Office of Contract Compliance shall state the date the approval expires. The Office of Contract Compliance shall not withdraw its approval for any Affirmative Action Plan or change the Affirmative Action Plan after the date of contract award for the entire contract term without the mutual agreement of the awarding authority and **CONTRACTOR**.

- M. The Affirmative Action Plan required to be submitted hereunder and the pre-registration, pre-bid, pre-proposal or pre-award conference which may be required by the Board of Public Works, Office of Contract Compliance or the awarding authority shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:
1. Apprenticeship where approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;
 2. Classroom preparation for the job when not apprenticeable;
 3. Pre-apprenticeship education and preparation;
 4. Upgrading training and opportunities;
 5. Encouraging the use of contractors, subcontractors and suppliers of all racial and ethnic groups, provided, however, that any contract subject to this ordinance shall require the contractor, subcontractor or supplier to provide not less than the prevailing wage, working conditions and practices generally observed in private industries in the contractor's, subcontractor's or supplier's geographical area for such work;
 6. The entry of qualified women, minority and all other journeymen into the industry; and
 7. The provision of needed supplies or job conditions to permit persons with disabilities to be employed, and minimize the impact of any disability.
- N. Any adjustments which may be made in the contractor's or supplier's work force to achieve the requirements of the **CITY'S** Affirmative Action Contract Compliance Program in purchasing and construction shall be accomplished by either an increase in the size of the work force or replacement of those employees who leave the work force by reason of resignation, retirement or death and not by termination, layoff, demotion or change in grade.
- O. Affirmative Action Agreements resulting from the proposed Affirmative Action Plan or the pre-registration, pre-bid, pre-proposal or pre-award conferences shall not be confidential and may be publicized by the contractor at his or her discretion. Approved Affirmative Action Agreements become the property of the **CITY** and may be used at the discretion of the **CITY** in its Contract Compliance Affirmative Action Program.
- P. Intentionally blank.

- Q. All contractors subject to the provisions of this section shall include a like provision in all subcontracts awarded for work to be performed under the contract with the **CITY** and shall impose the same obligations, including but not limited to filing and reporting obligations, on the subcontractors as are applicable to the contractor. Failure of the contractor to comply with this requirement or to obtain the compliance of its subcontractors with all such obligations shall subject the contractor to the imposition of any and all sanctions allowed by law, including but not limited to termination of the contractor's contract with the **CITY**.

PSC-30. CHILD SUPPORT ASSIGNMENT ORDERS

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

Pursuant to Section 10.10(b) of the Los Angeles Administrative Code, the failure of **CONTRACTOR** to comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignment Orders or Notices of Assignment, or the failure of any Principal Owner(s) of **CONTRACTOR** to comply with any Wage and Earnings Assignment Orders or Notices of Assignment applicable to them personally, shall constitute a default by the **CONTRACTOR** under this Contract, subjecting this Contract to termination if such default shall continue for more than ninety (90) days after notice of such default to **CONTRACTOR** by the **CITY**.

Any subcontract entered into by **CONTRACTOR**, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract. Failure of **CONTRACTOR** to obtain compliance of its subcontractors shall constitute a default by **CONTRACTOR** under this Contract, subjecting this Contract to termination where such default shall continue for more than ninety (90) days after notice of such default to **CONTRACTOR** by the **CITY**.

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

PSC-31. LIVING WAGE ORDINANCE AND SERVICE CONTRACTOR WORKER RETENTION ORDINANCE

- A. Unless otherwise exempt, this Contract 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. These Ordinances require the following:
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 compensated and uncompensated days off and health 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 **CONTRACTOR** with respect to such pledges and fully discharge the obligation of **CONTRACTOR** to comply with the provision in the LWO contained in Section 10.37.6(c) concerning compliance with such federal law.
 3. **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 **CONTRACTOR** relating to this Contract, to the extent allowed hereunder, shall be subject to the provisions of PSC-31 and shall incorporate the provisions of the LWO and the SCWRO.

5. **CONTRACTOR** shall comply with all rules, regulations and policies promulgated by the **CITY'S** Designated Administrative Agency which may be amended from time to time.
- B. Under the provisions of Sections 10.36.3(c) and 10.37.6(c) of the Los Angeles Administrative Code, the **CITY** shall have the authority, under appropriate circumstances, to terminate this Contract 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 **CITY'S** Designated Administrative Agency has determined (a) that **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 **CITY** in such circumstances may impound monies otherwise due **CONTRACTOR** in accordance with the following procedures. Impoundment shall mean that from monies due **CONTRACTOR**, **CITY** may deduct the amount determined to be due and owing by **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 **CONTRACTOR** is to continue work following an impoundment shall remain in the sole discretion of the **CITY**. **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.
- D. **CONTRACTOR** shall inform employees making less than Twelve Dollars (\$12.00) per hour of their possible right to the federal Earned Income Credit (EIC). **CONTRACTOR** shall also make available to employees the forms informing them about the EIC and forms required to secure advance EIC payments from **CONTRACTOR**.

PSC- 32. AMERICANS WITH DISABILITIES ACT

CONTRACTOR hereby certifies that it will comply with the Americans with Disabilities Act, 42 U.S.C. §§ 12101 *et seq.*, and its implementing regulations. **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 Americans with Disabilities Act. **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 **CONTRACTOR**, relating to this Contract, to the extent allowed hereunder, shall be subject to the provisions of this paragraph.

PSC-33. CONTRACTOR RESPONSIBILITY ORDINANCE

Unless otherwise exempt, this Contract is subject to the provisions of the Contractor Responsibility Ordinance, Section 10.40 *et seq.*, of the Los Angeles Administrative Code, as amended from time to time, 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 Contract.

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

PSC-34. MINORITY, WOMEN, AND OTHER BUSINESS ENTERPRISE OUTREACH PROGRAM

CONTRACTOR agrees and obligates itself to utilize the services of Minority, Women and Other Business Enterprise firms on a level so designated in its proposal, if any. **CONTRACTOR** certifies that it has complied with Mayoral Directive 2001-26 regarding the Outreach Program for Personal Services Contracts Greater than \$100,000, if applicable. **CONTRACTOR** shall not change any of these designated subcontractors, nor shall **CONTRACTOR** reduce their level of effort, without prior written approval of the **CITY**, provided that such approval shall not be unreasonably withheld.

PSC-35. EQUAL BENEFITS ORDINANCE

Unless otherwise exempt, this Contract is subject to the provisions of the Equal Benefits Ordinance (EBO), Section 10.8.2.1 of the Los Angeles Administrative Code, as amended from time to time.

- A. During the performance of the Contract, **CONTRACTOR** certifies and represents that **CONTRACTOR** will comply with the EBO.
- B. The failure of **CONTRACTOR** to comply with the EBO will be deemed to be a material breach of this Contract by the **CITY**.
- C. If **CONTRACTOR** fails to comply with the EBO the **CITY** may cancel, terminate or suspend this Contract, in whole or in part, and all monies due or to become due under this Contract may be retained by the **CITY**. The **CITY** may also pursue any and all other remedies at law or in equity for any breach.
- D. Failure to comply with the EBO may be used as evidence against **CONTRACTOR** in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40 *et seq.*, Contractor Responsibility Ordinance.
- E. If the **CITY'S** Designated Administrative Agency determines that a **CONTRACTOR** has set up or used its contracting entity for the purpose of evading the intent of the EBO, the **CITY** may terminate the Contract. Violation of this provision may be used as evidence against **CONTRACTOR** in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40 *et seq.*, Contractor Responsibility Ordinance.

CONTRACTOR shall post the following statement in conspicuous places at its place of business available to employees and applicants for employment:

"During the performance of a Contract with the City of Los Angeles, the Contractor will provide equal benefits to its 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, Office of Contract Compliance at (213) 847-1922."

PSC 36. SLAVERY DISCLOSURE ORDINANCE

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

EXHIBIT 1

INSURANCE CONTRACTUAL REQUIREMENTS

CONTACT For additional information about compliance with City Insurance and Bond requirements, contact the Office of the City Administrative Officer, Risk Management at (213) 978-RISK (7475) or go online at www.lacity.org/cao/risk. The City approved Bond Assistance Program is available for those contractors who are unable to obtain the City-required performance bonds. A City approved insurance program may be available as a low cost alternative for contractors who are unable to obtain City-required insurance.

CONTRACTUAL REQUIREMENTS

CONTRACTOR AGREES THAT:

1. Additional Insured/Loss Payee. The CITY must be included as an Additional Insured in applicable liability policies to cover the CITY'S liability arising out of the acts or omissions of the named insured. The CITY is to be named as an Additional Named Insured and a Loss Payee As Its Interests May Appear in property insurance in which the CITY has an interest, e.g., as a lien holder.

2. Notice of Cancellation. All required insurance will be maintained in full force for the duration of its business with the CITY. By ordinance, all required insurance must provide at least thirty (30) days' prior written notice (ten (10) days for non-payment of premium) directly to the CITY if your insurance company elects to cancel or materially reduce coverage or limits prior to the policy expiration date, for any reason except impairment of an aggregate limit due to prior claims.

3. Primary Coverage. CONTRACTOR will provide coverage that is 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.

4. Modification of Coverage. The 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 CONTRACTOR, the CITY agrees to negotiate additional compensation proportional to the increased benefit to the CITY.

5. Failure to Procure Insurance. All required insurance must be submitted and approved by the Office of the City Administrative Officer, Risk Management prior to the inception of any operations by CONTRACTOR.

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 the CITY may immediately suspend or terminate this Contract or, at its discretion, procure or renew such insurance to protect the CITY'S interests and pay any and all premiums in connection therewith and recover all monies so paid from CONTRACTOR.

6. Workers' Compensation. By signing this Contract, CONTRACTOR hereby certifies that it is aware of the provisions of Section 3700 *et seq.*, of the California 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 time during the performance of the work pursuant to this Contract.

7. 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 or through an insurer otherwise acceptable to the CITY. 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.

8. Aggregate Limits/Impairment. If any of the required insurance coverages contain annual aggregate limits, CONTRACTOR must give the CITY written notice of any pending claim or lawsuit which will materially diminish the aggregate within thirty (30) days of knowledge of same. You must take appropriate steps to restore the impaired aggregates or provide replacement insurance protection within thirty (30) days of 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 the CITY'S protection are allowed without the CITY'S prior written consent.

9. Commencement of Work. For purposes of insurance coverage only, this Contract will be deemed to have been executed immediately upon any party hereto taking any steps that can be considered to be in furtherance of or towards performance of this Contract. The requirements in this Section supersede all other sections and provisions of this Contract, including, but not limited to, PSC-4, to the extent that any other section or provision conflicts with or impairs the provisions of this Section.

Exhibit 1 (Continued) Required Insurance and Minimum Limits

Name: _____ Date: _____

Agreement/Reference: _____

Evidence of coverages checked below, with the specified minimum limits, must be submitted and approved prior to occupancy/start of operations. Amount shown are Combined Single Limits ("CSLs"). For Automobile Liability, split limits may be substituted for a CSL if the total per occurrence equals or exceeds the CSL amount.

	Limits
Workers' Compensation – Workers' Compensation (WC) and Employer's Liability (EL)	WC <i>Statutory</i> EL _____
<input type="checkbox"/> Waiver of Subrogation in favor of City <input type="checkbox"/> Longshore & Harbor Workers <input type="checkbox"/> Jones Act	

General Liability	
<input type="checkbox"/> Products/Completed Operations <input type="checkbox"/> Sexual Misconduct _____ <input type="checkbox"/> Fire Legal Liability _____ <input type="checkbox"/> _____	

Automobile Liability (for any and all vehicles used for this Contract, other than commuting to/from work)	
--	--

Professional Liability (Errors and Omissions)	
--	--

Property Insurance (to cover replacement cost of building – as determined by insurance company)	
<input type="checkbox"/> All Risk Coverage <input type="checkbox"/> Boiler and Machinery <input type="checkbox"/> Flood _____ <input type="checkbox"/> Builder's Risk <input type="checkbox"/> Earthquake _____ <input type="checkbox"/> _____	

Pollution Liability	
<input type="checkbox"/> _____	

Surety Bonds – Performance and Payment (Labor and Materials) Bonds	100 % of Contract Price
Crime Insurance	

Other: _____

APPENDIX B – PERFORMANCE MILESTONES

This appendix sets forth the performance milestones for completion of the Project's environmental review documents and the related payment schedule for each milestone.

Milestone	Payments
Publish Initial Study and Notice of Preparation	\$50,000
Completion of Administrative Draft EIR	\$250,000
Completion of Draft EIR and all Technical Studies	\$150,000
Completion of Administrative Draft Final EIR (including responses to comments)	\$50,000
Completion of Final EIR (including Findings, and Statement of Overriding Considerations, if required)	\$25,000

00:00:00
4-19-2010
11:00:00

DEPT OF REC & PARKS
PLAN, CONST. & MAINTENANCE

2014 SEP -4 PM 3:00

COOPERATIVE AGREEMENT COVER SHEET

Work Description

Developing a bridge structure to support park and recreational facilities over US Route 101 generally from Santa Monica Boulevard to Bronson Avenue in Hollywood area of the City of Los Angeles

Contact Information

CALTRANS

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CITY OF LOS ANGELES DEPARTMENT OF RECREATION AND PARKS

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COOPERATIVE AGREEMENT

This AGREEMENT, effective on April 26, 2016, is between the State of California, acting through its Department of Transportation, referred to as CALTRANS, and:

City of Los Angeles, referred to hereinafter as CITY, a municipal corporation and chartered city of the State of California, acting by and through its Board of Recreation and Park Commissioners (BOARD), hereby enters into this AGREEMENT. The BOARD, as contract awarding authority for the City of Los Angeles Department of Recreation and Parks (RAP), authorized the General Manager of the Department of Recreation and Parks per Board Report No. 14-138, to execute this AGREEMENT with CALTRANS.

RECITALS

1. PARTNERS are authorized to enter into a cooperative agreement for improvements to the state highway system (SHS) per the California Streets and Highways Code sections 114 and 130.
2. For the purpose of this AGREEMENT, developing a bridge over US Route 101 for construction of a park and related development, generally from Santa Monica Boulevard to Bronson Avenue in Hollywood area of the City of Los Angeles, will be referred to hereinafter as PROJECT. This description only serves to identify the PROJECT. The project scope of work is defined in the appropriate authorizing documents for the PROJECT per the Project Development Procedures Manual.
3. The PROJECT is being developed in coordination with the Friends of the Hollywood Central Park, a California non-profit corporation that has been working cooperatively with the Partners to entitle the PROJECT and is the primary entity that raises funds, community interest and support for the PROJECT.
4. All responsibilities assigned in this AGREEMENT to complete the following PROJECT COMPONENTS will be referred to hereinafter as OBLIGATIONS:
 - Project Approval and Environmental Document (PA&ED)
5. This AGREEMENT is separate from and does not modify or replace any other cooperative agreement or memorandum of understanding between PARTNERS regarding the PROJECT.
6. The following work associated with this PROJECT has been completed or is in progress:
 - The Project Study Report – Project Development Support (PSR-PDS) is complete and work is covered under Cooperative Agreement No. 07-4994.
7. In this AGREEMENT capitalized words represent either defined terms or acronyms.

8. PARTNERS hereby set forth the terms, covenants, and conditions of this AGREEMENT, under which they will accomplish OBLIGATIONS.

DEFINITIONS

AGREEMENT – This agreement including any attachments, exhibits, and amendments.

ARRA – The American Recovery and Reinvestment Act of 2009.

CALTRANS STANDARDS – CALTRANS policies and procedures, including, but not limited to, the guidance provided in the Project Development Procedures Manual (PDPM) and the CALTRANS Workplan Standards Guide for the Delivery of Capital Projects (WSG) [which contains the CALTRANS Work Breakdown Structure (WBS) and was previously known as the WBS Guide] and is available at <http://www.dot.ca.gov/hq/projmgmt/guidance.htm>.

CEQA (California Environmental Quality Act) – The act (California Public Resources Code, sections 21000 et seq.) that requires state and local agencies to identify the significant environmental impacts of their actions and to avoid or mitigate those significant impacts, if feasible.

CFR (Code of Federal Regulations) – The general and permanent rules published in the Federal Register by the executive departments and agencies of the federal government.

COOPERATIVE AGREEMENT CLOSURE STATEMENT – A document signed by PARTNERS that verifies the completion of all OBLIGATIONS included in this AGREEMENT and in all amendments to this AGREEMENT.

EDQC (Environmental Document Quality Control) - CALTRANS quality control and quality assurance procedures for all environmental documents as described in the Jay Norvell Memos dated October 1, 2012 (available at http://www.dot.ca.gov/ser/memos.htm#LinkTarget_705). This also includes the independent judgment analysis and determination under CEQA that the environmental documentation meets CEQA Guideline requirements.

FHWA – Federal Highway Administration.

FHWA STANDARDS – FHWA regulations, policies and procedures, including, but not limited to, the guidance provided at www.fhwa.dot.gov/topics.htm.

FUNDING PARTNER – A PARTNER, designated in the FUNDING SUMMARY that commits a defined dollar amount to fulfill OBLIGATIONS. Each FUNDING PARTNER accepts responsibility to provide the funds it commits in this AGREEMENT.

FUNDING SUMMARY – An executed document that names FUNDING PARTNER(S), includes a FUNDING TABLE, SPENDING SUMMARY, deposit amounts, and invoicing and payment methods.

FUNDING TABLE – The table that designates funding sources, types of funds, and the PROJECT COMPONENT in which the funds are to be spent. Funds listed on the FUNDING TABLE are “not-to-exceed” amounts for each FUNDING PARTNER.

GAAP (Generally Accepted Accounting Principles) – Uniform minimum standards and guidelines for financial accounting and reporting issued by the Federal Accounting Standards Advisory Board that serve to achieve some level of standardization. See <http://www.fasab.gov/accepted.html>.

HM-1 – Hazardous material (including, but not limited to, hazardous waste) that may require removal and disposal pursuant to federal or state law whether it is disturbed by the PROJECT or not.

HM-2 – Hazardous material (including, but not limited to, hazardous waste) that may require removal and disposal pursuant to federal or state law only if disturbed by the PROJECT.

HM MANAGEMENT ACTIVITIES – Management activities related to either HM-1 or HM-2 including, without limitation, any necessary manifest requirements and disposal facility designations.

IMPLEMENTING AGENCY – The PARTNER responsible for managing the scope, cost, and schedule of a PROJECT COMPONENT to ensure the completion of that component.

IQA (Independent Quality Assurance) – Ensuring that the IMPLEMENTING AGENCY’s quality assurance activities result in WORK that in accordance with the applicable standards and the PROJECT’s Quality Management Plan (QMP). IQA does not include any efforts necessary to develop or deliver WORK or any validation by verifying or rechecking work performed by another PARTNER.

NEPA (National Environmental Policy Act of 1969) – This federal act establishes a national policy for the environment and a process to disclose the adverse impacts of projects with a federal nexus.

OBLIGATIONS – All WORK responsibilities and their associated costs.

OBLIGATION COMPLETION – PARTNERS have fulfilled all OBLIGATIONS included in this AGREEMENT and have signed a COOPERATIVE AGREEMENT CLOSURE STATEMENT.

OBLIGATIONS COST(S) – The cost(s) to complete the responsibilities assigned in this AGREEMENT. Costs that are specifically excluded in this AGREEMENT or that are not incurred in the performance of the responsibilities in this AGREEMENT are not OBLIGATIONS COSTS. OBLIGATIONS COSTS are to be paid from the funds shown in the FUNDING SUMMARY. Costs that are not OBLIGATIONS COSTS are to be paid by the party that incurs the cost from funds that are outside the scope of this AGREEMENT.

PA&ED (Project Approval and Environmental Document) – See PROJECT COMPONENT.

PARTNER – Any individual signatory party to this AGREEMENT.

PARTNERS – The term that collectively references all of the signatory agencies to this AGREEMENT. This term only describes the relationship between these agencies to work together to achieve a mutually beneficial goal. It is not used in the traditional legal sense in which one PARTNER's individual actions legally bind the other PARTNER.

PROJECT COMPONENT – A distinct portion of the planning and project development process of a capital project as outlined in California Government Code, section 14529(b).

PID (Project Initiation Document) – The work required to deliver the project initiation document for the PROJECT in accordance with CALTRANS STANDARDS.

PA&ED (Project Approval and Environmental Document) – The work required to deliver the project approval and environmental documentation for the PROJECT in accordance with CALTRANS STANDARDS.

PS&E (Plans, Specifications, and Estimate) – The work required to deliver the plans, specifications, and estimate for the PROJECT in accordance with CALTRANS STANDARDS.

R/W (Right of Way) – The project components for the purpose of acquiring real property interests for the PROJECT in accordance with CALTRANS STANDARDS.

R/W (Right of Way) SUPPORT – The work required to obtain all property interests for the PROJECT.

R/W (Right of Way) CAPITAL – The funds for acquisition of property rights for the PROJECT.

CONSTRUCTION – The project components for the purpose of completing the construction of the PROJECT in accordance with CALTRANS STANDARDS.

CONSTRUCTION SUPPORT – The work required for the administration, acceptance, and final documentation of the construction contract for the PROJECT.

CONSTRUCTION CAPITAL – The funds for the construction contract.

PROJECT MANAGEMENT PLAN – A group of documents used to guide the PROJECT's execution and control throughout that project's lifecycle.

QMP (Quality Management Plan) – An integral part of the PROJECT MANAGEMENT PLAN that describes IMPLEMENTING AGENCY’s quality policy and how it will be used.

SHS (State Highway System) – All highways, right of way, and related facilities acquired, laid out, constructed, improved, or maintained as a state highway pursuant to constitutional or legislative authorization.

SPENDING SUMMARY – A table that identifies the funds available for expenditure by each PARTNER. The table shows the maximum reimbursable expenditure for each PARTNER in each PROJECT COMPONENT.

SPONSOR – Any PARTNER that accepts the responsibility to establish scope of the PROJECT and the obligation to secure financial resources to fund the PROJECT COMPONENTS in this AGREEMENT. SPONSOR is responsible for adjusting the PROJECT scope to match committed funds or securing additional funds to fully fund the PROJECT COMPONENTS in this AGREEMENT. If this AGREEMENT has more than one SPONSOR, funding adjustments will be made by percentage (as outlined in Responsibilities). Scope adjustments must be developed through the project development process and must be approved by CALTRANS as the owner/operator of the SHS.

WORK – All efforts to complete the OBLIGATIONS included in this AGREEMENT as described by the activities in the CALTRANS Workplan Standards Guide for the Delivery of Capital Projects (WSG).

RESPONSIBILITIES

Sponsorship

9. CITY is the SPONSOR for 100% of the PROJECT COMPONENTS included in this AGREEMENT.

Funding

10. FUNDING PARTNERS, funding limits, spending limits, billing, and payment details are documented in the FUNDING SUMMARY. The FUNDING SUMMARY is incorporated and made an express part of this AGREEMENT.

PARTNERS will execute a new FUNDING SUMMARY each time the funding, billing and payment details of the PROJECT change. The FUNDING SUMMARY will be executed by a legally authorized representative of the respective PARTNERS. The most current fully executed FUNDING SUMMARY supersedes any previous FUNDING SUMMARY created for this AGREEMENT.

Replacement of the FUNDING SUMMARY will not require an amendment to the body of this AGREEMENT unless the funding changes require it.

11. All costs incurred for WORK except those that are specifically excluded in this AGREEMENT are OBLIGATIONS COSTS. OBLIGATIONS COSTS are to be paid from the funds shown in the FUNDING SUMMARY. Costs that are not OBLIGATIONS COSTS are to be paid by the PARTNER incurring the costs from funds that are outside the scope of this AGREEMENT.

Implementing Agency

12. CITY is IMPLEMENTING AGENCY for PA&ED.
13. The IMPLEMENTING AGENCY for a PROJECT COMPONENT will provide a QMP for that component as part of the PROJECT MANAGEMENT PLAN.
14. Any PARTNER responsible for completing WORK shall make its personnel and consultants that prepare WORK available to help resolve WORK-related problems and changes for the entire duration of the PROJECT including PROJECT COMPONENT work that may occur under separate agreements.

Independent Quality Assurance (IQA)

15. CALTRANS will provide IQA for the portions of WORK within existing and proposed SHS right of way.

The cost of CALTRANS' IQA is not an OBLIGATIONS COST.

Environmental Document Quality Control (EDQC) Program

16. Per NEPA assignment and CEQA statutes, CALTRANS will - perform EDQC and NEPA Assignment Review Procedures for environmental documentation as submitted.

The cost of CALTRANS' EDQC and NEPA Assignment Review Procedures is not an OBLIGATIONS COST.

CEQA/NEPA Lead Agency

17. CITY is the CEQA lead agency for the PROJECT.
18. CALTRANS is the CEQA responsible agency for the PROJECT.
19. CALTRANS is the NEPA lead agency for the PROJECT.

Environmental Permits, Approvals and Agreements

20. PARTNERS will comply with the commitments and conditions set forth in the environmental documentation, environmental permits, approvals, and applicable agreements as those commitments and conditions apply to each PARTNER's responsibilities in this AGREEMENT.

21. Unless otherwise assigned in this AGREEMENT, the IMPLEMENTING AGENCY for a PROJECT COMPONENT is responsible for all PROJECT COMPONENT WORK associated with coordinating, obtaining, implementing, renewing, and amending the PROJECT permits where the permits are identified in the planned project scope of work or become necessary in the course of completing the PROJECT.
22. The PROJECT includes but is not limited to the following environmental requirements/approvals and permits:

ENVIRONMENTAL PERMITS/REQUIREMENTS
National Pollutant Discharge Elimination System (NPDES), State Water Resources Control Board
State Waste Discharge Requirements (Porter Cologne), Regional Water Quality Control Board
Local Agency Concurrence/Permit
Air Quality Permits (South Coast Air Quality Management District)
Entitlements
B Permit for certain construction activities
Demolition, grading, excavation, foundation and associated building permits
Encroachment Permits
Haul route(s) approval, as necessary
Section 106 of the National Historic Preservation Act (NHPA)
Section 4(f) of the Department of Transportation Act

Project Approval and Environmental Document (PA&ED)

23. CITY is responsible for all PA&EDWORK except those PA&ED activities and responsibilities that are assigned to another PARTNER in this AGREEMENT and those activities that may be specifically excluded.
24. CALTRANS will be responsible for completing the following PA&ED activities:

CALTRANS Work Breakdown Structure Identifier (If Applicable)	OBLIGATION COST
165.25.25 Approval to Circulate Resolution	No
180.15.05 Record of Decision (NEPA)	No

25. Any PARTNER preparing environmental documentation, including studies and reports, will ensure that qualified personnel remain available to help resolve environmental issues and perform any necessary work to ensure that the PROJECT remains in environmental compliance.

California Environmental Quality Act (CEQA)

26. CITY will determine the type of CEQA documentation required and will cause that documentation to be prepared in accordance with CEQA requirements.
27. Any PARTNER involved in the preparation of CEQA environmental documentation will prepare the documentation to meet CEQA requirements and follow CITY's standards that apply to the CEQA process.
28. CALTRANS is the CEQA responsible agency for the PROJECT and will review, comment, and concur on all environmental documentation (including, but not limited to, studies, reports, public notices, and public meeting materials, determinations, administrative drafts, and final environmental documents) at appropriate stages of development prior to approval and public availability.
29. Any PARTNER preparing any portion of the CEQA environmental documentation, including any studies and reports, will submit that portion of the documentation to the CEQA Lead Agency for review, comment, and approval at appropriate stages of development prior to public availability.
30. If CITY makes any major changes to the CEQA documentation, CITY will allow CALTRANS to review, comment, and concur on those changes prior to the CITY's approval at appropriate stages of development prior to public availability.

If CITY makes any major changes to CEQA-related public notices, then CITY will allow CALTRANS to review, comment, and concur on those changes prior to publication and circulation.

31. CALTRANS review of all CEQA environmental documentation, changes to CEQA environmental documentation, and any major changes to CEQA related public notices will not be unreasonably delayed or withheld, and in no event shall CALTRANS review of CEQA environmental documentation, changes to CEQA environmental documentation and any CEQA related public notices extend for a period for longer than sixty (60) days from the date of delivery by CITY.
32. CITY will attend all CEQA-related public meetings.

33. If a PARTNER who is not the CEQA lead agency holds a public meeting about the PROJECT, that PARTNER must clearly state its role in the PROJECT and the identity of the CEQA lead agency on all meeting publications. All meeting publications must also inform the attendees that public comments collected at the meetings are not part of the CEQA public review process.

That PARTNER will submit all meeting advertisements, agendas, exhibits, handouts, and materials to the CEQA lead agency for review, comment, and approval at least ten (10) working days prior to publication or use. If that PARTNER makes any changes to the materials, it will allow the CEQA lead agency to review, comment on, and approve those changes at least three (3) working days prior to the public meeting date.

The CEQA lead agency maintains final editorial control with respect to text or graphics that could lead to public confusion over CEQA-related roles and responsibilities.

National Environmental Policy Act (NEPA)

34. Pursuant to Chapter 3 of Title 23, United States Code (23 U.S.C. 326) and 23 U.S.C. 327, CALTRANS is the NEPA lead agency for the PROJECT. CALTRANS is responsible for NEPA compliance, and will determine cause the type of NEPA documentation, and will cause that documentation to be prepared in accordance with NEPA requirements.

CALTRANS, as the NEPA lead agency for PROJECT, will review, comment, and approve all environmental documentation (including, but not limited to, studies, reports, public notices, and public meeting materials, determinations, administrative drafts, and final environmental documents) at appropriate stages of development prior to approval and public availability.

When required as NEPA lead agency, CALTRANS will conduct consultation and coordination and obtain, renew, or amend approvals pursuant to the Federal Endangered Species Act, and Essential Fish Habitat.

When required as NEPA lead agency, CALTRANS will conduct consultation and coordination approvals pursuant to Section 106 of the National Historic Preservation Act, as required.

35. Any PARTNER involved in the preparation of NEPA environmental documentation will follow FHWA and CALTRANS STANDARDS that apply to the NEPA process including, but not limited to, the guidance provided in the FHWA Environmental Guidebook (available at www.fhwa.dot.gov/hep/index.htm) and the CALTRANS Standard Environmental Reference.
36. Any PARTNER preparing any portion of the NEPA environmental documentation (including, but not limited to, studies, reports, public notices, and public meeting materials, determinations, administrative drafts, and final environmental documents) will submit that portion of the documentation to CALTRANS for CALTRANS' review, comment, and approval prior to public availability.

37. CITY will prepare, publicize, and circulate all NEPA-related public notices, except Federal Register notices. CITY will submit all notices to CALTRANS for CALTRANS' review, comment, and approval prior to publication and circulation.

CALTRANS will work with the appropriate federal agency to publish notices in the Federal Register.

38. CALTRANS will attend all NEPA-related public meetings.
39. CITY will submit all NEPA-related public meeting materials to CALTRANS for CALTRANS' review, comment, and approval at least ten (10) working days prior to the public meeting date.
40. If CITY holds a public meeting about the PROJECT, CITY must clearly state its role in the PROJECT and the identity of the NEPA lead agency on all meeting publications. All meeting publications must also inform the attendees that public comments collected at the meetings are not part of the NEPA public review process.

CITY will submit all meeting advertisements, agendas, exhibits, handouts, and materials to the NEPA lead agency for review, comment, and approval at least ten (10) working days prior to publication or use. If CITY makes any changes to the materials, it will allow the NEPA lead agency to review, comment on, and approve those changes at least three (3) working days prior to the public meeting date.

The NEPA lead agency has final approval authority with respect to text or graphics that could lead to public confusion over NEPA-related roles and responsibilities.

Schedule

41. PARTNERS will manage the schedule for OBLIGATIONS through the work plan included in the PROJECT MANAGEMENT PLAN.

Additional Provisions

42. PARTNERS will perform all OBLIGATIONS in accordance with federal and California laws, regulations, and standards; FHWA STANDARDS; and CALTRANS STANDARDS.
43. CALTRANS retains the right to reject noncompliant WORK, protect public safety, preserve property rights, and ensure that all WORK is in the best interest of the SHS.
44. Each PARTNER will ensure that personnel participating in OBLIGATIONS are appropriately qualified or licensed to perform the tasks assigned to them.
45. PARTNERS will invite each other to participate in the selection of any consultants who participate in OBLIGATIONS.

46. CALTRANS will issue, upon approval of a proper application, the encroachment permits required for WORK within SHS right of way. Contractors and/or agents, and utility owners will not perform activities within the SHS right of way without an encroachment permit issued in their name. CALTRANS will provide encroachment permits to PARTNERS, their contractors, consultants and agents, at no cost.
47. The IMPLEMENTING AGENCY for a PROJECT COMPONENT will coordinate, prepare, obtain, implement, renew, and amend any encroachment permits needed to complete the PROJECT COMPONENT WORK.
48. If any PARTNER discovers unanticipated cultural, archaeological, paleontological, or other protected resources during WORK, all WORK in that area will stop and that PARTNER will notify all PARTNERS within twenty-four (24) hours of discovery. WORK may only resume after a qualified professional has evaluated the nature and significance of the discovery and a plan is approved for its removal or protection.
49. PARTNERS will hold all administrative drafts and administrative final reports, studies, materials, and documentation relied upon, produced, created, or utilized for the PROJECT in confidence to the extent permitted by law and where applicable, the provisions of California Government Code section 6254.5(e) shall protect the confidentiality of such documents in the event that said documents are shared between PARTNERS.

PARTNERS will not distribute, release, or share said documents with anyone other than employees, agents, and consultants who require access to complete the PROJECT without the written consent of the PARTNER authorized to release them, unless required or authorized to do so by law.
50. If a PARTNER receives a public records request pertaining to OBLIGATIONS, that PARTNER will notify PARTNERS within five (5) working days of receipt and make PARTNERS aware of any disclosed public documents. PARTNERS will consult with each other prior to the release of any public documents related to the PROJECT.
51. If HM-1 or HM-2 is found during a PROJECT COMPONENT, IMPLEMENTING AGENCY for that PROJECT COMPONENT will immediately notify PARTNERS.
52. CALTRANS, independent of the PROJECT, is responsible for any HM-1 found within the existing SHS right of way. CALTRANS will undertake, or cause to be undertaken, HM MANAGEMENT ACTIVITIES related to HM-1 with minimum impact to the PROJECT schedule. The cost for HM MANAGEMENT ACTIVITIES related to HM-1 found within the existing SHS right of way is not an OBLIGATIONS COST and CALTRANS will pay, or cause to be paid, all costs for HM-1 ACTIVITIES.

53. CITY, independent of the PROJECT, is responsible for any HM-1 found within the PROJECT limits and outside the existing SHS right of way. CITY will undertake, or cause to be undertaken, HM MANAGEMENT ACTIVITIES related to HM-1 with minimum impact to the PROJECT schedule. The cost of HM MANAGEMENT ACTIVITIES related to HM-1 found within the PROJECT limits and outside of the existing SHS right of way is not an OBLIGATIONS COST and CITY will pay, or cause to be paid, all costs for such ACTIVITIES.
54. If HM-2 is found within the PROJECT limits, the public agency responsible for the advertisement, award, and administration (AAA) of the PROJECT construction contract will be responsible for HM MANAGEMENT ACTIVITIES related to HM-2.
55. CALTRANS' acquisition or acceptance of title to any property on which any HM-1 or HM-2 is found will proceed in accordance with CALTRANS' policy on such acquisition.
56. IMPLEMENTING AGENCY for each PROJECT COMPONENT will furnish PARTNERS with written quarterly progress reports during the implementation of OBLIGATIONS in that component.
57. Any PARTNER that is responsible for completing OBLIGATIONS will accept, reject, compromise, settle, or litigate claims arising from those OBLIGATIONS.
58. PARTNERS will confer on any claim that may affect OBLIGATIONS or PARTNERS' liability or responsibility under this AGREEMENT in order to retain resolution possibilities for potential future claims. No PARTNER will prejudice the rights of another PARTNER until after PARTNERS confer on claim.
59. PARTNERS will maintain, and will ensure that any party hired by PARTNERS to participate in OBLIGATIONS will maintain, a financial management system that conforms to Generally Accepted Accounting Principles (GAAP), and that can properly accumulate and segregate incurred PROJECT costs and billings.
60. If FUNDING PARTNERS fund any part of OBLIGATIONS with state or federal funds, each PARTNER will comply, and will ensure that any party hired to participate in OBLIGATIONS will comply with the federal cost principles of 2 CFR, Part 225, and administrative requirements outlined in 49 CFR, Part 18. These principles and requirements apply to all funding types included in this AGREEMENT.
61. PARTNERS will maintain and make available to each other all OBLIGATIONS-related documents, including financial data, during the term of this AGREEMENT.

PARTNERS will retain all OBLIGATIONS-related records for three (3) years after the final voucher.
62. PARTNERS have the right to audit each other in accordance with generally accepted governmental audit standards.

CALTRANS, the state auditor, FHWA (if the PROJECT utilizes federal funds), and CITY will have access to all OBLIGATIONS-related records of each PARTNER, and any party hired by a PARTNER to participate in OBLIGATIONS, for audit, examination, excerpt, or copy.

The examination of any records will take place in the offices and locations where said records are generated and/or stored and will be accomplished during reasonable hours of operation. The auditing PARTNER will be permitted to make copies of any OBLIGATIONS-related records needed for the audit.

The audited PARTNER will review the draft audit, findings, and recommendations, and provide written comments within thirty (30) calendar days of receipt.

Upon completion of the final audit, PARTNERS have thirty (30) calendar days to refund or invoice as necessary in order to satisfy the obligation of the audit.

Any audit dispute not resolved by PARTNERS is subject to mediation. Mediation will follow the process described in the General Conditions section of this AGREEMENT.

63. If FUNDING PARTNERS fund any part of the PROJECT with state or federal funds, each FUNDING PARTNER will undergo an annual audit in accordance with the Single Audit Act and the federal Office of Management and Budget (OMB) Circular A-133.
64. If the PROJECT expends federal funds, any PARTNER that hires an architectural and/or engineering consultant to perform WORK on any part of the PROJECT will ensure that the procurement of the consultant and the consultant overhead costs are in accordance with Chapter 10 of the *Local Assistance Procedures Manual*.
65. PARTNERS will not incur costs beyond the funding commitments in this AGREEMENT. If IMPLEMENTING AGENCY anticipates that funding for WORK will be insufficient to complete WORK, IMPLEMENTING AGENCY will promptly notify SPONSOR.
66. If WORK stops for any reason, IMPLEMENTING AGENCY will place the PROJECT right of way in a safe and operable condition acceptable to CALTRANS.
67. If WORK stops for any reason, each PARTNER will continue to implement all of its applicable commitments and conditions included in the PROJECT environmental documentation, permits, agreements, or approvals that are in effect at the time that WORK stops, as they apply to each PARTNER's responsibilities in this AGREEMENT, in order to keep the PROJECT in environmental compliance until WORK resumes.
68. Unless otherwise documented in the FUNDING SUMMARY, all fund types contributed to a PROJECT COMPONENT will be spent proportionately within that PROJECT COMPONENT.

69. Unless otherwise documented in the FUNDING SUMMARY, any savings recognized within a PROJECT COMPONENT will be credited or reimbursed, when allowed by policy or law, in proportion to the amount contributed to that PROJECT COMPONENT by each fund type.
70. If FUNDING PARTNERS fund OBLIGATIONS with Proposition 1B Bond funds, PARTNERS will meet the requirements of California Government Code Section 8879.20 et al. (Proposition 1 legislation), the governor's Executive Order 2007-S-02-07, and the California Transportation Commission (CTC) program guidelines for the applicable account.

Right of way purchased using Proposition 1B Bond funds will become the property of CALTRANS, and any revenue from the sale of excess lands originally purchased with bond funds will revert to CALTRANS.

71. CALTRANS will administer any federal subvention funds shown in the FUNDING SUMMARY table.
72. Notwithstanding the mutual indemnity provisions in 83 and 84, the cost of legal challenges to the environmental process or documentation is an OBLIGATIONS COSTS.
73. The cost of coordinating, obtaining, complying with, implementing, renewing, and amending resource agency permits, agreements, and approvals is an OBLIGATIONS COST.
74. Fines, interest, or penalties levied against a PARTNER are not an OBLIGATIONS COST and will be paid, independent of OBLIGATIONS COST, by the PARTNER whose actions or lack of action caused the levy.
75. The cost of any engineering support performed by CALTRANS includes all direct and applicable indirect costs. CALTRANS calculates indirect costs based solely on the type of funds used to pay support costs. State and federal funds administered by CALTRANS are subject to the current Program Functional Rate. All other funds are subject to the current Program Functional Rate and the current Administration Rate. The Program Functional Rate and Administration Rate are adjusted periodically.
76. Travel, per diem, and third-party contract reimbursements are an OBLIGATIONS COST only after those hired by PARTNERS to participate in OBLIGATIONS incur and pay those costs.
- Payments for travel and per diem will not exceed the rates paid rank and file state employees under current California Department of Personnel Administration (DPA) rules current at the effective date of this AGREEMENT.
- If CITY invoices for rates in excess of DPA rates, CITY will fund the cost difference and reimburse CALTRANS for any overpayment.

77. If there are insufficient funds available in this AGREEMENT to place PROJECT right of way in a safe and operable condition, the appropriate IMPLEMENTING AGENCY will fund these activities until such time as PARTNERS amend this AGREEMENT.

That IMPLEMENTING AGENCY may request reimbursement for these costs during the amendment process.

If there are insufficient funds in this AGREEMENT to implement applicable commitments and conditions included in the PROJECT environmental documentation, permits, agreements, and/or approvals that are in effect at a time that WORK stops, each PARTNER accepts responsibility to fund their respective OBLIGATIONS until such time as PARTNERS amend this AGREEMENT.

Each PARTNER may request reimbursement for these costs during the amendment process.

78. After PARTNERS agree that all WORK is complete for a PROJECT COMPONENT, PARTNER(S) will submit a final accounting for all OBLIGATIONS COSTS. Based on the final accounting, PARTNERS will refund or invoice as necessary in order to satisfy the financial commitments of this AGREEMENT.

GENERAL CONDITIONS

79. PARTNERS understand that this AGREEMENT is in accordance with and governed by the Constitution and laws of the State of California. This AGREEMENT will be enforceable in the State of California. Any PARTNER initiating legal action arising from this AGREEMENT will file and maintain that legal action in the Superior Court of the county in which the CALTRANS district office that is signatory to this AGREEMENT resides, or in the Superior Court of the county in which the PROJECT is physically located.
80. All OBLIGATIONS of CALTRANS under the terms of this AGREEMENT are subject to the appropriation of resources by the Legislature, the State Budget Act authority, and the allocation of funds by the California Transportation Commission.
81. When CALTRANS performs IQA activities it does so for its own benefit. No one can assign liability to CALTRANS due to its IQA activities.
82. Except as specified in provision 73, neither CITY nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by CALTRANS and/or its agents under or in connection with any work, authority, or jurisdiction conferred upon CALTRANS under this AGREEMENT. It is understood and agreed that CALTRANS, to the extent permitted by law, will defend, indemnify, and save harmless CITY and all of its officers and employees from all claims, suits, or actions of every name, kind, and description brought forth under, but not limited to, tortious, contractual, inverse condemnation, or other theories and assertions of liability occurring by reason of anything done or omitted to be done by CALTRANS and/or its agents under this AGREEMENT.

83. Except as specified in provision 73, neither CALTRANS nor any officer or employee thereof is responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by CITY, its contractors, sub-contractors, and/or its agents under or in connection with any work, authority, or jurisdiction conferred upon CITY under this AGREEMENT. It is understood and agreed that CITY, to the extent permitted by law, will defend, indemnify, and save harmless CALTRANS and all of its officers and employees from all claims, suits, or actions of every name, kind, and description brought forth under, but not limited to, tortious, contractual, inverse condemnation, or other theories and assertions of liability occurring by reason of anything done or omitted to be done by CITY, its contractors, sub-contractors, and/or its agents under this AGREEMENT.
84. PARTNERS do not intend this AGREEMENT to create a third party beneficiary or define duties, obligations, or rights in parties not signatory to this AGREEMENT. PARTNERS do not intend this AGREEMENT to affect their legal liability by imposing any standard of care for fulfilling OBLIGATIONS different from the standards imposed by law.
85. PARTNERS will not assign or attempt to assign OBLIGATIONS to parties not signatory to this AGREEMENT without an amendment to this AGREEMENT.
86. Neither PARTNER will interpret any ambiguity contained in this AGREEMENT against the other PARTNER. PARTNERS waive the provisions of California Civil Code section 1654.
- A waiver of a PARTNER's performance under this AGREEMENT will not constitute a continuous waiver of any other provision.
87. A delay or omission to exercise a right or power due to a default does not negate the use of that right or power in the future when deemed necessary.
88. If any PARTNER defaults in its OBLIGATIONS, a non-defaulting PARTNER will request in writing that the default be remedied within thirty (30) calendar days. If the defaulting PARTNER fails to do so, the non-defaulting PARTNER may initiate dispute resolution.
89. PARTNERS will first attempt to resolve AGREEMENT disputes at the PROJECT team level. If they cannot resolve the dispute themselves, the CALTRANS district director and the General Manager of the Department of Recreation and Parks will attempt to negotiate a resolution. If PARTNERS do not reach a resolution, PARTNERS' legal counsel will initiate mediation. PARTNERS agree to participate in mediation in good faith and will share equally in its costs.
- Neither the dispute nor the mediation process relieves PARTNERS from full and timely performance of OBLIGATIONS in accordance with the terms of this AGREEMENT. However, if any PARTNER stops fulfilling OBLIGATIONS, any other PARTNER may seek equitable relief to ensure that OBLIGATIONS continue.
- Except for equitable relief, no PARTNER may file a civil complaint until after mediation, or forty-five (45) calendar days after filing the written mediation request, whichever occurs first.

PARTNERS will file any civil complaints in the Superior Court of the county in which the CALTRANS district office signatory to this AGREEMENT resides or in the Superior Court of the county in which the PROJECT is physically located. The prevailing PARTNER will be entitled to an award of all costs, fees, and expenses, including reasonable attorney fees as a result of litigating a dispute under this AGREEMENT or to enforce the provisions of this article including equitable relief.

90. PARTNERS maintain the ability to pursue alternative or additional dispute remedies if a previously selected remedy does not achieve resolution.
91. If any provisions in this AGREEMENT are found by a court of competent jurisdiction to be, or are in fact, illegal, inoperative, or unenforceable, those provisions do not render any or all other AGREEMENT provisions invalid, inoperative, or unenforceable, and those provisions will be automatically severed from this AGREEMENT.
92. PARTNERS intend this AGREEMENT to be their final expression that supersedes any oral understanding or writings pertaining to the OBLIGATIONS.
93. If during performance of WORK additional activities or environmental documentation is necessary to keep the PROJECT in environmental compliance, PARTNERS will amend this AGREEMENT to include completion of those additional tasks.
94. Except as otherwise provided in the AGREEMENT, PARTNERS will execute a formal written amendment if there are any changes to OBLIGATIONS.
95. When WORK performed on the PROJECT is done under contract and falls within the Labor Code section 1720(a)(1) definition of "public works" in that it is construction, alteration, demolition, installation, or repair; or maintenance work under Labor Code section 1771, PARTNERS shall conform to the provisions of Labor Code sections 1720 through 1815, and all applicable provisions of California Code of Regulations found in Title 8, Division 1, Chapter 8, Subchapter 3, Articles 1-7. PARTNERS shall include prevailing wage requirements in contracts for public work and require contractors to include the same prevailing wage requirements in all subcontracts. Work performed by a PARTNER's own employees is exempt from the Labor Code's Prevailing Wage requirements.
96. If WORK is paid for, in whole or part, with federal funds and is of the type of work subject to federal prevailing wage requirements, PARTNERS shall conform to the provisions of the Davis-Bacon and Related Acts, 40 U.S.C. § 276(a).

When applicable, PARTNERS shall include federal prevailing wage requirements in contracts for public work. WORK performed by a PARTNER's employees is exempt from federal prevailing wage requirements.

97. PARTNERS agree to sign a COOPERATIVE AGREEMENT CLOSURE STATEMENT to terminate this AGREEMENT. However, all indemnification, document retention, audit, claims, environmental commitment, legal challenge, maintenance and ownership articles will remain in effect until terminated or modified in writing by mutual agreement or expire by the statute of limitations.

SIGNATURES

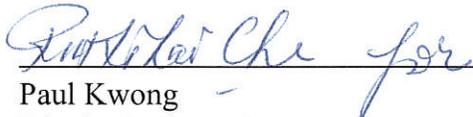
PARTNERS are empowered by California Streets and Highways Code Section 114 & 130 to enter into this AGREEMENT and have delegated to the undersigned the authority to execute this AGREEMENT on behalf of the respective agencies and covenants to have followed all the necessary legal requirements to validly execute this AGREEMENT.

CALTRANS



Carrie L. Bowen
District 07 Director

Certified as to funds:



Paul Kwong
District Budget Manager

**CITY OF LOS ANGELES, PARKS &
RECREATION DEPARTMENT**

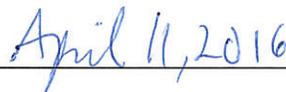


Michael A Shull
General Manager

Approved as to form:

Michael N. Feuer
City Attorney

By: 
Deputy City Attorney

Date: 

FUNDING SUMMARY

v. 1				
<u>FUNDING TABLE</u>				
<u>IMPLEMENTING AGENCY</u> →			<u>CITY</u>	
Source	FUNDING PARTNER	Fund Type	PA&ED	Totals
Local	CITY	Local	1,750,000	1,750,000
Totals			1,750,000	1,750,000

v. 2			
<u>SPENDING SUMMARY</u>			
Fund Type	PA&ED		Totals
	CALTRANS	<u>CITY</u>	
Local Funds			
Local	0	1,750,000	1,750,000
Totals	0	1,750,000	1,750,000

Invoicing and Payment

1. PARTNERS will invoice for funds where the SPENDING SUMMARY shows that one PARTNER provides funds for use by another PARTNER. PARTNERS will pay invoices within forty-five (45) calendar days of receipt of invoice when not paying with Electronic Funds Transfer (EFT). When paying with EFT, CITY will pay invoices within five (5) calendar days of receipt of invoice.
2. If CITY has received EFT certification from CALTRANS then CITY will use the EFT mechanism and follow all EFT procedures to pay all invoices issued from CALTRANS.
3. CALTRANS will draw from state and federal funds that are provided by CITY without invoicing CITY when CALTRANS administers those funds and CALTRANS has been allocated those funds by the CTC and whenever else possible.
4. When a PARTNER is reimbursed for actual costs from funds administered by another PARTNER, invoices will be submitted each month for the prior month's expenditures.

Project Approval and Environmental Document (PA&ED)

5. No invoicing or reimbursement will occur for the PA&ED PROJECT COMPONENT.

Signatures

CALTRANS

Carrie L. Bowen

Carrie L. Bowen
District Director

Date 4/26/2016

Paula Che for Paul Kwong
District Budget Manager


HQ Accounting

**CITY OF LOS ANGELES, PARKS &
RECREATION DEPARTMENT**

Michael A. Shull

Michael A Shull
General Manager

Approved as to form:

Michael N. Feuer
City Attorney

By: *Steph Fumble*
Deputy City Attorney

Date April 11, 2016

CLOSURE STATEMENT INSTRUCTIONS

1. Did PARTNERS complete all scope, cost and schedule commitments included in this AGREEMENT and any amendments to this AGREEMENT?

YES / NO

2. Did CALTRANS accept and approve all final deliverables submitted by CITY?

YES / NO

3. If applicable, did the CALTRANS HQ Office of Accounting verify that all final accounting for this AGREEMENT and any amendments to this AGREEMENT were completed?

YES / NO

4. If construction is involved, did the CALTRANS District Project Manager verify that all claims and third party billings (utilities, etc.) have been settled before termination of the AGREEMENT?

YES / NO

5. If applicable, did PARTNERS complete and transmit all As-Built, Project History File, and other required contract documents?

YES / NO

If ALL answers are "YES", this form may be used to TERMINATE this AGREEMENT.

COOPERATIVE AGREEMENT CLOSURE STATEMENT

PARTNERS agree that they have completed all scope, cost, and schedule commitments included in Cooperative Agreement 07-4990 and any amendments to the agreement.

The final signature date on this document terminates Cooperative Agreement 07-4990 except survival articles.

All survival articles in Cooperative Agreement 07-4990 will remain in effect until expired by law, terminated or modified in writing by PARTNER's mutual agreement, whichever occurs earlier.

The people signing this Agreement have the authority to do so on behalf of their public agencies.

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

CITY OF LOS ANGELES, PARKS &
RECREATION DEPARTMENT

Name:
District 07 Director

Michael A Shull
General Manager

Date: _____

Approved as to form:

Michael N. Feuer
City Attorney

CERTIFIED AS TO ALL FINANCIAL
OBLIGATIONS/TERMS AND POLICIES

By: _____

Deputy City Attorney

Name:
District Budget Manager

Date: _____

DEPARTMENT OF RECREATION
AND PARKS

CITY OF LOS ANGELES
CALIFORNIA



ERIC GARCETTI
MAYOR

GENERAL MANAGER

ANTHONY-PAUL (AP) DIAZ, ESQ.
EXECUTIVE OFFICER &
CHIEF OF STAFF

RAMON BARAJAS
ASSISTANT GENERAL MANAGER

VICKI ISRAEL
ASSISTANT GENERAL MANAGER

SOPHIA PIÑA-CORTEZ
ASSISTANT GENERAL MANAGER

(213) 202-2633 FAX (213) 202-2614

BOARD OF COMMISSIONERS

SYLVIA PATSAOURAS
PRESIDENT

LYNN ALVAREZ
VICE PRESIDENT

MELBA CULPEPPER
PILAR DIAZ
JOSEPH HALPER

IRIS L. DAVIS
BOARD SECRETARY (213) 202-2640

December 13, 2018

Friends of Hollywood Central Park (FHCP)
6464 Sunset Boulevard, Suite 770
Hollywood, California 90028

Attention: Laurie Goldman, President

Gentlepersons:

Enclosed is Contract No. 3692, executed on December 12, 2018, between the City of Los Angeles, by and through its Board of Recreation and Park Commissioners, FCS International, Inc., and your organization, to provide and fund the preparation of the environmental impact analysis and related technical studies for the Hollywood Central Park Project for a term of thirty six (36) months from the date of execution, with an option to extend the term for two (2) additional eighteen (18) month periods, subject to the approval of the parties.

If you have any questions with regard to the Contract at this time, please contact Mr. Darryl Ford, Senior Management Analyst II, Planning, Maintenance and Construction Branch (212) 202 - 2607.

Very truly yours,

BOARD OF RECREATION AND
PARK COMMISSIONERS

IRIS L. DAVIS
Commission Executive Assistant II

Enclosures

- cc: City Controller (w/ enclosure)
- City Attorney (w/ enclosure)
- Departmental Chief Accountant (w/ enclosure)
- Darryl Ford Senior Management Analyst II Planning Maintenance and Construction Branch (w/ enclosure)



CONTRACT NO. 3692

BETWEEN

THE CITY OF LOS ANGELES DEPARTMENT OF
RECREATION AND PARKS

AND

FIRSTCARBON SOLUTIONS DBA FCS INTERNATIONAL, INC.
(FORMERLY KNOWN AS MICHAEL BRANDMAN ASSOCIATES)

AND

FRIENDS OF HOLLYWOOD CENTRAL PARK

TO

PROVIDE AND FUND THE PREPARATION OF THE ENVIRONMENTAL
IMPACT ANALYSIS AND RELATED TECHNICAL STUDIES FOR THE
HOLLYWOOD CENTRAL PARK PROJECT.

CONTRACT
BETWEEN
THE CITY OF LOS ANGELES
AND
FIRSTCARBON SOLUTIONS dba
FCS International, Inc. (formerly known as Michael Brandman Associates
AND
FRIENDS OF HOLLYWOOD CENTRAL PARK
TO PROVIDE AND FUND THE PREPARATION OF
THE ENVIRONMENTAL IMPACT ANALYSIS AND RELATED TECHNICAL STUDIES
FOR THE HOLLYWOOD CENTRAL PARK PROJECT

This CONTRACT ("Contract" or "Agreement") is made and entered into this 12th day of December 2018, by and between the CITY OF LOS ANGELES, a municipal corporation, (hereinafter referred to as "**CITY**") acting by and through its BOARD OF RECREATION AND PARK COMMISSIONERS (hereinafter referred to as "**BOARD**"), Michael Brandman Associates, a California corporation wholly owned by FCS Global Corporation and operating under the name FirstCarbon Solutions **dba FCS International, Inc. (formerly known as Michael Brandman Associates)**, (hereinafter referred to as "**CONTRACTOR**" or "**FCS**") and FRIENDS OF HOLLYWOOD CENTRAL PARK, a California non-profit corporation, (hereinafter referred to as "**FHCP**"). CITY, CONTRACTOR and FHCP shall be referred to individually as a "**Party**" and collectively as "**the PARTIES**".

RECITALS

WHEREAS, the Department of Recreation and Parks of the City of Los Angeles (hereinafter referred to as "**DEPARTMENT**") owns various park and recreational facilities and infrastructure throughout the City of Los Angeles and is responsible for the development, operation, maintenance, and improvement of such facilities and infrastructure; and

WHEREAS, **CITY** has general land use authority over approvals for the Hollywood Central Park project ("**Project**") and **DEPARTMENT** will be the Lead Agency for processing the environmental review documents and compliance with the California Environmental Quality Act ("**CEQA**"); and

WHEREAS, **DEPARTMENT** requires the services of an experienced and responsible consultant to perform or secure environmental impact analysis related services for the **DEPARTMENT** for the **Project**; and

WHEREAS, the Los Angeles City Council, as adopted in Council File No. 12-0600-S120, approved the transfer and appropriation of a total of Eight Hundred Twenty-Five Thousand Dollars (\$825,000.00) from various funding sources, to the Bureau of Engineering (“**BOE**”) for the preparation of environmental analyses for the Project of which Three Hundred Thousand Dollars (\$300,000.00) would be needed to pay City Department’s staff costs for the preparation and review of the environmental documents and the remaining would be available to pay for environmental consultants; and

WHEREAS, the Los Angeles City Council, as adopted in Council File No. 13-1248, requested the **DEPARTMENT** to negotiate and execute an agreement with **FHCP**, in the amount of Five Hundred Twenty-Five Thousand Dollars (\$525,000.00), to provide services in connection with the preparation of the Environmental Impact Report (“**EIR**”) / Environmental Impact Study (“**EIS**”), or applicable NEPA documentation, and associated technical studies for the Project; and

WHEREAS, the **DEPARTMENT**, has entered into a Cooperative Agreement (hereinafter referred to as “**CO-OP AGREEMENT**”) (Agreement 07-4990) with the State of California, acting through its Department of Transportation, referred to as **CALTRANS**, which identifies the roles and responsibilities of **CITY** and **CALTRANS** relative to the development of **Project** and **EIR/EIS**, and identifies specific services and documentation that shall be provided by **DEPARTMENT**; and,

WHEREAS, the **DEPARTMENT**, negotiated and executed a contract (Contract No.3498) agreement with **FHCP** and **CONTRACTOR**, in the amount of Five Hundred Twenty-Five Thousand Dollars (\$525,000.00), to provide services in connection with the preparation of the **EIR/EIS**, and said contract has since expired ;and

WHEREAS, the Los Angeles City Council, as adopted in Council File No. 14-1174-S32, approved up to One Million Five Hundred Twenty Nine Thousand Dollars (\$1,529,000.00) in tax-exempt CRA/LA Excess Non-Housing Bond Proceeds for the **EIR** and requested the **DEPARTMENT** to negotiate and execute an agreement with **FHCP**, in connection with the preparation of the **EIR/EIS**, or applicable NEPA documentation, and associated technical studies for the **Project**; and

WHEREAS, in 2008 a feasibility study for the Hollywood Central Park was completed, which determined that the proposed Hollywood Central Park is both technically and functionally feasible; and

WHEREAS, the **FHCP**, a non-profit corporation, was created to raise funds, community interest and support for the development of the proposed Hollywood Central Park; and

WHEREAS, the **Project** is an approximately 44-acre park proposed to be built on top of an approximately one mile below grade segment of the US 101 Hollywood Freeway in the general vicinity of and between Bronson Avenue and Santa Monica Boulevard; and

WHEREAS, FHCP has secured private funding to prepare the necessary environmental documentation and analyses for the proposed park, including a \$1,200,000.00 donation from the Aileen Getty Foundation, to fund the **EIR/EIS** for the **Project** which will be combined with other funds, including the City's funds, to engage a consultant team and to pay the **CONTRACTOR** to provide the necessary environmental documentation and analyses; and

WHEREAS, FHCP has conducted a Request for Proposals process and hired **CONTRACTOR** to provide the necessary environmental documentation and analyses; and

WHEREAS, the BOARD, as the contract awarding authority, finds pursuant to Charter Section 371(e)(2) that the professional and special fundraising services to be provided by **FHCP** are of a temporary and occasional character for which competitive bidding is not practical or advantages because **FHCP** was created for the sole purpose of raising funds, interest and support for the **Project**; and

WHEREAS, the BOARD as the contract awarding authority, finds in accordance with Charter Section 371(e)(10) that the use of competitive bidding would be undesirable, impractical or impossible because acquisition of the environmental documentation and analyses necessary for the **Project** would not be possible without **FHCP** securing the majority of the funding; and

WHEREAS, the funds secured by **FHCP** will be used together with the City's funds for **CONTRACTOR's** compensation under this Contract, to ensure completion of all performance milestones, and to engage professional service firms and environmental consultants that will contribute expertise and work products valuable to the environmental review process associated with the **Project**; and

WHEREAS, the BOARD as the contract awarding authority, finds pursuant to Charter Section 1022 that the work can be performed more economically or feasibly by **FHCP** than by City employees because **FHCP** will act as a facilitator and raise and donate additional funding to ensure completion of environmental documents that will be submitted to the **CITY** for the City's consideration and approval; and

WHEREAS, FHCP has secured **CONTRACTOR** and will manage a consultant team to prepare environmental analyses, the **EIR/EIS**, associated technical studies, and appropriate **CEQA** and National Environmental Policy Act ("**NEPA**") documentation, for the Project that will be submitted to the **DEPARTMENT** for consideration and approval; and

WHEREAS, FHCP will use funds dispersed by the **CITY** under this Contract exclusively to pay for the environmental services rendered by **CONTRACTOR** to ensure completion of all performance milestones, and

WHEREAS, FHCP and **CONTRACTOR** are subject to the specified Standard Provisions for City Contracts attached hereto and incorporated herein in by reference as Appendix A; and

WHEREAS, the PARTIES expressly acknowledge and agree that the **DEPARTMENT** will exercise its independent discretion in review of all environmental documents related to the **Project** whether produced by **CONTRACTOR** pursuant to this Contract or by any other agency or entity involved in environmental review of the **Project**; and

WHEREAS, the BOARD, as the contract awarding authority, finds, in accordance with Charter Section 1022, that **DEPARTMENT** does not have, available in its employ, personnel with sufficient time or necessary expertise to undertake these specialized professional tasks and that it is more economical or feasible to secure these services by independent contractors than by City employees; and,

WHEREAS, the BOARD, as the contract awarding authority, finds pursuant to Charter Section 371(e)(2), that the EIR/EIS and related technical studies and documentation to be provided by **CONTRACTOR** for the **Project** are professional, expert, technical services of a temporary and occasional character for which competitive bidding would be undesirable; and

WHEREAS, the BOARD, as the contract awarding authority, finds pursuant to Charter Section 371(e)(10), that the EIR/EIS and related technical studies and documentation to be provided by **CONTRACTOR** for the **Project** are professional, expert, technical services for which the use of competitive bidding would be undesirable, impractical or impossible or where the common law otherwise excuses compliance with competitive bidding requirements; and

WHEREAS, the BOARD, as the contract awarding authority finds pursuant to Charter Section 372 that obtaining competitive proposals or bids for the work that may be performed pursuant to this Contract is not reasonably practicable or compatible with the **CITY's** interests to obtain proposals or bids as **CONTRACTOR** and **FHCP** are the organizations that have agreed to provide, obtain, and secure all the services necessary for this Contract.

NOW, THEREFORE, CITY, CONTRACTOR, AND FHCP in consideration of the recitals above and of the terms, covenants, and conditions contained herein, agree as follows:

1.0 PARTIES TO CONTRACT, REPRESENTATIVES AND NOTICE

1.1 Parties

The parties to this Contract are:

CITY – The City of Los Angeles, a municipal corporation, acting by and through its **BOARD OF RECREATION AND PARK COMMISSIONERS** on behalf of the Department of Recreation and Parks having its principal office located at 221 North Figueroa Street, Suite 300, Los Angeles, California 90012.

CONTRACTOR – FirstCarbon Solutions **dba FCS International, Inc.**, a California corporation, having its principal office located at **250** Commerce, Suite **250**, Irvine, California 92602. **FHCP** – Friends of Hollywood Central Park, a California Non-profit corporation, having its principal office located at 6464 Sunset Boulevard, Suite 770, Hollywood, California 90028.

1.2 Representatives

The representatives of the parties who are authorized to administer this Contract and to whom formal notices, demands and communications will be given for as follows:

CITY's representative will be:
Michael A. Shull, General Manager
City of Los Angeles, Department of Recreation and Parks
221 North Figueroa Street, Suite 350
Los Angeles, California 90012

With copies to:

Cathie Santo-Domingo
Superintendent
Planning, Construction and Maintenance Branch
City of Los Angeles, Department of Recreation and Parks
221 North Figueroa Street, Suite 400
Los Angeles, California 90012
Telephone Number: (213) 202-2661
Fax Number: (213) 202-2612

CONTRACTOR's representative will be:

Patrick Schultz
Chief Operating Officer
FCS International, Inc.
250 Commerce, Suite-**250**
Irvine, California 92602
Telephone Number: (714) 508-4100

With a copy to:

Jennifer M. Guenther, Esq., General Counsel
650 E. Hospitality Lane, Suite 125
San Bernardino, CA 92408
Telephone Number: (888) 826-5814 ext. 1211
Fax Number: (909) 884-2113

FHCP's representative will be:
Laurie Goldman
President
6464 Sunset Boulevard, Suite 770
Hollywood, California 90028
Telephone Number: (310) 274-8682
Fax Number: (310) 274-8627

With a copy to:
Alfred Fraijo Jr., Esq.
Sheppard, Mullin, Richter, & Hampton LLP
333 South Hope Street, 43rd Floor
Los Angeles, California 90071-1422
Telephone Number: (213) 617-5567
Fax Number: (213) 443-2855

1.3 Notices

Formal notices, demands and communications to be given hereunder by either party will be made in writing and may be effected by personal delivery or certified mail, return receipt requested, and will be deemed communicated as of the date of receipt.

If the person designated to receive the notices, demands or communications or the address of such person is changed, written notice of such change shall be given, in accordance with this Section, within five (5) working days of the change.

2.0 TERM OF CONTRACT

1.4 Term

The term of this contract shall be thirty six (36) months from the date of execution ("**Term**").

1.5 Extension

The PARTIES may mutually agree to extend the **Term** for two (2) additional eighteen (18) month periods, subject to the approval of **the PARTIES**. The **Term** may be extended only by written amendment to this Contract. If the **PARTIES** cannot agree upon such an extension, this Contract shall automatically terminate.

3.0 INTERACTION OF PARTIES

1.6 Good Faith Dealings

A. **The PARTIES** and their consultants, staff, and management, shall diligently and in good faith pursue timely completion of environmental review for the **Project** and shall cooperate in conducting related activities to achieve the Performance Milestones, attached hereto and incorporated herein as provided in Appendix B.

B. **The PARTIES** shall make available their consultants, staff, management, and other necessary resources as may be required for the timely resolution of issues that may arise during the environmental review process and for the expeditious review of documents submitted during environmental review.

C. **The PARTIES** acknowledge and agree that they, and their consultants, staff, and management, shall be deemed to be acting in good faith so long as they make reasonable efforts to attend scheduled meetings, direct consultants to cooperate with the other Party, provide information necessary to the duties of the other Party, and use commercially reasonable efforts to review and timely return with comments all correspondence, reports, documents, or contracts received from the other Party.

D.

4.0 SERVICES TO BE PROVIDED BY THE CONTRACTOR AND FHCP

1.7 Environmental Impact Analysis

A. **CONTRACTOR** will provide, for the **DEPARTMENT's** sole and independent consideration, the environmental review documents that evaluate the potential environmental impacts of the Project in accordance with the environmental documentation and review requirements of **CEQA** and **NEPA**.

B. **CONTRACTOR** will provide, for the **DEPARTMENT's** sole and independent consideration, applicable **CEQA** documentation including Initial Studies, Negative Declarations, Mitigated Negative Declaration, and Environmental Impact Reports as applicable.

C. **CONTRACTOR** will provide, for the **DEPARTMENT's** sole and independent consideration, applicable **NEPA** documentation including Findings of No Significant Impacts, Environmental Assessments, or Environmental Impact Statements as applicable.

D. **CONTRACTOR** will provide, for the **DEPARTMENT's** sole and independent consideration, any other technical studies required to assess the extent and magnitude of the **Project's** potential impacts on air quality, cultural resources, geology and soils, hydrology and water quality, noise, transportation and traffic, or any other environmental resource areas

identified in the **CEQA** Initial Study Checklist and the **NEPA** Environmental Assessment Checklist as applicable.

E. **FCS** will initiate and provide, for the **DEPARTMENT's** sole and independent consideration, any other documentation, reports, technical, or special studies required by **CALTRANS** in accordance with the **CO-OP AGREEMENT** ("**CALTRANS Required Technical Studies**") and **CONTRACTOR** will incorporate all applicable data and information from these **CALTRANS Required Technical Studies** in the environmental documentation as required by of **CEQA** and **NEPA**. These **CALTRANS Required Technical Studies** include, but may not be limited to:

- (a) Crime and Public Safety Considerations Study Report
- (b) Preliminary Capped Freeway Systems Report
- (c) Intelligent Transportation Systems (ITS) Preliminary Plans
- (d) Project Management Plan
- (e) Project Communication Plan,
- (f) Status Reports on Cost, Scope, and Schedule
- (g) Quality Management Plan.
- (h) Draft Project Report
- (i) Economic Impact Analysis Technical Report
- (j) Capital Construction Cost Estimate
- (k) Risk Management; Financing Tools
- (l) Project Cost Feasibility Report
- (m) Preliminary Plans
- (n) Geometric Design Technical Engineering Report
- (o) EA/NEPA Social Justice Compliance
- (p) Construction Staging Report
- (q) Various State Grants Technical Reports or Studies
- (r) Value Analysis Report
- (s) Initial Design Technical Studies

1.8 Timely Completion

FHCP shall use all best efforts to have **CONTRACTOR** timely reach the milestones provided in the Performance Milestones, attached hereto and incorporated herein as Appendix B, which includes the key milestones in the environmental review process for the **Project**.

5.0 SERVICES TO BE PROVIDED BY THE CITY

1.9 The **DEPARTMENT** agrees that, upon reasonable notice, as from time to time requested by **CONTRACTOR** or **FHCP**, the **DEPARTMENT** shall provide progress reports to **CONTRACTOR** or **FHCP** regarding the status of review and processing of documents related to the **Project**.

6.0 COMPENSATION AND INVOICING

1.10 Compensation

CITY will pay **FHCP** Two Million, Four Thousand Dollars (\$2,004,000.00) to pay for costs related to environmental services and to coordinate the preparation of the environmental impact analysis, and associated technical studies, for the **Project** in accordance with the terms and provisions of this Contract. The total for this Contract will not exceed Two Million, Four Thousand Dollars (\$2,004,000.00). Payments from **CITY** to **FHCP**, according to Appendix B – Performance Milestones, only will be provided to **FHCP** after **CITY** has determined, in its sole and independent discretion that the environmental documentation associated with each performance milestone is complete. **CITY** will not be liable to **CONTRACTOR** for any payments due under this Contract, and **CONTRACTOR** shall look only to **FHCP** for full payment of services rendered under this Contract.

1.11 Invoicing

FHCP shall invoice **CITY** within thirty (30) days of completion of each milestone provided in Appendix B – Performance Milestones by submitting two (2) copies of the invoice, which shall demonstrate that the milestone has been achieved.

FHCP shall submit invoices to:

City of Los Angeles, Department of Recreation and Parks
Attention: Darryl Ford
Planning, Construction and Maintenance Branch
221 North Figueroa Street, Suite 400
Los Angeles, California 90012

All invoices shall be submitted on **FHCP**'s letterhead, containing **FHCP**'s official logo, or other unique and identifying information, such as the name and address of **FHCP**. Evidence that documents the task has been completed, in the form of transmittal correspondence for completed environmental documents, public or hearing notices, reports, brochures or photographs, shall be attached to all invoices.

Invoices, evidence, and supporting documentation shall be prepared at the sole expense and responsibility of **FHCP**. **CITY** will not compensate **FHCP** for costs incurred in invoice preparation. **CITY** may request changes to the content and format of the invoice, evidence, and supporting documentation at any time.

Failure to adhere to these policies may result in nonpayment pursuant to Charter Section 262(a), which requires the City Controller to inspect the

quality, quantity, and condition of services, labor, materials, supplies, or equipment received by any City office or department, and to approve demands before they are drawn on the Treasury.

DEPARTMENT shall promptly review the content and format of invoices, evidence, and supporting documentation to determine if the associated milestone has been achieved and if the invoice has been properly submitted by **FHCP**. **DEPARTMENT** shall provide prompt notice to **FHCP** of any **CITY** requested changes to the content and format of the invoice, evidence, and supporting documentation.

DEPARTMENT shall notify **FHCP** of date of receipt of a properly submitted invoice.

The **CITY** shall pay invoices properly submitted by **FHCP** within thirty (30) days of date of receipt of a properly submitted invoice.

7.0 INCORPORATION OF DOCUMENTS

1.12 Entire Contract

This Contract and appendices represent the entire integrated Contract of **the PARTIES** and supersedes all prior written or oral representations, discussions, and contracts. This Contract may not be changed or modified in any manner except by formal, written amendment fully executed by both **CITY**, **CONTRACTOR** and **FHCP**. The following documents are incorporated and made a part hereof by reference:

Appendix A. Standard Provisions for City Contracts (Rev. 10/17)[v.3]
Appendix B. Performance Milestones

1.13 Standard Provisions for City Contracts

In the event of a conflict between provisions of this Contract and those of the Standard Provisions for City Contracts (Rev. 10/17)[v.3] (“Standard Provisions”), the language of this Contract is controlling. For purposes of the the Standard Provisions, the term “**CONTRACTOR**” shall mean each of **FCS** and **FHCP**.

8.0 TERMINATION

1.14 Termination

This Contract may be terminated pursuant to the provisions of PSC-9 (“Termination”) of the Standard Conditions for City Contracts (Rev. 10/17)[v.3] (Appendix A).

If this Contract is terminated pursuant to the provisions of PSC-9.A ("Termination for Convenience") of the Standard Conditions for City Contracts (Rev. 10/17)[v.3], **CITY** shall defend and hold **CONTRACTOR** harmless from all claims, costs, and liabilities related to **CITY's** use of unfinished documents produced pursuant to this Contract on this **Project**.
(Signature Page to Follow)

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

Date: 11-29-18

Date: 11-29-18

Date: _____

Date: _____

Date: _____

Approved as to Form:

Date: 12/12/18

MICHAEL N. FEUER, City Attorney

By [Signature]
STEVEN H. HONG
Deputy City Attorney

THE CITY OF LOS ANGELES, a municipal corporation, acting by and through its BOARD OF RECREATION AND PARK COMMISSIONERS

By [Signature]
PRESIDENT

By [Signature]
SECRETARY

FIRSTCARBON SOLUTIONS dba FCS INTERNATIONAL, INC., a California corporation

By [Signature]
PRESIDENT 11-7-18

VICE PRESIDENT

FRIENDS OF HOLLYWOOD CENTRAL PARK,

a California Non-profit corporation

By [Signature]
~~EXECUTIVE DIRECTOR~~
PRESIDENT 11-5-18

[Signature]
TREASURER 11-6-18

APPENDIX A – STANDARD PROVISIONS FOR CITY CONTRACTS (Rev. 10/17)[v.3]

STANDARD PROVISIONS FOR CITY CONTRACTS

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STANDARD PROVISIONS FOR CITY CONTRACTS

PSC-1. Construction of Provisions and Titles Herein

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

PSC-2. Applicable Law, Interpretation and Enforcement

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

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

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

PSC-3. Time of Effectiveness

Unless otherwise provided, this Contract shall take effect when all of the following events have occurred:

- A. This Contract has been signed on behalf of **CONTRACTOR** by the person or persons authorized to bind **CONTRACTOR**;
- B. This Contract has been approved by the City Council or by the board, officer or employee authorized to give such approval;
- C. The Office of the City Attorney has indicated in writing its approval of this Contract as to form; and
- D. This Contract has been signed on behalf of **CITY** by the person designated by the City Council, or by the board, officer or employee authorized to enter into this Contract.

PSC-4. Integrated Contract

This Contract sets forth all of the rights and duties of the parties with respect to the subject matter of this Contract, and replaces any and all previous Contracts or understandings, whether written or oral, relating thereto. This Contract may be amended only as provided for in the provisions of PSC-5 hereof.

PSC-5. Amendment

All amendments to this Contract shall be in writing and signed and approved pursuant to the provisions of PSC-3.

PSC-6. Excusable Delays

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

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

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

PSC-7. Waiver

A waiver of a default of any part, term or provision of this Contract shall not be construed as a waiver of any succeeding default or as a waiver of the part, term or provision itself. A party's performance after the other party's default shall not be construed as a waiver of that default.

PSC-8. Suspension

At **CITY'S** sole discretion, **CITY** may suspend any or all services provided under this Contract by providing **CONTRACTOR** with written notice of suspension. Upon receipt of the notice of suspension, **CONTRACTOR** shall immediately cease the services suspended and shall not incur any additional obligations, costs or expenses to **CITY** until **CITY** gives written notice to recommence the services.

PSC-9. Termination

A. Termination for Convenience

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

B. Termination for Breach of Contract

1. Except as provided in PSC-6, if **CONTRACTOR** fails to perform any of the provisions of this Contract or so fails to make progress as to endanger timely performance of this Contract, **CITY** may give **CONTRACTOR** written notice of the default. **CITY'S** default notice will indicate whether the default may be cured and the time period to cure the default to the sole satisfaction of **CITY**. Additionally, **CITY'S** default notice may offer **CONTRACTOR** an opportunity to provide **CITY** with a plan to cure the default, which shall be submitted to **CITY** within the time period allowed by **CITY**. At **CITY'S** sole discretion, **CITY** may accept or reject **CONTRACTOR'S** plan. If the default cannot be cured or if **CONTRACTOR** fails to cure within the period allowed by **CITY**, then **CITY** may terminate this Contract due to **CONTRACTOR'S** breach of this Contract.
2. If the default under this Contract is due to **CONTRACTOR'S** failure to maintain the insurance required under this Contract, **CONTRACTOR** shall immediately: (1) suspend performance of any services under this Contract for which insurance was required; and (2) notify its employees and Subcontractors of the loss of insurance coverage and Contractor's obligation to suspend performance of

services. **CONTRACTOR** shall not recommence performance until **CONTRACTOR** is fully insured and in compliance with **CITY'S** requirements.

3. If a federal or state proceeding for relief of debtors is undertaken by or against **CONTRACTOR**, or if **CONTRACTOR** makes an assignment for the benefit of creditors, then **CITY** may immediately terminate this Contract.
4. If **CONTRACTOR** engages in any dishonest conduct related to the performance or administration of this Contract or violates **CITY'S** laws, regulations or policies relating to lobbying, then **CITY** may immediately terminate this Contract.
5. Acts of Moral Turpitude
 - a. **CONTRACTOR** shall immediately notify **CITY** if **CONTRACTOR** or any Key Person, as defined below, is charged with, indicted for, convicted of, pleads nolo contendere to, or forfeits bail or fails to appear in court for a hearing related to, any act which constitutes an offense involving moral turpitude under federal, state, or local laws ("Act of Moral Turpitude").
 - b. If **CONTRACTOR** or a Key Person is convicted of, pleads nolo contendere to, or forfeits bail or fails to appear in court for a hearing related to, an Act of Moral Turpitude, **CITY** may immediately terminate this Contract.
 - c. If **CONTRACTOR** or a Key Person is charged with or indicted for an Act of Moral Turpitude, **CITY** may terminate this Contract after providing **CONTRACTOR** an opportunity to present evidence of **CONTRACTOR'S** ability to perform under the terms of this Contract.
 - d. Acts of Moral Turpitude include, but are not limited to: violent felonies as defined by Penal Code Section 667.5, crimes involving weapons, crimes resulting in serious bodily injury or death, serious felonies as defined by Penal Code Section 1192.7, and those crimes referenced in the Penal Code and articulated in California Public Resources Code Section 5164(a)(2); in addition to and including acts of murder, rape, sexual assault, robbery, kidnapping, human trafficking, pimping, voluntary manslaughter, aggravated assault, assault on a peace officer, mayhem, fraud, domestic abuse, elderly abuse, and child abuse, regardless of whether such acts are punishable by felony or misdemeanor conviction.

- e. For the purposes of this provision, a Key Person is a principal, officer, or employee assigned to this Contract, or owner (directly or indirectly, through one or more intermediaries) of ten percent or more of the voting power or equity interests of **CONTRACTOR**.
 6. In the event **CITY** terminates this Contract as provided in this section, **CITY** may procure, upon such terms and in the manner as **CITY** may deem appropriate, services similar in scope and level of effort to those so terminated, and **CONTRACTOR** shall be liable to **CITY** for all of its costs and damages, including, but not limited to, any excess costs for such services.
 7. If, after notice of termination of this Contract under the provisions of this section, it is determined for any reason that **CONTRACTOR** was not in default under the provisions of this section, or that the default was excusable under the terms of this Contract, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to PSC-9(A) Termination for Convenience.
 8. The rights and remedies of **CITY** provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.
- C. In the event that this Contract is terminated, **CONTRACTOR** shall immediately notify all employees and Subcontractors, and shall notify in writing all other parties contracted with under the terms of this Contract within five working days of the termination.

PSC-10. Independent Contractor

CONTRACTOR is an independent contractor and not an agent or employee of **CITY**. **CONTRACTOR** shall not represent or otherwise hold out itself or any of its directors, officers, partners, employees, or agents to be an agent or employee of **CITY**.

PSC-11. Contractor's Personnel

Unless otherwise approved by **CITY**, **CONTRACTOR** shall use its own employees to perform the services described in this Contract. **CITY** has the right to review and approve any personnel who are assigned to work under this Contract. **CONTRACTOR** shall remove personnel from performing work under this Contract if requested to do so by **CITY**.

CONTRACTOR shall not use Subcontractors to assist in performance of this Contract without the prior written approval of **CITY**. If **CITY** permits the use of Subcontractors, **CONTRACTOR** shall remain responsible for performing all aspects of this Contract and paying all Subcontractors. **CITY** has the right to approve **CONTRACTOR'S** Subcontractors, and **CITY** reserves the right to request replacement of any

Subcontractor. **CITY** does not have any obligation to pay **CONTRACTOR'S** Subcontractors, and nothing herein creates any privity of contract between **CITY** and any Subcontractor.

PSC-12. Assignment and Delegation

CONTRACTOR may not, unless it has first obtained the written permission of **CITY**:

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

PSC-13. Permits

CONTRACTOR and its directors, officers, partners, agents, employees, and Subcontractors, shall obtain and maintain all licenses, permits, certifications and other documents necessary for **CONTRACTOR'S** performance of this Contract. **CONTRACTOR** shall immediately notify **CITY** of any suspension, termination, lapses, non-renewals, or restrictions of licenses, permits, certificates, or other documents that relate to **CONTRACTOR'S** performance of this Contract.

PSC-14. Claims for Labor and Materials

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

PSC-15. Current Los Angeles City Business Tax Registration Certificate Required

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

PSC-16. Retention of Records, Audit and Reports

CONTRACTOR shall maintain all records, including records of financial transactions, pertaining to the performance of this Contract, in their original form or as otherwise approved by **CITY**. These records shall be retained for a period of no less than three years from the later of the following: (1) final payment made by **CITY**, (2) the expiration of this Contract or (3) termination of this Contract. The records will be subject to examination and audit by authorized **CITY** personnel or **CITY'S** representatives at any time. **CONTRACTOR** shall provide any reports requested by **CITY** regarding

performance of this Contract. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

In lieu of retaining the records for the term as prescribed in this provision, **CONTRACTOR** may, upon **CITY'S** written approval, submit the required information to **CITY** in an electronic format, e.g. USB flash drive, at the expiration or termination of this Contract.

PSC-17. Bonds

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

PSC-18. Indemnification

Except for the active negligence or willful misconduct of **CITY**, or any of its boards, officers, agents, employees, assigns and successors in interest, **CONTRACTOR** shall defend, indemnify and hold harmless **CITY** and any of its boards, officers, agents, employees, assigns, and successors in interest from and against all lawsuits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by **CITY**, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever, for death or injury to any person, including **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 an act, error, or omission by **CONTRACTOR**, Subcontractors, or their boards, officers, agents, employees, assigns, and successors in interest. The rights and remedies of **CITY** provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract. This provision will survive expiration or termination of this Contract.

PSC-19. Intellectual Property Indemnification

CONTRACTOR, at its own expense, shall defend, indemnify, and hold harmless the **CITY**, and any of its boards, officers, agents, employees, assigns, and successors in interest from and against all lawsuits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by **CITY**, including but not limited to, costs of experts and consultants), damages or liability of any nature arising out of the infringement, actual or alleged, direct or contributory, of any intellectual property rights, including, without limitation, patent, copyright, trademark, trade secret, right of publicity, and proprietary information: (1) on or in any design, medium, matter, article, process, method, application, equipment, device, instrumentation, software, hardware, or firmware used by **CONTRACTOR**, or its Subcontractors, in performing the work under this Contract; or (2) as a result of **CITY'S** actual or intended use of any Work Product (as defined in PSC-21) furnished by **CONTRACTOR**, or its Subcontractors, under this Contract. The rights and remedies of **CITY** provided in this section shall not be exclusive

and are in addition to any other rights and remedies provided by law or under this Contract. This provision will survive expiration or termination of this Contract.

PSC-20. Intellectual Property Warranty

CONTRACTOR represents and warrants that its performance of all obligations under this Contract does not infringe in any way, directly or contributorily, upon any third party's intellectual property rights, including, without limitation, patent, copyright, trademark, trade secret, right of publicity and proprietary information.

PSC-21. Ownership and License

Unless otherwise provided for herein, all finished and unfinished works, tangible or not, created under this Contract including, without limitation, documents, materials, data, reports, manuals, specifications, artwork, drawings, sketches, blueprints, studies, memoranda, computation sheets, computer programs and databases, schematics, photographs, video and audiovisual recordings, sound recordings, marks, logos, graphic designs, notes, websites, domain names, inventions, processes, formulas, matters and combinations thereof, and all forms of intellectual property originated and prepared by **CONTRACTOR** or its Subcontractors under this Contract (each a "Work Product"; collectively "Work Products") shall be and remain the exclusive property of **CITY** for its use in any manner **CITY** deems appropriate. **CONTRACTOR** hereby assigns to **CITY** all goodwill, copyright, trademark, patent, trade secret and all other intellectual property rights worldwide in any Work Products originated and prepared under this Contract. **CONTRACTOR** further agrees to execute any documents necessary for **CITY** to perfect, memorialize, or record **CITY'S** ownership of rights provided herein.

CONTRACTOR agrees that a monetary remedy for breach of this Contract may be inadequate, impracticable, or difficult to prove and that a breach may cause **CITY** irreparable harm. **CITY** may therefore enforce this requirement by seeking injunctive relief and specific performance, without any necessity of showing actual damage or irreparable harm. Seeking injunctive relief or specific performance does not preclude **CITY** from seeking or obtaining any other relief to which **CITY** may be entitled.

For all Work Products delivered to **CITY** that are not originated or prepared by **CONTRACTOR** or its Subcontractors under this Contract, **CONTRACTOR** shall secure a grant, at no cost to **CITY**, for a non-exclusive perpetual license to use such Work Products for any **CITY** purposes.

CONTRACTOR shall not provide or disclose any Work Product to any third party without prior written consent of **CITY**.

Any subcontract entered into by **CONTRACTOR** relating to this Contract shall include this provision to contractually bind its Subcontractors performing work under this Contract such that **CITY'S** ownership and license rights of all Work Products are preserved and protected as intended herein.

PSC-22. Data Protection

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

PSC-23. Insurance

During the term of this Contract and without limiting **CONTRACTOR’S** obligation to indemnify, hold harmless and defend **CITY**, **CONTRACTOR** shall provide and maintain at its own expense a program of insurance having the coverages and limits not less than the required amounts and types as determined by the Office of the City Administrative Officer of Los Angeles, Risk Management (template Form General 146 in Exhibit 1 hereto). The insurance must: (1) conform to **CITY’S** requirements; (2) comply with the Insurance Contractual Requirements (Form General 133 in Exhibit 1 hereto); and (3) otherwise be in a form acceptable to the Office of the City Administrative Officer, Risk Management. **CONTRACTOR** shall comply with all Insurance Contractual Requirements shown on Exhibit 1 hereto. Exhibit 1 is hereby incorporated by reference and made a part of this Contract.

PSC-24. Best Terms

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

PSC-25. Warranty and Responsibility of Contractor

CONTRACTOR warrants that the work performed hereunder shall be completed in a manner consistent with professional standards practiced among those firms within **CONTRACTOR'S** profession, doing the same or similar work under the same or similar circumstances.

PSC-26. Mandatory Provisions Pertaining to Non-Discrimination in Employment

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

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

Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-27. Child Support Assignment Orders

CONTRACTOR shall comply with the Child Support Assignment Orders Ordinance, Section 10.10 of the LAAC, as amended from time to time. Pursuant to Section 10.10(b) of the LAAC, **CONTRACTOR** shall fully comply with all applicable State and Federal employment reporting requirements. Failure of **CONTRACTOR** to comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignment or Notices of Assignment, or the failure of any principal owner(s) of **CONTRACTOR** to comply with any Wage and Earnings Assignment or Notices of Assignment applicable to them personally, shall constitute a default by the **CONTRACTOR** under this Contract. Failure of **CONTRACTOR** or principal owner to cure

the default within 90 days of the notice of default will subject this Contract to termination for breach. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-28. Living Wage Ordinance

CONTRACTOR shall comply with the Living Wage Ordinance, LAAC Section 10.37 *et seq.*, as amended from time to time. **CONTRACTOR** further agrees that it shall comply with federal law proscribing retaliation for union organizing. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-29. Service Contractor Worker Retention Ordinance

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

PSC-30. Access and Accommodations

CONTRACTOR represents and certifies that:

- A. **CONTRACTOR** shall comply with the Americans with Disabilities Act, as amended, 42 U.S.C. Section 12101 *et seq.*, the Rehabilitation Act of 1973, as amended, 29 U.S.C. Section 701 *et seq.*, the Fair Housing Act, and its implementing regulations and any subsequent amendments, and California Government Code Section 11135;
- B. **CONTRACTOR** shall not discriminate on the basis of disability or on the basis of a person's relationship to, or association with, a person who has a disability;
- C. **CONTRACTOR** shall provide reasonable accommodation upon request to ensure equal access to **CITY**-funded programs, services and activities;
- D. Construction will be performed in accordance with the Uniform Federal Accessibility Standards (UFAS), 24 C.F.R. Part 40; and
- E. The buildings and facilities used to provide services under this Contract are in compliance with the federal and state standards for accessibility as set forth in the 2010 ADA Standards, California Title 24, Chapter 11, or other applicable federal and state law.

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

PSC-31. Contractor Responsibility Ordinance

CONTRACTOR shall comply with the Contractor Responsibility Ordinance, LAAC Section 10.40 *et seq.*, as amended from time to time.

PSC-32. Business Inclusion Program

Unless otherwise exempted prior to bid submission, **CONTRACTOR** shall comply with all aspects of the Business Inclusion Program as described in the Request for Proposal/Qualification process, throughout the duration of this Contract. **CONTRACTOR** shall utilize the Business Assistance Virtual Network (“BAVN”) at <https://www.labavn.org/>, to perform and document outreach to Minority, Women, and Other Business Enterprises. **CONTRACTOR** shall perform subcontractor outreach activities through BAVN. **CONTRACTOR** shall not change any of its designated Subcontractors or pledged specific items of work to be performed by these Subcontractors, nor shall **CONTRACTOR** reduce their level of effort, without prior written approval of **CITY**.

PSC-33. Slavery Disclosure Ordinance

CONTRACTOR shall comply with the Slavery Disclosure Ordinance, LAAC Section 10.41 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-34. First Source Hiring Ordinance

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

PSC-35. Local Business Preference Ordinance

CONTRACTOR shall comply with the Local Business Preference Ordinance, LAAC Section 10.47 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-36. Iran Contracting Act

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

PSC-37. Restrictions on Campaign Contributions and Fundraising in City Elections

Unless otherwise exempt, if this Contract is valued at \$100,000 or more and requires approval by an elected **CITY** office, **CONTRACTOR**, **CONTRACTOR’S** principals, and **CONTRACTOR’S** Subcontractors expected to receive at least \$100,000 for performance under the Contract, and the principals of those Subcontractors (the “Restricted Persons”)

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

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

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

PSC-38. Contractors’ Use of Criminal History for Consideration of Employment Applications

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

PSC-39. Limitation of City’s Obligation to Make Payment to Contractor

Notwithstanding any other provision of this Contract, including any exhibits or attachments incorporated therein, and in order for **CITY** to comply with its governing legal requirements, **CITY** shall have no obligation to make any payments to **CONTRACTOR** unless **CITY** shall have first made an appropriation of funds equal to or in excess of its obligation to make any payments as provided in this Contract. **CONTRACTOR** agrees that any services provided by **CONTRACTOR**, purchases made by **CONTRACTOR** or expenses incurred by **CONTRACTOR** in excess of the appropriation(s) shall be free and without charge to **CITY** and **CITY** shall have no obligation to pay for the services, purchases or expenses. **CONTRACTOR** shall have no obligation to provide any services,

provide any equipment or incur any expenses in excess of the appropriated amount(s) until **CITY** appropriates additional funds for this Contract.

PSC-40. Compliance with Identity Theft Laws and Payment Card Data Security Standards

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

PSC-41. Compliance with California Public Resources Code Section 5164

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

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

PSC-42. Possessory Interests Tax

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

PSC-43. Confidentiality

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

EXHIBIT 1

INSURANCE CONTRACTUAL REQUIREMENTS

CONTACT For additional information about compliance with City Insurance and Bond requirements, contact the Office of the City Administrative Officer, Risk Management at (213) 978-RISK (7475) or go online at www.lacity.org/cao/risk. The City approved Bond Assistance Program is available for those contractors who are unable to obtain the City-required performance bonds. A City approved insurance program may be available as a low cost alternative for contractors who are unable to obtain City-required insurance.

CONTRACTUAL REQUIREMENTS

CONTRACTOR AGREES THAT:

- 1. Additional Insured/Loss Payee.** The CITY must be included as an Additional Insured in applicable liability policies to cover the CITY'S liability arising out of the acts or omissions of the named insured. The CITY is to be named as an Additional Named Insured and a Loss Payee As Its Interests May Appear in property insurance in which the CITY has an interest, e.g., as a lien holder.
- 2. Notice of Cancellation.** All required insurance will be maintained in full force for the duration of its business with the CITY. By ordinance, all required insurance must provide at least thirty (30) days' prior written notice (ten (10) days for non-payment of premium) directly to the CITY if your insurance company elects to cancel or materially reduce coverage or limits prior to the policy expiration date, for any reason except impairment of an aggregate limit due to prior claims.
- 3. Primary Coverage.** CONTRACTOR will provide coverage that is 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.
- 4. Modification of Coverage.** The 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 CONTRACTOR, the CITY agrees to negotiate additional compensation proportional to the increased benefit to the CITY.
- 5. Failure to Procure Insurance.** All required insurance must be submitted and approved by the Office of the City Administrative Officer, Risk Management prior to the inception of any operations by CONTRACTOR.

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 the CITY may immediately suspend or terminate this Contract or, at its discretion, procure or renew such insurance to protect the CITY'S interests and pay any and all premiums in connection therewith and recover all monies so paid from CONTRACTOR.

- 6. Workers' Compensation.** By signing this Contract, CONTRACTOR hereby certifies that it is aware of the provisions of Section 3700 *et seq.*, of the California 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 time during the performance of the work pursuant to this Contract.

7. 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 or through an insurer otherwise acceptable to the CITY. 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.

8. Aggregate Limits/Impairment. If any of the required insurance coverages contain annual aggregate limits, CONTRACTOR must give the CITY written notice of any pending claim or lawsuit which will materially diminish the aggregate within thirty (30) days of knowledge of same. You must take appropriate steps to restore the impaired aggregates or provide replacement insurance protection within thirty (30) days of 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 the CITY'S protection are allowed without the CITY'S prior written consent.

9. Commencement of Work. For purposes of insurance coverage only, this Contract will be deemed to have been executed immediately upon any party hereto taking any steps that can be considered to be in furtherance of or towards performance of this Contract. The requirements in this Section supersede all other sections and provisions of this Contract, including, but not limited to, PSC-3, to the extent that any other section or provision conflicts with or impairs the provisions of this Section.

Required Insurance and Minimum Limits

Name: _____

Date: _____

Agreement/Reference: _____

Evidence of coverages checked below, with the specified minimum limits, must be submitted and approved prior to occupancy/start of operations. Amounts shown are Combined Single Limits ("CSLs"). For Automobile Liability, split limits may be substituted for a CSL if the total per occurrence equals or exceeds the CSL amount.

	Limits
<p>___ Workers' Compensation (WC) and Employer's Liability (EL)</p> <div style="display: flex; justify-content: space-between; align-items: flex-start;"> <div style="width: 45%;"> <p><input type="checkbox"/> Waiver of Subrogation in favor of City</p> <p><input type="checkbox"/> Longshore & Harbor Workers</p> <p><input type="checkbox"/> Jones Act</p> </div> <div style="width: 45%; text-align: right;"> <p>WC _____</p> <p>Statutory _____</p> <p>EL _____</p> </div> </div>	
<p>___ General Liability</p> <div style="display: flex; justify-content: space-between; align-items: flex-start;"> <div style="width: 45%;"> <p><input type="checkbox"/> Products/Completed Operations</p> <p><input type="checkbox"/> Fire Legal Liability</p> <p><input type="checkbox"/> _____</p> </div> <div style="width: 45%; text-align: right;"> <p><input type="checkbox"/> Sexual Misconduct _____</p> </div> </div>	
<p>___ Automobile Liability (for any and all vehicles used for this contract, other than commuting to/from work)</p>	_____
<p>___ Professional Liability (Errors and Omissions)</p> <p style="margin-left: 20px;">Discovery Period _____</p>	_____
<p>___ Property Insurance (to cover replacement cost of building - as determined by insurance company)</p> <div style="display: flex; justify-content: space-between; align-items: flex-start;"> <div style="width: 45%;"> <p><input type="checkbox"/> All Risk Coverage</p> <p><input type="checkbox"/> Flood _____</p> <p><input type="checkbox"/> Earthquake _____</p> </div> <div style="width: 45%; text-align: right;"> <p><input type="checkbox"/> Boiler and Machinery</p> <p><input type="checkbox"/> Builder's Risk</p> <p><input type="checkbox"/> _____</p> </div> </div>	_____
<p>___ Pollution Liability</p> <p><input type="checkbox"/> _____</p>	_____
<p>___ Surety Bonds - Performance and Payment (Labor and Materials) Bonds</p>	_____
<p>___ Crime Insurance</p>	_____

Other: _____

APPENDIX B – PERFORMANCE MILESTONES

This appendix sets forth the performance milestones for completion of the Project's environmental review documents and the related payment schedule for each milestone.

Milestone	Payments
Publish Initial Study and Notice of Preparation	N/A (Included as FYI only. Milestone was Completed Under Contract No. 3498)
Initiation of CALTRANS Required Technical Studies (As Identified in Section 4.1E of Contract)	\$860,000
Completion of Administrative Draft EIR	\$824,000
Completion of Draft EIR and all Technical Studies	\$200,000
Completion of Administrative Draft Final EIR (including responses to comments)	\$50,000
Completion of Final EIR (including Findings, and Statement of Overriding Considerations, if required)	\$70,000

COOPERATIVE AGREEMENT COVER SHEET

Work Description

Developing a bridge structure to support park and recreational facilities over US Route 101 generally from Santa Monica Boulevard to Bronson Avenue in Hollywood area of the City of Los Angeles

Contact Information

CALTRANS

Zareh Shahbazian, Project Manager
100 S. Main Street, Suite 100
Los Angeles, CA 90012
Office Phone: (213) 897-4255
Email: zareh_shahbazian@dot.ca.gov

CITY OF LOS ANGELES DEPARTMENT OF RECREATION AND PARKS

Darryl Ford, Principal Project Coordinator
221 N. Figueroa Street, Suite 1550
Los Angeles, CA 90012
Office Phone: (213) 202-2682
Email: Darryl.ford@lacity.org

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COOPERATIVE AGREEMENT

This AGREEMENT, effective on April 26, 2016, is between the State of California, acting through its Department of Transportation, referred to as CALTRANS, and:

City of Los Angeles, referred to hereinafter as CITY, a municipal corporation and chartered city of the State of California, acting by and through its Board of Recreation and Park Commissioners (BOARD), hereby enters into this AGREEMENT. The BOARD, as contract awarding authority for the City of Los Angeles Department of Recreation and Parks (RAP), authorized the General Manager of the Department of Recreation and Parks per Board Report No. 14-138, to execute this AGREEMENT with CALTRANS.

RECITALS

1. PARTNERS are authorized to enter into a cooperative agreement for improvements to the state highway system (SHS) per the California Streets and Highways Code sections 114 and 130.
2. For the purpose of this AGREEMENT, developing a bridge over US Route 101 for construction of a park and related development, generally from Santa Monica Boulevard to Bronson Avenue in Hollywood area of the City of Los Angeles, will be referred to hereinafter as PROJECT. This description only serves to identify the PROJECT. The project scope of work is defined in the appropriate authorizing documents for the PROJECT per the Project Development Procedures Manual.
3. The PROJECT is being developed in coordination with the Friends of the Hollywood Central Park, a California non-profit corporation that has been working cooperatively with the Partners to entitle the PROJECT and is the primary entity that raises funds, community interest and support for the PROJECT.
4. All responsibilities assigned in this AGREEMENT to complete the following PROJECT COMPONENTS will be referred to hereinafter as OBLIGATIONS:
 - Project Approval and Environmental Document (PA&ED)
5. This AGREEMENT is separate from and does not modify or replace any other cooperative agreement or memorandum of understanding between PARTNERS regarding the PROJECT.
6. The following work associated with this PROJECT has been completed or is in progress:
 - The Project Study Report – Project Development Support (PSR-PDS) is complete and work is covered under Cooperative Agreement No. 07-4994.
7. In this AGREEMENT capitalized words represent either defined terms or acronyms.

8. PARTNERS hereby set forth the terms, covenants, and conditions of this AGREEMENT, under which they will accomplish OBLIGATIONS.

DEFINITIONS

AGREEMENT – This agreement including any attachments, exhibits, and amendments.

ARRA – The American Recovery and Reinvestment Act of 2009.

CALTRANS STANDARDS – CALTRANS policies and procedures, including, but not limited to, the guidance provided in the Project Development Procedures Manual (PDPM) and the CALTRANS Workplan Standards Guide for the Delivery of Capital Projects (WSG) [which contains the CALTRANS Work Breakdown Structure (WBS) and was previously known as the WBS Guide] and is available at <http://www.dot.ca.gov/hq/projmgmt/guidance.htm>.

CEQA (California Environmental Quality Act) – The act (California Public Resources Code, sections 21000 et seq.) that requires state and local agencies to identify the significant environmental impacts of their actions and to avoid or mitigate those significant impacts, if feasible.

CFR (Code of Federal Regulations) – The general and permanent rules published in the Federal Register by the executive departments and agencies of the federal government.

COOPERATIVE AGREEMENT CLOSURE STATEMENT – A document signed by PARTNERS that verifies the completion of all OBLIGATIONS included in this AGREEMENT and in all amendments to this AGREEMENT.

EDQC (Environmental Document Quality Control) - CALTRANS quality control and quality assurance procedures for all environmental documents as described in the Jay Norvell Memos dated October 1, 2012 (available at http://www.dot.ca.gov/ser/memos.htm#LinkTarget_705). This also includes the independent judgment analysis and determination under CEQA that the environmental documentation meets CEQA Guideline requirements.

FHWA – Federal Highway Administration.

FHWA STANDARDS – FHWA regulations, policies and procedures, including, but not limited to, the guidance provided at www.fhwa.dot.gov/topics.htm.

FUNDING PARTNER – A PARTNER, designated in the FUNDING SUMMARY that commits a defined dollar amount to fulfill OBLIGATIONS. Each FUNDING PARTNER accepts responsibility to provide the funds it commits in this AGREEMENT.

FUNDING SUMMARY – An executed document that names FUNDING PARTNER(S), includes a FUNDING TABLE, SPENDING SUMMARY, deposit amounts, and invoicing and payment methods.

FUNDING TABLE – The table that designates funding sources, types of funds, and the PROJECT COMPONENT in which the funds are to be spent. Funds listed on the FUNDING TABLE are “not-to-exceed” amounts for each FUNDING PARTNER.

GAAP (Generally Accepted Accounting Principles) – Uniform minimum standards and guidelines for financial accounting and reporting issued by the Federal Accounting Standards Advisory Board that serve to achieve some level of standardization. See <http://www.fasab.gov/accepted.html>.

HM-1 – Hazardous material (including, but not limited to, hazardous waste) that may require removal and disposal pursuant to federal or state law whether it is disturbed by the PROJECT or not.

HM-2 – Hazardous material (including, but not limited to, hazardous waste) that may require removal and disposal pursuant to federal or state law only if disturbed by the PROJECT.

HM MANAGEMENT ACTIVITIES – Management activities related to either HM-1 or HM-2 including, without limitation, any necessary manifest requirements and disposal facility designations.

IMPLEMENTING AGENCY – The PARTNER responsible for managing the scope, cost, and schedule of a PROJECT COMPONENT to ensure the completion of that component.

IQA (Independent Quality Assurance) – Ensuring that the IMPLEMENTING AGENCY’s quality assurance activities result in WORK that in accordance with the applicable standards and the PROJECT’s Quality Management Plan (QMP). IQA does not include any efforts necessary to develop or deliver WORK or any validation by verifying or rechecking work performed by another PARTNER.

NEPA (National Environmental Policy Act of 1969) – This federal act establishes a national policy for the environment and a process to disclose the adverse impacts of projects with a federal nexus.

OBLIGATIONS – All WORK responsibilities and their associated costs.

OBLIGATION COMPLETION – PARTNERS have fulfilled all OBLIGATIONS included in this AGREEMENT and have signed a COOPERATIVE AGREEMENT CLOSURE STATEMENT.

OBLIGATIONS COST(S) – The cost(s) to complete the responsibilities assigned in this AGREEMENT. Costs that are specifically excluded in this AGREEMENT or that are not incurred in the performance of the responsibilities in this AGREEMENT are not OBLIGATIONS COSTS. OBLIGATIONS COSTS are to be paid from the funds shown in the FUNDING SUMMARY. Costs that are not OBLIGATIONS COSTS are to be paid by the party that incurs the cost from funds that are outside the scope of this AGREEMENT.

PA&ED (Project Approval and Environmental Document) – See PROJECT COMPONENT.

PARTNER – Any individual signatory party to this AGREEMENT.

PARTNERS – The term that collectively references all of the signatory agencies to this AGREEMENT. This term only describes the relationship between these agencies to work together to achieve a mutually beneficial goal. It is not used in the traditional legal sense in which one PARTNER's individual actions legally bind the other PARTNER.

PROJECT COMPONENT – A distinct portion of the planning and project development process of a capital project as outlined in California Government Code, section 14529(b).

PID (Project Initiation Document) – The work required to deliver the project initiation document for the PROJECT in accordance with CALTRANS STANDARDS.

PA&ED (Project Approval and Environmental Document) – The work required to deliver the project approval and environmental documentation for the PROJECT in accordance with CALTRANS STANDARDS.

PS&E (Plans, Specifications, and Estimate) – The work required to deliver the plans, specifications, and estimate for the PROJECT in accordance with CALTRANS STANDARDS.

R/W (Right of Way) – The project components for the purpose of acquiring real property interests for the PROJECT in accordance with CALTRANS STANDARDS.

R/W (Right of Way) SUPPORT – The work required to obtain all property interests for the PROJECT.

R/W (Right of Way) CAPITAL – The funds for acquisition of property rights for the PROJECT.

CONSTRUCTION – The project components for the purpose of completing the construction of the PROJECT in accordance with CALTRANS STANDARDS.

CONSTRUCTION SUPPORT – The work required for the administration, acceptance, and final documentation of the construction contract for the PROJECT.

CONSTRUCTION CAPITAL – The funds for the construction contract.

PROJECT MANAGEMENT PLAN – A group of documents used to guide the PROJECT's execution and control throughout that project's lifecycle.

QMP (Quality Management Plan) – An integral part of the PROJECT MANAGEMENT PLAN that describes IMPLEMENTING AGENCY’s quality policy and how it will be used.

SHS (State Highway System) – All highways, right of way, and related facilities acquired, laid out, constructed, improved, or maintained as a state highway pursuant to constitutional or legislative authorization.

SPENDING SUMMARY – A table that identifies the funds available for expenditure by each PARTNER. The table shows the maximum reimbursable expenditure for each PARTNER in each PROJECT COMPONENT.

SPONSOR – Any PARTNER that accepts the responsibility to establish scope of the PROJECT and the obligation to secure financial resources to fund the PROJECT COMPONENTS in this AGREEMENT. SPONSOR is responsible for adjusting the PROJECT scope to match committed funds or securing additional funds to fully fund the PROJECT COMPONENTS in this AGREEMENT. If this AGREEMENT has more than one SPONSOR, funding adjustments will be made by percentage (as outlined in Responsibilities). Scope adjustments must be developed through the project development process and must be approved by CALTRANS as the owner/operator of the SHS.

WORK – All efforts to complete the OBLIGATIONS included in this AGREEMENT as described by the activities in the CALTRANS Workplan Standards Guide for the Delivery of Capital Projects (WSG).

RESPONSIBILITIES

Sponsorship

9. CITY is the SPONSOR for 100% of the PROJECT COMPONENTS included in this AGREEMENT.

Funding

10. FUNDING PARTNERS, funding limits, spending limits, billing, and payment details are documented in the FUNDING SUMMARY. The FUNDING SUMMARY is incorporated and made an express part of this AGREEMENT.

PARTNERS will execute a new FUNDING SUMMARY each time the funding, billing and payment details of the PROJECT change. The FUNDING SUMMARY will be executed by a legally authorized representative of the respective PARTNERS. The most current fully executed FUNDING SUMMARY supersedes any previous FUNDING SUMMARY created for this AGREEMENT.

Replacement of the FUNDING SUMMARY will not require an amendment to the body of this AGREEMENT unless the funding changes require it.

11. All costs incurred for WORK except those that are specifically excluded in this AGREEMENT are OBLIGATIONS COSTS. OBLIGATIONS COSTS are to be paid from the funds shown in the FUNDING SUMMARY. Costs that are not OBLIGATIONS COSTS are to be paid by the PARTNER incurring the costs from funds that are outside the scope of this AGREEMENT.

Implementing Agency

12. CITY is IMPLEMENTING AGENCY for PA&ED.
13. The IMPLEMENTING AGENCY for a PROJECT COMPONENT will provide a QMP for that component as part of the PROJECT MANAGEMENT PLAN.
14. Any PARTNER responsible for completing WORK shall make its personnel and consultants that prepare WORK available to help resolve WORK-related problems and changes for the entire duration of the PROJECT including PROJECT COMPONENT work that may occur under separate agreements.

Independent Quality Assurance (IQA)

15. CALTRANS will provide IQA for the portions of WORK within existing and proposed SHS right of way.

The cost of CALTRANS' IQA is not an OBLIGATIONS COST.

Environmental Document Quality Control (EDQC) Program

16. Per NEPA assignment and CEQA statutes, CALTRANS will - perform EDQC and NEPA Assignment Review Procedures for environmental documentation as submitted.

The cost of CALTRANS' EDQC and NEPA Assignment Review Procedures is not an OBLIGATIONS COST.

CEQA/NEPA Lead Agency

17. CITY is the CEQA lead agency for the PROJECT.
18. CALTRANS is the CEQA responsible agency for the PROJECT.
19. CALTRANS is the NEPA lead agency for the PROJECT.

Environmental Permits, Approvals and Agreements

20. PARTNERS will comply with the commitments and conditions set forth in the environmental documentation, environmental permits, approvals, and applicable agreements as those commitments and conditions apply to each PARTNER's responsibilities in this AGREEMENT.

21. Unless otherwise assigned in this AGREEMENT, the IMPLEMENTING AGENCY for a PROJECT COMPONENT is responsible for all PROJECT COMPONENT WORK associated with coordinating, obtaining, implementing, renewing, and amending the PROJECT permits where the permits are identified in the planned project scope of work or become necessary in the course of completing the PROJECT.
22. The PROJECT includes but is not limited to the following environmental requirements/approvals and permits:

ENVIRONMENTAL PERMITS/REQUIREMENTS
National Pollutant Discharge Elimination System (NPDES), State Water Resources Control Board
State Waste Discharge Requirements (Porter Cologne), Regional Water Quality Control Board
Local Agency Concurrence/Permit
Air Quality Permits (South Coast Air Quality Management District)
Entitlements
B Permit for certain construction activities
Demolition, grading, excavation, foundation and associated building permits
Encroachment Permits
Haul route(s) approval, as necessary
Section 106 of the National Historic Preservation Act (NHPA)
Section 4(f) of the Department of Transportation Act

Project Approval and Environmental Document (PA&ED)

23. CITY is responsible for all PA&EDWORK except those PA&ED activities and responsibilities that are assigned to another PARTNER in this AGREEMENT and those activities that may be specifically excluded.
24. CALTRANS will be responsible for completing the following PA&ED activities:

CALTRANS Work Breakdown Structure Identifier (If Applicable)	OBLIGATION COST
165.25.25 Approval to Circulate Resolution	No
180.15.05 Record of Decision (NEPA)	No

25. Any PARTNER preparing environmental documentation, including studies and reports, will ensure that qualified personnel remain available to help resolve environmental issues and perform any necessary work to ensure that the PROJECT remains in environmental compliance.

California Environmental Quality Act (CEQA)

26. CITY will determine the type of CEQA documentation required and will cause that documentation to be prepared in accordance with CEQA requirements.
27. Any PARTNER involved in the preparation of CEQA environmental documentation will prepare the documentation to meet CEQA requirements and follow CITY's standards that apply to the CEQA process.
28. CALTRANS is the CEQA responsible agency for the PROJECT and will review, comment, and concur on all environmental documentation (including, but not limited to, studies, reports, public notices, and public meeting materials, determinations, administrative drafts, and final environmental documents) at appropriate stages of development prior to approval and public availability.
29. Any PARTNER preparing any portion of the CEQA environmental documentation, including any studies and reports, will submit that portion of the documentation to the CEQA Lead Agency for review, comment, and approval at appropriate stages of development prior to public availability.
30. If CITY makes any major changes to the CEQA documentation, CITY will allow CALTRANS to review, comment, and concur on those changes prior to the CITY's approval at appropriate stages of development prior to public availability.

If CITY makes any major changes to CEQA-related public notices, then CITY will allow CALTRANS to review, comment, and concur on those changes prior to publication and circulation.

31. CALTRANS review of all CEQA environmental documentation, changes to CEQA environmental documentation, and any major changes to CEQA related public notices will not be unreasonably delayed or withheld, and in no event shall CALTRANS review of CEQA environmental documentation, changes to CEQA environmental documentation and any CEQA related public notices extend for a period for longer than sixty (60) days from the date of delivery by CITY.
32. CITY will attend all CEQA-related public meetings.

33. If a PARTNER who is not the CEQA lead agency holds a public meeting about the PROJECT, that PARTNER must clearly state its role in the PROJECT and the identity of the CEQA lead agency on all meeting publications. All meeting publications must also inform the attendees that public comments collected at the meetings are not part of the CEQA public review process.

That PARTNER will submit all meeting advertisements, agendas, exhibits, handouts, and materials to the CEQA lead agency for review, comment, and approval at least ten (10) working days prior to publication or use. If that PARTNER makes any changes to the materials, it will allow the CEQA lead agency to review, comment on, and approve those changes at least three (3) working days prior to the public meeting date.

The CEQA lead agency maintains final editorial control with respect to text or graphics that could lead to public confusion over CEQA-related roles and responsibilities.

National Environmental Policy Act (NEPA)

34. Pursuant to Chapter 3 of Title 23, United States Code (23 U.S.C. 326) and 23 U.S.C. 327, CALTRANS is the NEPA lead agency for the PROJECT. CALTRANS is responsible for NEPA compliance, and will determine cause the type of NEPA documentation, and will cause that documentation to be prepared in accordance with NEPA requirements.

CALTRANS, as the NEPA lead agency for PROJECT, will review, comment, and approve all environmental documentation (including, but not limited to, studies, reports, public notices, and public meeting materials, determinations, administrative drafts, and final environmental documents) at appropriate stages of development prior to approval and public availability.

When required as NEPA lead agency, CALTRANS will conduct consultation and coordination and obtain, renew, or amend approvals pursuant to the Federal Endangered Species Act, and Essential Fish Habitat.

When required as NEPA lead agency, CALTRANS will conduct consultation and coordination approvals pursuant to Section 106 of the National Historic Preservation Act, as required.

35. Any PARTNER involved in the preparation of NEPA environmental documentation will follow FHWA and CALTRANS STANDARDS that apply to the NEPA process including, but not limited to, the guidance provided in the FHWA Environmental Guidebook (available at www.fhwa.dot.gov/hep/index.htm) and the CALTRANS Standard Environmental Reference.
36. Any PARTNER preparing any portion of the NEPA environmental documentation (including, but not limited to, studies, reports, public notices, and public meeting materials, determinations, administrative drafts, and final environmental documents) will submit that portion of the documentation to CALTRANS for CALTRANS' review, comment, and approval prior to public availability.

37. CITY will prepare, publicize, and circulate all NEPA-related public notices, except Federal Register notices. CITY will submit all notices to CALTRANS for CALTRANS' review, comment, and approval prior to publication and circulation.

CALTRANS will work with the appropriate federal agency to publish notices in the Federal Register.

38. CALTRANS will attend all NEPA-related public meetings.
39. CITY will submit all NEPA-related public meeting materials to CALTRANS for CALTRANS' review, comment, and approval at least ten (10) working days prior to the public meeting date.
40. If CITY holds a public meeting about the PROJECT, CITY must clearly state its role in the PROJECT and the identity of the NEPA lead agency on all meeting publications. All meeting publications must also inform the attendees that public comments collected at the meetings are not part of the NEPA public review process.

CITY will submit all meeting advertisements, agendas, exhibits, handouts, and materials to the NEPA lead agency for review, comment, and approval at least ten (10) working days prior to publication or use. If CITY makes any changes to the materials, it will allow the NEPA lead agency to review, comment on, and approve those changes at least three (3) working days prior to the public meeting date.

The NEPA lead agency has final approval authority with respect to text or graphics that could lead to public confusion over NEPA-related roles and responsibilities.

Schedule

41. PARTNERS will manage the schedule for OBLIGATIONS through the work plan included in the PROJECT MANAGEMENT PLAN.

Additional Provisions

42. PARTNERS will perform all OBLIGATIONS in accordance with federal and California laws, regulations, and standards; FHWA STANDARDS; and CALTRANS STANDARDS.
43. CALTRANS retains the right to reject noncompliant WORK, protect public safety, preserve property rights, and ensure that all WORK is in the best interest of the SHS.
44. Each PARTNER will ensure that personnel participating in OBLIGATIONS are appropriately qualified or licensed to perform the tasks assigned to them.
45. PARTNERS will invite each other to participate in the selection of any consultants who participate in OBLIGATIONS.

46. CALTRANS will issue, upon approval of a proper application, the encroachment permits required for WORK within SHS right of way. Contractors and/or agents, and utility owners will not perform activities within the SHS right of way without an encroachment permit issued in their name. CALTRANS will provide encroachment permits to PARTNERS, their contractors, consultants and agents, at no cost.
47. The IMPLEMENTING AGENCY for a PROJECT COMPONENT will coordinate, prepare, obtain, implement, renew, and amend any encroachment permits needed to complete the PROJECT COMPONENT WORK.
48. If any PARTNER discovers unanticipated cultural, archaeological, paleontological, or other protected resources during WORK, all WORK in that area will stop and that PARTNER will notify all PARTNERS within twenty-four (24) hours of discovery. WORK may only resume after a qualified professional has evaluated the nature and significance of the discovery and a plan is approved for its removal or protection.
49. PARTNERS will hold all administrative drafts and administrative final reports, studies, materials, and documentation relied upon, produced, created, or utilized for the PROJECT in confidence to the extent permitted by law and where applicable, the provisions of California Government Code section 6254.5(e) shall protect the confidentiality of such documents in the event that said documents are shared between PARTNERS.

PARTNERS will not distribute, release, or share said documents with anyone other than employees, agents, and consultants who require access to complete the PROJECT without the written consent of the PARTNER authorized to release them, unless required or authorized to do so by law.
50. If a PARTNER receives a public records request pertaining to OBLIGATIONS, that PARTNER will notify PARTNERS within five (5) working days of receipt and make PARTNERS aware of any disclosed public documents. PARTNERS will consult with each other prior to the release of any public documents related to the PROJECT.
51. If HM-1 or HM-2 is found during a PROJECT COMPONENT, IMPLEMENTING AGENCY for that PROJECT COMPONENT will immediately notify PARTNERS.
52. CALTRANS, independent of the PROJECT, is responsible for any HM-1 found within the existing SHS right of way. CALTRANS will undertake, or cause to be undertaken, HM MANAGEMENT ACTIVITIES related to HM-1 with minimum impact to the PROJECT schedule. The cost for HM MANAGEMENT ACTIVITIES related to HM-1 found within the existing SHS right of way is not an OBLIGATIONS COST and CALTRANS will pay, or cause to be paid, all costs for HM-1 ACTIVITIES.

53. CITY, independent of the PROJECT, is responsible for any HM-1 found within the PROJECT limits and outside the existing SHS right of way. CITY will undertake, or cause to be undertaken, HM MANAGEMENT ACTIVITIES related to HM-1 with minimum impact to the PROJECT schedule. The cost of HM MANAGEMENT ACTIVITIES related to HM-1 found within the PROJECT limits and outside of the existing SHS right of way is not an OBLIGATIONS COST and CITY will pay, or cause to be paid, all costs for such ACTIVITIES.
54. If HM-2 is found within the PROJECT limits, the public agency responsible for the advertisement, award, and administration (AAA) of the PROJECT construction contract will be responsible for HM MANAGEMENT ACTIVITIES related to HM-2.
55. CALTRANS' acquisition or acceptance of title to any property on which any HM-1 or HM-2 is found will proceed in accordance with CALTRANS' policy on such acquisition.
56. IMPLEMENTING AGENCY for each PROJECT COMPONENT will furnish PARTNERS with written quarterly progress reports during the implementation of OBLIGATIONS in that component.
57. Any PARTNER that is responsible for completing OBLIGATIONS will accept, reject, compromise, settle, or litigate claims arising from those OBLIGATIONS.
58. PARTNERS will confer on any claim that may affect OBLIGATIONS or PARTNERS' liability or responsibility under this AGREEMENT in order to retain resolution possibilities for potential future claims. No PARTNER will prejudice the rights of another PARTNER until after PARTNERS confer on claim.
59. PARTNERS will maintain, and will ensure that any party hired by PARTNERS to participate in OBLIGATIONS will maintain, a financial management system that conforms to Generally Accepted Accounting Principles (GAAP), and that can properly accumulate and segregate incurred PROJECT costs and billings.
60. If FUNDING PARTNERS fund any part of OBLIGATIONS with state or federal funds, each PARTNER will comply, and will ensure that any party hired to participate in OBLIGATIONS will comply with the federal cost principles of 2 CFR, Part 225, and administrative requirements outlined in 49 CFR, Part 18. These principles and requirements apply to all funding types included in this AGREEMENT.
61. PARTNERS will maintain and make available to each other all OBLIGATIONS-related documents, including financial data, during the term of this AGREEMENT.

PARTNERS will retain all OBLIGATIONS-related records for three (3) years after the final voucher.
62. PARTNERS have the right to audit each other in accordance with generally accepted governmental audit standards.

CALTRANS, the state auditor, FHWA (if the PROJECT utilizes federal funds), and CITY will have access to all OBLIGATIONS-related records of each PARTNER, and any party hired by a PARTNER to participate in OBLIGATIONS, for audit, examination, excerpt, or copy.

The examination of any records will take place in the offices and locations where said records are generated and/or stored and will be accomplished during reasonable hours of operation. The auditing PARTNER will be permitted to make copies of any OBLIGATIONS-related records needed for the audit.

The audited PARTNER will review the draft audit, findings, and recommendations, and provide written comments within thirty (30) calendar days of receipt.

Upon completion of the final audit, PARTNERS have thirty (30) calendar days to refund or invoice as necessary in order to satisfy the obligation of the audit.

Any audit dispute not resolved by PARTNERS is subject to mediation. Mediation will follow the process described in the General Conditions section of this AGREEMENT.

63. If FUNDING PARTNERS fund any part of the PROJECT with state or federal funds, each FUNDING PARTNER will undergo an annual audit in accordance with the Single Audit Act and the federal Office of Management and Budget (OMB) Circular A-133.
64. If the PROJECT expends federal funds, any PARTNER that hires an architectural and/or engineering consultant to perform WORK on any part of the PROJECT will ensure that the procurement of the consultant and the consultant overhead costs are in accordance with Chapter 10 of the *Local Assistance Procedures Manual*.
65. PARTNERS will not incur costs beyond the funding commitments in this AGREEMENT. If IMPLEMENTING AGENCY anticipates that funding for WORK will be insufficient to complete WORK, IMPLEMENTING AGENCY will promptly notify SPONSOR.
66. If WORK stops for any reason, IMPLEMENTING AGENCY will place the PROJECT right of way in a safe and operable condition acceptable to CALTRANS.
67. If WORK stops for any reason, each PARTNER will continue to implement all of its applicable commitments and conditions included in the PROJECT environmental documentation, permits, agreements, or approvals that are in effect at the time that WORK stops, as they apply to each PARTNER's responsibilities in this AGREEMENT, in order to keep the PROJECT in environmental compliance until WORK resumes.
68. Unless otherwise documented in the FUNDING SUMMARY, all fund types contributed to a PROJECT COMPONENT will be spent proportionately within that PROJECT COMPONENT.

69. Unless otherwise documented in the FUNDING SUMMARY, any savings recognized within a PROJECT COMPONENT will be credited or reimbursed, when allowed by policy or law, in proportion to the amount contributed to that PROJECT COMPONENT by each fund type.
70. If FUNDING PARTNERS fund OBLIGATIONS with Proposition 1B Bond funds, PARTNERS will meet the requirements of California Government Code Section 8879.20 et al. (Proposition 1 legislation), the governor's Executive Order 2007-S-02-07, and the California Transportation Commission (CTC) program guidelines for the applicable account.
- Right of way purchased using Proposition 1B Bond funds will become the property of CALTRANS, and any revenue from the sale of excess lands originally purchased with bond funds will revert to CALTRANS.
71. CALTRANS will administer any federal subvention funds shown in the FUNDING SUMMARY table.
72. Notwithstanding the mutual indemnity provisions in 83 and 84, the cost of legal challenges to the environmental process or documentation is an OBLIGATIONS COSTS.
73. The cost of coordinating, obtaining, complying with, implementing, renewing, and amending resource agency permits, agreements, and approvals is an OBLIGATIONS COST.
74. Fines, interest, or penalties levied against a PARTNER are not an OBLIGATIONS COST and will be paid, independent of OBLIGATIONS COST, by the PARTNER whose actions or lack of action caused the levy.
75. The cost of any engineering support performed by CALTRANS includes all direct and applicable indirect costs. CALTRANS calculates indirect costs based solely on the type of funds used to pay support costs. State and federal funds administered by CALTRANS are subject to the current Program Functional Rate. All other funds are subject to the current Program Functional Rate and the current Administration Rate. The Program Functional Rate and Administration Rate are adjusted periodically.
76. Travel, per diem, and third-party contract reimbursements are an OBLIGATIONS COST only after those hired by PARTNERS to participate in OBLIGATIONS incur and pay those costs.
- Payments for travel and per diem will not exceed the rates paid rank and file state employees under current California Department of Personnel Administration (DPA) rules current at the effective date of this AGREEMENT.
- If CITY invoices for rates in excess of DPA rates, CITY will fund the cost difference and reimburse CALTRANS for any overpayment.

77. If there are insufficient funds available in this AGREEMENT to place PROJECT right of way in a safe and operable condition, the appropriate IMPLEMENTING AGENCY will fund these activities until such time as PARTNERS amend this AGREEMENT.

That IMPLEMENTING AGENCY may request reimbursement for these costs during the amendment process.

If there are insufficient funds in this AGREEMENT to implement applicable commitments and conditions included in the PROJECT environmental documentation, permits, agreements, and/or approvals that are in effect at a time that WORK stops, each PARTNER accepts responsibility to fund their respective OBLIGATIONS until such time as PARTNERS amend this AGREEMENT.

Each PARTNER may request reimbursement for these costs during the amendment process.

78. After PARTNERS agree that all WORK is complete for a PROJECT COMPONENT, PARTNER(S) will submit a final accounting for all OBLIGATIONS COSTS. Based on the final accounting, PARTNERS will refund or invoice as necessary in order to satisfy the financial commitments of this AGREEMENT.

GENERAL CONDITIONS

79. PARTNERS understand that this AGREEMENT is in accordance with and governed by the Constitution and laws of the State of California. This AGREEMENT will be enforceable in the State of California. Any PARTNER initiating legal action arising from this AGREEMENT will file and maintain that legal action in the Superior Court of the county in which the CALTRANS district office that is signatory to this AGREEMENT resides, or in the Superior Court of the county in which the PROJECT is physically located.
80. All OBLIGATIONS of CALTRANS under the terms of this AGREEMENT are subject to the appropriation of resources by the Legislature, the State Budget Act authority, and the allocation of funds by the California Transportation Commission.
81. When CALTRANS performs IQA activities it does so for its own benefit. No one can assign liability to CALTRANS due to its IQA activities.
82. Except as specified in provision 73, neither CITY nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by CALTRANS and/or its agents under or in connection with any work, authority, or jurisdiction conferred upon CALTRANS under this AGREEMENT. It is understood and agreed that CALTRANS, to the extent permitted by law, will defend, indemnify, and save harmless CITY and all of its officers and employees from all claims, suits, or actions of every name, kind, and description brought forth under, but not limited to, tortious, contractual, inverse condemnation, or other theories and assertions of liability occurring by reason of anything done or omitted to be done by CALTRANS and/or its agents under this AGREEMENT.

83. Except as specified in provision 73, neither CALTRANS nor any officer or employee thereof is responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by CITY, its contractors, sub-contractors, and/or its agents under or in connection with any work, authority, or jurisdiction conferred upon CITY under this AGREEMENT. It is understood and agreed that CITY, to the extent permitted by law, will defend, indemnify, and save harmless CALTRANS and all of its officers and employees from all claims, suits, or actions of every name, kind, and description brought forth under, but not limited to, tortious, contractual, inverse condemnation, or other theories and assertions of liability occurring by reason of anything done or omitted to be done by CITY, its contractors, sub-contractors, and/or its agents under this AGREEMENT.
84. PARTNERS do not intend this AGREEMENT to create a third party beneficiary or define duties, obligations, or rights in parties not signatory to this AGREEMENT. PARTNERS do not intend this AGREEMENT to affect their legal liability by imposing any standard of care for fulfilling OBLIGATIONS different from the standards imposed by law.
85. PARTNERS will not assign or attempt to assign OBLIGATIONS to parties not signatory to this AGREEMENT without an amendment to this AGREEMENT.
86. Neither PARTNER will interpret any ambiguity contained in this AGREEMENT against the other PARTNER. PARTNERS waive the provisions of California Civil Code section 1654.

A waiver of a PARTNER's performance under this AGREEMENT will not constitute a continuous waiver of any other provision.

87. A delay or omission to exercise a right or power due to a default does not negate the use of that right or power in the future when deemed necessary.
88. If any PARTNER defaults in its OBLIGATIONS, a non-defaulting PARTNER will request in writing that the default be remedied within thirty (30) calendar days. If the defaulting PARTNER fails to do so, the non-defaulting PARTNER may initiate dispute resolution.
89. PARTNERS will first attempt to resolve AGREEMENT disputes at the PROJECT team level. If they cannot resolve the dispute themselves, the CALTRANS district director and the General Manager of the Department of Recreation and Parks will attempt to negotiate a resolution. If PARTNERS do not reach a resolution, PARTNERS' legal counsel will initiate mediation. PARTNERS agree to participate in mediation in good faith and will share equally in its costs.

Neither the dispute nor the mediation process relieves PARTNERS from full and timely performance of OBLIGATIONS in accordance with the terms of this AGREEMENT. However, if any PARTNER stops fulfilling OBLIGATIONS, any other PARTNER may seek equitable relief to ensure that OBLIGATIONS continue.

Except for equitable relief, no PARTNER may file a civil complaint until after mediation, or forty-five (45) calendar days after filing the written mediation request, whichever occurs first.

PARTNERS will file any civil complaints in the Superior Court of the county in which the CALTRANS district office signatory to this AGREEMENT resides or in the Superior Court of the county in which the PROJECT is physically located. The prevailing PARTNER will be entitled to an award of all costs, fees, and expenses, including reasonable attorney fees as a result of litigating a dispute under this AGREEMENT or to enforce the provisions of this article including equitable relief.

90. PARTNERS maintain the ability to pursue alternative or additional dispute remedies if a previously selected remedy does not achieve resolution.
91. If any provisions in this AGREEMENT are found by a court of competent jurisdiction to be, or are in fact, illegal, inoperative, or unenforceable, those provisions do not render any or all other AGREEMENT provisions invalid, inoperative, or unenforceable, and those provisions will be automatically severed from this AGREEMENT.
92. PARTNERS intend this AGREEMENT to be their final expression that supersedes any oral understanding or writings pertaining to the OBLIGATIONS.
93. If during performance of WORK additional activities or environmental documentation is necessary to keep the PROJECT in environmental compliance, PARTNERS will amend this AGREEMENT to include completion of those additional tasks.
94. Except as otherwise provided in the AGREEMENT, PARTNERS will execute a formal written amendment if there are any changes to OBLIGATIONS.
95. When WORK performed on the PROJECT is done under contract and falls within the Labor Code section 1720(a)(1) definition of "public works" in that it is construction, alteration, demolition, installation, or repair; or maintenance work under Labor Code section 1771, PARTNERS shall conform to the provisions of Labor Code sections 1720 through 1815, and all applicable provisions of California Code of Regulations found in Title 8, Division 1, Chapter 8, Subchapter 3, Articles 1-7. PARTNERS shall include prevailing wage requirements in contracts for public work and require contractors to include the same prevailing wage requirements in all subcontracts. Work performed by a PARTNER's own employees is exempt from the Labor Code's Prevailing Wage requirements.
96. If WORK is paid for, in whole or part, with federal funds and is of the type of work subject to federal prevailing wage requirements, PARTNERS shall conform to the provisions of the Davis-Bacon and Related Acts, 40 U.S.C. § 276(a).

When applicable, PARTNERS shall include federal prevailing wage requirements in contracts for public work. WORK performed by a PARTNER's employees is exempt from federal prevailing wage requirements.

97. PARTNERS agree to sign a COOPERATIVE AGREEMENT CLOSURE STATEMENT to terminate this AGREEMENT. However, all indemnification, document retention, audit, claims, environmental commitment, legal challenge, maintenance and ownership articles will remain in effect until terminated or modified in writing by mutual agreement or expire by the statute of limitations.

SIGNATURES

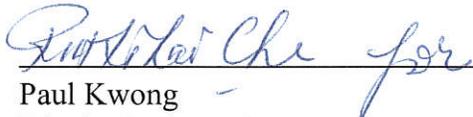
PARTNERS are empowered by California Streets and Highways Code Section 114 & 130 to enter into this AGREEMENT and have delegated to the undersigned the authority to execute this AGREEMENT on behalf of the respective agencies and covenants to have followed all the necessary legal requirements to validly execute this AGREEMENT.

CALTRANS



Carrie L. Bowen
District 07 Director

Certified as to funds:



Paul Kwong
District Budget Manager

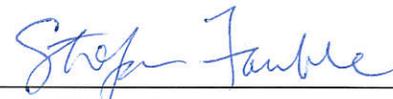
**CITY OF LOS ANGELES, PARKS &
RECREATION DEPARTMENT**

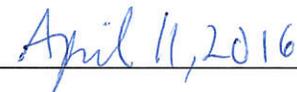


Michael A Shull
General Manager

Approved as to form:

Michael N. Feuer
City Attorney

By: 
Deputy City Attorney

Date: 

FUNDING SUMMARY

v. 1				
<u>FUNDING TABLE</u>				
<u>IMPLEMENTING AGENCY</u> →			<u>CITY</u>	
Source	FUNDING PARTNER	Fund Type	PA&ED	Totals
Local	CITY	Local	1,750,000	1,750,000
Totals			1,750,000	1,750,000

v. 2			
<u>SPENDING SUMMARY</u>			
Fund Type	PA&ED		Totals
	CALTRANS	<u>CITY</u>	
Local Funds			
Local	0	1,750,000	1,750,000
Totals	0	1,750,000	1,750,000

Invoicing and Payment

1. PARTNERS will invoice for funds where the SPENDING SUMMARY shows that one PARTNER provides funds for use by another PARTNER. PARTNERS will pay invoices within forty-five (45) calendar days of receipt of invoice when not paying with Electronic Funds Transfer (EFT). When paying with EFT, CITY will pay invoices within five (5) calendar days of receipt of invoice.
2. If CITY has received EFT certification from CALTRANS then CITY will use the EFT mechanism and follow all EFT procedures to pay all invoices issued from CALTRANS.
3. CALTRANS will draw from state and federal funds that are provided by CITY without invoicing CITY when CALTRANS administers those funds and CALTRANS has been allocated those funds by the CTC and whenever else possible.
4. When a PARTNER is reimbursed for actual costs from funds administered by another PARTNER, invoices will be submitted each month for the prior month's expenditures.

Project Approval and Environmental Document (PA&ED)

5. No invoicing or reimbursement will occur for the PA&ED PROJECT COMPONENT.

Signatures

CALTRANS

Carrie L. Bowen

Carrie L. Bowen
District Director

Date 4/26/2016

Paula Che for Paul Kwong
District Budget Manager


HQ Accounting

**CITY OF LOS ANGELES, PARKS &
RECREATION DEPARTMENT**

Michael A. Shull

Michael A Shull
General Manager

Approved as to form:

Michael N. Feuer
City Attorney

By: *Steph Fumble*
Deputy City Attorney

Date April 11, 2016

CLOSURE STATEMENT INSTRUCTIONS

1. Did PARTNERS complete all scope, cost and schedule commitments included in this AGREEMENT and any amendments to this AGREEMENT?

YES / NO

2. Did CALTRANS accept and approve all final deliverables submitted by CITY?

YES / NO

3. If applicable, did the CALTRANS HQ Office of Accounting verify that all final accounting for this AGREEMENT and any amendments to this AGREEMENT were completed?

YES / NO

4. If construction is involved, did the CALTRANS District Project Manager verify that all claims and third party billings (utilities, etc.) have been settled before termination of the AGREEMENT?

YES / NO

5. If applicable, did PARTNERS complete and transmit all As-Built, Project History File, and other required contract documents?

YES / NO

If ALL answers are “YES”, this form may be used to TERMINATE this AGREEMENT.

COOPERATIVE AGREEMENT CLOSURE STATEMENT

PARTNERS agree that they have completed all scope, cost, and schedule commitments included in Cooperative Agreement 07-4990 and any amendments to the agreement.

The final signature date on this document terminates Cooperative Agreement 07-4990 except survival articles.

All survival articles in Cooperative Agreement 07-4990 will remain in effect until expired by law, terminated or modified in writing by PARTNER's mutual agreement, whichever occurs earlier.

The people signing this Agreement have the authority to do so on behalf of their public agencies.

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

CITY OF LOS ANGELES, PARKS &
RECREATION DEPARTMENT

Name:
District 07 Director

Michael A Shull
General Manager

Date: _____

Approved as to form:

Michael N. Feuer
City Attorney

CERTIFIED AS TO ALL FINANCIAL
OBLIGATIONS/TERMS AND POLICIES

By: _____

Deputy City Attorney

Name:
District Budget Manager

Date: _____