



## AGENDA REPORT

**Meeting Date:** September 20, 2011

**Item Number:** F-9

**To:** Honorable Mayor & City Council

**From:** Alan Schneider, Director of Project Administration

**Subject:** APPROVAL OF AN AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND RTK ARCHITECTS, INC. FOR CONSULTANT SERVICES RELATED TO THE PUBLIC WORKS WAREHOUSE AND SITE IMPROVEMENTS AT 9357 W. THIRD STREET; AND  
APPROVAL OF A PURCHASE ORDER IN THE AMOUNT OF \$525,600 TO RTK ARCHITECTS, INC. FOR PROFESSIONAL SERVICES

**Attachments:**

1. Agreement
2. Categorical Exemption

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### **RECOMMENDATION**

Staff recommends that the City Council move to approve an agreement with RTK Architects, Inc. (RTK) for consulting architectural and engineering services related to the development of the Public Works warehouse project at 9357 W. Third Street, and approve a Purchase Order in the amount of \$525,600 for design services. The total compensation for services under this agreement is comprised of a fee of \$481,600 and an additional \$44,000 for contingencies and reimbursable expenses.

### **INTRODUCTION**

The proposed agreement will provide for the architectural and engineering design services to complete the Public Works campus on the west side of Foothill Road and Third Street property. This project will replace the temporary warehouse and open storage area located at 336 Foothill Road and the adjacent property along Third Street.

In June 2009, as part of the 2009-10 fiscal year Capital Improvement Program (CIP) budget, RTK Architects, Inc. was engaged to develop conceptual plans for a warehouse facility. RTK was selected based on their experience having designed the Public Works Facility remodel in 2008-09. That project led the architect to acquire detailed knowledge and understanding of the department's operations and facility requirements. The fee for

the warehouse conceptual plans was \$48,000 inclusive of site plan, floor plans, building elevations, conceptual building structural, mechanical and electrical systems, and outline specifications.

## **DISCUSSION**

The proposed project consists of a Public Works warehouse facility and exterior yard located at 9357 W. Third Street, on the City's former refuse transfer site. The project is intended to provide for efficient storage of interior and exterior materials used by the City's Public Works & Transportation Department. The structure shall relate to its surrounding context, considering massing and proximity to the public sidewalk. Building proportions and facade articulation would be compatible with the urban site location and the other Public Works facilities. The design shall incorporate green building design to meet the sustainable building code. Landscaping along the property lines will be included to provide screening of the Public Works yard from the adjacent neighboring buildings.

The building will house 5,800 square feet of warehouse space, various trade workshops, warehouse administrative offices and support areas, warehouse staff break room/DOC (department emergency operations center) and approximately 1,900 square feet of unassigned space for City uses. The scope also includes design and layout of the Public Works yard on the west side of the site, a new loading dock adjacent to existing Vehicle shop and a tunnel connecting basement of the new facility to existing parking structure subterranean level B-2.

Based on the conceptual plans that meet the department's program requirements, a proposal for full architectural and engineering services was submitted by RTK to provide the following scope of services:

- Preparation of schematic and design development documents describing the proposed design in sufficient detail
- Preparation of construction plans and specifications suitable for bidding under the public contracting code
- Submission of plans to Building & Safety for plan check review and resolution of any code compliance issues

Future services for construction administration to ensure the work is executed according to the approved plans would be submitted for approval upon an award of a construction contract.

The fee proposal for the above services is \$481,600. Based on a conceptual construction cost budget of \$8.2 million, the fee is approximately 6% of the construction cost. In addition, a contingency of \$25,000 for unforeseen conditions and reimbursable expenses of \$19,000 are included in the proposed agreement. The total compensation is not to exceed \$525,600.

The agreement stipulates the following schedule for the design services:

- Schematic design documents – 3 weeks
- Design development documents – 6 weeks
- Construction documents – 10 weeks

A two week City review period is stipulated between the design phases, which would be followed by the permitting and bidding process.

Staff is also contemplating a construction manager delivery method for this project. In lieu of the design-bid-build process, the construction manager (CM) would be engaged early in the design process to provide a construction background for key design decisions in consultation with the project architect. The CM would also provide cost estimating and scheduling input. Project bidding is then managed by the CM with bid packages for the construction trades held by the City. In many ways this process mirrors the delivery method for the Crescent garage project, which has met its schedule and is significantly under the project budget. A recommendation for approval of an agreement for construction management services would be presented to the City Council for consideration in October 2011.

The Department of Community Development has reviewed the project for environmental impact and concluded that the project qualifies for a categorical exemption under the procedures adopted by the City of Beverly Hills, and no further environmental assessment is necessary. CEQA guidelines, Section 15302 for Class 2 consists of replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced.

The proposed project site did contain a warehouse that was demolished after damage sustained during the Northridge earthquake and temporary facilities have been in use since then.

**FISCAL IMPACT**

Funding for these services has been budgeted from the fiscal year 2011-12 CIP budget for Public Works Yard and Facilities Improvements, project #0894.

  
\_\_\_\_\_  
Scott G. Miller  
Finance Approval

  
\_\_\_\_\_  
David D. Gustavson  
Approved By

# **Attachment 1**

AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND  
RTK ARCHITECTS, INC. FOR CONSULTANT SERVICES RELATED  
TO THE PUBLIC WORKS WAREHOUSE AND SITE IMPROVEMENTS  
AT 9357 WEST THIRD STREET

NAME OF CONSULTANT: RTK Architects, Inc.

CONSULTANT'S DESIGNATED REPRESENTATIVE: Mandana Motahari, Principal

CONSULTANT'S ADDRESS: 3975 Landmark Street, Suite 400  
Culver City, CA 90232

CITY'S ADDRESS: City of Beverly Hills  
345 Foothill Road  
Beverly Hills, CA 90210  
Attention: Alan Schneider  
Director of Project Administration

CITY'S DESIGNATED REPRESENTATIVE: Alan Schneider  
Director of Project Administration

COMMENCEMENT DATE: Upon receipt of Notice to Proceed

COMPLETION DATE: Upon final acceptance of the Project by City Council

COMPENSATION: Professional fees not to exceed \$481,600.00 based on the rates set forth in Exhibit D; Contingency for additional work not to exceed \$25,000.00, as more fully described in Exhibits B and E-1; Reimbursable expenses not to exceed \$19,000 as described in Exhibits B and E; Total compensation, including Professional Fees, Contingency and Reimbursable Expenses, not to exceed \$526,500.00

AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND  
RTK ARCHITECTS, INC. FOR CONSULTANT SERVICES RELATED  
TO THE PUBLIC WORKS WAREHOUSE AND SITE IMPROVEMENTS  
AT 9357 WEST THIRD STREET

THIS AGREEMENT is entered between the City of Beverly Hills ("City") and RTK Architects, Inc. ("Consultant"), a California corporation.

R E C I T A L S

A. City desire to obtain the services of a consultant to provide design services for a Public Works warehouse and shops building located at 9357 West Third Street (Project").

B. The design services shall be based on the conceptual design plans dated December, 2010 and revised June, 2011 set forth herein and more fully described in Exhibit F, attached hereto and incorporated herein.

C. Consultant represents that it is licensed, qualified and able to perform the services.

D. Pursuant to the authority provided by Government Code Section 37103, City desires to engage Consultant to design the Project in the manner set forth herein and more fully described in Exhibit A, attached hereto and incorporated herein.

NOW, THEREFORE, the parties agree as follows:

Section 1. Scope and Level of Services.

A. Subject to the terms and conditions set forth in this Agreement, City hereby engages Consultant, and Consultant hereby accepts such engagement, to perform the technical and professional services necessary to prepare all drawings, specifications, design and other documents for the Project as described in Exhibit A.

B. In providing the Consultant's services, Consultant will review applicable laws, statutes, ordinances, codes, and other regulations affecting the Project, including without limitation, for the purpose of determining accessibility requirements, the State of California handicap accessibility requirements, and seismic requirements (collectively, "Laws"). Consultant shall prepare all design documents in compliance with such Laws.

C. Consultant hereby represents and agrees that it has the experience necessary to undertake the services to be provided herein. In light of such status and experience, Consultant hereby covenants that it shall follow the customary professional standards in performing all services required hereunder.

D. Consultant shall provide prompt written notice to City if Consultant becomes aware of any fault or defect in the Project, including any errors, omissions or inconsistencies in the Consultant's plans, specifications or working drawings.

E. By executing this Agreement, Consultant agrees that, to the extent required by the standard of practice, Consultant (i) has thoroughly investigated and considered the scope of services to be performed, (ii) has carefully considered how the services should be performed, and (iii) understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. Consultant agrees that Consultant, to the extent required by the standard of practice, has investigated the visible portions of the construction site(s) and is reasonably acquainted with the conditions there existing. Should Consultant discover any latent or unknown conditions, which will materially affect the performance of the services hereunder, Consultant shall immediately inform City of such fact and shall not proceed until written instructions are received from the City Representative.

Section 2. Time of Performance. Consultant shall commence the services described in Section 1 upon the City's giving to Consultant a written notice to proceed and shall diligently prosecute the services to completion on or before the Completion Date set forth in the Basic Contract Terms on the first page of this Agreement and in accordance with the Progress Schedule attached hereto and incorporated herein as Exhibit A-1.

Section 3. Compensation; Terms of Payment. City agrees to pay to Consultant, and Consultant agrees to accept in full satisfaction for the services described in this Agreement, an amount not to exceed the amount set forth above and further described in Exhibit B, attached hereto and incorporated herein and hourly rates described in Exhibit D, attached hereto and incorporated herein. City shall pay Consultant said consideration in accordance with the payment terms set forth in Exhibit B.

Section 4. City's Designated Representative and Consultants. The City's Designated Representative shall be authorized to act on the City's behalf with respect to the Project and shall be permitted to issue consents and approvals on behalf of City, but shall have no authority to issue changes or approve additional services which increase the Consultant's compensation hereunder. The City, in the City's sole and absolute discretion, may furnish the services of consultants other than those designated in Exhibit C, attached hereto and incorporated herein. Consultant covenants with City to cooperate with, and to cause its consultants to cooperate with, City's Designated Representative and City's consultants in connection with the services provided by Consultant hereunder.

Section 5. Independent Contractor. Consultant is and shall at all times remain, a wholly independent contractor with respect to City. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees. Consultant shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of City. This Agreement shall not and is not intended to make Consultant an agent, servant, or employee of City and shall not and is not intended to create the relationship of partnership, joint venture or association between City and Consultant.

Section 6. Assignment. This Agreement covers professional services of a specific and unique nature. This Agreement may not be assigned in whole or in part by Consultant, without the prior written consent of City. Consultant shall not assign, transfer, or subcontract any interest in this Agreement or the performance of any of Consultant's obligations hereunder. Any attempt by Consultant to so assign, transfer, or subcontract any rights, duties, or obligations arising hereunder shall be null, void and of no effect.

Section 7. Personnel.

A. The Consultant's Designated Representative is authorized to act on the Consultant's behalf with respect to City. The members of Consultant's staff set forth in Exhibit C shall be responsible for fulfilling Consultant's obligations under this Agreement in the capacities set forth in Exhibit C. Consultant represents that it has, or shall secure at its own expense, all personnel required to perform Consultant's services under this Agreement, whether or not listed on Exhibit C, and Consultant shall at all times shall be responsible for satisfactory performance of all personnel engaged in performing services required by this Agreement. All personnel used by Consultant in the performance of the services required pursuant to this Agreement shall be qualified by training and experience to perform their assigned tasks. At the request of City, Consultant shall not use any personnel hereafter deemed by City to be incompetent, careless, unqualified to perform the work assigned to him, or otherwise unsatisfactory to City. Consultant represents and warrants that RTK Architects, Inc. are licensed California architects and shall keep and maintain such licenses in good standing and in full force and effect at all times while Consultant is performing services included in this Agreement.

B. All services required under this Agreement shall be performed by Consultant or under Consultant's direct supervision, and all personnel shall possess the qualifications, permits, and licenses required by State and local law to perform such services.

C. Consultant shall be responsible for payment of all employees' and subconsultants' wages and benefits, and shall comply with all requirements pertaining to employer's liability, workers' compensation, unemployment insurance, and Social Security.

D. Consultant shall indemnify and hold harmless City and its elected officials, officers, employees, servants, attorneys, volunteers, and agents serving as independent contractors in the role of city or agency officials, from any and all liability, damages, claims, costs and expenses of any nature arising from Consultant's alleged violations of personnel practices. City shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this Section 7.

Section 8. Conflicts of Interests. Consultant covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which may be affected by the services to be performed by Consultant under this Agreement, or which would conflict in any manner with the performance of its services hereunder. Consultant further covenants that, in performance of this Agreement, no person having any such interest shall be employed by it. Furthermore, Consultant shall avoid the appearance of having any interest which would conflict in any manner with the performance of its services pursuant to this Agreement. Consultant agrees not to accept any employment or representation during the term of this Agreement which is or may likely make Consultant "financially interested" (as provided in California Government Code Sections 1090 and 87100) in any decision made by City on any matter in connection with which Consultant has been retained pursuant to this Agreement.

Section 9. Insurance. The following insurance shall be provided and maintained by Consultant:

A. Commercial General Liability/Umbrella Insurance. Primary insurance shall be provided on ISO-CGL form No. CG00 01 11 85 or 88. Total limits shall be no less than two million dollars (\$2,000,000) per occurrence for all coverages and two million dollars (\$2,000,000) general aggregate. City and its employees and agents shall be added as additional insureds using ISO additional insured endorsement form CG 20 10 11 85 (in no event will City accept an endorsement form with an edition date later than 1990). Coverage shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance, primary or excess, available to City or any employee or agent of City. Coverage shall not be limited to the vicarious liability or supervisory role of any additional insured. Umbrella Liability Insurance (over primary) shall apply to bodily injury/property damage, personal injury/advertising injury, at a minimum, and shall include a "drop down" provision providing primary coverage above a maximum \$25,000.00 self-insured retention for liability not covered by primary policies but covered under the umbrella policy. Coverage shall be following form to any underlying coverage. Coverage shall be provided on a "pay on behalf" basis, with defense costs payable in addition to policy limits. There shall be no cross liability exclusion. Policies shall have concurrent starting and ending dates.

B. Business Auto/Umbrella Liability Insurance. Primary coverage shall be written on ISO Business Auto Coverage form CA 00 01 06 92 including symbol 1 (Any Auto). Limits shall be no less than two million dollars (\$2,000,000) per accident. Starting and ending dates shall be concurrent. If Consultant owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

C. Worker's Compensation/Employer's Liability Insurance. Coverage shall be written on a policy form providing worker's compensation statutory benefits as required by law. Employer's liability limits shall be no less than one million dollars per accident or disease. Employer's liability coverage shall be scheduled under any umbrella policy described above. Unless otherwise agreed, this policy shall be endorsed to waive any right of subrogation as respects the City, its employees or agents.

D Professional Liability Insurance. Coverage shall be written on a policy form providing "design professional liability" or "architects and engineers" liability insurance or equivalent coverage. The policy limit shall be no less than one million dollars (\$1,000,000) per claim and in the aggregate.

Unless otherwise approved by City in writing, Consultant's insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best's Insurance Guide rating of "A-:IV." Self-insurance will not be considered to comply with these insurance specifications.

Except for Workers Compensation, the insurance provided by Consultant shall be primary to any coverage available to City. The policies of insurance required by this Agreement shall include provisions for waiver of subrogation.

Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, Consultant shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Consultant shall procure a bond guaranteeing payment of losses and expenses.

Consultant agrees to provide evidence of the insurance required herein, satisfactory to City, consisting of certificate(s) of insurance evidencing all of the coverages

required and an additional insured endorsement to Consultant's general liability and umbrella liability policies using ISO form CG 20 10 11 85. Certificate(s) are to reflect that the insurer will provide thirty (30) days notice of any cancellation of coverage. Consultant agrees to require its insurer to modify such certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions. Consultant agrees to provide complete copies of policies to City upon request.

Consultant agrees to require all consultants and other parties hired for the Project to maintain insurance which meets all of the requirements of this Agreement. Consultant agrees to obtain certificates evidencing such coverage and make reasonable efforts to ensure that such coverage is provided as required here. Consultant agrees to require that no contract used by any consultant, or contracts Consultant enters into, will reserve the right to charge back to City the cost of insurance required by this Agreement. Consultant agrees that upon request, all agreements with consultants or others with whom Consultant contracts on behalf of City, will be submitted to City for review. Failure of City to request copies of such agreement will not impose any liability on City, or its employees.

Consultant shall not commence the performance of the services until the above insurance has been obtained and certificate(s) of insurance evidencing all of the coverages required and additional insured endorsement(s) have been filed with and approved by City. Procurement of insurance by Consultant shall not be construed as a limitation of Consultant's liability or as full performance of Consultant's duties to indemnify, hold harmless, and defend under this Agreement.

Section 10. Indemnification.

A. In connection with its design professional services, CONSULTANT shall hold harmless and indemnify CITY, and its elected officials, officers, employees, servants, designated volunteers, and those CITY agents serving as independent contractors in the role of CITY officials (collectively, "Indemnitees"), with respect to any and all claims, demands, damages, liabilities, losses, costs or expenses, including reimbursement of attorneys' fees and costs of defense (collectively, "Claims" hereinafter), including but not limited to Claims relating to death or injury to any person and injury to any property, which arise out of, pertain to, or relate to in whole or in part to the negligence, recklessness, or willful misconduct of CONSULTANT or any of its officers, employees, subcontractors, or agents in the performance of its design professional services under this Agreement.

B. In connection with any and all claims, demands, damages, liabilities, losses, costs or expenses, including attorneys' fees and costs of defense (collectively, "Damages" hereinafter) not covered by paragraph (a) of this Section, CONSULTANT shall defend, hold harmless and indemnify the Indemnitees with respect to any and all Damages, including but not limited to, Damages relating to death or injury to any person and injury to any property, which arise out of, pertain to, or relate to the acts or omissions of CONSULTANT or any of its officers, employees, subcontractors, or agents in the performance of this Agreement, except for such loss or damage arising from the sole negligence or willful misconduct of the CITY, as determined by final arbitration or court decision or by the agreement of the parties. CONSULTANT shall defend Indemnitees in any action or actions filed in connection with any such Damages with counsel of CITY's choice, and shall pay all costs and expenses, including all attorneys' fees and experts' costs actually incurred in connection with such defense. CONSULTANT's duty to defend pursuant to this Section shall

apply independent of any prior, concurrent or subsequent misconduct, negligent acts, errors or omissions of Indemnitees.

Section 11. Termination by City.

A. City may cancel this Agreement at any time upon five (5) days written notice to Consultant. Consultant agrees to cease all work under this Agreement on or before the effective date of such notice.

B. In the event of termination or cancellation of this Agreement by City, due to no fault or failure of performance by Consultant, Consultant shall be paid full compensation for all services satisfactorily performed by Consultant in an amount to be determined as follows: For work done in accordance with all of the terms and provisions of this Agreement, Consultant shall be paid an amount equal to the amount of services performed prior to the effective date of termination or cancellation based on the hourly rates set forth in Exhibit D, provided, in no event shall the amount of money paid under the foregoing provisions of this paragraph exceed the amount which would be paid Consultant for the full performance of the services required by this Agreement.

C. In the event that the City's termination is based on a default by Consultant, City may pursue any and all rights and remedies it may have at law or in equity, and City's pursuit of any such right or remedy shall not be deemed a waiver of any other right or remedy of City.

D. In the event of termination under this Section, City may retain another Consultant for the Project.

Section 12. Ownership of Work Product.

A. Ownership of Plans. All plans, specifications, reports, studies, tracings, maps, drawings, blueprints, or other written material prepared or obtained by Consultant in the course of performing the services required by this Agreement shall be and remain the property of City without restriction or limitation upon its use or dissemination by City, and Consultant shall convey and transfer all copyrightable interests in such plans, specifications, reports, studies, tracings, maps, drawings, blueprints, documents, and in the Building to City. Basic survey notes, sketches, charts, computations and similar data prepared or obtained by Consultant under this Agreement shall, upon request, be made available to City. Such material shall not be the subject of a copyright application by Consultant. Any alteration or reuse by City of any such materials on any project other than the Project for which they were prepared shall be at the sole risk of City unless City compensates Consultant for such use. City agrees to indemnify, defend and hold harmless Consultant against any claims, losses, costs or damages as a result of City's alteration or reuse of such plans, drawings and specifications without compensation to Consultant. In the event of the return of the plans, drawings or specifications to Consultant or its representative, Consultant shall be responsible for their safe return to City. Consultant shall be entitled to retain copies of the plans, drawings and specifications for Consultant's files. Under no circumstances, other than non-payment, shall Consultant fail to deliver any draft or final plans, drawings or specifications to City upon written demand by City for their delivery, notwithstanding any disputes between Consultant and City concerning payment, performance of the Agreement, or otherwise unless City has failed to pay Consultant any undisputed amount lawfully due Consultant under this Agreement. This covenant shall survive the termination of this Agreement.

B. Title to Intellectual Property. Consultant represents that it has secured all necessary licenses, consents or approvals to use the components of any intellectual property, including computer software, used in the rendering of services and the production of the materials produced under this Agreement, and that City has full legal title to and the right to reproduce such materials. Consultant agrees to defend, indemnify and hold City, and its elected officials, officers, employees, servants, attorneys, volunteers, and agents serving as independent contractors in the role of city or agency officials, harmless from any loss, claim or liability in any way related to a claim that City is violating federal, state or local laws, or any contractual provisions, relating to trade names, licenses, franchises, patents or other means of protecting interests in products or inventions. Consultant shall bear all costs arising from the use of patented, copyrighted, trade secret or trademarked materials, equipment, devices or processes used on or incorporated in the services and materials produced under this Agreement. In case such materials, equipment, devices or processes are held to constitute an infringement and their use is enjoined, Consultant, at its expense, shall: (i) secure for City the right to continue using the materials by suspension of any injunction or by procuring a license or licenses for City; or (ii) modify the materials so that they become non-infringing. This covenant shall survive the termination of this Agreement.

Section 13. Effect of City Approvals. City's approval of any documents prepared in connection with the Project (in City's proprietary capacity under this Agreement as the owner of the Project) shall not be deemed to limit Consultant's liability under this Agreement or otherwise affect Consultant's duties and responsibilities under this Agreement.

Section 14. Confidentiality. Consultant, in the course of its duties, may have access to financial, accounting, statistical, and personnel data of private individuals and employees of City. Consultant covenants that all data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without prior written authorization by City. City shall grant such authorization if disclosure is required by law. All City data shall be returned to City upon the termination of this Agreement. Consultant's covenant under this section shall survive the termination of this Agreement.

Section 15. Attorneys' Fees. In the event either party to this Agreement shall institute any action or proceeding against the other party to this Agreement, which action or proceeding concerns a controversy arising out of this Agreement, the prevailing party in such action or proceeding shall be entitled to reimbursement from the unsuccessful party for all reasonable costs and reasonable attorneys' fees arising out of such action or proceeding. In addition to the foregoing award of reasonable attorneys' fees and costs, the prevailing party shall be entitled to its reasonable attorneys' fees and costs incurred in any post-judgment or post-arbitration proceedings to enforce any judgment in connection with this Agreement. This provision is separate and several and shall survive the merger of this provision into any judgment.

Section 16. Notices. Any notice required to be given by this Agreement shall be deemed duly and properly given upon delivery, if sent by U.S. mail, postage prepaid, return receipt requested, to the address set forth on the first page of this Agreement, or personally delivered to such address or other address specified in writing and delivered in accordance with the requirements of this Section.

Section 17. Non-Waiver of Terms, Rights and Remedies. Waiver by either party of any one or more of the conditions of performance under this Agreement shall not be a waiver of any other condition of performance under this Agreement. In no event shall the making by City of any payment to Consultant constitute or be construed as a waiver by City of any breach of covenant, or any default which may then exist on the part of Consultant, and the making of any such payment by City shall in no way impair or prejudice any right or remedy available to City with regard to such breach or default.

Section 18. Exhibits; Precedence. All documents referenced as exhibits in this Agreement are hereby incorporated in this Agreement. In the event of any material discrepancy between the express provisions of this Agreement and the provisions of any document incorporated herein by reference, the provisions of this Agreement shall prevail.

Section 19. Entire Agreement. This Agreement represents the entire integrated agreement between City and Consultant, and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by a written instrument signed by both City and Consultant.

Section 20. Time of Essence . Time is of the essence of this Agreement. Consultant acknowledges that City is entering into this Agreement based on the representation that the Consultant's schedule contained in Exhibit A-1 can be maintained. In the event City determines that the progress of Consultant's work and services is behind the progress anticipated in the schedule (and not due to events caused by City), City may require Consultant to take such actions as City deems necessary to expedite progress of the work and services in conformance with the progress anticipated by the schedule, which actions may include, without limitation, increasing the number of workmen performing the work and services, utilizing overtime work and requiring additional work shifts. Such action by City to place Consultant back on schedule shall not entitle Consultant to receive any additional compensation for these activities. In addition, if the Project is delayed due to Consultant's fault, negligence or breach of this Agreement, Consultant shall be responsible for the reasonable additional costs and expenses incurred by City, including without limitation, any acceleration costs, impact costs and any additional compensation due to City's other consultants, as a result of such delays, to the extent permitted by California law.

Section 21. Governing Law. The interpretation and implementation of this Agreement shall be governed by the domestic law of the State of California.

Section 22. Severability. Invalidation of any provision contained herein or the application thereof to any person or entity by judgment or court order shall in no way affect any of the other covenants, conditions, restrictions, or provisions hereof, or the application thereof to any other person or entity, and the same shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the  
\_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, at Beverly Hills, California.

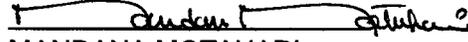
City:  
CITY OF BEVERLY HILLS,  
a municipal corporation

\_\_\_\_\_  
BARRY BRUCKER  
Mayor of the City of  
Beverly Hills, California

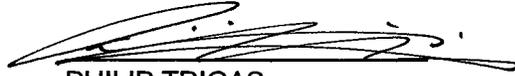
ATTEST:

\_\_\_\_\_  
BYRON POPE (SEAL)  
City Clerk

Consultant: RTK ARCHITECTS, INC.,  
A California corporation

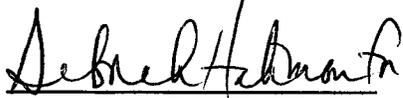


MANDANA MOTAHARI  
President



PHILIP TRIGAS  
Secretary

APPROVED AS TO FORM:



LAURENCE S. WIENER  
City Attorney

APPROVED AS TO CONTENT:

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JEFFREY KOLIN  
City Manager



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DAVID D. GUSTAVSON  
Director of Public Works &  
Transportation



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ALAN SCHNEIDER  
Director of Project Administration



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KARL KIRKMAN  
Risk Manager

## **EXHIBIT A**

### **Scope of Services**

#### **ARTICLE 1. GENERAL RESPONSIBILITIES**

A schedule for the development and construction of the Project, including a schedule for the performance of Architect's services, is attached hereto as Exhibit A-1. Any adjustments to the Architect's schedule shall be of no force and effect unless such adjustments are agreed to in writing by City or are delays in the Architect's performance caused for reasons beyond the control of Architect.

#### **ARTICLE 2. CHANGES IN ARCHITECT'S SERVICES**

Changes in services of the Architect, including services required of the Architect's Architects, may be accomplished after execution of this Agreement, without invalidating the Agreement, provided that changes in the services required of the Architect are initiated by City, would entitle the Architect to an adjustment in compensation, and Architect obtains City's prior written authorization for an adjustment in compensation in each instance. Such adjustment in compensation shall be made by mutual agreement of the parties.

#### **ARTICLE 3. PROJECT ADMINISTRATION**

A. The Architect shall manage the Architect's services and administer the Project. The Architect shall consult with the City, research applicable design criteria, attend Project meetings during and through completion of the Design phase prior to commencement of construction documents phase, communicate with members of the Project team and issue progress reports. The Architect shall coordinate the services provided by the Architect and the Architect's consultants with those services provided by the City and the City's consultants.

B. Upon written request of City, the Architect shall prepare for City's and City's Designated Representative's review and approval, an update of the Architect's portion of the progress schedule attached hereto as Exhibit A-1 that shall identify milestone dates for decisions required of the City, design services furnished by the Architect, and completion of documents provided by the Architect. Such update schedule shall be consistent with the initial Progress Schedule attached hereto as Exhibit A-1.

C. The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program, budget and aesthetics in developing the design for the Project.

D. Upon request of the City, the Architect shall make a presentation to explain the design of the Project to representatives of the City or as otherwise requested by City.

E. The Architect shall submit design documents to the City at intervals appropriate to the design process for purposes of evaluation and approval by the City. The Architect shall be entitled to rely on written approvals received from the City in the further development of the design except as limited by Section 4 of the Agreement.

F. If requested by the City's Designated Representative, the Architect shall assist the City in connection with the City's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

#### ARTICLE 4. EVALUATION OF BUDGET AND COST OF THE WORK

A. The City shall engage a qualified professional to prepare estimates of the cost of the work for the Project (the "Cost of Work") at the end of the Schematic Design, Design Development and Construction Document phases. The Architect shall review the estimates and advise the City of any suggested adjustments to the estimates of the Cost of the Work required by changes in Project requirements. If at any time the estimate of the Cost of the Work exceeds the City's budget, the Architect shall make appropriate recommendations to the City to adjust the Project's size, quality or budget.

B. Omitted

C. In preparing estimates of the Cost of the Work, the Architect shall be permitted to include contingencies for design; to reasonably assume (unless known) what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the scope of the Project with City's prior written approval and, with City's prior written approval in each instance, to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the City's budget for the Cost of the Work.

#### ARTICLE 5. PRELIMINARY EVALUATIONS AND PLANNING SERVICES

A. The Architect shall provide a preliminary evaluation of the information furnished by the City under this Agreement, including the City's program and schedule requirements and budget for the Cost of the Work, each in terms of the other. The Architect shall review such information to ascertain that it is consistent with the requirements of the Project and shall notify the City of any other information or Architect services that may be reasonably needed for the Project.

B. The Architect shall report to the City immediately if the City's budget is deficient to design and construct the program under the conditions and requirements that the City has established.

C. The Architect shall review the City's proposed method of contracting for construction services and shall notify the City of anticipated impacts that such method may have on the City's program, financial and time requirements, and the scope of the Project.

#### ARTICLE 6. SCHEMATIC DESIGN SERVICES

A. A description of the desired Project/building elements for the Project is attached hereto and incorporated herein as Exhibit A-2. The Architect's schematic design services shall include design of such Project building elements and all structural, mechanical, plumbing, civil, and electrical engineering services relating thereto.

B. In addition to the foregoing, design services shall also include interior architectural services for the lobby, plumbing, engineering, HVAC engineering, fire protection engineering (excluding fire sprinklers system design and engineering except for performance

specifications and coordination with the local Fire Department). Title 24 requirements, elevators specifications, design of conduit for customary low voltage electrical systems (e.g., telephone/security and similar systems) roofing/waterproofing design, and as required by code, signage services (including graphics), and green building code requirements in connection with the complete design of the Project.

C. Architect shall also (1) engage with City's designated contractors, engineers, designers and consultants, in their "value engineering analysis" of structural, architectural, electrical, mechanical and related design alternatives, and shall, with the written approval of City, incorporate any economy so identified in the design of the Project: (2) conduct periodic meetings with City and City's separate consultants and (3) cooperate and coordinate the Architect's design services with the services of the City's separate consultants. The coordination services described in clause (4) above shall not make Architect responsible for the adequacy or timeliness of any plans and specifications prepared by City's consultants; however, if Architect knows or reasonably suspects that any such plans and specifications are not consistent with sound design or construction practices, Architect shall immediately notify City in writing.

D. In no event shall Architect: (1) utilize or replace any consultants or subcontractors in connection with the performance of the services hereunder unless City gives its prior written approval of such consultants or subcontractors (or their replacements, as applicable); (2) prepare "performance" specifications or "design-build" documents as part of Architect's services hereunder unless Architect receives City's prior written consent for such "performance" specifications or "design-build" documents (City's approval of any such "performance" specifications or "design-build" documents may result in an appropriate downward adjustment to the Architect's fee for design services); or (3) prepare design documents that call for "proprietary" equipment or material in which Architect has a financial or other interest, unless Architect receives City's prior written approval to prepare design documents that call for such "proprietary" equipment or material. Architect will not commence work on any phase of design services until Architect receives a written authorization from City directing Architect to so proceed. City and Architect acknowledge that there may be, at times, some reasonable overlapping of the services performed by Architect in the Design phases (i.e., the City may authorize or instruct the Architect to proceed into a phase prior to completion of the preceding phase, and that the Architect may be providing services in more than one phase of the Project concurrently).

## ARTICLE 7. DESIGN DEVELOPMENT DOCUMENTS

A. The Architect shall provide design development documents (the "Design Documents") based on the approved written program resulting from discussions and meetings with City staff. The Design Development Documents shall illustrate and describe the refinement of the design of the Project, establishing the scope, relationships, forms, size and appearance of the Project by means of plans, sections and elevations, typical construction details, and equipment layouts. The Design Documents shall include specifications that identify major materials and systems and establish in general their quality levels.

B. Design Documents shall include, without limitation, floor plans of each typical and unique level; site plan; building sections; preliminary building systems designs; key details; and outline specifications. Design Documents for interior design and any common areas will include, without limitation, final space plan; typical interior details; wall, floor and

finish selection. It shall also include the cubicle layout, selection and hookup.

C. Architect shall reasonably cooperate in the scheduling of meetings necessary for City's review and approval of the Design Documents, which meetings shall be attended by Architect at the request of City.

D. The Architect shall provide a budget for the Cost of the Work.

E. Project background and building elements are indicated in Exhibit A-2, attached hereto and incorporated herein.

## ARTICLE 8. CONSTRUCTION DOCUMENTS

A. The Architect shall provide construction documents (the "Construction Documents") based on the approved Design Documents and updated budget for the Cost of the Work. The Construction Documents shall set forth in detail the requirements for construction of the Project. The Construction Documents shall include Drawings and Specifications that establish in detail the quality levels of materials and systems required for the Project.

B. During the development of the Construction Documents, the Architect shall assist the City in the development and preparation of: (1) if requested by City, bidding procurement information which describes the time, place and conditions of bidding; bidding or proposal forms; and the form of agreement between the City and the Contractor; and (2) the conditions of the contract for construction (general conditions, supplementary conditions and other conditions). The Architect also shall compile the Project Manual that includes the conditions of the contract for construction and Specifications and may include bidding requirements and sample forms.

C. The Architect shall file with the appropriate regulatory agency all documents required for approval of governmental authorities exercising jurisdiction over the Project. Architect shall prepare all the documents required pursuant to design services, which are necessary for City or City's contractors to obtain all permits and other approvals of plans, specifications, and construction documents prepared by Architect from public agencies exercising jurisdiction over the Project whose approval is required or by law or as otherwise customary and reasonable.

D. Construction Documents will include, without limitation: (i) floor plans of each typical and unique level; (ii) site plan; (iii) enlarged plans and elevations of special areas where necessary; (iv) engineering drawings of building systems included in Project scope; (v) reflected ceiling plans, showing the location of the various types of ceilings and the location of HVAC registers and influenced by the ceiling layout; (vi) outlets plans showing the location of power, telephone and data communications outlets; and (vii) details indicating the design intent of the above.

E. Omitted

F. Construction Documents shall specify acceptable manufactures recommended product installation procedures and performance criteria for products. The Contract Documents shall also require Contractor, at the conclusion of the construction of the

Project and based upon information kept current by Contractor and reviewed by Architect as an element necessary for approval of the Contractor's monthly progress payments, to prepare and furnish to City a complete record set of drawings and specifications depicting the Project as constructed.

G. Construction Documents shall divide the Work into base work and alternatives, if directed by the City. The documents shall make provision for the base work to be constructed by itself or with any or all of the alternatives.

H. In addition to paper print copies, the Construction Documents shall be provided in electronic disk format in the latest version of AutoCAD.

1. The Construction Documents shall include the requirement that the appropriate City personnel be trained in the maintenance and operation of all equipment and systems at the completion of the project.

#### ARTICLE 9. CONSTRUCTION PROCUREMENT SERVICES

A. The Architect shall assist the City in obtaining competitive bids and shall assist the City in awarding and preparing contracts for construction.

B. The Architect shall assist the City in establishing a list of prospective bidders or contractors.

C. The Architect shall assist the City in bid validation or proposal evaluation and determination of the successful bid or proposal, if any.

D. Bidding documents shall consist of bidding requirements, proposed contract forms, general conditions and supplementary conditions, specifications and drawings (the "Bidding Documents"). The City shall prepare the boilerplate documents including the Notice Inviting Bids, Instructions To Bidders, Special City Requirements, General Specifications and General Conditions, and required contract forms to be completed by bidders.

E. If requested by the City, the Architect shall arrange for procuring the reproduction of Bidding Documents for distribution to prospective bidders. The City shall pay directly for the cost of reproduction.

F. If requested by the City, the Architect shall distribute the Bidding Documents to prospective bidders and request their return upon completion of the bidding process. The Architect shall maintain a log of distribution and retrieval, and the amounts of deposits, if any, received from and returned to prospective bidders.

G. The Architect shall consider requests for substitutions, if permitted by the Bidding Documents, and shall prepare and distribute to all prospective bidders, addenda identifying approved substitutions.

H. At the request of City, the Architect shall participate in or, at the City's direction, shall organize and conduct a pre-bid conference for prospective bidders.

I. The Architect shall prepare responses to questions from prospective bidders and provide clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda.

J. The Architect shall participate in, if requested by the City, the opening of the bids.

#### FUTURE SERVICES

The Architect shall provide future services consisting of the following phases to be incorporated herein by an amendment to this Agreement:

Construction Administration Phase

## **EXHIBIT A-1**

### **Progress Schedule**

The Architect proposes the following work schedule which shall commence at the discretion of the City:

Commencement of work:	Upon receipt of a notice to proceed following a kick-off meeting with City and design team wherein the mutually agreed upon program, schedule, and budget are confirmed.
Schematic Design Documents:	Commence upon receipt of notice to proceed and complete in three (3) weeks
Design Development Documents:	Commence upon receipt of notice to proceed and complete in six (6) weeks
Construction Documents:	Commence upon receipt of notice to proceed and complete in ten (10) weeks

## **EXHIBIT A-2**

### **Project/Building Elements**

The proposed project consists of a Public Works warehouse and truck parking facility located at 9357 W. Third Street and improvements to the Public Works yard, on the City's former refuse transfer site, per Exhibit F. The Project is intended to provide for efficient parking of the City's large fleet vehicles and for accommodating interior and exterior materials stored and used by the City's Public Works & Transportation Department. The structure shall relate to its surrounding context, considering massing and proximity to the public sidewalk. Building proportions and facade articulation should be compatible with the urban site location and the other Public Works facilities. The design shall contemplate green building design to meet the sustainable building code.

The building will house 5,800 square feet of warehouse space, various trade workshops, warehouse administrative offices and support areas, bus drivers' lounge, warehouse staff break room/DOC (department emergency operations center) and approximately 1,900 square feet of second floor tenant space. The scope also includes design and layout of the Public Works yard on the west side of the site, a new loading dock adjacent to existing Vehicle shop and a tunnel connecting basement of the new facility to existing parking structure subterranean level B-2.

Services are limited to architectural, structural, mechanical, electrical, plumbing, landscape architecture, and civil engineering based on the conceptual design package prepared by RTK Architects, Inc. in December 2010 and revised in June 2011.

## EXHIBIT B

### Compensation/Payment Terms

A. City shall compensate Architect for the satisfactory performance of services described in this Agreement an amount not to exceed Four Hundred Eighty One Thousand Six Hundred Sixty Dollars (\$481,600.00) for professional fees. City shall pay Architect for reimbursable expenses reasonably incurred in the performance of this Agreement as described in Exhibit E, attached hereto and incorporated herein, an amount not to exceed Nineteen Thousand Dollars (\$19,000.00). If additional design services are required by City, City shall pay Architect in accordance with the terms set forth in Exhibit E-1, Contingency, attached hereto and incorporated herein.

B. Architect shall provide City with monthly invoices in a form acceptable to the City for services performed. Such invoices shall describe in detail the work performed during the previous month by task, and shall request that payment be made in proportion to the portion of total services required. City shall pay satisfactory invoices within thirty (30) days. However, in no event shall Architect be paid more than the following:

1. Fourteen and One Half percent (14.5%) of the total Agreement price upon the satisfactory completion of the Schematic Design documents;
2. Thirty-Nine and One Half percent (39.5%) of the total Agreement price upon the satisfactory completion of the Design Development documents;
3. Ninety-Seven percent (97%) of the total Agreement price upon the satisfactory completion of the Construction Documents;
4. Ninety-Eight and One Half percent (98.5%) of the total Agreement price upon completion of the Agency approvals;
5. One hundred percent (100%) of the total Agreement price upon the completion of the Project bidding.

C. In the event the City authorizes in writing Contingency services not included as a part of the services described herein, the payment shall be based on the hourly rates in Exhibit D or a lump sum as may be mutually agreed, but shall not exceed Two Thousand Five Hundred Dollars (\$25,000.00). This amount shall be in addition to that indicated in the previous paragraphs.

D. If City exercises its right to terminate this Agreement other than for cause pursuant to Section 11 of the Agreement, compensation to the Architect shall be based on the actual work completed at the time of termination, but in no case exceed the amount which would be paid Architect for the full performance of the services required by this Agreement.

E. Fee Breakdown

Design Disciplines	Architectural	Electrical	Mechanical	Structural	Landscape Architect	Civil	Total
Schematic Design	\$35,530.00	\$8,000.00	\$8,000.00	\$3,650.00	\$6,925.00	\$4,800.00	\$66,905.00
Design Development	\$65,925.00	\$12,500.00	\$12,500.00	\$10,550.00	\$7,050.00	\$6,400.00	\$114,925.00
Construction Docs	\$176,425.00	\$17,500.00	\$19,800.00	\$26,000.00	\$8,625.00	\$16,000.00	\$264,350.00
Agency Approvals	\$6,185.00				\$1,000.00		\$7,185.00
Bid & Award	\$7,185.00						\$7,185.00
Construction Admin	\$0.00						\$0.00
<b>Sub-Total</b>	<b>\$291,250.00</b>	<b>\$38,000.00</b>	<b>\$40,300.00</b>	<b>\$40,200.00</b>	<b>\$23,600.00</b>	<b>\$27,200.00</b>	<b>\$460,550.00</b>
<b>Connecting Tunnel:</b>	<b>\$9,500.00</b>	<b>\$3,000.00</b>	<b>\$3,500.00</b>	<b>\$5,000.00</b>			<b>\$21,000.00</b>
<b>Professional Svcs</b>	<b>\$300,800.00</b>	<b>\$41,000.00</b>	<b>\$43,800.00</b>	<b>\$45,200.00</b>	<b>\$23,600.00</b>	<b>\$27,200.00</b>	<b>\$481,600.00</b>
Reimbursable	\$11,400.00	\$1,200.00	\$1,200.00	\$2,500.00	\$2,100.00	\$1,500.00	\$19,900.00
<b>Grand Total</b>	<b>\$312,200.00</b>	<b>\$42,200.00</b>	<b>\$45,000.00</b>	<b>\$47,700.00</b>	<b>\$25,700.00</b>	<b>\$28,700.00</b>	<b>\$501,500.00</b>

## **EXHIBIT C**

### **Responsible Personnel**

The following key personnel shall be dedicated for the duration of the Project:

Mandana Motahari          Design Principal

**EXHIBIT D**

**Schedule of Hourly Rates**

<u>Title</u>	<u>Project Title</u>	<u>Rate</u>
Partner	Principal	\$195
Associate Partner	Project Architect	\$165
Senior Associate	Architect	\$145
Associate	Associate	\$125
None	Designers/Drafters	\$97.50
None	Technical Assistant	\$75

## **EXHIBIT E**

### **Reimbursable Expenses**

Reimbursable expenses for printing and plotting, and computer rendering of the design, reasonably incurred by the Architect and the Architect's employees in connection with the Project shall be billed at direct cost. City shall be responsible for reproduction of bid sets. A budget not exceed Nineteen Thousand Dollars (\$19,000.00) shall cover such reimbursable expenses.

## **EXHIBIT E-1**

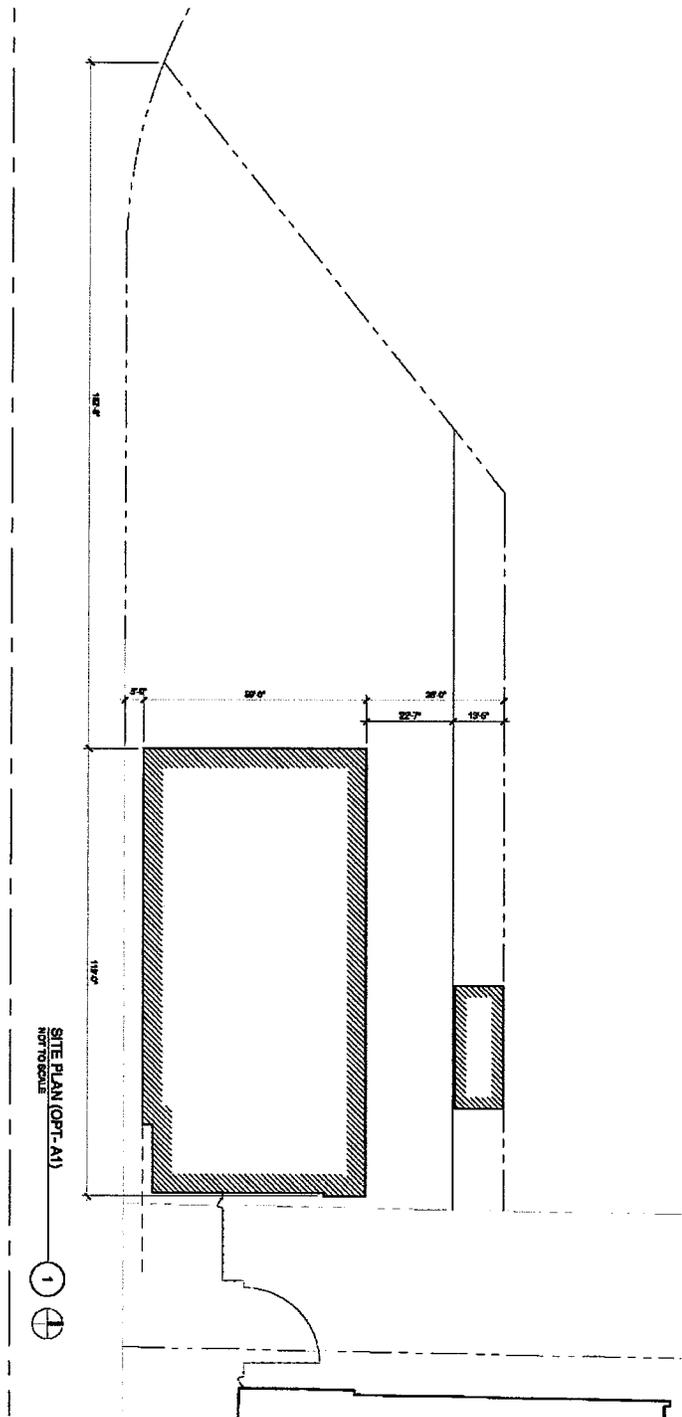
### **Contingency**

Consultants not included in the base contract, but which could be added as additional services, include:

- Waterproofing and Roofing Consultant (Peer Review)
- Special Lighting Design Consultant
- LEED or equal Consultant (Compliance Documentation)
- Security Consultant
- Building and Tenant Identification Graphics
- Acoustical Consultant

**EXHIBIT F**  
**Conceptual Plans**

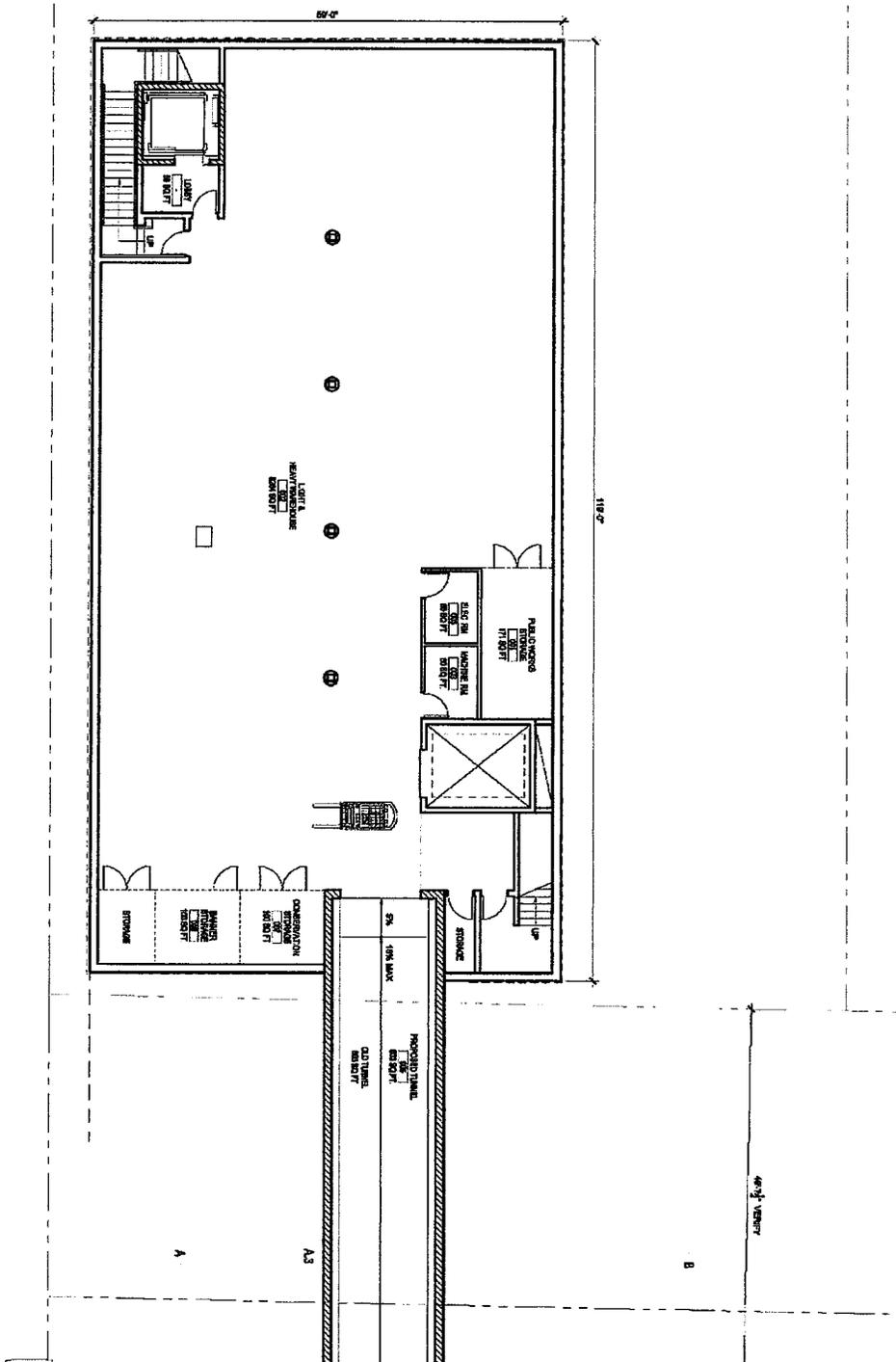
B.H. PUBLIC WORKS WAREHOUSE  
8203 THIRD ST., BEVERLY HILLS, CA 90004



SITE PLAN (OPT-A1)  
NOT TO SCALE



08/08/11



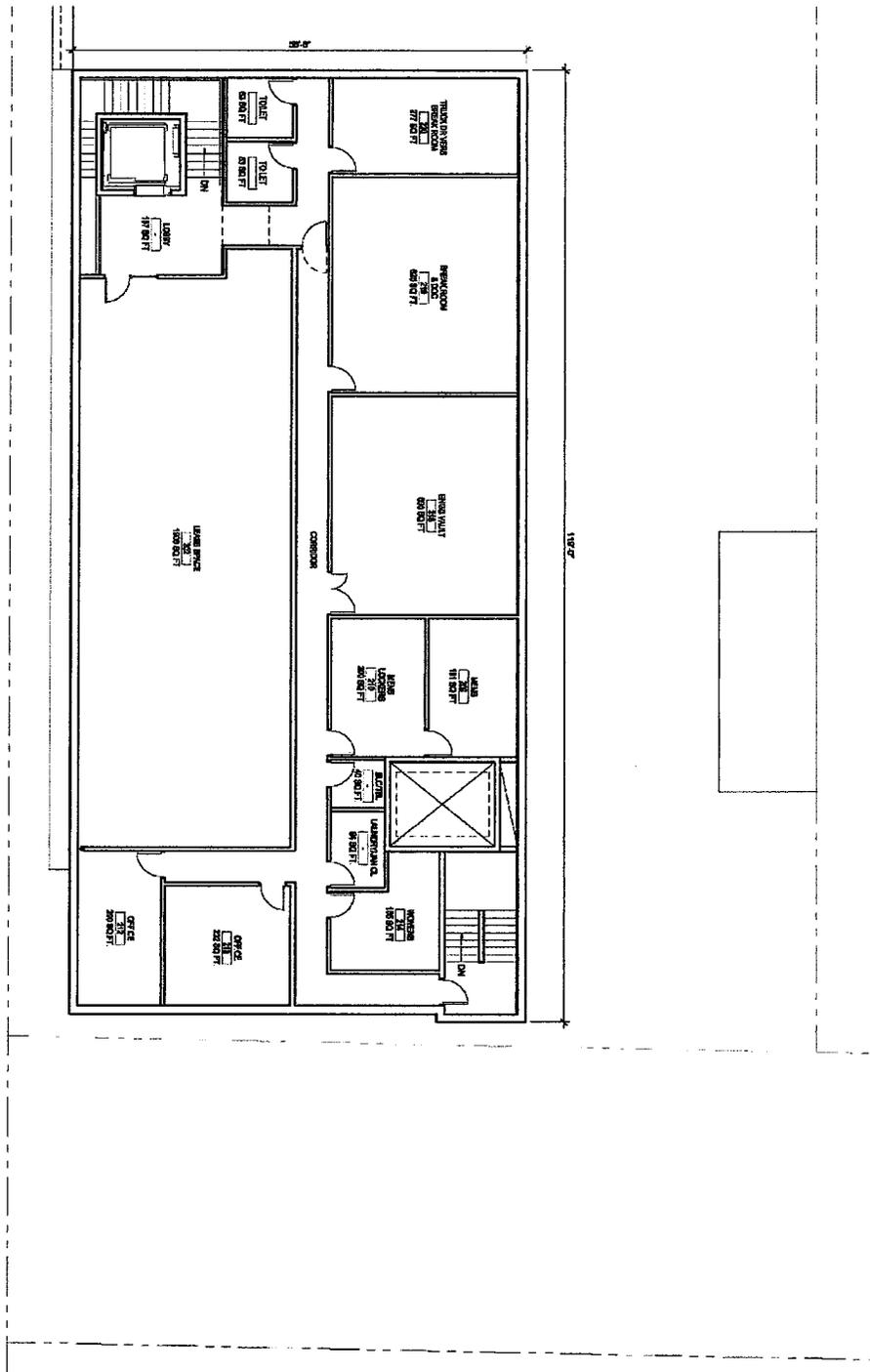
**BASEMENT PLAN (OPT. A1)**  
 SCALE: 1/8" = 1'-0"  
 TOTAL: 6,049 SQ. FT.



08.09.11







# **Attachment 2**



www.beverlyhills.org

COMMUNITY DEVELOPMENT DEPARTMENT

455 N. Rexford Drive  
Beverly Hills, CA 90210-4817  
(310) 285-1123  
FAX: (310) 858-5966

CITY OF BEVERLY HILLS

Categorical Exemption

NAME OF PROJECT PW Warehouse Project

LOCATION Third Street

TYPE OF BUSINESS (IF COMMERCIAL) City Hall

PROJECT DESCRIPTION Replacement of an approximate 60,000 square foot City warehouse facility used for storage, service and offices with a new 20,800 square foot building containing two stories above ground and one basement level. No change in use, reduction of square footage and footprint of existing buildings.

APPLICANT'S NAME City of Beverly Hills PHONE 310-285-1188

APPLICANT'S ADDRESS Project Administration 345 Foothill Road

CITY Beverly Hills, CA ZIP 90210

IF DIFFERENT, PROVIDE:

AGENT'S NAME \_\_\_\_\_ PHONE \_\_\_\_\_

AGENT'S ADDRESS \_\_\_\_\_

CITY \_\_\_\_\_ ZIP \_\_\_\_\_

The undersigned, having received this project for processing, has reviewed it for environmental impact and concluded that the project qualifies for a categorical exemption under the procedures adopted by the City of Beverly Hills and no further environmental assessment is necessary.

Applicable Exemption Class 15302 (b)

COMMENTS: The proposed project involves the replacement of existing municipal facilities which results in a reduction of square footage and intensity. CEQA Guidelines identify the replacement of commercial structures of substantially the same size, purpose and capacity as being exempt from environmental review.

REVIEWED BY [Signature] Date 8/24/11

FEE \$ \_\_\_\_\_ (See current Planning Department Fee Schedule)