

REPORT FROM

OFFICE OF THE CITY ADMINISTRATIVE OFFICER

Date: September 19, 2013

CAO File No. 0220-04698-0015

Council File No.

Council District: 9

To: The Council
The Mayor

From: Miguel A. Santana, City Administrative Officer *MAS*
MS

Reference: Assignment and Assumption Agreement between the City and CRA/LA-DLA

SUBJECT: THE NEVIN AVENUE ELEMENTARY SCHOOL PEDESTRIAN SAFETY IMPROVEMENTS PROJECT

SUMMARY

The Community Redevelopment Agency of the City of Los Angeles (Former Agency) sought grant funds from the California Department of Transportation (Caltrans) Safe Routes to School Program. The Program provides funds to improve the ability of primary, middle and high school students to safely walk and bicycle to school. In 2009, the Former Agency received a \$855,000 grant, with a \$245,000 match from the CRA/LA, for the Nevin Avenue Elementary School Pedestrian Safety Improvements Project. The proposed project would construct improvements to create safer crosswalks and bus stops, as well as slow traffic to make a better walking environment to encourage children and their parents to walk to school.

Nevin Avenue Elementary School is located at 1569 East 32nd Street in Southeast Los Angeles. The school is surrounded by commercial, industrial, and institutional uses that present numerous infrastructure and commuter deficiencies that make walking to school a challenge for students. The proposed project promises to create safety improvements to the surrounding sidewalks and crosswalks to create a safer walking environment that will encourage children and their parents to walk to school. Improvements will be located along 32nd Street from Morgan Avenue to Compton Avenue, along the southern boundary of the school; Nevin Avenue from Adams Boulevard to 32nd Street, along the eastern boundary of the school; and Compton Avenue from 33rd Street to Adams Boulevard on the western boundary of the school. Specific improvements include:

- Reconstruct damaged and uneven sidewalks, roadway and drainage devices; and,
- Construct new enhanced crosswalks with curb extensions, curb ramps, landscaping and street trees and traffic calming devices in front of the school.

The Community Redevelopment Agency/Los Angeles (Former Agency) was dissolved on February 1, 2012 per Assembly Bill 1x26, and followed by a Successor Agency, CRA/LA-A Designated Local Authority (CRA/LA-DLA). The CRA/LA-DLA is tasked with administering the process through which

the business of the Former Agency is wound down and concluded, as established in the redevelopment legislation. As part of this administrative process, all proposed expenditures by the CRA/LA-DLA must be listed on a Recognized Obligation Payment Schedule (ROPS), a six-month expenditure plan, and must be approved by CRA/LA-DLA's Governing Board, Oversight Board and the State Department of Finance (DOF) which possesses final authority. On May 23, 2013, DOF gave its final approval of CRA/LA-DLA's ROPS 13-14A, which covers the period from July 2013 through December 2013. This included approval of a payment of \$245,000 for the CRA/LA match for the Nevin Avenue Elementary School Pedestrian Safety Improvements Project.

In order to complete a revised grant project, the Bureau of Street Services and the CRA-LA/Designated Local Authority (DLA) have negotiated an Assignment and Assumption Agreement (Attached) that will allow the Bureau to continue to implement this grant. The Bureau requests authority to execute the Agreement. In order to accept the project, the Council and Mayor should approve the attached agreement and assign the contract to the Bureau of Street Services.

The Bureau has reviewed the grant and implementation time frame and has indicated that they can administer and implement the grant without additional resources. No contractual obligations exist for this project. If the Grant Agreement does not provide sufficient funding to reimburse all related costs, then the Council and Mayor should waive any unfunded related cost reimbursement. If scope changes and/or additional funding are required in the future, the Bureau will return to the Council and Mayor with recommended actions.

The Bureau will begin the design of the project during 2013-14 and it is projected that the project will be completed in 2014-15.

RECOMMENDATIONS

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

1. Approve execution of the Assignment and Assumption Agreement (Attached) between the City of Los Angeles and the Community Redevelopment Agency/Los Angeles, A Designated Local Authority;
2. Instruct the Director, Bureau of Street Services, or designee, to:
 - a. Execute the Assignment and Assumption Agreement relative to the Nevin Avenue Elementary School Pedestrian Safety Improvements Project in the amount of \$855,000;
 - b. Implement the Project on behalf of the City and to negotiate, execute and submit to the grantor all necessary documents relative to the grant award, subject to the approval of the City Attorney as to form;
 - c. Spend up to the grant amount of \$855,000 in accordance with the grant award;
 - d. Prepare Controller instructions for any technical adjustments, subject to the approval of the City Administrative Officer, and authorize and instruct the Controller to implement the instructions;

- e. Return to the Council with recommendations if the project scope changes and/or additional funding is required;
 - f. Immediately submit an invoice to the CRA/LA-DLA for payment of the \$245,000 match to the City; and,
 - g. Receive and deposit the \$245,000 match payment to the Transportation Grant Fund No. 655, Department 94.
3. Request the Controller to establish a new account entitled "Nevin Avenue Elementary School Pedestrian Safety Improvements Project" and appropriate funds in the amount of \$1,100,000 from the cash available balance to the new account, both within the Transportation Grant Fund No. 655, Dept. 94; and,
 4. Waive any related cost reimbursements not funded by the grant.

FISCAL IMPACT STATEMENT

Upon execution of the Assignment and Assumption Agreement with the Community Redevelopment Agency/Los Angeles, A Designated Local Authority the City will be authorized to spend up to \$1,100,000 of funds provided by a non-City grant program and the CRA/LA-DLA. There is no General Fund impact.

ASSIGNMENT AND ASSUMPTION AGREEMENT
(NEVIN AVENUE ELEMENTARY SCHOOL PEDESTRIAN SAFETY IMPROVEMENTS
PROJECT,
SAFE ROUTES TO SCHOOL GRANT)

This Assignment and Assumption Agreement (the "Agreement"), is made as of this _____ day of _____, 2013 (the "Effective Date"), by and among CRA/LA, A Designated Local Authority, a public body formed under California Health & Safety Code Section 34173(d)(3) (the "Assignor" or "CRA/LA-DLA"), the City of Los Angeles, a municipal corporation acting by and through its Bureau of Street Services (the "Assignee" or the "City"), with reference to the following recitals of fact:

RECITALS:

A. WHEREAS, the Community Redevelopment Agency of the City of Los Angeles (the "Former Agency") was awarded a grant in the amount of Eight Hundred Fifty Five Thousand and No/Hundredths Dollars (\$855,000.00) by the California Department of Transportation ("Caltrans") on August 25, 2009 (the "Grant") for the Nevin Avenue Elementary School Pedestrian Safety Improvements Project (the "Project").

B. WHEREAS, the Grant is evidenced by an award letter, or equivalent documentation, and/or certain agreements and documents executed by the Former Agency and Caltrans regarding the Former Agency's obligation to utilize the Grant for certain specified purposes (collectively, the "Grant Documents"). Copies of all of the original executed Grant Documents are attached as **Exhibit A**.

C. WHEREAS, as of February 1, 2012, the Former Agency was dissolved pursuant to California Health & Safety Code Section 34172.

D. WHEREAS, in accordance with California Health & Safety Code Section 34173(d)(3), CRA/LA-DLA was formed to serve as the successor agency of the Former Agency. In accordance with California Health & Safety Code Section 34175(b), all property and assets of the Former Agency, including, but not limited to, the rights to the Grant, were transferred to the control of CRA/LA-DLA. As the successor-in-interest to the Former Agency, CRA/LA-DLA is a party to the Grant Documents, and has all of the Former Agency's rights, duties, and obligations thereunder.

E. WHEREAS, the City has an interest in the completion of the Project funded by the Grant.

F. WHEREAS, Assignor desires to assign its rights, title, interests and obligations in and to the Grant, as evidenced by the Grant Documents, to the Assignee, and the Assignee desires to assume Assignor's rights, title, interests and obligations in and to the Grant as more fully set forth herein.

G. WHEREAS, Assignor desires to transfer the amount of Two Hundred Forty Five Thousand Dollars (\$245,000.00) (the "Matching Funds") to the Assignee provided that the conditions set forth in this Agreement are satisfied, and the Assignee desires to accept the Matching Funds from the Assignor.

H. WHEREAS, Assignor is authorized to enter into this Agreement pursuant to California Health & Safety Code Section 34177(i) and California Health & Safety Code Section 34177(c).

I. WHEREAS, Assignor's Governing Board approved and authorized: (i) Assignor's assignment of the Grant, as evidenced by the Grant Documents, to Assignee, and (ii) allocation and disbursement of the Matching Funds, on June 21, 2012, and the Assignor's Oversight Board approved and authorized such actions on July 12, 2012.

J. WHEREAS, the City Council of the City approved and authorized the City's assumption of the Grant, as evidenced by the Grant Documents, the acceptance of the Matching Funds, from Assignor on _____, 2013.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto hereby agree as follows:

A G R E E M E N T:

1. Assignment. As of the Effective Date and subject to the provisions of Section 5 hereof, Assignor hereby assigns to the Assignee all of Assignor's rights, titles, interests to the Grant, and all of Assignor's obligations under the Grant Documents. In addition, Assignor hereby represents to Assignee that no Grant Proceeds have been disbursed to Assignor.

2. Assumption. As of the Effective Date and subject to the provisions of Section 5 hereof, (i) the Assignee hereby accepts the above assignment of the Assignor's rights, titles, interests to the Grant. All references in the Grant Documents to the Former Agency or the Assignor, as applicable, shall hereafter be deemed to be references to the Assignee.

3. Representations Regarding Grant. The Assignor represents that, as of the Effective Date, the undisbursed amount of the Grant is Eight Hundred Fifty Five Thousand and No/Hundredths Dollars (\$855,000.00), there is no default under the Grant Documents, and no event has occurred or failed to occur which, with the passage of time or the giving of notice or both, would constitute a default by Assignor under the Grant Documents.

4. Disbursement of Matching Funds. In consideration for the assumption of the Grant as set forth herein, the Assignor shall deliver to the Assignee the Matching Funds within thirty (30) days following the date on which all of the following have occurred: (i) the State of California Department of Finance (the "DOF") has approved of the Assignor's Recognized Obligations Payment Schedule (the "ROPS") that lists the obligation to fund the Matching Funds as an "enforceable obligation" (as such term is defined in California Health & Safety Code Section 34171(d) of the Assignor, or the applicable time period for any challenge or review by the DOF, or any other party, of such ROPS has expired; and (ii) pursuant to such ROPS, the Assignor has received the amount of the Matching Funds from the office of the Auditor-Controller of the County of Los Angeles (the "Auditor-Controller"). Following the receipt of the Matching Funds by the Assignor, the Assignor shall deliver the Matching Funds to the Assignee by check payable to the Assignee. Upon receipt of the Matching Funds, the Assignee shall utilize the Matching Funds for the sole and exclusive purpose of funding the Assignee's share of the funds in accordance with the Grant Documents. The use of the Matching Funds for any other purpose is prohibited. To the extent all, or any portion of, the Matching Funds are not disbursed for Project-related expenses, in

accordance with the Grant Documents, then the Assignee shall promptly return such funds to the Assignor. Every six months, the Assignee shall file a report with the Assignor, advising of the status of the Project for which the Matching Funds were delivered, including amounts disbursed during the six month period, amounts disbursed to date, the pending balance, and funds anticipated to be returned, if any. The Assignee shall retain all books and records regarding the Matching Funds for no less than six (6) years following the date of disbursement by Assignee in accordance with the Grant Documents. Upon prior written notice to Assignee, the Assignor shall have the right to inspect the Assignee's books and records in connection with the use of the Matching Funds. Such right shall survive the expiration, or termination, of this Agreement.

5. Apportionment of Liability. Assignee shall be responsible for all claims, liabilities, obligations, costs and expenses of every kind and nature whatsoever that Assignor or Caltrans may suffer or incur and that arise from or are related, directly or indirectly, to conditions, actions, inactions or events that first existed or occurred from and after the Effective Date with respect to the Grant. Assignor shall be responsible for all claims, liabilities, obligations, costs and expenses of every kind and nature whatsoever that Assignee or Caltrans may suffer or incur and that arise from or are related, directly or indirectly, to conditions, actions, inactions or events that first existed or occurred prior to the Effective Date with respect to the Grant. Unless paid by Assignor from funds otherwise available, Assignor agrees to timely take all such actions as necessary to include on the appropriate Recognized Obligation Payment Schedule ("ROPS") all costs associated with its obligations under this Section 5.

6. Assignee Contact. Assignee's address for purposes of notices under the Grant Documents is _____.

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

8. Covenant of Further Assurances. The parties hereto hereby agree to execute such other documents and perform such other acts as may be necessary or desirable to carry out the purposes of this Agreement. The Assignor shall use good faith and commercially reasonable efforts to list the Matching Funds as an enforceable obligation (as such term is defined in California Health & Safety Code Section 34171(d)) on each ROPS prepared and submitted in accordance with California Health & Safety Code Section 34177(m) until such time as the DOF approves of such ROPS (or the time period for the DOF, or any other party, to challenge such ROPS has expired); provided, however, the parties agree and acknowledge that unless and until the ROPS has been approved and, pursuant to such ROPS, the Auditor-Controller delivers the funds for the Matching Funds to the Assignor, the Assignor shall have no obligation to provide the Matching Funds to the Assignee. In the event that either: (i) the DOF fails to approve of the ROPS, or (ii) the Auditor-Controller fails to deliver proceeds to fund the Matching Funds to the Assignor pursuant to such ROPS, then the Assignor shall have no obligation to deliver the Matching Funds to the Assignee, and the Assignee shall release the Assignor from all liability in connection with such obligation.

9. Successors and Assigns. This Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their respective successors and permitted assigns.

10. No Attorneys' Fees. Should any action be brought arising out of this Agreement, including, without limitation, any action for declaratory or injunctive relief, each party shall bear their own attorneys' fees and costs and expenses of investigation as may be incurred.

11. Entire Agreement. This Agreement, including and incorporating the Recitals, represents the entire agreement between the parties with respect to the subject matter of this Agreement and supersedes all prior oral or written agreements, understandings, representations, and covenants.

12. Exhibits. All exhibits attached to this Agreement are hereby incorporated into this Agreement by this reference.

13. Terminology. All personal pronouns used in this Agreement, whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural; and the plural shall include the singular. Titles of sections in this Agreement are for convenience only, and neither limit nor amplify the provisions of this Agreement.

14. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same instrument.

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IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the Effective Date.

"ASSIGNOR"

CRA/LA, A DESIGNATED LOCAL AUTHORITY

a public body formed under Health & Safety Code Section 34173(d)(3), as successor to the Community Redevelopment Agency of the City of Los Angeles

By: _____
Steve Valenzuela
Chief Executive Officer

APPROVED AS TO FORM:

GOLDFARB & LIPMAN LLP

By: _____
Thomas Webber
CRA/LA-DLA Special
Counsel

"ASSIGNEE"

THE CITY OF LOS ANGELES, a municipal corporation acting by and through its Department of _____

By: _____

Name: _____

Its: _____

APPROVED AS TO FORM:

RICHARDS, WATSON &
GERSHON
A Professional Corporation

By: _____
Steven R. Orr
Special Counsel to the
City of Los Angeles