

TRANSMITTAL

To:

THE COUNCIL

Date:

DEC 02 2013

From:

THE MAYOR

TRANSMITTED FOR YOUR CONSIDERATION. PLEASE SEE ATTACHED.



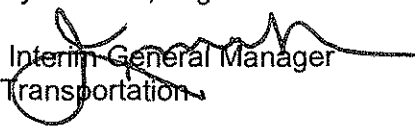
(Ana Guerrero)

ERIC GARCETTI
Mayor

CITY OF LOS ANGELES
INTER-DEPARTMENTAL CORRESPONDENCE

DATE: December 4, 2013

TO: Honorable Eric Garcetti, Mayor
Attention: Mandy Morales, Legislative Coordinator

FROM: Jon Kirk Mukri, Interim General Manager
Department of Transportation 

SUBJECT: **BROADWAY STREETSCAPE MASTER PLAN DRESS REHEARSAL
SERVICE CONTRACT**

The City of Los Angeles Department of Transportation (LADOT) requests authorization to execute a service contract with each of the three respective Business Improvement Districts (BIDs) along Broadway between 1st and 11th Streets for the maintenance, management and operations of the project area.

Per Council File 13-0356, the Broadway Streetscape Master Plan Dress Rehearsal, LADOT has been instructed to present to Council agreements with the Historic Downtown BID, the Fashion District BID and the Downtown Center BID. Based on the need for well-maintained, managed and operated public pedestrian spaces, LADOT seeks to negotiate and establish contract costs with each BID as they are the key vendors capable of expanding the work that they are already performing and providing the services detailed in the service contract. LADOT seeks to execute these contracts in advance of procuring materials and assigning the labor necessary to install the project. LADOT plans to install numerous pedestrian-oriented, traffic-calming tools for the historic Broadway corridor to provide greater pedestrian comfort and security along one of the city's busiest pedestrian streets and make Broadway a more enjoyable place to walk and spend time.

The Master Plan Dress Rehearsal is intended as the semi-permanent Phase One implementation of the road configuration called for in the Broadway Streetscape Master Plan. The project will use cost-efficient, quickly installed materials to effectuate the result of the traffic-calming pedestrian enhancements and a three-lane road reconfiguration of the Master Plan while funding is secured to achieve the permanent build out of a full-scale project.

RECOMMENDATION

That the City Council, subject to the concurrence of the Mayor:

AUTHORIZE the LADOT Interim General Manager to negotiate and execute three contracts, substantially in conformance with the details described in and attached to this report, with per contract limit not to exceed \$350,000 for a term of two (2) years with up to three (3) one-year options to extend the term, subject to the City Attorney's approval as to form.

FISCAL IMPACT STATEMENT

The actions described in this report have no negative impact on the General Fund.

Attachment

JKM:mo

c: Borja Leon, Deputy Mayor Transportation

**BROADWAY STREETSCAPE MASTER PLAN DRESS REHEARSAL
SERVICE CONTRACT
BETWEEN THE CITY OF LOS ANGELES
AND
_____ BUSINESS IMPROVEMENT DISTRICT**

This Agreement is made and entered into this _____ day of _____ 2013, by and between the City of Los Angeles (hereinafter referred to as "**City**"), a municipal corporation acting through the Department of Transportation (hereinafter referred to as "**LADOT**"), and the _____ Business Improvement District, a California nonprofit corporation (hereinafter referred to as "**Corporation**") for the management, maintenance, and operation of a portion of the Broadway Streetscape Master Plan Dress Rehearsal, specifically along Broadway Street between _____ Street and _____ Street (hereinafter referred to as "Plaza").

WITNESSETH

WHEREAS, City granted Corporation a contract for two (2) years with up to three (3) one-year options to extend the contract term to manage, maintain, and operate the Plaza;

WHEREAS, the City Council adopted a motion (Council File 11-0183-S1) based on the recommendation of the working group comprises the Los Angeles County Department of Public Health, Department of City Planning, Department of Public Works, and LADOT to implement and support of the Public Placemaking Program and People St Program in the City of Los Angeles;

WHEREAS, the People St Program seeks to utilize the underutilized public street rights-of-way to transform them into open public spaces (pedestrian plazas), and to transform parking spaces into parklets and bike corrals;

WHEREAS, the City Council instructed LADOT to prepare and present agreements with Business Improvement Districts (BIDs) located on Plaza to provide ongoing maintenance, management and operation of the Broadway Streetscape Master Plan Dress Rehearsal (Council File 13-0356);

WHEREAS, Corporation agreed to operate, maintain, and operate designated Plaza areas according to the terms and conditions set forth in this agreement;

WHEREAS, the Mayor authorized the General Manager of LADOT to execute an Agreement with respective Corporation for the management, maintenance, and operation of the Broadway Streetscape Project;

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements set forth herein, the parties hereto agree as follows:

SECTION I INTRODUCTION AND CONDITION PRECEDENT

A. Parties to this Agreement

The Parties to this Agreement are:

- 1. The City of Los Angeles, a municipal corporation, having its principal offices at 200 N. Main Street, Los Angeles, CA 90012.
- 2. The Corporation, known as the _____ Business Improvement District having its office located at _____, Los Angeles, California 90013

B. Representatives of the Parties and Services of Notices.

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

The representative of City shall be, unless otherwise stated in this Agreement:

Margot Ocanas
 Pedestrian Programs Division
 City of Los Angeles
 Department of Transportation
 100 Main Street, 9th Floor
 Los Angeles, CA 90012

The representative of the Corporation shall be, unless otherwise stated in this Agreement:

- 2. *Notices.* Formal notices, demands and communications to be given by either party shall be made in writing and may be affected by personal delivery or certified mail. The notice of breach of contract, liquidated damages, or performance penalties will be sent via certified mail.
- 3. *Changes.* If the name of the person designated the notices, demands or communications or the address of such person is changed, written notice shall be given, in accordance of this Section within five (5) calendar days of

said change.

4. *Insurance Requirements.* Corporation shall comply with all the insurance requirements under this Agreement. All insurance verification must be produced on City Insurance Endorsement forms. Required insurance and Minimum Limits are included in the Standard Provisions for City Contracts (Revised 3/09).
5. *Contract Compliance.* Corporation shall comply with the City contract compliance requirements, including Affirmative Action, Nondiscrimination, Equal Employment Practice, Equal Benefits Ordinance, Living Wage Ordinance, First Source Hiring Ordinance, and Slavery Disclosure Ordinance.
6. *Business Tax Registration Certificate.* Corporation shall obtain a Business Tax Registration Certificate (BTRC) from the City's Office of Finance.
7. *Corporate and Internal Service Documents.* Corporation shall provide corporate and Internal Revenue Service documents showing tax exempt status.

SECTION II TERMS OF AGREEMENT

A. Agreement Period

This Agreement shall be in effect for two (2) years commencing the date the Agreement was attested by the City Clerk.

Renewal of Agreement

City reserves the right to extend this Agreement for up to three (3) one-year renewal options subject to the availability of funds. City shall notify Corporation in writing within sixty (60) calendar days prior to the contract expiration if City desires to extend the contract.

Revocable Agreement

City may at its sole option to revoke this Agreement at any time without cause or liability, and without any obligation to pay any consideration to Corporation.

Modification

This Agreement shall not be modified without a contract amendment, which must be approved by the Mayor and/or City Council prior to contract execution.

No Assignment, Transfer, or Sublet

This Agreement is a privilege that is personal and specific to Corporation. Neither this Agreement nor any of the privileges conferred under it may be sold, conveyed, assigned, encumbered, sublet, or otherwise transferred, in whole or in part, by Corporation without the written consent of City. Any attempt to sell, convey, assign, encumber, and sublet or otherwise transfer this Agreement or

the privileges conferred it under without first obtaining the City's written consent may result in contract termination.

This Agreement is not appurtenant to the land. If Corporation wishes to transfer the responsibility of management, operation and maintenance of the Plaza, Corporation shall make a written request of such transfer to the City. The transfer of such shall be subject to City's sole discretion and written approval. If such a transfer is approved by the City, a new Agreement must be approved by the Mayor and/or City Council prior to contract execution.

SECTION III CORPORATION RESPONSIBILITIES

A. Independent Contractor Status

In rendering service hereunder, Corporation shall be and remain an independent contractor. It is expressly understood and acknowledged by the parties hereto that any amounts payable hereunder shall be paid in gross amount, without reduction for any federal or state withholding or other payroll taxes, or any other governmental taxes or charges. Corporation is responsible for assuming and remitting any applicable federal or state withholding taxes, estimated tax payments, social security payments, unemployment compensation payments, or any other fees or expenses whatsoever.

Corporation shall refrain from any action that would create or tend to create obligations, expressed or implied, on behalf of City, it being understood that Corporation is not and shall not be the legal representative or agent of City and that Corporation shall not be authorized to make any promise, warranty or representation except as specifically provided for in this Agreement or as otherwise agreed to in writing between the parties.

B. Corporation Responsibilities

Corporation shall at all times manage, maintain and operate the Plaza so that it remains in a clean, sanitary, orderly, publically accessible and safe state.

Corporation shall bear all costs or expenses of any kind or nature in connection with the management, operation and maintenance of the Plaza, and shall keep the Plaza free and clear of any liens or claims of lien to the extent arising out of or in any way connected with its use of Corporation's responsibilities as called out in this Agreement.

1. MAINTENANCE RESPONSIBILITIES

Corporation shall manage, operate and maintain, or arrange for the management, operation, and maintenance of the Plaza, in accordance with the approved plans and specifications identified for the Plaza and any other requirements thereto which have been approved by the City in conformance with appropriate City ordinances, guidelines, criteria and

other written direction. The Corporation shall comply with all rules and regulations of the City and County Department of Public Health.

Maintenance of Plaza

The Plaza shall remain publicly accessible while Corporation is conducting Plaza maintenance. Corporation shall maintain the Plaza:

- in a clean, neat, sanitary and safe condition
- to be free of debris and grime
- to be free of pests and vectors
- to not be hazardous to Plaza users
- to be free of debris to allow proper drainage
- to be accessible to individuals with disabilities per the Americans with Disabilities Act Accessibility Guidelines (ADAAG). People who use wheelchairs must be able to enter the Plaza and access all the primary features of the Plaza.

Maintenance of Barrier Planters

Weighted barrier planters shall remain in the fixed location in accordance with the approved plans and specifications identified by City. For the barrier planters, Corporation shall:

- maintain the planters' inside and the outside in a clean, neat, sanitary and safe condition
- promptly remove graffiti, stickers, and other detritus from the planters' inside and outside
- maintain all plants in good health and properly trimmed to maintain visibility lines-of-sight required for the safety of motorists, cyclists, pedestrians, and other users in, on and around the Plaza
- replace any and all vegetation that dies or is damaged and/or stolen

Maintenance of People St Approved Kit-of-Parts elements

The People St approved Kit-of-Parts elements are unsecured personal property including tables, chairs, umbrellas, umbrella stands and trash cans that are placed into and removed from the Plaza by Corporation or subcontractor used by Corporation, within specified hours. For the approved People St Kit-of-Parts elements, Corporation shall:

- keep any People St approved Kit-of-Parts elements in a clean and safe condition
- repair and/or replace People St approved Kit-of-Parts elements with People St approved Kit-of-Parts elements as needed
- clean and empty any trash receptacles
- remove and store People St approved Kit-of-Parts elements from the Plaza and store in a secured area after business hours if Corporation is a business. If Corporation is not a business, the hours for the People St approved Kit-of-Parts elements will be: between 7:00 am

and 10:00 pm. People St approved Kit-of-Parts elements do not include barrier planters which are to remain on the Plaza at all times.

Corporation shall not:

- place or install any personal property elements that are not included as a part of the People St approved Kit-of-Parts elements including, but not limited to, tables, chairs, umbrellas and umbrella stands, signage, murals, street surface painting and public art.
- place or install fixtures or improvements on the Plaza without advance written approval from City.
- add, subtract or otherwise modify the People St approved Kit-of-Parts elements shown in Exhibit A without advance City written approval of such modifications.

Failure to Maintain Plaza

If City determines that Corporation fails to manage, maintain, and operate the Plaza, City shall notify Corporation in writing of a violation. Upon receiving a notice of violation, Corporation shall correct the violation within thirty (30) days.

If Corporation fails to cure any such violation, City may without further notice, declare a default under the terms of this Agreement and may bring any action necessary to specifically enforce the obligations of Corporation growing out of the terms of this Agreement, or apply for such other relief as may be appropriate. Notwithstanding the above, if an emergency situation exists, City may take whatever actions are reasonably necessary in the circumstances to abate the imminent threat.

The actions described in this section are in addition to and not in lieu of any and all legal remedies as provided by law available to the City as a result of Corporation's failure to operate, manage, and maintain the Plaza.

Contractor and Subcontractor

Corporation shall be responsible and ensure that its subcontractors will comply with City, state and federal requirements. All subcontractors must be properly trained and must be licensed pursuant to the applicable law. Corporation: (a) shall be responsible for ensuring that the work of contractor and subcontractor is performed consistent with this Agreement and applicable law; (b) shall be responsible for acts or omissions of the subcontractor under this Agreement to the same degree it is responsible for the acts of its employees; (c) shall be responsible for promptly correcting acts or omissions by any subcontractor; and (d) shall implement a quality control program to ensure that the

work completed by this Agreement is properly performed.

City's Right To Inspect

City shall have the right, but not the obligation, to make periodic inspections of the Plaza, at City's sole discretion and cost, as conditions may warrant.

2. MANAGEMENT AND OPERATIONS RESPONSIBILITIES

Corporation shall be responsible for directing interested event organizers to and supporting event applicants through to the city approved process for reviewing, approving and permitting programmed activities within the below-curb pedestrian plaza areas of the Broadway Dress Rehearsal project.

Corporation shall be responsible for managing and operating a budget to ensure the meeting of maintenance, management and operations of the Plaza per the responsibilities outlined in Section B1.

C. USE OF PLAZA

Corporation shall not engage in any negligent or intentional acts that could reasonably be expected to damage anything in, on, under or about the Plaza or the adjacent Public Rights-of-Way that could cause damage to the Plaza or interfere with City's use of the Plaza or materially interfere with City's use of the Plaza.

Exercise Of Due Care

Corporation shall use, and Corporation shall cause its Agents or Invitees to use, due care at all times to avoid any damage or harm to the Plaza, except for reasonable wear and tear resulting from the public use of the Plaza and to use a reasonable standard of care for the nature of Corporation's management, operations and maintenance of the Plaza.

Plaza Damaged By Persons Other Than Corporation

If the Plaza is fully or partially destroyed or damaged through no fault of Corporation and, as a result thereof, Corporation is no longer able to manage, operate and/or maintain the Plaza, City shall notify Corporation, within thirty (30) calendar days after such event, whether or not City intends to repair, rebuild, or restore the Plaza.

If City decides for any reason to repair, rebuild, or restore any damaged Public Rights-of-Way on which City installed the Plaza, City shall give Corporation at least ten (10) calendar days advance notice so the Corporation can make preparations or allowances for City to make repairs where the Plaza resides. In the event that City must remove the Plaza from the Public Rights-of-Way, City

may reinstall the Plaza in the Public Rights-of-Way once the repairs are made, subject to Corporation obtaining all required permits or approvals if applicable.

Restrictions On Use

Corporation agrees that the following uses of the Plaza by Corporation are inconsistent with the limited purpose of this Agreement and are strictly prohibited.

Alterations

Corporation shall not alter or modify the Plaza without the prior City's written permission.

Improvements

Except as set forth in Exhibit A, Corporation shall not construct or place any permanent structures in or on top of the Plaza unless the improvements are approved by City in writing.

Advertising

Corporation shall not engage in any advertising, commercial uses, vending and/or sales are prohibited in the Plaza, without prior written approval by the City.

D. NOTIFICATIONS

Corporation shall immediately notify City in writing or give City written notice if the Plaza is damaged or threatened by any of the activities conducted by Corporation, employees, or its agents, or by Persons other than Corporation, including, but not limited to:

- any accidents or other incidents which have caused or may cause injury to persons or property, if known, occurring at the Plaza
- any claim for injury, death, property damage or theft which may be asserted against Corporation with respect to the Plaza
- any unusual conditions of which Corporation is aware that may develop in the course of the Plaza operation including, but not limited to, fire, flood, casualty and substantial damage of any kind

Corporation shall designate a person primarily responsible for documents, and responding to and resolving claims for loss or damage including insured claims for loss or damages. Corporation shall provide City with the name, address and telephone number of such person within thirty (30) calendar days of the date of this Agreement.

City shall provide Corporation with the acceptable format for accident and incident reporting, which may be supplemented by Corporation.

Emergency Response Plan

Prior to the Commencement Date for the Plaza, Corporation shall provide City a

current emergency response plan identifying staff who have authority to resolve, twenty-four (24) hours a day, seven (7) days a week, problems or complaints resulting from Corporation's use of the Plaza.

Complaints

If City receives citizen complaints, a field investigation will be completed by City. Complaints to the City should be directed to City's primary contact. City will notify Corporation of any citizen complaint prior to investigation and will provide Corporation with a copy of the complaint.

E. PRIVILEGE

Limited Privilege

This Agreement gives Corporation an approval to use the Plaza for the purposes stated in this Agreement only and, notwithstanding any statement to the contrary herein, this Agreement does not constitute a grant by City of any ownership, leasehold, easement or other property interest or estate whatsoever in the Plaza. Nothing in this Permit shall be construed as granting or creating any franchise rights pursuant to any federal, state or local laws. Permittee accepts the Plaza and the adjacent Public Rights-of-Way in their "AS IS" condition, without representation or warranty of any kind by City and subject to all applicable laws, rules and ordinances governing the use of the Plaza for the Permittee's intended purpose.

Occupancy by Corporation

Corporation's use of the Plaza is temporary and does not constitute abandonment, whether expressed or implied, by City of any of its rights associated with the statutory and customary purpose and use of and management, operations and maintenance in the Plaza.

Non-Exclusive Privilege

The approval granted in this Agreement shall be non-exclusive. Nothing contained in this Agreement shall be construed, in any way, to limit, alter, or waive the right of City to authorize persons or entities other than Corporation to access and use the Plaza.

Subject To City and Public Uses

Notwithstanding anything to the contrary in this Agreement, the approval granted herein, and any and all of Corporation's responsibilities hereunder, shall be subject and subordinate at all times to City's existing and future use of the Plaza for municipal and other purposes, as well as the use of other public agencies including but not limited to public utility agencies. In case of an emergency, as determined by City, the City shall notify Corporation and City may immediately remove the Plaza from the Public Rights-of-Way as required by City. If not an emergency, the City shall provide advance written notification within thirty (30) calendar days to Corporation of the removal of the Plaza from the Permit.

SECTION IV CITY RESPONSIBILITIES

City shall install the real property portions of the Plaza including the spread DG surface treatment, striping, reflective delineators, fully weighted non-vegetated barrier planters, signage and meters and other approved traffic control devices. City shall provide for the structural repair and/or replacement caused by normal wear and tear of real property of the Plaza. City shall provide structural repair and/or replacement of the Plaza's Public Rights-of-Way (including but not limited to, the existing roadway, curb, gutter and sidewalks).

- Barrier Planter Replacement
In the event that one or more weighted barrier planters are damaged due to an accident or other incident, City is responsible for replacing the weighted non-vegetated barrier planter ensuring sufficient weight and spacing of the barrier planter and the Permittee is responsible for replanting the barrier planter to ensure appropriate landscaping is maintained.
- Plaza Signage
Plazas must remain publicly accessible. There must be a sign that states that the Plaza is publicly accessible. City shall be responsible for installing signs so that the design and language is consistent for all Plazas. Each Plaza will be required to have at least two signs.
- Utility Services
City shall furnish, at its cost, any and all utility services necessary or appropriate for Permittee's use of the Plaza. Any utility services installed by Permittee must receive advanced written City approval and/or approval by appropriate public utility agencies. Said utility installations by Corporation may require post-installation inspection by public agencies at Corporation's cost.

It is expressly understood and agreed that
City is under no obligation to manage, operate and/or maintain the Plaza and in no event shall this Permit be construed to impose any such obligation on City.

SECTION V COMPENSATION

- A. Subject to availability of fund, City shall compensate Corporation up to but not to exceed \$350,000 for a term of two (2) years with up to three (3) one-year options of this Agreement for the satisfactory performance of duties and responsibilities described in Section III. Corporation shall submit invoices quarterly. The invoices shall include a summary of work within specific service dates for the quarterly period being billed.
- B. Corporation shall maintain a system of internal fiscal control in accordance with commonly accepted accounting practices as approved by City. Internal fiscal

control comprises the plan of organization and all of the coordinated methods and measures adopted within an organization to safeguard its asset, check the adequacy and the reliability of its accounting data, promote operating efficiency and the assured adherence to prescribed management policies.

- C. Corporation agrees that, should City determine that Corporation's record keeping, reporting techniques or data collection are inadequate to allow for effective monitoring and evaluation of the program, City shall have the right to demand whatever records it deems adequate to correct such deficiencies in matters pertaining to the execution of the Agreement. Should these books and records, still do not meet the minimum standards of the accepted accounting practices, City reserves the right to withhold any or all payments to the Corporation until such time as they meet these standards.
- D. In compliance with the City requirements under Charter Section 262(a), Corporation agrees to submit invoices that conform with City standards and include, at a minimum, the following information:
 - Name and address of company or firm
 - Name and address of City department being billed
 - Date of the invoice and period covered
 - Reference to Agreement number
 - Description of completed task and amount due for the task
 - Certification by a duly authorized officer
 - Remittance address
- E. All invoices shall be submitted on the company's letterhead that contain the company's official logo, or contain other unique and identifying information such as name and address of company or individual. Evidence that tasks have been completed, in the form of a report, shall be attached to the invoices, as applicable.
- F. Invoices and supporting documentation shall be prepared at the sole expenses and responsibility of Corporation. City will not compensate Corporation for any costs incurred for invoice preparation.
- G. City may request in writing, changes to the content and format of the invoice and supporting documentation at any time. City reserves the right to request additional supporting documentation to substantiate costs at any time.
- H. Payment to Corporation may be withheld by City if Corporation fails to comply with the provision of the Agreement.

SECTION V STANDARD PROVISIONS FOR CITY AGREEMENTS

Hereby incorporated by reference into this Agreement are the Standard Provisions for

City Contracts (Revised 3/09), which are attached hereto as Appendix B and included herein by reference.

IN WITNESS WHEREOF, the City and Corporation have caused this agreement to be executed by their duly authorized representatives.

Michael Feuer, City Attorney

Executed for:
The City of Los Angeles

By: _____
Michael Nagle
Deputy City Attorney

By: _____
Jon Kirk Mukri
Interim General Manager
Department of Transportation

Date: _____

Date: _____

Attest:
Holly L. Wolcott, City Clerk

Executed for:

Business Improvement District

By: _____

By: _____

Date: _____

Date: _____

City Council File Number: _____

Said Agreement is Number: _____