



## AGENDA REPORT

**Meeting Date:** March 11, 2009  
**Item Number:** F-17  
**To:** Honorable Mayor & City Council  
**From:** Noel Marquis, Assistant Director of Administrative Services - Finance  
**Subject:** **APPROVALS RELATED TO VARIOUS CITY PURCHASING AND BUDGET TRANSACTIONS AS DESCRIBED HEREIN**  
**Attachments:** 1. Agreements (5)

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**Item A. APPROVAL OF AN AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND EDGESOFT, INC. FOR INFORMATION TECHNOLOGY CONSULTING SERVICES FOR PUBLIC SAFETY INITIATIVES; AND, APPROVAL OF A PURCHASE ORDER IN A TOTAL NOT-TO-EXCEED AMOUNT OF \$100,000**

### **RECOMMENDATION**

Information Technology and the Police Department recommend that the City Council move to approve an agreement between the City of Beverly Hills and Edgesoft, Inc. for information technology consulting services for public safety initiatives and approval of a purchase order in a total not-to-exceed amount of \$100,000.

### **INTRODUCTION**

On December 9, 2008, the City released a Request for Proposals (RFP) identified as Bid No. 09-16, requesting bid proposals for information technology consulting services for the City's eGov initiatives for Public Safety. On January 6, 2009 at 2:00 p.m., sealed bids for Bid No. 09-16 were opened by the Deputy City Clerk. Of the seven responses received, one response had deficiencies in form.

### **DISCUSSION**

Of the seven proposals submitted, 3 consulting firms had no deficiencies, and quoted an unambiguous, all-inclusive blended rate, as requested in the RFP. These firms were Edgesoft, Inc., Enterprise Strategies, LLC, and 22<sup>nd</sup> Century Technologies, Inc. Each

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was invited to prepare a presentation for the selection committee showcasing relevant experience.

	<b>Consulting Firm</b>	<b>Hourly Rate</b>	<b>Notes</b>
1.	22nd Century Technologies Inc.	\$79	The Bid Form states that the blended hourly rate includes all charges and fees.
3.	Edgesoft Inc.	\$110	None.
6.	Enterprise Strategies, LLC	\$70	None.

Based on an evaluation of the presentations by the three finalists, the City's selection committee chose Edgesoft, Inc. Edgesoft was found to have the most extensive relevant experience with respect to development and implementation of similar eGov initiatives for local government. Further, their compliant work schedule will meet the City's requirements to complete all work onsite, pursuant to the direct supervision of City staff.

### **FISCAL IMPACT**

Funding for this engagement will be provided by the Unified Network of Interoperable Technology Enhancements (UNITE) federal grant Capital Improvement Program 1902105F006-85030.

**Item B. APPROVAL TO ISSUE A PURCHASE ORDER TO MOTOROLA INC. FOR THE PURCHASE OF REPLACEMENT RADIOS FOR PUBLIC SAFETY, IN AN AMOUNT NOT-TO-EXCEED \$400,000**

### **RECOMMENDATION**

Staff recommends the purchase for the planned replacement of twenty percent (20%) of the end-of-life public safety hand held radios.

### **INTRODUCTION**

On December 30, 2004, the City contracted with Motorola, Inc. (Agreement #388-04) to provide a new Public Safety Radio System that would be compliant with the City's Interagency Communications Interoperability System Joint Powers Agreement of 2003 (ICIS JPA Agreement #266-03). That contract did not include the upgrade of existing XTS3000 handheld radios. As a result these particular radios have been in service for approximately eight years. The expected service life of these radios is between five and seven years.

The current XTS3000 handheld radios are no longer manufactured by Motorola. Motorola is phasing out support for the XTS3000 hand held radios and finding support for these radios is becoming increasingly difficult. These radios are essential to public safety as they are the mainline of communication between dispatch and field services.

The City's mobile and handheld radios (subscriber units) are on a replacement cycle. Based on this replacement schedule for end-of-life radio equipment, approximately 20% of the current subscriber fleet requires replacement at this time to ensure operability.

### **DISCUSSION**

This purchase represents the planned replacement for the end-of-life radios that are currently in service, representing approximately 20% of the subscriber fleet.

### **FISCAL IMPACT**

Funds were budgeted and are available in the Information Technology Internal Service Fund Capital Improvement Project 31410329-85050 for this purpose.

- Item C. APPROVAL OF AN AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND DELTAWRX, LLC FOR PROJECT MANAGEMENT AND CONSULTING SERVICES RELATED TO UPGRADE OF THE CITY'S PUBLIC SAFETY SYSTEMS; AND,**
- APPROVE A PURCHASE ORDER IN THE NOT-TO-EXCEED AMOUNT OF \$400,000**

### **RECOMMENDATION**

Staff recommends that the City Council approve the agreement and purchase order in the amount of \$400,000 to DELTAWRX, LLC for professional services related to the planned upgrade of the City's CAD/RMS systems for Police and Fire.

### **INTRODUCTION**

On December 9, 2008, the City released an RFP requesting bid proposals for Project Management Services Related to Upgrade of Public Safety Systems for the City of Beverly Hills (CAD/RMS) (Bid No. 09-17). On January 6, 2009 at 2:00 p.m., sealed bids were opened by the Deputy City Clerk for Bid No. 09-17. Five responses were received.

### **DISCUSSION**

While the City's purchasing ordinance allows for the City to select consultants without the bid process (City of Beverly Hills Municipal Code, Section 3-3-113, Exceptions to Bidding Requirement) to ensure that the City receives the most cost effective services, staff prepared an RFP and solicited bids from qualified bidders.

Upon evaluation of the 5 bid proposals and presentations, the selection committee determined that DELTAWRX, LLC, while not the lowest price bidder had the most extensive experience, and demonstrated the quality and level of service required by the City for successful completion of the project.

### **FISCAL IMPACT**

Funds were budgeted and are available in the Information Technology Internal Service Fund Capital Improvement Project 31410339-85060 for this purpose. The cost of

\$400,000 includes a fixed fee of \$172,400 to research and develop an RFP and to manage the bid selection and City Council approval process for the planned CAD/RMS replacement, as well as a fixed fee of \$169,000 for project management services and implementation processes through successful completion. \$58,600 in contingency funds is included.

**Item D. APPROPRIATING FUNDS IN THE AMOUNT OF \$342,800 FOR THE PURCHASE OF THE SCULPTURE, *ERRATIC*, BY ROXY PAINE;**

**APPROVAL OF AN AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND ROXY PAINE FOR THE SALE AND ASSIGNMENT OF ALL RIGHTS FOR THE ARTISTIC WORK ENTITLED *ERRATIC*; AND**

**APPROVAL OF A PURCHASE ORDER FOR A TOTAL NOT-TO-EXCEED AMOUNT OF \$342,800**

**RECOMMENDATION**

Staff recommends that the City Council move to appropriate funds in the amount of \$342,800 for the purchase of the sculpture, *Erratic*, by Roxy Paine as follows:

FROM		TO	
\$342,800	Find Art Fund Unrestricted Balance 18-30000	\$342,800	Fine Art Purchases 40180568-85060

Staff also recommends that City Council move to approve an agreement between the City of Beverly Hills and Roxy Paine for the sale and assignment of all rights for the artistic work entitled *Erratic* and a purchase order for a total not-to-exceed amount of \$342,800.

**INTRODUCTION**

The Fine Art Commission unanimously moved to recommend the acquisition of an outdoor sculpture by internationally acclaimed artist, Roxy Paine. The sculpture is recommended to be installed in Beverly Gardens Park. Currently, it is on exhibit in Prospect Park in Brooklyn, New York.

*Erratic* is "Paine's newest exploration... a stainless steel boulder measuring 7 feet high by 15 feet wide. In geology, the term "erratic" refers to a rock that has been carried by a glacier hundreds of miles away from its original geographic location. *Erratic's* slick exterior leaves its origin unexplained. It is a boulder displaced from somewhere between a mountain and a steel factory."

**DISCUSSION**

The purchase price for the sculpture is \$340,000, plus a not-to-exceed amount of \$2,800 for the travel costs of the Artist's representative to oversee the installation of the piece for a total cost of \$342,800. This fee does not include transportation and installation which are anticipated to cost between \$10,000 and \$15,000.

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The sculpture will be transported from New York and installed by a local company. It is anticipated that the sculpture will be installed in late spring 2009.

**FISCAL IMPACT**

Funds were not budgeted but are available in the Public Art Fund for this purpose.

**Item E. APPROVAL OF AMENDMENT NO. 1 TO THE AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND CALIFORNIA WEST COAST PAINT & BODY SHOP FOR VEHICLE REPAIR SERVICES**

**RECOMMENDATION**

Staff recommends that the City Council move to approve amendment no. 1 to the agreement as follows: (1) Increase the blanket purchase order (BPO) amount from \$32,000 to \$37,000 per year; (2) extend the current agreement with the vendor until June 30, 2010.

**INTRODUCTION**

This request is for City Council to approve an amendment to Agreement 277-07 which would authorize increase in not-to-exceed annual amount from \$32,000 to \$37,000 per year and extend the current agreement until June 30, 2010. This agreement provides for body repairs and refinishing of City fleet vehicles on an as needed basis.

**DISCUSSION**

Due to the highly specialized skills required for repairing accident damages and the lack of an appropriate facility to handle body repairs and repainting in house, Fleet Services outsources this type of work to two vendors that are located close to the City yard. These vendors were awarded the BPO's after being determined, through an informal bid process, as the most responsive service providers.

The cost of accident repairs have steadily risen every year due to the complexity of modern vehicles and due to the increases in the cost of materials and the associated components needed for these repairs. This current year, an inordinate number of fleet vehicles, especially public-safety vehicles, have incurred major damages that needed the attention and expertise of the two body repair shops. As a result, the budget allocated for accident-damage repairs for the Fiscal Year 2009 was prematurely exhausted.

**FISCAL IMPACT**

Funds were budgeted and are available in the Capital Assets Internal Service Fund for this purpose.

**Item F. APPROVAL OF AMENDMENT NO. 5 TO AN AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND SCHINDLER ELEVATOR CORPORATION FOR ELEVATOR MAINTENANCE SERVICES**

**RECOMMENDATION**

Staff recommends that the City Council move to approve amendment no. 5 to the agreement with Schindler Elevator Corporation for labor union wage increase of 5.42% for monthly payments of \$19,726.61.

**INTRODUCTION**

This amendment approves the annual union labor increase of 5.42% bringing the monthly contract cost to \$19,726.61.

**DISCUSSION**

Schindler Elevator Corporation provides elevator maintenance services to the City. The agreement was for a period of one year with four one year extensions and allows for an annual labor union wage increase that will be passed to the City.

**FISCAL IMPACT**

Funds were budgeted and are available in the Capital Assets Internal Service Fund for this purpose.

  
Noel Marquis  
Finance Approval

  
Scott G. Miller  
Approved By

AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS  
AND EDGESOFT, INC. FOR INFORMATION TECHNOLOGY  
CONSULTING SERVICES FOR PUBLIC SAFETY  
INITIATIVES

NAME OF CONSULTANT: Edgesoft, Inc.

RESPONSIBLE PRINCIPAL  
OF CONSULTANT: Shan Sundar, President

CONSULTANT'S ADDRESS: 6133 Bristol Parkway, Suite 301  
Culver City CA 90230

CITY'S ADDRESS: City of Beverly Hills  
455 N. Rexford Drive  
Beverly Hills, CA 90210  
Attention: David Schirmer, Chief  
Information Officer

COMMENCEMENT DATE: Upon Written Notice to Proceed

TERMINATION DATE: Upon satisfactory completion of the  
Services

CONSIDERATION: An amount not to exceed \$100,000.00  
(includes applicable taxes) as more fully  
described in Exhibit B

AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS  
AND EDGESOFT, INC. FOR INFORMATION TECHNOLOGY  
CONSULTING SERVICES FOR PUBLIC SAFETY  
INITIATIVES

THIS AGREEMENT is made by and between the City of Beverly Hills (hereinafter called "City"), and Edgesoft, Inc., (hereinafter called "Consultant").

RECITALS

A. City desires to have certain services provided as set forth in Exhibit A, attached hereto and incorporated herein by this reference (the "Services").

B. Consultant represents that it is qualified and able to perform the Services in accordance with the terms set forth herein.

AGREEMENT

NOW, THEREFORE, the parties agree as follows:

Section 1. Consultant's Services. Consultant shall provide the consulting services on an "as needed" basis or as mutually agreed to by the parties, relating to the City's web applications and as more particularly described in Exhibit A, in a manner satisfactory to City and consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions.

Section 2. Time of Performance. This Agreement shall commence upon a notice to proceed, and shall terminate on the Termination Date set forth above, unless sooner terminated pursuant to Section 11 of this Agreement.

Section 3. Compensation. City agrees to compensate Consultant, and Consultant agrees to accept in full satisfaction for the services required by this Agreement the Consideration set forth above and more particularly described in Exhibit B, attached hereto and incorporated herein by this reference. Said Consideration shall constitute reimbursement of Consultant's fee for the services as well as the actual cost of any equipment, materials, and supplies necessary to provide the services (including all labor, materials, delivery, tax, assembly, and installation, as applicable). City shall pay Consultant said Consideration in accordance with the schedule of payment set forth in Exhibit B.

Section 4. Independent Contractor. Consultant is and shall at all times remain, as to City, a wholly independent contractor. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as herein set forth. 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.

Section 5. Assignment and Subcontracting. Consultant shall not assign or attempt to assign any portion of this Agreement, or subcontract any required performance

hereunder, without the prior written approval of City. Consultant, however, shall at all times be responsible for the services performed by any subcontractors.

Section 6. Party Representatives.

(a) Consultant: Responsible Principal. The Responsible Principal set forth above shall be principally responsible for Consultant's obligations under this Agreement and shall serve as principal liaison between City and Consultant. Designation of another Responsible Principal by Consultant shall not be made without the prior written consent of City.

(b) City Representative. The City Manager or his designee shall represent City in the implementation of this Agreement.

Section 7. Personnel. Consultant represents that it has, or shall secure at its own expense, all personnel required to perform Consultant's services under this Agreement.

Section 8. Interests of Consultant. Consultant affirms that it presently has no interest and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of the services contemplated by this Agreement. No person having any such interest shall be employed by or be associated with Consultant.

Section 9. Insurance.

(a) Consultant shall at all times during the term of this Agreement carry, maintain, and keep in full force and effect, a policy or policies of Comprehensive General Liability Insurance, with minimum limits of Two Million Dollars (\$2,000,000) for each occurrence, combined single limit, against any personal injury, death, loss or damage resulting from the wrongful or negligent acts by Consultant.

(b) Consultant shall at all times during the term of this Agreement carry, maintain, and keep in full force and effect, a policy or policies of Comprehensive Vehicle Liability Insurance covering personal injury and property damage, with minimum limits of One Million Dollars (\$1,000,000) per occurrence combined single limit, covering any vehicle utilized by Consultant in performing the services required by this Agreement.

(c) Consultant agrees to maintain in force at all times during the performance of work under this Agreement workers' compensation insurance as required by law.

(d) Consultant shall require each of its sub-consultants or sub-contractors to maintain insurance coverage which meets all of the requirements of this Agreement.

(e) The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least a B+;VII in the latest edition of Best's Insurance Guide.

(f) Consultant agrees that if it does not keep the aforesaid insurance in full force and effect City may either immediately terminate this Agreement or, if insurance is

available at a reasonable cost, City may take out the necessary insurance and pay, at Consultant's expense, the premium thereon.

(g) At all times during the term of this Agreement, Consultant shall maintain on file with the City Clerk a certificate or certificates of insurance on the form set forth on Exhibit C, attached hereto and incorporated herein, or satisfactory to the City Attorney and Risk Manager, showing that the aforesaid policies are in effect in the required amounts. Consultant shall, prior to commencement of work under this Agreement, file with the City Clerk such certificate or certificates.

(h) The policies of insurance required by this Agreement shall contain an endorsement naming the City and City's elected officials, officers and employees as additional insureds. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty (30) days prior written notice to City, and specifically stating that the coverage contained in the policies affords insurance pursuant to the terms and conditions as set forth in this Agreement.

(i) The insurance provided by Consultant shall be primary to any coverage available to City, and any insurance or self-insurance maintained by City, its officers, officials, employees, agents or volunteers shall be excess of Consultant's insurance and shall not contribute with it. The policies of insurance required by this Agreement shall include provisions for waiver of subrogation. The Consultant hereby waives all rights of subrogation against City.

(j) 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.

Section 10. Indemnification. CONSULTANT agrees to indemnify, hold harmless and defend CITY, City Council and each member thereof, and every officer, employee and agent of CITY, from any claim, liability or financial loss (including, without limitation, attorneys fees and costs) arising from any intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of CONSULTANT or any person employed by CONSULTANT in the performance of this Agreement.

Section 11. Termination.

(a) Either party may cancel this Agreement, with or without cause, at any time upon five (5) days written notice to the other party. 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 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; 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.

Section 12. City's Responsibility. City shall provide Consultant with all pertinent data, documents, and other requested information as is available for the proper performance of Consultant's services.

Section 13. Work Product. All products of consulting, including, without limitation, any copyrightable works, ideas, discoveries, inventions, patents, products, videos, graphics, scripts, or other information (collectively, the "Work Product") developed in whole or in part by Consultant in connection with this Agreement shall be the exclusive property of City. Upon the request of City, Consultant shall sign all documents requested by City to confirm or perfect the exclusive ownership of City of the Work Product. Any Work Product in the possession of Consultant shall be delivered to the City at least ten (10) days prior to the termination of this Agreement. This section shall survive termination of this Agreement.

Section 14. Information and Documents. All data, information, documents and drawings prepared for City and required to be furnished to City in connection with this Agreement shall become the property of City, and City may use all or any portion of the work submitted by Consultant and compensated by City pursuant to this Agreement as City deems appropriate.

Section 15. Non-Disclosure.

(a) Pursuant to the terms of this Agreement, City has provided, or will provide Consultant with certain information, and/or access to certain information including public safety information (the "Information"), which was or will be obtained by the City pursuant to a License Agreement with a third party, or which is the proprietary information of the City, or which is not publicly known. Consultant, its employees, agents, representatives, contractors and subcontractors shall hold the Information private and confidential, and shall not:

(i) Use the Information, nor cause the Information to be used for any purpose other than in performance of its duties to the City,

(ii) Participate in the wrongful use, illegal use, or unauthorized disclosure of the Information, or

(iii) Sell, release, free trade, assign, or provide access to the Information, directly or indirectly, to third parties. This provision survives termination of Consultant's duties to the City.

Section 16. Notice. Any notice required by this Agreement shall be deemed received on: (a) the day of delivery if delivered by hand or overnight courier service during regular business hours; or (b) on the second business day following deposit in the United States mail, postage prepaid, to the addresses set forth above or to such other addresses as the parties may designate in writing.

Section 17. Attorney's Fees. In the event of litigation between the parties arising out of or connected with this Agreement, the prevailing party in such litigation shall be entitled to recover, in addition to any other amounts, reasonable attorney's fees and costs of such litigation.

Section 18. 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 19. Governing Law. The interpretation and implementation of this Agreement shall be governed by the domestic law of the State of California.

Section 20. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be valid under applicable law. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect.

EXECUTED the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

CITY OF BEVERLY HILLS  
A Municipal Corporation

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

ATTEST:

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

CONSULTANT: EDGESOFT INC.  


\_\_\_\_\_  
SHAN SUNDAR  
President

FOR ANAND BELAGULY

\_\_\_\_\_  
ANAND BELAGULY  
Secretary

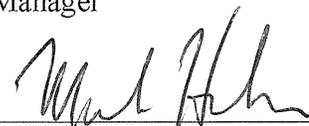
[Signatures continue]

APPROVED AS TO FORM:

  
\_\_\_\_\_  
LAURENCE S. WIENER  
City Attorney

APPROVED AS TO CONTENT:

\_\_\_\_\_  
RODERICK J. WOOD  
City Manager

  
\_\_\_\_\_  
DAVID SCHIRMER  
Chief Information Officer

  
\_\_\_\_\_  
*For* DAVID SNOWDEN  
Chief of Police

  
\_\_\_\_\_  
KARL KIRKMAN  
Risk Manager

## **EXHIBIT A**

### **SCOPE OF SERVICES**

Consultant shall provide information technology consulting services (the “Services”) related to the City’s Public Safety Initiatives. Consultant shall provide the Services as directed by City on an as-needed basis. The Services shall include the following:

- (i) Analysis of business requirements and subsequent creation of high-level technical design documents and detailed technical specifications, in accordance with City architecture standards.
- (ii) Development of application code as necessary, using Java, WebSphere and Struts.
- (iii) Unit and system testing of application code as well as execution of implementation activities.
- (iv) Identification, documentation and estimation of technical tasks for projects of varying sizes and levels of complexity.
- (v) Analysis and identification of technical areas of improvement within existing web applications.
- (vi) Work with internal IT teams to complete project activities, such as infrastructure, architecture and database design.
- (vii) Discovery, solutions development, systems testing, solutions presentations, training, and application support.

For all work to be completed under this Agreement, Consultant shall provide a detailed scope of work for approval and sign off by City, with detailed deliverables and payment milestones for acceptance by City.

## **EXHIBIT B**

### **COMPENSATION AND PAYMENT**

City shall pay Consultant compensation at a blended rate of One Hundred and Ten Dollars (\$110.00) per hour for scheduled service during normal business hours. The total sum shall not exceed the amount of One Hundred Thousand Dollars (\$100,000.00), as set forth in the purchase order issued by City for all services to be provided pursuant to this Agreement. Said Compensation shall constitute reimbursement of Consultant's fee for the services as well as the actual cost of any equipment, materials and supplies necessary to provide the services (including labor, materials, delivery, tax, assembly and installation, as applicable).

Consultant shall submit a monthly itemized statement to City for its services performed for the prior month, which shall include documentation setting forth, in detail, a description of the services rendered and the hours of service. City shall pay Consultant all undisputed amounts of such billing within thirty (30) days of receipt of the same.



## EXHIBIT C CERTIFICATE OF INSURANCE

This is to certify that the following endorsement is part of the policy(ies) described below:

**NAMED INSURED**

**COMPANIES AFFORDING COVERAGE**

- A.
- B.
- C.

**ADDRESS**

COMPANY (A. B. C.)	COVERAGE	POLICY NUMBER	EXPIRATION DATE	B.I.	LIMITS P.D.	AGGREGATE
	<input type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> GENERAL LIABILITY <input type="checkbox"/> PRODUCTS/COMPLETED OPERATIONS <input type="checkbox"/> BLANKET CONTRACTUAL <input type="checkbox"/> CONTRACTOR'S PROTECTIVE <input type="checkbox"/> PERSONAL INJURY <input type="checkbox"/> EXCESS LIABILITY <input type="checkbox"/> WORKERS' COMPENSATION <input type="checkbox"/>					

It is hereby understood and agreed that the **City of Beverly Hills**, its City Council and each member thereof and every officer and employee of the City shall be named as joint and several assureds with respect to claims arising out of the following project or agreement:

It is further agreed that the following indemnity agreement between the **City of Beverly Hills** and the named insured is covered under the policy: Contractor agrees to indemnify, hold harmless and defend City, its City Council and each member thereof and every officer and employee of City from any and all liability or financial loss resulting from any suits, claims, losses or actions brought against and from all costs and expenses of litigation brought against City, its City Council and each member thereof and any officer or employee of City which results directly or indirectly from the wrongful or negligent actions of contractor's officers, employees, agents or others employed by Contractor while engaged by Contractor in the (performance of this agreement) construction of this project.

It is further agreed that the inclusion of more than one assured shall not operate to increase the limit of the company's liability and that insurer waives any right of contribution with insurance which may be available to the **City of Beverly Hills**.

In the event of cancellation or material change in the above coverage, the company will give **30 days** written notice of cancellation or material change to the certificate holder.

Except to certify that the policy(ies) described above have the above endorsement attached, this certificate or verification of insurance is not an insurance policy and does not amend, extend or alter the coverage afforded by the policies listed herein. Notwithstanding any requirement, term, or condition of any contract or other document with respect to which this certificate or verification of insurance may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies.

DATE: \_\_\_\_\_

BY: \_\_\_\_\_  
Authorized Insurance Representative

AGENCY: \_\_\_\_\_

TITLE: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS  
AND DELTAWRX, LLC FOR PROJECT MANAGEMENT AND  
CONSULTING SERVICES RELATED TO UPGRADE OF THE  
CITY'S PUBLIC SAFETY SYSTEMS

NAME OF CONSULTANT: DELTAWRX, LLC

RESPONSIBLE PRINCIPAL  
OF CONSULTANT: Brian Hudson, Partner / Executive Vice President

CONSULTANT'S ADDRESS: 21700 Oxnard Street, Suite 530  
Woodland Hills, CA 91367

CITY'S ADDRESS: City of Beverly Hills  
455 N. Rexford Drive  
Beverly Hills, CA 90210  
ATTN: David Schirmer, Chief Information Officer

COMMENCEMENT DATE: March 11, 2009

TERMINATION DATE: Upon Satisfactory Completion of the Services

CONSIDERATION: An amount not to exceed \$400,000 more  
particularly described in Exhibit B (including taxes,  
fees, and contingency funds in the amount of  
\$58,600)

AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS  
AND DELTAWRX, LLC FOR PROJECT MANAGEMENT AND  
CONSULTING SERVICES RELATED TO UPGRADE OF THE  
CITY'S PUBLIC SAFETY SYSTEMS

THIS AGREEMENT is made by and between the City of Beverly Hills (hereinafter called "City"), and Deltawrx, LLC, (hereinafter called "Consultant").

RECITALS

A. City desires to have certain services provided as set forth in Exhibit A, attached hereto and incorporated herein by this reference (the "Services").

B. Consultant represents that it is qualified and able to perform the Services in accordance with the terms set forth herein.

AGREEMENT

NOW, THEREFORE, the parties agree as follows:

Section 1. Consultant's Services. Consultant shall provide project management and consulting services related to upgrade of the City's Public Safety systems, as more particularly described in Exhibit A, in a manner satisfactory to City and consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions.

Section 2. Time of Performance. This Agreement shall commence upon a notice to proceed, and shall terminate on the Termination Date set forth above, unless sooner terminated pursuant to Section 11 of this Agreement.

Section 3. Compensation. City agrees to compensate Consultant, and Consultant agrees to accept in full satisfaction for the services required by this Agreement the Consideration set forth above and more particularly described in Exhibit B, attached hereto and incorporated herein by this reference. Said Consideration shall constitute reimbursement of Consultant's fee for the services as well as the actual cost of any equipment, materials, and supplies necessary to provide the services (including all labor, materials, delivery, tax, assembly, and installation, as applicable).

Section 4. Independent Contractor. Consultant is and shall at all times remain, as to City, a wholly independent contractor. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as herein set forth. 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.

Section 5. Assignment and Subcontracting. Consultant shall not assign or attempt to assign any portion of this Agreement, or subcontract any required performance

hereunder, without the prior written approval of City. Consultant, however, shall at all times be responsible for the services performed by any subcontractors.

Section 6. Party Representatives.

(a) Consultant: Responsible Principal. The Responsible Principal set forth above shall be principally responsible for Consultant's obligations under this Agreement and shall serve as principal liaison between City and Consultant. Designation of another Responsible Principal by Consultant shall not be made without the prior written consent of City.

(b) City Representative. The City Manager or his designee shall represent City in the implementation of this Agreement.

Section 7. Personnel. Consultant represents that it has, or shall secure at its own expense, all personnel required to perform Consultant's services under this Agreement.

Section 8. Interests of Consultant. Consultant affirms that it presently has no interest and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of the services contemplated by this Agreement. No person having any such interest shall be employed by or be associated with Consultant.

Section 9. Insurance.

(a) Consultant shall at all times during the term of this Agreement carry, maintain, and keep in full force and effect, a policy or policies of Comprehensive General Liability Insurance, with minimum limits of Two Million Dollars (\$2,000,000) for each occurrence, combined single limit, against any personal injury, death, loss or damage resulting from the wrongful or negligent acts by Consultant.

(b) Consultant shall at all times during the term of this Agreement carry, maintain, and keep in full force and effect, a policy or policies of Professional Liability Insurance covering personal injury and property damage, with minimum limits of One Million Dollars (\$1,000,000) per claim and in the aggregate. Any deductibles or self-insured retentions attached to such policy or policies must be declared to City in writing and be approved by City. Further, Consultant agrees to maintain in full force and effect such insurance for one year after performance of work under this Agreement is completed.

(c) Consultant shall at all times during the term of this Agreement carry, maintain, and keep in full force and effect, a policy or policies of Comprehensive Vehicle Liability Insurance covering personal injury and property damage, with minimum limits of One Million Dollars (\$1,000,000) per occurrence combined single limit, covering any vehicle utilized by Contractor in performing the services required by this Agreement.

(d) Consultant agrees to maintain in force at all times during the performance of work under this Agreement workers' compensation insurance as required by law.

(e) Consultant shall require each of its sub-Consultants or sub-contractors to maintain insurance coverage which meets all of the requirements of this Agreement.

(f) The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least a B+;VII in the latest edition of Best's Insurance Guide.

(g) Consultant agrees that if it does not keep the aforesaid insurance in full force and effect City may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, City may take out the necessary insurance and pay, at Consultant's expense, the premium thereon.

(h) At all times during the term of this Agreement, Consultant shall maintain on file with the City Clerk a certificate or certificates of insurance on the form set forth on Exhibit C, attached hereto and incorporated herein, or a form satisfactory to the City Attorney and Risk Manager, showing that the aforesaid policies are in effect in the required amounts. Consultant shall, prior to commencement of work under this Agreement, file with the City Clerk such certificate or certificates.

(i) The policies of insurance required by this Agreement shall contain an endorsement naming the City and City's elected officials, officers and employees as additional insureds. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty (30) days prior written notice to City, and specifically stating that the coverage contained in the policies affords insurance pursuant to the terms and conditions as set forth in this Agreement.

(j) The insurance provided by Consultant shall be primary to any coverage available to City, and any insurance or self-insurance maintained by City, its officers, officials, employees, agents or volunteers shall be excess of Consultant's insurance and shall not contribute with it. The policies of insurance required by this Agreement shall include provisions for waiver of subrogation. The Consultant hereby waives all rights of subrogation against City.

(k) 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.

#### Section 10. Indemnification.

(a) Consultant agrees to indemnify, hold harmless and defend the City of Beverly Hills, the City Council and each member thereof, and every officer, employee and agent of the City from any claim, liability or financial loss (including without limitation, attorneys fees and costs) arising out of the acts or omissions of Consultant, its employees, agents, representatives, and/or subcontractors, whether intentional, reckless, negligent, or otherwise wrongful, in the performance of this Agreement.

(b) Consultant agrees to indemnify, hold harmless and defend the City, the City Council and each member thereof, every officer, employee and agent of the City from and against any claim, liability or financial loss (including, without limitation, attorneys fees and costs) arising from any claim that the technology and services provided by Consultant under this

Agreement infringes upon any copyright, trade secret, trademarks, patent or other proprietary or intellectual property right of any third party.

Section 11. Termination.

(a) City may cancel this Agreement, with or without cause, 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 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; 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.

Section 12. City's Responsibility. City shall provide Consultant with all pertinent data, documents, and other requested information as is available for the proper performance of Consultant's services.

Section 13. Work Product. All products of consulting, including, without limitation, any copyrightable works, ideas, discoveries, inventions, patents, products, videos, graphics, scripts, or other information (collectively, the "Work Product") developed in whole or in part by Consultant in connection with this Agreement shall be the exclusive property of City. Upon the request of City, Consultant shall sign all documents requested by City to confirm or perfect the exclusive ownership of City of the Work Product. Any Work Product in the possession of Consultant shall be delivered to the City at least ten (10) days prior to the termination of this Agreement. This section shall survive termination of this Agreement.

Section 14. Information and Documents. All data, information, documents and drawings prepared for City and required to be furnished to City in connection with this Agreement shall become the property of City, and City may use all or any portion of the work submitted by Consultant and compensated by City pursuant to this Agreement as City deems appropriate.

Section 15. Non-Disclosure.

(a) Pursuant to the terms of this Agreement, City has provided, or will provide Consultant with certain information, and/or access to certain information including public safety information (the "Information"), which was or will be obtained by the City pursuant to a License Agreement with a third party, or which is the proprietary information of the City, or which is not publicly known. Consultant, its employees, agents, representatives, contractors and subcontractors shall hold the Information private and confidential, and shall not:

(i) Use the Information, nor cause the Information to be used for any purpose other than in performance of its duties to the City,

(ii) Participate in the wrongful use, illegal use, or unauthorized disclosure of the Information, or

(iii) Sell, release, free trade, assign, or provide access to the Information, directly or indirectly, to third parties. This provision survives termination of Consultant's duties to the City.

Section 16. Notice. Any notice required by this Agreement shall be deemed received on: (a) the day of delivery if delivered by hand or overnight courier service during regular business hours; or (b) on the second business day following deposit in the United States mail, postage prepaid, to the addresses set forth above or to such other addresses as the parties may designate in writing.

Section 17. Attorney's Fees. In the event of litigation between the parties arising out of or connected with this Agreement, the prevailing party in such litigation shall be entitled to recover, in addition to any other amounts, reasonable attorney's fees and costs of such litigation.

Section 18. 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 19. Governing Law. The interpretation and implementation of this Agreement shall be governed by the domestic law of the State of California.

Section 20. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be valid under applicable law. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect.

Section 21. No Third Party Beneficiaries. This Agreement and the obligations hereunder are not intended to benefit any party other than CITY and CONSULTANT, except as expressly provided otherwise herein. No entity not a signatory to this Agreement shall have any rights or causes of action against any party to this Agreement as a result of that party's performance or non-performance under this Agreement, except as expressly provided otherwise herein.

EXECUTED the \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

CITY OF BEVERLY HILLS  
A Municipal Corporation

\_\_\_\_\_  
Mayor of the City of Beverly Hills

[Signatures continue]

ATTEST:

\_\_\_\_\_ (SEAL)

BYRON POPE  
City Clerk

CONSULTANT: DELTAWRX, LLC

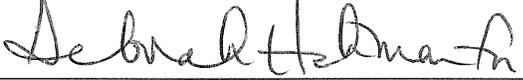


MICHAEL THAYER  
Chief Executive Officer



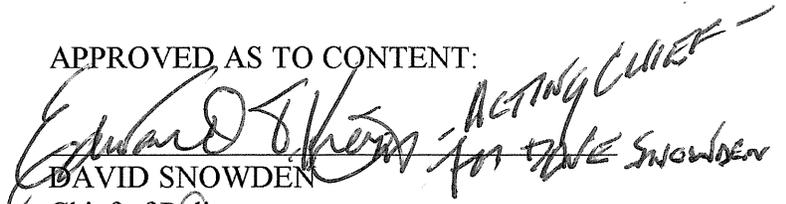
BRIAN HUDSON  
Executive Vice President

APPROVED AS TO FORM:

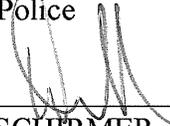


LAURENCE S. WIENER  
City Attorney

APPROVED AS TO CONTENT:



DAVID SNOWDEN  
Chief of Police



DAVID SCHIRMER  
Chief Information Officer



KARL KIRKMAN  
Risk Manager

## EXHIBIT A

### SCOPE OF SERVICES

Consultant shall provide project management and consulting services (the “Services”) related to researching, planning and facilitating successful upgrade of the City’s current Computer Aided Dispatch (CAD), Records Management System (RMS), Mobile Computing (MCT) and Mobile Field Reporting (MFR) used by the Beverly Hills Police and Fire Departments (collectively referred to below as “Public Safety”) systems, as directed by City. The Services shall include, but are not limited to the following:

- 1) Research and Development Services – The City requires one or more consultants to serve as information gatherer for the purpose of preparing a Request for Proposals (RFP) or Scope of Work (SOW), as directed by City, for the City’s planned Public Safety CAD/RMS/MCT/MFR upgrade. Consultant(s) shall conduct research and development services which include, but are not limited to the following:
  - a. Conduct needs assessments and requirements analyses to ensure required functionality is achieved.
  - b. Conduct and research CAD/RMS/MCT/MFR vendors and generate a list of qualified vendor(s) who have extensive experience in Public Safety systems and with the following qualifications:
    - i. Utilize Windows, Microsoft.Net, and SQL database technologies;
    - ii. History of successful implementations of comprehensive and integrated solutions of CAD/RMS/MCT/MFR shared by the Police and Fire Departments; and
    - iii. Demonstrate highly rated overall customer satisfaction records, including systems performance, reliability, and customer support.
  - c. Draft an RFP and/or an SOW for the resulting upgrade agreement, as directed by City representatives to include:
    - i. Comprehensive upgrade of the City’s existing CAD/RMS/MCT/MFR, including, but not limited to implementation services, licensing, support, training, and related services.
    - ii. Integration of the upgraded CAD/RMS/MCT/MFR systems with the Beverly Hills Fire Department’s Motorola MOSCAD Fire Station Alerting System.
    - iii. The Consultant(s) selected for the engagement will be required to ensure that all hardware, software, equipment, and services required for a successful upgrade are included in the RFP and/or SOW.

- d. Assist City with evaluation of vendor proposals, quotations, and related documentation, as directed by City.
- 2) Project Management Services – Consultant shall serve as the City’s project manager and liaison between the City departments and the vendor(s) in preparation for the planned upgrade, and shall continue such services through the upgrade engagement to ensure successful implementation. Consultant’s project management services shall include the following:
- a. Serve as liaison between City representatives and CAD/RMS/MCT/MFR implementer.
  - b. Schedule and conduct conference calls and meetings with key City representatives as needed.
  - c. Ensure implementation schedule is maintained and accurate, including completion of all tasks and deliverables.
  - d. Review, verify and present all necessary documentation submitted by the CAD/RMS/MCT/MFR implementer;
  - e. Assist in management of CAD/RMS/MCT/MFR implementer’s technical personnel to ensure uninterrupted service delivery to the City;
  - f. Resolve any conflicts during the course of the project; and
  - g. Provide weekly status reports to City staff.

For all work to be completed under this Agreement, Consultant shall provide a detailed scope of work for approval and sign off by City, with detailed deliverables and payment milestones for acceptance by City.

**EXHIBIT B**

**COMPENSATION AND PAYMENT**

City shall pay Consultant compensation in an amount not to exceed Four Hundred Thousand Dollars (\$400,000.00), including contingency funds in the not to exceed amount of Fifty-Eight Thousand Six Hundred Dollars (\$58,600). Consultant shall invoice City and City shall pay Consultant for Software and Hardware in accordance with the following schedule:

<b>Payment Milestone</b>	<b>Description</b>	<b>Deliverable</b>	<b>% Payment</b>	<b>Payment Amount</b>
1	Contract Execution	City Issued Purchase Order	10%	\$17,240
2	Conduct a Needs Assessment and to determine Public Safety's requirements	Needs Assessment and Requirements Analysis Report	20%	\$34,480
3	RFP Development	RFP Document	25%	\$43,100
4	Vendor Evaluation & Selection	Detailed Evaluation Documentation and Justification Document for Selection	30%	\$51,720
5	Council Presentation(s)	Prepare Agenda Report(s) and Present Project to City Council for Approval	15%	\$25,860
Phase 1 – Subtotal:			100.00%	\$172,400
6	Project Management Services	Project Kickoff	20%	\$33,800
7	Project Management Services	Installation Complete	25%	\$42,250
8	Project Management Services	Testing Complete	20%	\$33,800
9	Project Management Services	Training Complete	25%	\$42,250
10	Project Management Services	Certificate of Completion	10%	\$16,900
Phase 2 – Subtotal:			100.00%	\$169,000
11	Additional Services – Contingency Funds	TBD	N/A	\$58,600
<b>PROJECT TOTAL NOT-TO-EXCEED:</b>				<b>\$400,000</b>

Upon completion of each payment milestone above, Consultant shall submit an invoice to City for its services performed, detailing the Task(s) completed and the percentage payment and amount due. Additional services paid with Contingency funds must be authorized by City. City shall pay Consultant all undisputed amounts of such billing within thirty (30) days of receipt of the same.



**EXHIBIT C**

**CERTIFICATE OF INSURANCE**

This is to certify that the following endorsement is part of the policy(ies) described below:

**NAMED INSURED**

**COMPANIES AFFORDING COVERAGE**

- A.
- B.
- C.

**ADDRESS**

COMPANY (A. B. C.)	COVERAGE	POLICY NUMBER	EXPIRATION DATE	LIMITS		
				B.I.	P.D.	AGGREGATE
	<input type="checkbox"/> <b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> <b>GENERAL LIABILITY</b> <input type="checkbox"/> <b>PRODUCTS/COMPLETED OPERATIONS</b> <input type="checkbox"/> <b>BLANKET CONTRACTUAL</b> <input type="checkbox"/> <b>CONTRACTOR'S PROTECTIVE</b> <input type="checkbox"/> <b>PERSONAL INJURY</b> <input type="checkbox"/> <b>EXCESS LIABILITY</b> <input type="checkbox"/> <b>WORKERS' COMPENSATION</b> <input type="checkbox"/>					

It is hereby understood and agreed that the **City of Beverly Hills**, its City Council and each member thereof and every officer and employee of the City shall be named as joint and several assureds with respect to claims arising out of the following project or agreement:

It is further agreed that the following indemnity agreement between the **City of Beverly Hills** and the named insured is covered under the policy: Contractor agrees to indemnify, hold harmless and defend City, its City Council and each member thereof and every officer and employee of City from any and all liability or financial loss resulting from any suits, claims, losses or actions brought against and from all costs and expenses of litigation brought against City, its City Council and each member thereof and any officer or employee of City which results directly or indirectly from the wrongful or negligent actions of contractor's officers, employees, agents or others employed by Contractor while engaged by Contractor in the (performance of this agreement) construction of this project.

It is further agreed that the inclusion of more than one assured shall not operate to increase the limit of the company's liability and that insurer waives any right of contribution with insurance which may be available to the **City of Beverly Hills**.

In the event of cancellation or material change in the above coverage, the company will give **30 days** written notice of cancellation or material change to the certificate holder.

Except to certify that the policy(ies) described above have the above endorsement attached, this certificate or verification of insurance is not an insurance policy and does not amend, extend or alter the coverage afforded by the policies listed herein. Notwithstanding any requirement, term, or condition of any contract or other document with respect to which this certificate or verification of insurance may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies.

DATE: \_\_\_\_\_

BY: \_\_\_\_\_  
 Authorized Insurance Representative

AGENCY: \_\_\_\_\_

TITLE: \_\_\_\_\_  
 ADDRESS: \_\_\_\_\_

AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND ROXY  
PAINE FOR THE SALE AND ASSIGNMENT OF ALL RIGHTS FOR THE  
ARTISTIC WORK ENTITLED *ERRATIC*

THIS AGREEMENT FOR THE SALE AND ASSIGNMENT OF ALL RIGHTS IN AN ARTISTIC WORK (the "Agreement") is made and entered into as of this \_\_\_ of February, 2009, by and between the City of Beverly Hills, a municipal corporation ("City") and Roxy Paine, through his agent, James Cohan (collectively, "Artist").

**Section 1. Description of Work.**

Roxy Paine is an internationally known artist who has created a sculpture entitled *Erratic*, made out of stainless steel and is 7 feet tall by 15 feet wide ("Work"). The Work shall stand on a concrete base.

**Section 2. Sale of Work and Purchase Price.**

A. Artist agrees to sell, and City agrees to purchase the Work under the terms and conditions set forth in this Agreement and Exhibit A.

B. The price for the Work shall be Three Hundred Forty-Two Thousand and Eight Hundred Dollars (\$342,800) ("Purchase Price"). The Purchase Price is more particularly described in Exhibit B. City shall not withhold applicable federal or state payroll or any other required taxes, or other authorized deduction for payment made to Artist. Upon payment, Artist will sign a written acknowledgement of receipt of said monies and such document shall be incorporated in this Agreement. City reserves the right to inspect the Artwork before acceptance and acceptance of the Artwork is hereby expressly conditioned upon City's satisfaction upon said inspection. Artist reserves the right to be present at the time of the inspection, or to designate an agent to be present at the time of the inspection. All costs associated with the Artist or Artist's agent presence at the inspection shall be born by Artist.

**Section 3. Transfer of Rights of Reproduction.**

Artist hereby provides the City with the right to reproduce in a non-commercial context the Work without further payment to Artist. Artist, however, retains all copyright to the Work.

**Section 4. Originality of Works.**

Artist represents and warrants that (i) the Work is and will be original; (ii) at the time of transfer hereunder, Artist is the sole owner of the Work and of all rights therein including copyright, trademark and other proprietary rights therein; (iii) Artist is and will be the sole creator of the Work; (iv) Artist has and will have full and sufficient right to assign all rights granted herein and to waive all rights relinquished herein; and (v) Artist is not under any obligation to transfer or sell any of the Work to any third party. The Artist agrees that it will not make a duplicate of the

work whether or not for commercial sale or noncommercial use so that Erratic remains an original one-of-a kind work of art.

**Section 5. Artist's Commitment.**

Artist agrees that Artist will not make reference to the Work in a way that reflects discredit on the City or the Work.

**Section 6. Addresses for Notices.**

Any notice, bills, invoices, demand or document which any party is required or may desire to give or deliver to the other hereunder, shall be in writing and may be delivered personally or given by facsimile or overnight courier service, postage prepaid, addressed as follows: to Artist: Roxy Paine, c/o James Cohan Gallery, 533 W. 26<sup>th</sup> Street, New York, NY 10001, Fax: 212-714-9510; to City: City of Beverly Hills, 455 North Rexford Drive, Beverly Hills, California 90210, Attention: City Manager, Fax: (310) 274-3267 with a copy to the City Attorney. Either party shall have the right to designate a different address by written notice similarly given. Any notice, demand or documents shall be deemed received on: (a) the day of delivery if delivered by hand or overnight courier service during the party's regular business hours; or (b) the day of delivery if delivered by facsimile during the parties regular business hours. City assumes no responsibility to search for Artist if he cannot be reached at the address of record.

**Section 7. Termination.**

City shall have the right to terminate this Agreement, with or without cause, upon ten calendar days written notice to Artist.

**Section 8. Attorneys' Fees.**

In the event either party shall commence any action against the other party relating to this Agreement or for the breach of any obligation contained herein, the prevailing party shall be entitled to recover from the losing party reasonable attorneys' fees, expenses, and court costs.

**Section 9. Successors and Assigns.**

The terms of this Agreement shall be binding upon and inure to the benefit of the respective heirs, successors in interest and assigns of the parties hereto.

**Section 10. Entire Agreement.**

This Agreement represents the entire integrated agreement between City and Artist, 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 Artist.

**Section 11. Severability.**

Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be valid under applicable law. If any provision of this Agreement, is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect.

**Section 12. Governing Law; Jurisdiction.**

This Agreement shall be governed by and construed in accordance with the laws of the State of California. In the event of litigation between the parties, venue in State trial courts shall be exclusively in Los Angeles County. In the event of litigation in a United States District Court, exclusive venue shall lie in the Central District of California.

**Section 13. Execution.**

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument.

**Section 14. Representation.**

James Cohan Gallery warrants and represents that it has the legal authority to enter into this Agreement on behalf of Roxy Paine, including the authority to agree to the waiver of certain rights as set forth herein.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

EXECUTED the \_\_\_\_\_ day of \_\_\_\_\_, 2009, at Beverly Hills, California.

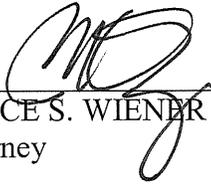
CITY OF BEVERLY HILLS,  
a municipal corporation

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

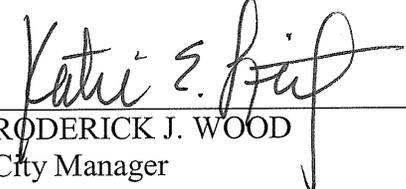
ATTEST:

\_\_\_\_\_  
BYRON POPE, City Clerk

APPROVED AS TO FORM:

  
LAURENCE S. WIENER  
City Attorney

APPROVED AS TO CONTENT:

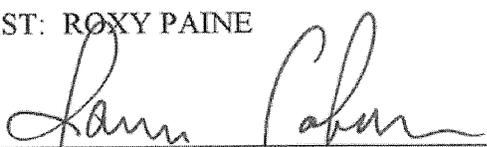
  
for RODERICK J. WOOD  
City Manager

  
STEPHEN M. MILLER  
Director of Community Services

  
KARL KIRKMAN  
Risk Manager

[signatures continued]

ARTIST: ROXY PAINE

  
\_\_\_\_\_  
JAMES COHAN, as agent for Roxy Paine

## **EXHIBIT A**

### **SCOPE OF SERVICES**

Artist has sculpted a stainless steel sculpture (Work) entitled Erratic. A picture of the Work is attached to Exhibit A.

Artist representative shall oversee the installation of the Work. Artist representative will conduct one site visit to the City to conduct the following:

Artist's representatives will supervise the installation of the Work, including the removal the welded rings (used for shipping purposes) and polishing of the sculpture.

City is responsible for transportation and installation of Work. Work will be transported from New York.

## **EXHIBIT B**

### **PAYMENT AND PAYMENT SCHEDULE**

The City shall pay Artist \$342,800 for the Work pursuant to the terms and conditions of this Agreement. \$340,000 shall be compensation for Artist's Work. \$2,800 shall be to cover travel costs for the Artist's representative to visit California to oversee the installation of the piece. This amount includes airfare, hotel, meals, car rental and all incidental expenses for the site visit for one person. No additional compensation shall be provided for the purchase or travel expenses, whether or not the travel expenses exceed the allocated \$2,800.

Upon execution of this Agreement, City shall pay Artist the purchase price of \$342,800.

AMENDMENT NO. 1 TO THE AGREEMENT BETWEEN THE CITY  
OF BEVERLY HILLS AND CALIFORNIA WEST COAST PAINT &  
BODY SHOP FOR VEHICLE REPAIR SERVICES

NAME OF VENDOR: California West Coast Paint & Body Shop

RESPONSIBLE PRINCIPAL OF VENDOR: Mike Sajjadieh, Owner

VENDOR'S ADDRESS: 5060 Venice Boulevard  
Los Angeles, CA 90019

CITY'S ADDRESS: City of Beverly Hills  
455 N. Rexford Drive  
Beverly Hills, CA 90210  
Attention: Rene Biadoma,  
Fleet Manager

COMMENCEMENT DATE: July 1, 2007

TERMINATION DATE: June 30, 2010, unless extended pursuant to  
Section 2 of the Agreement

CONSIDERATION: Not to exceed \$37,000.00 per year, based on  
the rates set forth in Exhibit B

AMENDMENT NO. 1 TO THE AGREEMENT BETWEEN THE CITY  
OF BEVERLY HILLS AND CALIFORNIA WEST COAST PAINT &  
BODY SHOP FOR VEHICLE REPAIR SERVICES

This Amendment No. 1 is to that certain Agreement, dated July 10, 2007, and identified as Contract No. 277-07, as extended by letter dated May 12, 2008 (the "Agreement"), copies of which are on file in the office of the City Clerk, between the City of Beverly Hills, a municipal corporation (hereinafter called "CITY"), and California West Coast Paint and Body Shop (hereinafter called "VENDOR") for vehicle repair services.

RECITALS

- A. CITY entered into a written Agreement, dated July 10, 2007 for vehicle repair services.
- B. CITY desires to amend the Agreement to extend the Termination Date and increase the services, and to increase the compensation for the additional unanticipated services.

NOW, THEREFORE, the parties hereto do amend the Agreement as follows:

Section 1. The Termination Date shall be amended as set forth above.

Section 2. The Consideration shall be amended as set forth above.

Section 3. Except as amended by this Amendment No. 1, the Agreement shall remain in full force and effect.

EXECUTED the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_\_.

CITY OF BEVERLY HILLS  
A Municipal Corporation

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

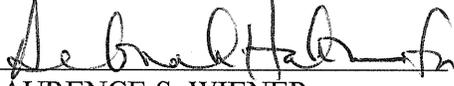
ATTEST:

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

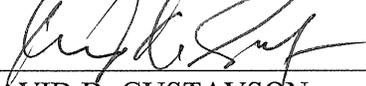
VENDOR: CALIFORNIA WEST COAST PAINT  
& BODY SHOP

  
\_\_\_\_\_  
MIKE SAJJADIEH  
Owner

APPROVED AS TO FORM:

  
\_\_\_\_\_  
LAURENCE S. WIENER  
City Attorney

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
DAVID D. GUSTAVSON  
Director of Public Works & Transportation

  
\_\_\_\_\_  
KARL KIRKMAN  
Risk Manager

AMENDMENT NO. 5 TO AN AGREEMENT BETWEEN THE  
CITY OF BEVERLY HILLS AND SCHINDLER ELEVATOR  
CORPORATION FOR ELEVATOR MAINTENANCE SERVICES

This Amendment No. 5 is to that certain Agreement dated May 4, 2004 and identified as Contract No. 114-04, as amended by Amendment No. 1, dated July 19, 2005 and identified as Contract No. 221-05, Amendment No. 2, dated June 27, 2006 and identified as Contract No. 217-06, Amendment No. 3 dated May 29, 2007 and identified as Contract No. 171-07, and further amended by Amendment No. 4 dated March 4, 2008 and identified as Contract No. 61-08 ("Agreement"), copies of which are on file in the office of the City Clerk, between the City of Beverly Hills, a municipal corporation ("City"), and Schindler Elevator Corporation, a California corporation (hereinafter called the "Contractor") for elevator maintenance services.

RECITALS

A. City entered into the Agreement for elevator maintenance services, which has been previously amended.

B. Contractor has requested an increase in compensation due to a labor union increase contemplated by the Agreement. The City Council approves such labor union increase as required by Paragraph 2 of Part I of Section 8 of the Agreement.

NOW, THEREFORE, the parties hereto do amend the Agreement as follows:

Section 1. Section 4 of the Form of Agreement shall be amended as follows:

"PAYMENT. City shall pay Contractor as full consideration for the satisfactory performance by Contractor of all Elevator Maintenance Service during the term of this Agreement the sum of Nineteen Thousand Seven Hundred Twenty-Six Dollars and Sixty-One Cents (\$19,726.61) per each month payable as provided in the Contract Documents."

Section 2. Except as expressly modified by Section 1 of Amendment No. 3 and this Amendment No. 4, all of the provisions of the Agreement between the City of Beverly Hills and Schindler Elevator Corporation shall remain in full force and effect.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 200 \_\_\_\_ at Beverly Hills, California.

CITY OF BEVERLY HILLS  
A Municipal Corporation

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

ATTEST:

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

CONTRACTOR: SCHINDLER  
ELEVATOR CORPORATION

By: \_\_\_\_\_  
GRAHAM EXALL  
Vice President

By: \_\_\_\_\_  
LANCE HOWARD  
District Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
LAURENCE S. WIENER  
City Attorney

APPROVED AS TO CONTENT:

\_\_\_\_\_  
RODERICK J. WOOD  
City Manager

[Signatures continue]



DAVID D. GUSTAVSON  
Director of Public Works & Transportation



KARL KIRKMAN  
Risk Manager