

AMENDMENT NO. 2

to

Contract No. C-114016

for the

PRE-QUALIFIED ON-CALL ARCHITECTURAL CONSULTANT SERVICES

Between

CITY OF LOS ANGELES

and

KEVIN DALY ARCHITECTS

AMENDMENT NO. 2 TO CONTRACT NO. C-114016, FOR PRE-QUALIFIED ON-CALL ARCHITECTURAL CONSULTANT SERVICES BETWEEN THE CITY OF LOS ANGELES AND KEVIN DALY ARCHITECTS

This Amendment modifies the Contract executed on July 8, 2013 and Amendment No. 1 dated October 2, 2013, between the City of Los Angeles (hereinafter referred to as "CITY") and KEVIN DALY ARCHITECTS, formerly DALY GENIK INC. dba DALY GENIK ARCHITECTS (hereinafter referred to as "CONSULTANT").

WITNESSETH

WHEREAS, CITY issued a Request for Qualifications (RFQ) on April 16, 2007 for architectural and related professional services, on a pre-qualified basis, on various projects and CONSULTANT submitted a statement of qualifications in response; and

WHEREAS, CONSULTANT demonstrated qualifications to perform said services and was selected by CITY staff based on the evaluation criteria set forth in the RFQ; and

WHEREAS, on July 8, 2008 Contract No. C-114016 was awarded to CONSULTANT, the terms of which will expire on July 8, 2018; and

WHEREAS, the CONSULTANT is currently providing architectural and construction administration services for the Robertson Recreation Center project and has the capacity and experienced personnel to provide the required services; and

WHEREAS, the CITY and CONSULTANT have agreed to extend the term of the Contract by three (3) additional years through July 7, 2021; and

WHEREAS, the CITY'S Department of Public Works, Bureau of Engineering, (hereinafter referred to as "BUREAU"), is the Program Manager and oversees the CONSULTANT'S performance of this Contract; and

NOW, THEREFORE, in consideration of the foregoing and of the benefits which will accrue to the parties hereto in carrying out the conditions of this Amendment No. 2, Contract No. C-114016 is hereby amended as follows:

ARTICLE 1 SECTION HEADINGS AND CONSTRUCTION OF PROVISIONS AND TITLES HEREIN

No Change

ARTICLE 2 DEFINITIONS

Article 2 is hereby amended in its definition of CONSULTANT as

follows:

FROM: DALY GENIK ARCHITECTS

TO: KEVIN DALY ARCHITECTS

ARTICLE 3

PROJECT DESCRIPTION

No Change

ARTICLE 4

RESPONSIBILITIES OF AND TASKS TO BE PERFORMED BY THE CONSULTANT

Article 4.3 is hereby amended to read as follows:

4.3 Retention of Records, Audit and Reports

CONSULTANT 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. CONSULTANT shall provide any reports requested by CITY regarding performance of this Contract. Any subcontract entered into by CONSULTANT 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, CONSULTANT 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.

ARTICLE 5

KEY CONSULTANT PERSONNEL

No Change

ARTICLE 6

RESPONSIBILITIES OF AND TASKS TO BE PERFORMED BY CITY

No Change

ARTICLE 7

TERM OF CONTRACT AND TIME OF EFFECTIVENESS

Article 7 is hereby amended in its first paragraph to read as follows:

Unless otherwise provided, the term of this Contract shall begin on the date of full execution and shall expire on July 7, 2021, unless terminated as provided under Article 8 or extended by amendment to this Contract.

ARTICLE 8

TERMINATION

Article 8 is hereby amended in its entirety to read as follows:

A. Termination for Convenience

CITY may terminate this Contract for CITY'S convenience at any time by providing CONSULTANT thirty days written notice. Upon receipt of the notice of termination, CONSULTANT 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 CONSULTANT its reasonable and allowable costs through the effective date of termination and those reasonable and necessary costs incurred by CONSULTANT to effect the termination. Thereafter, CONSULTANT 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. CONSULTANT 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 Article 20, if CONSULTANT 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 CONSULTANT 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 CONSULTANT 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 CONSULTANT'S plan. If the default cannot be cured or if CONSULTANT fails to cure within the period allowed by CITY, then CITY may terminate this Contract due to CONSULTANT'S breach of this Contract.

2. If the default under this Contract is due to CONSULTANT'S failure to maintain the insurance required under this Contract, CONSULTANT shall immediately: (1) suspend performance of any services under this Contract for which insurance was required; and (2) notify its employees and subconsultants of the loss of insurance coverage and CONSULTANT's obligation to suspend performance of services. CONSULTANT shall not recommence performance until CONSULTANT 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 CONSULTANT, or if CONSULTANT makes an assignment for the benefit of creditors, then CITY may immediately terminate this Contract.
4. If CONSULTANT 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. CONSULTANT shall immediately notify CITY if CONSULTANT 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 CONSULTANT 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 CONSULTANT or a Key Person is charged with or indicted for an Act of Moral Turpitude, CITY may terminate this Contract after providing CONSULTANT an opportunity to present evidence of CONSULTANT'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 CONSULTANT.
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 CONSULTANT 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 CONSULTANT 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 Article 8 (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, CONSULTANT shall immediately notify all employees and subconsultants, and shall notify in writing all other parties contracted with under the terms of this Contract within five working days of the termination.

ARTICLE 9

SUBCONSULTANT APPROVAL

Article 9 is hereby amended to include the following to its list of potential subconsultants:

SUBCONSULTANT
C.P. O'Halloran Associates
Craig Lawson & Co., LLC
Integral Group
KPFF Consulting Engineers
Sue Jagodzinski
Terra-Petra, Inc.
TTG Engineers (formerly TMAD Engineers, Inc.)

ARTICLE 10

COMPENSATION, INVOICING AND PAYMENT

Article 10 is hereby amended to replace the last paragraph of 10.6 to read as follows:

For efficiency purposes, the CONSULTANT will be given the opportunity to provide work prior to the execution of Amendment No. 2. Although the CITY will do everything within its ability and means to see that Amendment No. 2 is formally executed and that the CONSULTANT is paid for their work, CONSULTANT is to be made aware of the following:

1. There is no guarantee that the City will execute Amendment No. 2.
2. CONSULTANT will be doing work at their own risk with the possibility that CONSULTANT will not be paid for the work should Amendment No. 2 fail to be executed.
3. There is a possibility that CONSULTANT might not get reimbursed for work performed prior to the execution of Amendment No. 2.
4. Should Amendment No. 2 be executed in a different form from the current version, any payments would be based on the executed form.

ARTICLE 11

AMENDMENTS, CHANGES OR MODIFICATIONS

No Change

ARTICLE 12

INDEMNIFICATION AND INSURANCE

Article 12 is hereby amended in its entirety to read as follows:

12.1 Indemnification

Except for the active negligence or willful misconduct of CITY, or any of its boards, officers, agents, employees, assigns and successors in interest, CONSULTANT 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 CONSULTANT'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 CONSULTANT, subconsultants, 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.

12.2 Insurance

During the term of this Contract and without limiting CONSULTANT'S obligation to indemnify, hold harmless and defend CITY, CONSULTANT 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 otherwise be in a form acceptable to the Office of the City Administrative Officer, Risk Management. CONSULTANT 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.

ARTICLE 13

INDEPENDENT CONTRACTORS

No Change

ARTICLE 14

WARRANTY AND RESPONSIBILITY OF CONSULTANT

No Change

ARTICLE 15

OWNERSHIP OF DATA AND INTELLECTUAL PROPERTY

Article 15.1.1 is hereby amended to read as follows:

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 CONSULTANT or its subconsultants under this Contract (each a “Work Product”; collectively “Work Products”) shall be and remain the exclusive property of the CITY for its use in any manner CITY deems appropriate. CONSULTANT 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. CONSULTANT further agrees to execute any documents necessary for CITY to perfect, memorialize, or record CITY’S ownership of rights provided herein.

Article 15 is further amended to include the following:

15.1.7 CONSULTANT 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.

ARTICLE 16

NONDISCRIMINATION

Article 16 is hereby amended in its title and content to read as follows:

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. CONSULTANT 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, CONSULTANT 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 CONSULTANT for work to be performed under this Contract must include an identical provision.

ARTICLE 17

MINORITY, WOMEN AND OTHER BUSINESS ENTERPRISE OUTREACH PROGRAM

No Change

ARTICLE 18

SUCCESSORS AND ASSIGNS

No Change

ARTICLE 19

CONTACT PERSONS-PROPER ADDRESSES-NOTIFICATION

Article 19 is hereby amended to revise the contact information for CONSULTANT:

From:	Contact Person: Address:	Kevin Daly, Principal Daly Genik Inc. 1558-C Tenth Street Santa Monica, CA 90401
To:	Contact Person: Address:	Kevin Daly, Principal Kevin Daly Architects 3617 Exposition Blvd. Los Angeles, CA 90016-4821

ARTICLE 20**EXCUSABLE DELAYS**

Article 20 is hereby amended in its entirety to read as follows:

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

In the event CONSULTANT'S delay or failure to perform arises out of a Force Majeure Event, CONSULTANT 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.

ARTICLE 21**SEVERABILITY**

No Change

ARTICLE 22**DISPUTES**

No Change

ARTICLE 23**ENTIRE CONTRACT**

Article 23 is hereby amended in its entirety to read as follows:

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 the provisions of Article 11 hereof.

ARTICLE 24

APPLICABLE LAW, INTERPRETATION AND ENFORCEMENT

Article 24 is hereby amended in its entirety to read as follows:

Each party's performance 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. This Contract shall be enforced and interpreted under the laws of the State of California without regard to conflict of law principles. CONSULTANT 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 CONSULTANT.

In any action arising out of this Contract, CONSULTANT 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.

ARTICLE 25

CURRENT LOS ANGELES CITY BUSINESS TAX REGISTRATION CERTIFICATE REQUIRED

No Change

ARTICLE 26

BONDS

No Change

ARTICLE 27

CHILD SUPPORT ASSIGNMENT ORDERS

Article 27 is hereby amended in its entirety to read as follows:

CONSULTANT 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, CONSULTANT shall fully comply with all applicable State and Federal employment reporting requirements. Failure of CONSULTANT 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 CONSULTANT to comply with any Wage and Earnings Assignment or Notices of Assignment applicable to them personally, shall constitute a default by the CONSULTANT under this Contract. Failure of CONSULTANT 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 CONSULTANT for work to be performed under this Contract must include an identical provision.

ARTICLE 28

LIVING WAGE ORDINANCE AND SERVICE CONTRACTOR WORKER RETENTION ORDINANCE:

Article 29 is hereby amended in its title and content to read as follows:

LIVING WAGE ORDINANCE

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

ARTICLE 29

AMERICANS WITH DISABILITIES ACT

Article 29 is hereby amended in its title and content to read as follows:

ACCESS AND ACCOMMODATIONS

CONSULTANT represents and certifies that:

- A. CONSULTANT 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. CONSULTANT 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. CONSULTANT 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.

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

ARTICLE 30 **EQUAL BENEFITS ORDINANCE**

Article 30 is hereby amended in its entirety to read as follows:

Intentionally blank.

ARTICLE 31 **WAIVER**

No Change

ARTICLE 32 **PROHIBITION AGAINST ASSIGNMENT OR DELEGATION**

No Change

ARTICLE 33 **PERMITS**

Article 33 is hereby amended in its entirety to read as follows:

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

ARTICLE 34 **CLAIMS FOR LABOR AND MATERIALS**

Article 34 is hereby amended in its entirety to read as follows:

CONSULTANT 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 CONSULTANT hereunder), and shall pay all amounts due under the Unemployment Insurance Act or any other applicable law with respect to such labor used to perform under this Contract.

ARTICLE 35 **DISCOUNTS**

Article 35 is hereby amended in its title and content to read as follows:

BEST TERMS

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

ARTICLE 36 **CONTRACTOR RESPONSIBILITY ORDINANCE**

Article 36 is hereby amended in its entirety to read as follows:

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

ARTICLE 37 **BREACH**

No Change

ARTICLE 38 **SLAVERY DISCLOSURE ORDINANCE**

Article 38 is hereby amended in its entirety to read as follows:

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

ARTICLE 39 **BIDDER ETHICS**

Article 39 is hereby amended in its title and content to read as follows:

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, CONSULTANT,

CONSULTANT’S principals, and CONSULTANT’S subconsultants expected to receive at least \$100,000 for performance under the Contract, and the principals of those subconsultants (the “Restricted Persons”) shall comply with Charter Section 470(c)(12) and Los Angeles Municipal Code (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 CONSULTANT subject to Charter Section 470(c)(12) is required to comply with disclosure requirements by submitting a completed and signed Ethics Commission Form 55 (**Exhibit J**) and to amend the information in that form as specified by law. Any CONSULTANT subject to Charter Section 470(c)(12) shall include the following notice in any contract with any subconsultant 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 subconsultant on City of Los Angeles Contract #C-114016. 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 CONSULTANT 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.”

ARTICLE 40

AFFIRMATIVE ACTION

Article 40 is hereby amended in its entirety to read as follows:

Intentionally blank.

ARTICLE 41

FALSE CLAIMS ACT

No Change

ARTICLE 42

EQUAL EMPLOYMENT PRACTICES

Article 42 is hereby amended in its entirety to read as follows:

Intentionally blank

ARTICLE 43

FIRST SOURCE HIRING ORDINANCE

Article 43 is hereby amended in its entirety to read as follows:

CONSULTANT 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 CONSULTANT for work to be performed under this Contract must include an identical provision.

The Contract is hereby amended to include the following Articles:

ARTICLE 44

IRAN CONTRACTING ACT OF 2010

In accordance with California Public Contract Code Sections 2200-2208, all consultants entering into, or renewing contracts with 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” (**Exhibit L**).

ARTICLE 45

SERVICE CONTRACTOR WORKER RETENTION ORDINANCE

CONSULTANT 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 CONSULTANT for work to be performed under this Contract must include an identical provision.

ARTICLE 46

SUSPENSION

At CITY’S sole discretion, CITY may suspend any or all services provided under this Contract by providing CONSULTANT with written notice of suspension. Upon receipt of the notice of suspension, CONSULTANT 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.

ARTICLE 47

DATA PROTECTION

- A. CONSULTANT 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”).

CONSULTANT shall notify CITY in writing as soon as reasonably feasible, and in any event within twenty-four hours, of CONSULTANT'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. CONSULTANT shall begin remediation immediately. CONSULTANT shall provide daily updates, or more frequently if required by CITY, regarding findings and actions performed by CONSULTANT until the Data Breach or Security Incident has been effectively resolved to CITY'S satisfaction. CONSULTANT 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. CONSULTANT 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 CONSULTANT shall fully indemnify and hold harmless CITY and defend against any resulting actions.

ARTICLE 48

CONSULTANTS' USE OF CRIMINAL HISTORY FOR CONSIDERATION OF EMPLOYMENT APPLICATIONS

CONSULTANT 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 CONSULTANT for work to be performed under this Contract must include an identical provision.

ARTICLE 49

LIMITATION OF CITY'S OBLIGATION TO MAKE PAYMENT TO CONSULTANT

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 CONSULTANT unless the 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. CONSULTANT agrees that any services provided by CONSULTANT, purchases made by CONSULTANT or expenses incurred by CONSULTANT 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. CONSULTANT 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.

ARTICLE 50

COMPLIANCE WITH IDENTITY THEFT LAWS AND PAYMENT CARD DATA SECURITY STANDARDS

CONSULTANT 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. CONSULTANT also shall comply with all requirements related to maintaining compliance with Payment Card Industry Data Security Standards (“PCIDSS”). During the performance of any service to install, program or update payment devices equipped to conduct credit or debit card transactions, including PCIDSS services, CONSULTANT shall verify proper truncation of receipts in compliance with FACTA.

ARTICLE 51

COMPLIANCE WITH CALIFORNIA PUBLIC RESOURCE CODE 5164

California Public Resources Code 5164 prohibits a public agency from hiring a person for employment or as a volunteer to perform services at any park, playground, 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, CONSULTANT 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. CONSULTANT is required to have all employees, volunteers and subconsultants (including all employees and volunteers of any subconsultant) of CONSULTANT working on premises to pass a fingerprint and background check through the California Department of Justice at CONSULTANT’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.

ARTICLE 52

POSSESSORY INTERESTS TAX

Rights granted to CONSULTANT by CITY may create a possessory interest. CONSULTANT 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, CONSULTANT shall pay

the property tax. CONSULTANT acknowledges that the notice required under California Revenue and Taxation Code Section 107.6 has been provided.

ARTICLE 53

CONFIDENTIALITY

- A. All documents, information and materials provided to CONSULTANT by CITY or developed by CONSULTANT pursuant to this Contract (collectively “Confidential Information”) are confidential. CONSULTANT 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. CONSULTANT 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.

EXCEPT AS EXPRESSLY MODIFIED herein, the Contract executed on July 8, 2008 as amended on October 2, 2013 remains unchanged.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 2 on the day and year written below.

KEVIN DALY ARCHITECTS

By:

Title:

Date:

CITY OF LOS ANGELES

By:

Title: President, Board of Public Works

Date:

By:

Date:

ATTEST:

HOLLY L. WOLCOTT, City Clerk

By:

Date:

APPROVED AS TO FORM:

MICHAEL N. FEUER, City Attorney

By:

Title: Assistant City Attorney

Date: