

0220-00540-1099

**TRANSMITTAL**

TO The Council	DATE AUG 26 2014	COUNCIL FILE NO. 14-0113
FROM The Mayor	COUNCIL DISTRICT Citywide	

Proposed Fourth Amendment to the Contract with  
Charles and Cynthia Eberly Inc. dba The Eberly Company  
for Landlord Outreach Services Related to the  
Rent Escrow Account Program and Utility Maintenance Program

Approved and transmitted for further processing.  
See the City Administrative Officer report attached.

  
MAYOR  
(Ana Guerrero)

MAS:MMR:NSC:02150001C

BY EGG DEPUTY  
RIS  
CITY CLERK

2014 AUG 26 PM 2: 24

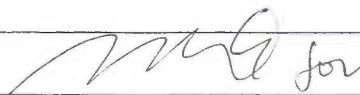
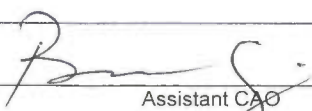
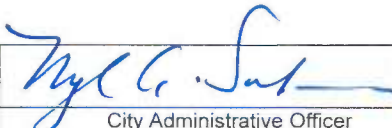
RECEIVED  
CITY CLERK'S OFFICE

**Report From**  
**OFFICE OF THE CITY ADMINISTRATIVE OFFICER**  
**Analysis of Proposed Contract**  
(\$25,000 or Greater and Longer than Three Months)

To: The Mayor	Date: 08-11-14	C.D. No. Citywide	CAO File No.: 0220-00540-1099				
Contracting Department/Bureau: Housing and Community Investment Department (HCID)		Contact: Tim Fargo – (213) 808-8546					
Reference: HCID Transmittal dated June 13, 2014; Received by the City Administrative Officer on June 30, 2014							
Purpose of Contract: Provision of landlord outreach and other services related to the implementation of the Rent Escrow Account Program (REAP) and the Utility Maintenance Program (UMP)							
Type of Contract: ( ) New contract ( X ) Amendment		Contract Term Dates: Amendment: July 1, 2014 – October 31, 2014 Total Term: January 1, 2011 – October 31, 2014					
Contract/Amendment Amount: \$35,000							
Proposed amount \$ 35,000 + Prior award(s) \$ 341,250 = Total \$ 376,250							
Source of funds: Code Enforcement Trust Fund (\$33,250) + Rent Stabilization Trust Fund (\$1,750)							
Name of Contractor: Charles and Cynthia Eberly Inc. dba The Eberly Company							
Address: 8383 Wilshire Blvd #906, Beverly Hills, CA 90211							
	Yes	No	N/A*	8. Contractor has complied with:	Yes	No	N/A*
1. Council has approved the purpose	X			a. Equal Employmt. Oppty./Affirm. Action	X		
2. Appropriated funds are available	X			b. Good Faith Effort Outreach**	X		
3. Charter Section 1022 findings completed	X			c. Equal Benefits Ordinance	X		
4. Proposals have been requested	X			d. Contractor Responsibility Ordinance	X		
5. Risk Management review completed	X			e. Slavery Disclosure Ordinance	X		
6. Standard Provisions for City Contracts included	X			f. Bidder Certification CEC Form 50	X		
7. Workforce that resides in the City: %				*N/A = not applicable ** Contracts over \$100,000			

**COMMENTS**

The Housing and Community Investment Department (HCID) requests authority to execute a Fourth Amendment to Contract No. C-118559 with Charles and Cynthia Eberly Inc., dba The Eberly Company (Contractor) for Rent Escrow Account Program (REAP) and Utility Maintenance Program (UMP) Landlord Outreach services. The current contract expires on June 30, 2014. The proposed Fourth Amendment will extend the term of the contract by four months, from July 1, 2014 through October 31, 2014, for a revised contract term of 46 months. The proposed Fourth Amendment will also increase compensation by \$35,000 for a revised total of \$376,250. The approval of the Council is required for this contract because pursuant to §10.5 of the Los Angeles Administrative Code, contracts with terms longer than three years must be approved by the Council. This Office is in concurrence with the recommendations of the Department.

		
NSC Analyst 02150001C	Assistant CAO	City Administrative Officer

**BACKGROUND**

In 1988, the Mayor and Council established REAP to allow tenants of substandard buildings to place rents voluntarily into an escrow account administered by the City in cases where the landlord has refused or failed to correct cited deficiencies. In 1997, the City created an outreach program for REAP and contracted with community-based organizations for the provision of educational and outreach services to tenants that reside in subject buildings, to increase the likelihood of their participation in REAP. That year, the Mayor and Council also expanded the REAP program to include properties referred under UMP, which focuses on properties where tenants are threatened with utility shut-off as a result of the property owner’s delinquent payments to the Department of Water and Power.

The HCID uses REAP/UMP landlord outreach coordinators as part of its efforts to maintain a cooperative relationship with landlords and property owners. In January 2011, the Mayor and Council authorized HCID to execute a contract with The Eberly Company to provide customized outreach and educational services for property owners subject to REAP/UMP. The original contract had a one-year term effective January 1, 2011 through December 31, 2011, with two one-year renewal options and a compensation amount of \$87,500. The table below shows the history of the contract.

**Contract No. C-118559 Funding History**

	Compensation	Term
Original Contract	\$ 87,500	1/1/2011 - 12/31/2011
1st Amendment	87,500	1/1/2012 - 12/31/2012
2nd Amendment	8,750	1/1/2012 - 12/31/2012
3rd Amendment	157,500	1/1/2013 - 6/30/2014
Proposed 4th Amendment	35,000	7/1/2014 - 10/31/2014
<b>TOTAL</b>	<b>\$ 376,250</b>	<b>1/1/2011 - 10/31/2014</b>

On April 3, 2014, HCID released a Request for Proposals (RFP) to prospective landlord outreach contractors; however, this RFP was withdrawn by HCID on May 30, 2014 to ensure departmental consistency in the application of citywide Business Inclusion Program guidelines. To continue REAP/UMP landlord outreach services, HCID requests a four-month contract extension to allow the Department time to conduct a new RFP for a replacement contract.

Scope of Work

The Contractor will continue to provide services to landlords whose property is in REAP or UMP, which includes, but is not limited to: educating landlords regarding their rights and responsibilities under these programs, assisting landlords to expedite removal of their properties from REAP/UMP, providing advice on how to complete the required work, directing property owners to appropriate service providers, informing property owners of the status of their cases, explaining the provisions of REAP, UMP and pertinent regulations, and facilitating landlord-tenant conflict resolutions. The Contractor will be required to work collaboratively with the REAP/UMP tenant outreach coordinators, HCID staff and other enforcement agencies to expedite the resolution of REAP and UMP cases.

The Department states that the outreach efforts of the Eberly Company have been instrumental in the ability of HCID to resolve REAP and UMP cases. During the course of the contract term, the work of the Contractor reduced the number of outstanding REAP and UMP cases by 505, from 1,698 outstanding cases in 2011 to the 1,193 outstanding cases currently, which represents a 30 percent reduction in unresolved cases.

**RECOMMENDATIONS**

That the Council, subject to the approval of the Mayor:

1. Authorize the General Manager, Housing and Community Investment Department (HCID), or designee, to:
  - a. Execute a Fourth Amendment to Contract No. C-118559 with Charles and Cynthia Eberly Incorporated, DBA The Eberly Company, to extend the term of the contract by four months from July 1, 2014 through October 31, 2014 for a new total term of 46 months, and to increase the compensation amount by \$35,000 for a revised total of \$376,250, in substantial conformance with the draft document attached to the HCID transmittal dated June 13, 2014, subject to the approval of the City Attorney as to form and compliance with City contracting requirements;
  - b. Prepare Controller instructions and make technical adjustments consistent with the Mayor’s action on this matter, subject to the approval of the City Administrative Officer, and instruct the Controller to implement these instructions;

2. Authorize the City Controller to:

- a. Appropriate and expend funds upon proper written demand of the General Manager, HCID, or designee, on an as-needed basis not to exceed \$33,250 from Fund No. 41M, Code Enforcement Trust Fund, Department 43, as follows:

<u>Account No.</u>	<u>Account Name</u>	<u>Amount</u>
43K228	Rent & Code Outreach Program	\$33,250

- b. Appropriate and expend funds upon proper written demand of the General Manager, HCID, or designee, on an as-needed basis not to exceed \$1,750 from Fund No. 440, Rent Stabilization Trust Fund, Department 43, as follows:

<u>Account No.</u>	<u>Account Name</u>	<u>Amount</u>
43K228	Rent & Code Outreach Program	\$1,750

**FISCAL IMPACT STATEMENT**

There is no impact to the General Fund. The funding for the proposed Fourth Amendment to Contract No. C-118559 with The Eberly Company is derived from REAP and UMP administrative fees set aside and deposited in the Code Enforcement Trust Fund (\$33,250) and the Rent Stabilization Trust Fund (\$1,750).



Eric Garcetti, Mayor  
Rushmore D. Cervantes, Interim General Manager

2014 JUL 11 PM 3:25  
CITY ADMINISTRATIVE OFFICER

Regulatory Compliance & Code Bureau  
1200 West 7th Street, 8th Floor, Los Angeles, CA 90017  
tel 213.808.8888 | toll-free 866.557.7368  
hcidla.lacity.org

June 13, 2014

Council File: 09-0404-S2; 11-1783; 14-0113  
Council Districts: Citywide  
Contact Person/s:  
Tim Fargo (213) 808-8546  
Roya Babazadeh (213) 808-8823  
Roberto Aldape (213) 808-8826

The Honorable Eric Garcetti  
Mayor, City of Los Angeles  
200 N. Spring Street, Room 303  
Los Angeles, CA 90012

Attention: Mandy Morales, Legislative Coordinator

**TRANSMITTAL: REQUEST FOR APPROVAL TO EXECUTE FOURTH AMENDMENT TO THE CONTRACT FOR THE LOS ANGELES HOUSING AND COMMUNITY INVESTMENT DEPARTMENT RENT ESCROW ACCOUNT PROGRAM (REAP) AND UTILITY MAINTENANCE PROGRAM (UMP) LANDLORD OUTREACH SERVICES FOR THE PERIOD OF JULY 1, 2014 THROUGH OCTOBER 31, 2014**

**Summary**

In accordance with Los Angeles Administrative Code Section 10.5, the Los Angeles Housing and Community Investment Department (HCIDLA) hereby respectfully requests authority to execute a Fourth Amendment to Contract Number C-118559 with The Eberly Company (Contractor) for the provision of landlord outreach services for the HCIDLA Rent Escrow Account Program (REAP) and Utility Maintenance Program (UMP). These landlord outreach services are essential to the success of REAP in bringing rental properties into compliance with the Los Angeles Municipal Code and restoring properties to minimum standards of habitability. The existing contract expires on June 30, 2014. The proposed amendment will allow HCIDLA to extend the term of the contract for an additional four months to expire on October 31, 2014, and to augment the compensation amount by \$35,000, revising the total contract award from \$341,250 to \$376,250. Approval of the amendment will allow the Contractor to continue assisting property owners in expediting the removal of existing Housing Code violations, ensuring timely closure of REAP/UMP cases, and reducing the rate of recidivism, while HCIDLA conducts a Request for Proposals for a new contract.

REAP/UMP Landlord Outreach Services Funding History		
	Contract Amount	Term
Original Contract	\$87,500	1/1/2011 – 12/31/2011
1 <sup>st</sup> Amendment	\$87,500	1/1/2012 – 12/31/2012
2 <sup>nd</sup> Amendment	\$8,750	1/1/2012 – 12/31/2012
3 <sup>rd</sup> Amendment	\$157,500	1/1/2013 – 6/30/2014
Proposed 4 <sup>th</sup> Amendment	\$35,000	7/1/2014 – 10/31/2014
<b>Total Contract Amount</b>	<b>\$376,250</b>	

A draft of the Fourth Amendment, along with a copy of this transmittal, has been forwarded to the City Attorney for concurrent review and approval as to form.

**Recommendations**

The HCIDLA General Manager respectfully recommends that the Mayor:

1. AUTHORIZE the HCIDLA General Manager, or designee, to execute a Fourth Amendment to Contract No. C-118559 with Charles and Cynthia Eberly Incorporated, DBA The Eberly Company, extending the term of the contract by four months to end on October 31, 2014, and augmenting the contract amount by \$35,000, from \$341,250 to \$376,250, in substantial conformance with the draft document attached to this transmittal, subject to contractor performance, funding availability, and the approval of the City Attorney as to form.

2. AUTHORIZE the City Controller to:
  - a. Expend funds upon proper written demand of the HCIDLA General Manager, or designee, on an as needed basis not to exceed \$33,250.00 from Fund No. 41M, Code Enforcement Trust Fund, Department 43, as follows:

Account No.	Account Name	Amount
43K228	Rent & Code Outreach Program	\$33,250.00

- b. Expend funds upon proper written demand of the HCIDLA General Manager, or designee, on an as needed basis not to exceed \$1,750.00 from Fund No. 440, Rent Stabilization Trust Fund, Department 43, as follows:

Account No.	Account Name	Amount
43K228	Rent & Code Outreach Program	\$1,750.00

3. AUTHORIZE the HCIDLA General Manager, or designee, to prepare Controller’s instructions and make any technical adjustment consistent with the Mayor action on this matter, subject to the approval of the City Administrative Officer, and instruct the Controller to implement these instructions.

## **Background**

In 1988, the City Council and the Mayor established the Rent Escrow Account Program (REAP) whereby tenants could voluntarily submit their rents to a City-administered escrow account in lieu of paying the landlord when the landlord had failed to correct the cited Housing Code violations (C.F. 87-1084-S2; Ordinance No. 164205). Shortly thereafter, the Council and the Mayor also adopted the Rent Reduction Program (RRP) which consisted of a schedule of rent reductions that corresponded to reductions of housing services that rendered a rental unit untenable under California Civil Code Section 1941.1 (C.F. 87-1084-S2; Ordinance No. 164496). The REAP/RRP programs proved effective in motivating landlords to remedy violations of the City's Housing Code and restore their property's condition to at least minimum standards of habitability. In 1997, the City established an outreach program for REAP and contracted with three community-based organizations for the provision of educational and outreach services to tenants residing in subject buildings to increase their likelihood of participation in REAP (C.F. 93-1850-S1). That same year, the City Council and Mayor expanded the REAP program to include properties referred under UMP, which focuses on properties where tenants were threatened with utility shut off because of the property owner's delinquency in payment to the Department of Water and Power. Both REAP and UMP are fee-supported programs. There is an administrative fee of \$50 per unit per month for the residential units in REAP and UMP.

HCIDLA works with REAP/UMP outreach contractors in an effort to maintain a cooperative relationship with landlords and property owners. In January 2011, the City Council and Mayor authorized HCIDLA to execute a contract with The Eberly Company to provide customized outreach and educational services primarily for property owners subject to REAP/UMP following a competitive selection process (C.F. 09-0404-S2). HCIDLA executed a one-year contract with the Contractor, effective January 1, 2011 through December 31, 2011, plus two one-year renewal options, subject to funding availability, contractor performance, and compliance with all applicable contracting regulatory requirements. On June 27, 2012 the Mayor and Council authorized an augmentation in the annual compensation for this contract from \$87,500 to \$105,000 annually and an increase in the term of the contract by six additional months for a total term of 42 months to expire on June 30, 2014 (C.F. 11-1783).

On April 3, 2014, a Request for Proposals (RFP) was released to solicit bids from prospective landlord outreach contractors (C.F. 14-0113). HCIDLA withdrew the RFP on May 30, 2014 to ensure Departmental consistency in the application of citywide Business Inclusion Program guidelines. As the City re-releases the RFP, the current contract is set to expire on June 30, 2014. In order to continue REAP/UMP landlord outreach services while the RFP is conducted, HCIDLA requests a four-month contract extension of the current landlord outreach contractor.

## **Scope of Work**

The Contractor will continue to provide services to landlords whose property is in REAP or UMP. The Contractor will provide counseling and technical assistance to landlords pertaining REAP and UMP, including but not limited to educating landlords regarding their rights and responsibilities under these programs, assisting them to expedite removal of their properties from REAP/UMP, providing assistance on how to complete the work required, linking property owners to appropriate service providers, providing property owners with the status of their cases, explaining the provisions of REAP and UMP and pertinent regulations, and facilitating landlord-tenant conflict resolutions, if needed. The Contractor must work



collaboratively with the tenant outreach contractors, the HCIDLA staff and other enforcement agencies such as Los Angeles County Health Department to expedite termination of the REAP cases.

The outreach efforts of the Eberly Company have been instrumental in the Department's ability to resolve habitability violations on REAP properties and close REAP cases. From January 1, 2011 to December 31, 2013, 1,747 new cases were referred to the Contractor who assisted in the closing of 2,227 new and existing cases through performing various outreach activities. This represents more than 8,567 REAP and UMP units that were brought into compliance with health & safety and housing codes. During that time period, 27% more cases had been closed than opened.

### **Fiscal Impact**

There is no impact to the General Fund. Funding for the landlord outreach services agreement for the Rent Escrow Account Program and Utility Maintenance Program (REAP/UMP) (\$35,000) is derived from REAP and UMP administrative fees that are set aside for this purpose and deposited in the Code Enforcement Trust Fund (\$33,250) and the Rent Stabilization Trust Fund (\$1,750).

Prepared by:



TIM FARGO  
Management Assistant  
Compliance Division

Reviewed by:



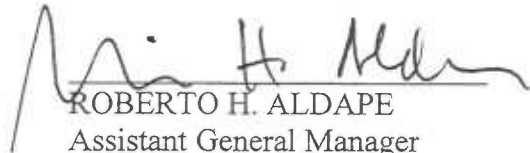
TONY PELAEZ  
Housing Investigator II  
Compliance Division

Reviewed by:



ROYA BABAZADEH  
Director of Enforcement Operations  
Compliance Division

Reviewed by:



ROBERTO H. ALDAPE  
Assistant General Manager  
Regulatory Compliance and Code Bureau

Approved by:



RUSHMORE D. CERVANTES  
Interim General Manager  
HCIDLA

Attachments:

1. Draft Fourth Amendment to Agreement No. C-118559 with The Eberly Company

FOURTH AMENDMENT  
TO AGREEMENT NUMBER **C-118559** OF CITY OF LOS ANGELES CONTRACT  
BETWEEN  
THE CITY OF LOS ANGELES  
AND  
**CHARLES AND CYNTHIA EBERLY, INC. DBA THE EBERLY COMPANY**  
RELATING TO  
RENT ESCROW ACCOUNT PROGRAM (REAP) AND  
UTILITY MAINTENANCE PROGRAM (UMP) LANDLORD OUTREACH SERVICES

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THIS FOURTH AMENDMENT to Agreement Number **C-118559** of the City of Los Angeles Contract is made and entered into, by and between the City of Los Angeles, hereinafter referred to as the City, and **CHARLES AND CYNTHIA EBERLY, INC. DBA THE EBERLY COMPANY**, a California for-profit corporation, hereinafter referred to as the Contractor.

WITNESSETH

WHEREAS, the City and the Contractor have entered into an agreement wherein the Contractor shall provide certain outreach services to landlords and property owners of buildings in the Rent Escrow Account Program (REAP) and Utility Maintenance Program (UMP) of the Housing and Community Investment Department (HCID), formerly known as Los Angeles Housing Department (LAHD), in connection with the said agreement, effective January 1, 2011, which together with all amendments thereto shall hereinafter be referred to as the Agreement; and

WHEREAS, §505 of the Agreement provides for amendments to the Agreement; and

WHEREAS, the City and the Contractor are desirous of amending the Agreement as authorized by the City Council and the Mayor pursuant (refer to Council File Nos. **09-0404-S2, 11-1783**, and \_\_\_\_\_ dated January 24, 2011, June 27, 2012, and \_\_\_\_\_ respectively; and City Administrative Officer's report dated \_\_\_\_\_, Report Number \_\_\_\_\_; signed by Mayor on \_\_\_\_\_), which authorized the General Manager or designee thereof, of the Housing and Community Investment Department to prepare and execute an amendment to the Agreement for the purpose of: a) extending the term of performance under the Agreement through October 31, 2014; and b) adding additional funds in the amount of Thirty Five Thousand Dollars (**\$35,000**), for a new total contract amount of Three Hundred Seventy Six Thousand Two Hundred Fifty Dollars (**\$376,250**); and

WHEREAS, this Amendment is necessary and proper to continue and/or complete certain activities authorized under the Agreement;

NOW, THEREFORE, the City and the Contractor agree that the Agreement be amended, effective July 1, 2014, as follows:

FOURTH AMENDMENT

§1. Amend Section 201. Time of Performance by deleting the ending date of June 30, 2014 and substituting therefore the ending date of October 31, 2014. This amendment adds four (4) months to the term of this Agreement, for a total of 46 months.

§2. Amend Section 301A Compensation by deleting the total dollar amount of Three Hundred Forty One Thousand Two Hundred Fifty Dollars (\$341,250) for a new total amount of Three Hundred Seventy Six Thousand Two Hundred Fifty Dollars (\$376,250).

This amendment adds an additional Thirty Five Thousand Dollars (**\$35,000**), for a new total contract amount of Three Hundred Seventy Six Thousand Two Hundred Fifty Dollars (**\$376,250**).

§3. Amend and delete all references to the Los Angeles Housing Department (LAHD) and replace with the Los Angeles Housing and Community Investment Department (HCID).

§4. Delete and replace section **§420. Inventions, Patents and Copyrights** with the following

A. Reporting Procedure for Inventions

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

B. Rights to Use Inventions

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

C. Copyright Policy

1. For purposes of this Agreement when copyrightable material (Material) is developed under this Agreement, ownership of the Material shall be governed by the provisions set forth below in Sections E through J. Notwithstanding such ownership rights, the Grantor, State, City and Contractor shall each have an unencumbered right, and a non-exclusive,

- irrevocable, royalty-free license, to use, access, manufacture, improve upon, and allow others to do so for all government purposes, any Material developed under this Agreement.
2. The Grantor shall have an unencumbered right, and a non-exclusive, irrevocable, royalty-free license, to use, manufacture, improve upon, and allow others to do so for all government purposes, any Material developed under this Agreement or any Copyright purchased under this Agreement. Contractor shall comply with 29 CFR 97.34

#### D. Rights to Data

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

#### E. Intellectual Property Provisions for California Sub-Grants – IF APPLICABLE

1. This Agreement is funded in part with federal "pass through" funds from the State of California (State). The following requirements are applicable to this Agreement. In any Contract funded in whole or in part by the federal government, City/State may acquire and maintain the Intellectual Property rights, title, and ownership, which result directly or indirectly from the Contract, except as provided in 37 Code of Federal Regulations Part 401.14. However, pursuant to 29 CFR Part 97.34 the federal government shall have a royalty-free, non-exclusive, irrevocable, paid-up license throughout the world to use, duplicate, or dispose of such Intellectual Property throughout the world in any manner for governmental purposes and to have and permit others to do so.

#### F. Ownership

1. Except where City/State has agreed in a signed writing to accept a license, City/State shall be and remain, without additional compensation, the sole owner of any and all rights, title and interest in all intellectual property, from the moment of creation, whether or not jointly conceived, that are made, conceived, derived from, or reduced to practice by Contractor or City/State and which result directly or indirectly from this Agreement.
2. For the purposes of this Agreement, Intellectual Property means recognized protectable rights and interest such as: patents, (whether or not issued) copyrights, trademarks, service marks, applications for any of the foregoing, inventions, trade secrets, trade dress, logos, insignia, color combinations, slogans, moral rights, right of publicity, author's rights, contract and licensing rights, works, mask works, industrial design rights, rights of priority, know how, design flows, methodologies, devices, business processes, developments, innovations, good will, any data or information maintained, collected or stored in the ordinary course of business by City/State, and all other legal rights protecting intangible

proprietary information as may exist now and/or hereafter come into existence, and all renewals and extensions, regardless of whether those rights arise under the laws of the United States, or any other state, country or jurisdiction.

3. For the purposes of the definition of Intellectual Property, “works” means all literary works, writings and printed matter including the medium by which they are recorded or reproduced, photographs, art work, pictorial and graphic representations and works of a similar nature, film, motion pictures, digital images, animation cells, and other audiovisual works including positives and negatives thereof, sound recordings, tapes, educational materials, interactive videos, computer software and any other materials or products created, produced, conceptualized and fixed in a tangible medium of expression. It includes preliminary and final products and any materials and information developed for the purposes of producing those final products. “Works” does not include articles submitted to peer review or reference journals or independent research projects.
4. In the performance of this Agreement, Contractor may exercise and utilize certain of its Intellectual Property in existence prior to the effective date of this Contract. In addition, under this Agreement, Contractor may access and utilize certain of City’s/State’s Intellectual Property in existence prior to the effective date of this Contract. Except as otherwise set forth herein, Contractor shall not use any of City’s/State’s Intellectual Property now existing or hereafter existing for any purposes without the prior written permission of City/State. Except as otherwise set forth herein, neither Contractor nor City/State shall give any ownership interest in or rights to its Intellectual Property to the other Party. If, during the term of this Agreement, Contractor accesses any third-party Intellectual Property that is licensed to City/State, Contractor agrees to abide by all license and confidentiality restrictions applicable to City/State in the third-party’s license agreement.
5. Contractor agrees to cooperate with City/State in establishing or maintaining City/State’s exclusive rights in the Intellectual Property, and in assuring City’s/State’s sole rights against third parties with respect to the Intellectual Property. If Contractor enters into any agreements or subcontracts with other parties in order to perform this Contract, Contractor shall require the terms of the agreement(s) to include all Intellectual Property provisions herein. Such terms must include, but are not limited to, the subcontractor assigning and agreeing to assign to City/State all rights, title and interest in Intellectual Property made, conceived, derived from, or reduced to practice by the subcontractor, Contractor or City/State and which result directly or indirectly from this Contract or any subcontract.
6. The requirement for Contractor to include all Intellectual Property Provisions in all agreements and subcontracts it enters into with other parties does not apply to agreements or subcontracts that are for customized and on-the-job training as authorized under 20 CFR 663.700-730.
7. Contractor further agrees to assist and cooperate with City/State in all reasonable respects, and execute all documents and, subject to reasonable availability, give testimony and take all further acts reasonably necessary to acquire, transfer, maintain, and enforce City’s/State’s Intellectual Property rights and interests.

#### G. Retained Rights/License Rights

1. Except for Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or City/State and which result directly or indirectly from this Agreement,

Contractor shall retain title to all of its Intellectual Property to the extent such Intellectual Property is in existence prior to the effective date of this Contract. Contractor hereby grants to City/State, without additional compensation, a permanent, non-exclusive, royalty free, paid-up, worldwide, irrevocable, perpetual, non-terminable license to use, reproduce, manufacture, sell, offer to sell, import, export, modify, publicly and privately display/perform, distribute, and dispose of Contractor's Intellectual Property with the right to sublicense through multiple layers, for any purpose whatsoever, to the extent it is incorporated in the Intellectual Property resulting from this Agreement, unless Contractor assigns all rights, title and interest in the Intellectual Property as set forth herein.

2. Nothing in this provision shall restrict, limit, or otherwise prevent Contractor from using any ideas, concepts, know-how, methodology or techniques related to its performance under this Agreement, provided that Contractor's use does not infringe the patent, copyright, trademark rights, license or other Intellectual Property rights of City/State or third party, or result in a breach or default of any provisions herein or result in a breach of any provisions of law relating to confidentiality.

#### H. Copyright

1. Contractor agrees that for purposes of copyright law, all works made by or on behalf of Contractor in connection with Contractor's performance of this Contract shall be deemed "works for hire." Contractor further agrees that the work of each person utilized by Contractor in connection with the performance of this Contract will be a "work made for hire," whether that person is an employee of Contractor or that person has entered into an agreement with Contractor to perform the work. Contractor shall enter into a written agreement with any such person that: (i) all work performed for Contractor shall be deemed a "work made for hire" under the Copyright Act and (ii) that person shall assign all right, title, and interest to City/State to any work product made, conceived, derived from or reduced to practice by Contractor or City/State and which result directly or indirectly from this Contract.
2. All materials, including, but not limited to, computer software, visual works or text, reproduced or distributed pursuant to this Agreement that include Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or City/State and which result directly or indirectly from this Agreement may not be reproduced or disseminated without prior written permission from City/State.

#### I. Patent Rights

1. With respect to inventions made by Contractor in the performance of this Contract, which did not result from research and development specifically included in the Agreement's scope of work, Contractor hereby grants to City/State a license for devices or material incorporating, or made through the use of such inventions. If such inventions result from research and development work specifically included within the Agreement's scope of work, then Contractor agrees to assign to City/State, without additional compensation, all its right, title and interest in and to such inventions and to assist City/State in securing United States and foreign patents with respect thereto.

## J. Third-Party Intellectual Property

1. Except as provided herein, Contractor agrees that its performance of this Agreement shall not be dependent upon or include any Intellectual Property of Contractor or third party without first: (i) obtaining City/State's prior written approval; and (ii) granting to or obtaining for City/State's, without additional compensation, a license, as described in Section G. above, for any of Contractor's or third-party's Intellectual Property in existence prior to the effective date of this Agreement. If such a license upon these terms is unattainable, and City/State determines that the Intellectual Property should be included in or is required for Contractor's performance of this Agreement, Contractor shall obtain a license under terms acceptable to City/State.

## K. Warranties

1. Contractor represents and warrants that:
  - a. It has secured and will secure all rights and licenses necessary for its performance of this Agreement. Neither Contractor's performance of this Agreement, nor the exercise by either Party of the rights granted in this Agreement, nor any use, reproduction, manufacture, sale, offer to sell, import, export, It modification, public and private display/performance, distribution, and disposition of the Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or City/State and which result directly or indirectly from this Agreement will infringe upon or violate any Intellectual Property right, non-disclosure obligation, or other proprietary right or interest of any third-party or entity now existing under the laws of, or hereafter existing or issued by, any state, the United States, or any foreign country. There are currently no actual or threatened claims by any such third party based on an alleged violation of any such right by Contractor.
  - b. Neither Contractor's performance nor any part of its performance will violate the right of privacy of, or constitute a libel or slander against any person or entity.
  - c. It has secured and will secure all rights and licenses necessary for Intellectual Property including, but not limited to, consents, waivers or releases from all authors of music or performances used, and talent (radio, television and motion picture talent), owners of any interest in and to real estate, sites locations, property or props that may be used or shown.
  - d. It has not granted and shall not grant to any person or entity any right that would or might derogate, encumber, or interfere with any of the rights granted to City/State in this Agreement.
  - e. It has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.
  - f. It has no knowledge of any outstanding claims, licenses or other charges, liens, or encumbrances of any kind or nature whatsoever that could affect in any way Contractor's performance of this Agreement.
2. City/State make no warranty that the intellectual property resulting from this subgrant Agreement does not infringe upon any patent, trademark, copyright or the like, now existing or subsequently issued.



## L. Intellectual Property Indemnity

1. Contractor shall indemnify, defend and hold harmless City/State and its licensees and assignees, and its officers, directors, employees, agents, representatives, successors, and users of its products, ("Indemnities") from and against all claims, actions, damages, losses, liabilities (or actions or proceedings with respect to any thereof), whether or not rightful, arising from any and all actions or claims by any third party or expenses related thereto (including, but not limited to, all legal expenses, court costs, and attorney's fees incurred in investigating, preparing, serving as a witness in, or defending against, any such claim action, or proceeding, commenced or threatened) to which any of the Indemnities may be subject, whether or not Contractor is a party to any pending or threatened litigation, which arise out of or are related to (i) the incorrectness or breach of any of the representations, warranties, covenants or agreements of Contractor pertaining to Intellectual Property; or (ii) any Intellectual Property infringement, or any other type of actual or alleged infringement claim, arising out of City/State's use, reproduction, manufacture, sale, offer to sell, distribution, import, export, modification, public and private performance/display, license, and disposition of the Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or City/State and which result directly or indirectly from this Agreement. This indemnity obligation shall apply irrespective of whether the infringement claim is based on a patent, trademark or copyright registration that was issued after the effective date of this Contract. City/State reserves the right to participate in and/or control, at Contractor's expense, any such infringement action brought against City/State.
2. Should any Intellectual Property licensed by Contractor to City/State under this Agreement become the subject of an Intellectual Property infringement claim, Contractor will exercise its authority reasonably and in good faith to preserve City/State's right to use the licensed Intellectual Property in accordance with this Agreement at no expense to City/State. City/State shall have the right to monitor and appear through its own counsel (at Contractor's expense) in any such claim or action. In the defense or settlement of the claim, Contractor may obtain the right for City/State to continue using the licensed Intellectual Property or, replace or modify the licensed Intellectual Property so that the replaced or modified Intellectual Property becomes non-infringing provided that such replacement or modification is functionally equivalent to the original licensed Intellectual Property. If such remedies are not reasonably available, City/State may be entitled to a refund of all monies paid under this Agreement, without restriction or limitation of any other rights and remedies available at law or in equity.
3. Contractor agrees that damages alone would be inadequate to compensate City/State for breach of any term of these Intellectual Property provisions herein by Contractor. Contractor acknowledges City/State would suffer irreparable harm in the event of such breach and agrees City/State shall be entitled to obtain equitable relief, including without limitation an injunction, from a court of competent jurisdiction, without restriction or limitation of any other rights and remedies available at law or in equity.

## M. Survival

1. The provisions set forth herein shall survive any termination or expiration of this Agreement or any project schedule.

§5. Amend to add the following section to read as follows:

"Section 431. Compliance with Iran Contracting Act of 2010

In accordance with California Public Contract Code Sections 2200-2208, all bidders submitting proposals for, entering into, or renewing contracts with the City of Los Angeles 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."

§6. Except as herein amended, all terms and conditions of the Agreement shall remain in full force and effect.

§7. This Amendment is executed in four (4) originals, each of which is deemed to be an original. This Amendment includes ten (10) pages which constitute the entire understanding and agreement of the parties.

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

APPROVED AS TO FORM:

MICHAEL N. FEUER, City Attorney

By: \_\_\_\_\_  
Deputy / Assistant City Attorney

Date: \_\_\_\_\_

ATTEST:

HOLLY L. WOLCOTT, Interim City Clerk

By: \_\_\_\_\_  
Deputy City Clerk

Date: \_\_\_\_\_

(Contractor's Corporate Seal or Notary)

Executed this \_ day of \_\_\_\_\_, 2014

For: THE CITY OF LOS ANGELES

RUSHMORE D. CERVANTES  
Interim General Manager  
Housing and Community Investment  
Department

By: \_\_\_\_\_

Executed this \_ day of \_\_\_\_\_, 2014

For: CHARLES AND CYNTHIA EBERLY,  
INCORPORATED DBA THE EBERLY  
COMPANY

By: \_\_\_\_\_

Print name:

Title:

By: \_\_\_\_\_

Print name:

Title:

City Business License Number: 0000160994  
Internal Revenue Service ID Number: 95-4113766

Council File: 09-0404-S2, 11-1783, and \_\_\_\_\_; Date of Approval: January 24, 2011, June 27, 2012, and \_\_\_\_\_ respectively; CAO File Number: \_\_\_\_\_; Date of Approval: \_\_\_\_\_

Said Agreement is Number C-118559 of City Contracts, Amendment 4