



## AGENDA REPORT

**Meeting Date:** February 5, 2008  
**Item Number:** F-8  
**To:** Honorable Mayor & City Council  
**From:** Donna Jerex, Senior Planner  
**Subject:** AMENDMENT NO. 1 TO AN AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND IMPACT SCIENCES, INC. FOR THE PREPARATION OF AN ENVIRONMENTAL IMPACT REPORT FOR 9900 WILSHIRE BOULEVARD

**Attachments:** 1. AMENDMENT NO. 1 TO AGREEMENT

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### RECOMMENDATION

Staff recommends that the City Council approve Amendment No. 1 between the City and Impact Sciences Inc. (ISI) for the preparation of an Environmental Impact Report for the proposed 9900 Wilshire project.

### BACKGROUND/DISCUSSION

On June 27, 2006, the City Council approved an agreement with Impact Sciences, Inc. for a development project located at 9900 Wilshire (the Robinsons-May site). This site is part of a triangular-shaped parcel located just west of the intersection of Wilshire and Santa Monica Boulevards. The parcel is currently characterized by three distinct developments: the Robinsons-May site, the Hilton Hotel, and the Unocal gas station. The site is currently zoned commercial (C-3) which allows 2:1 floor area ratio (FAR), three stories, and a height of 45 feet.

## Project Description

The 9900 Wilshire project involves the demolition of the Robinson-May store and adjacent parking structure and includes the development of approximately 250 condominium units; approximately 20,000 square feet of retail/restaurant space; and a subterranean parking structure.

To date, the Planning Commission has held eight public hearings on the project. Through this public hearing process, ISI incurred substantial additional costs for out-of-scope tasks outlined in the attached contract which include:

### ***Task 1. Draft EIR***

- Preparation of additional greenhouse gas emission analysis for inclusion in the Air Quality section.
- The need to coordinate analysis, reviews, and overall schedule with the Beverly Hilton Revitalization Plan EIR.

### ***Task 2. Recirculated Draft EIR***

- EIR sections were recirculated to reflect different baseline traffic counts for consistency with the 231-265 North Beverly Drive Project Draft EIR (William Morris project) then under preparation by the City.

### ***Task 3. Planning Commission Hearings 1-5 and Additional Analysis***

- Evaluation of five new Alternatives as directed by the Planning Commission
- Preparation of reports containing written responses to Planning Commission questions and requests for clarification or additional information. Preparation of boards for presentation at hearings.
- Preparation of new shade/shadow diagrams and analysis for each of the 10 Alternatives as well as a combined 9900 Wilshire/Hilton shade/shadow diagrams and associated analysis.
- Preparation of new visual simulations and animations, including five new vantage points, for the proposed project and each of the Alternatives. This also necessitated the creation of digital 3D models of the project site and immediate surroundings.
- Additional analysis to determine potential project impacts on the adjacent El Rodeo School and to determine whether the addition of a traffic signal at Santa Monica Boulevard/Merv Griffin Way would cause a significant impact on Whittier Drive based on the City's Residential Street Impact Criteria.
- Presentations of findings at hearings, and hard and/or electronic copies of all written and graphical work products for inclusion in Staff Report Appendices and/or presentation at hearings.

**Task 4. Responses to Draft EIR Comments**

Impact Sciences and its team are preparing responses to approximately 400 comment letters and oral comments provided at Planning Commission hearings. To manage this task and facilitate City and City Attorney review of responses, Impact Sciences has created a comprehensive list of all the commentators and a tabular summary of all comment letters and comments raised, organized by environmental topic, and has assembled bound booklets of bracketed comment letters.

**Task 5. Planning Commission Hearings 6-9**

The cost scope includes projected hours for up to four additional Planning Commission hearings held after November 8, 2007 and that require Impact Sciences' input, presence or presentations, or responses to Planning Commission questions and requests for additional information

**Task 6. City Council Hearings 1-4**

Preparations for, and attendance at, up to four City Council hearings that require Impact Sciences' input, presence or presentations, or responses to Council questions and requests for additional information.

**Task 7. Final EIR**

This task encompasses preparation of the Final EIR.

**Task 8. Project Management**

The cost scope itemizes Project Management costs already incurred between May 2007 (when the original task ceiling was first exceeded by Impact Sciences) and the present, as well as expected costs through project completion.

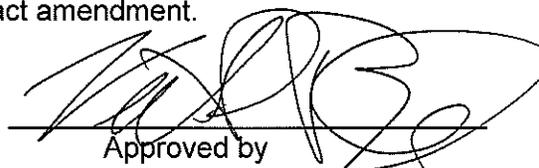
Costs for Original Contract and Amendment Request

The original contract cost and breakdown of unspent funds, new task costs, and the total revised EIR cost is provided in the table below. Staff has requested an additional contingency over and above the \$892,477 contract cost for a total contract amount of \$902,477. Any unspent funds will be returned to the applicant upon completion of the City's review of the project.

Original Basic Contract Value	Contingency	Total Original Contract Value	Unspent Funds Remaining in Total Contract Value	Amendment (Net Total)	Grand Total EIR Cost (Total Original Contract Value + Amendment, less rollover funds)
\$408,063	\$50,000	\$458,063	\$53,375	\$487,019	\$892,477

**FISCAL IMPACT**

Costs for the consultant's services are recovered from the developer; therefore there are no fiscal impacts to the City associated with this contract amendment.

  
Approved by

AMENDMENT NO. 1 TO AN AGREEMENT BETWEEN THE  
CITY OF BEVERLY HILLS AND IMPACT SCIENCES, INC.  
FOR THE PREPARATION OF AN ENVIRONMENTAL  
IMPACT REPORT FOR 9900 WILSHIRE BOULEVARD

NAME OF VENDOR: Impact Sciences, Inc.

RESPONSIBLE PRINCIPAL OF VENDOR: Susan Tebo

VENDOR'S ADDRESS: 803 Camarillo Springs Road, Suite A  
Camarillo, CA 93012

CITY'S ADDRESS: City of Beverly Hills  
455 N. Rexford Drive  
Beverly Hills, CA 90210  
Attention: Donna Jerex,  
Senior Planner

COMMENCEMENT DATE: July 1, 2006

TERMINATION DATE: December 31, 2008

CONSIDERATION: Not to exceed \$892,477.00 unless  
authorized under Section 8(b) and Section  
10; total compensation not to exceed  
\$902,477.00

AMENDMENT NO. 1 TO AN AGREEMENT BETWEEN THE  
CITY OF BEVERLY HILLS AND IMPACT SCIENCES, INC.  
FOR THE PREPARATION OF AN ENVIRONMENTAL  
IMPACT REPORT FOR 9900 WILSHIRE BOULEVARD

This Amendment No. 1 is to that certain Agreement, dated June 27, 2006, and identified as Contract No. 208-06 (the "Agreement"), a copy of which is on file in the office of the City Clerk, between the City of Beverly Hills, a municipal corporation (hereinafter called "CITY"), and Impact Sciences, Inc., a corporation (hereinafter called "CONSULTANT") for the preparation of an Environmental Impact Report ("EIR") for 9900 Wilshire Boulevard.

RECITALS

A. CITY entered into a written Agreement, dated June 26, 2006, for the preparation of an EIR for 9900 Wilshire Boulevard.

B. CITY desires to amend the Agreement to extend the Termination Date, revise the Scope of Work and increase the Consideration due to additional work.

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

Section 1. The Termination Date is hereby amended as set forth above.

Section 2. The Consideration is hereby amended as set forth above.

Section 3. Section 8, entitled, "COMPENSATION," shall be amended to read as follows:

“8. COMPENSATION.

(a) CITY shall pay CONSULTANT an amount not to exceed Eight Hundred Ninety-Two Thousand Four Hundred Seventy-Seven Dollars (\$892,477) for the satisfactory performance of services based on the fee set forth in Exhibit A. Payment shall be made as specified in Section 9 of this Agreement.

(b) CITY shall pay CONSULTANT for attendance at additional hearings, meetings, and presentations as described in Section 7 of this Agreement, and for additional services described in Section 10 of this Agreement, an amount not to exceed Ten Thousand Dollars (\$10,000) based on the hourly rates set forth in Exhibit A, and for actual expenses reasonably incurred in the performance of this Agreement and approved by CITY.

(c) The total compensation paid by CITY to CONSULTANT shall not exceed Nine Hundred Two Thousand Four Hundred Seventy-Seven Dollars (\$902,477).”

Section 4. Section 9, entitled “METHOD OF PAYMENT” shall be amended to read as follows:

“9. METHOD OF PAYMENT.

Payment shall be made as specified in this Section for satisfactory completion of work under the following phases. Such payment shall be made within thirty (30) days after receipt of invoices detailing the tasks performed, hours expended in accordance with the rates specified under Exhibit A, and, where applicable, the percentage of the phases set forth below completed under the term of the invoice.

(a) Three Hundred Six Thousand Five Hundred Eighty-Four Dollars (\$306,584) for conduct of the public scoping meeting, submittal of technical reports, administrative drafts, Draft EIRs, and recirculated Draft EIRs to CITY.

(b) One Hundred Thirty-Nine Thousand Five Hundred Thirty-Two Dollars (\$139,532) for preparation of reports, analysis, presentation materials, and attendance at up to three (3) Planning Commission meetings.

(c) One Hundred Fourteen Thousand Seven Hundred Sixteen Dollars (\$114,716) for preparation of reports, analysis, presentation materials, and attendance at up to two (2) Planning Commission meetings beyond those specified under paragraph (b) above.

(d) One Hundred Sixty-One Thousand Eighty-Five Dollars (\$161,085) for preparation of reports, analysis, presentation materials, and attendance at up to four (4) Planning Commission meetings beyond those specified under paragraphs (b) and (c) above.

(e) Sixty-Two Thousand One Hundred Fourteen Dollars (\$62,114) for preparation of Responses to Comments on the Draft EIRs.

(f) Seventeen Thousand Nine Hundred Ninety Dollars (\$17,990) for preparation of reports, analysis, presentation materials, and attendance at up to four (4) City Council meetings.

(g) Twenty-Two Thousand Two Hundred Thirty-Five Dollars (\$22,235) for preparation of Final EIRs.

(h) Sixty-Eight Thousand Two Hundred Twenty-One Dollars (\$68,221) for Project Management.

(i) Not more than Ten Thousand Dollars (\$10,000) for direct expenses, miscellaneous expenses, additional meeting attendance, and other costs not specified under Paragraphs (a) through (h) above, pursuant to Section 10 of this Agreement.

(j) Invoices shall not exceed the amounts specified for the work phases described under Paragraphs (a) through (i) unless the CONSULTANT's Project Manager declares in writing on such invoice(s) that all work under this Agreement can and shall be completed for the fee specified in Section 8."

Section 5. Attachment I, "Scope of Additional Services" is hereby added to Exhibit A, Scope of Services.

Section 6. Except as expressly amended herein, the Agreement shall remain in full force and effect.

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

CITY OF BEVERLY HILLS  
A Municipal Corporation

\_\_\_\_\_  
JIMMY DELSHAD  
Mayor of the City of Beverly Hills,  
California

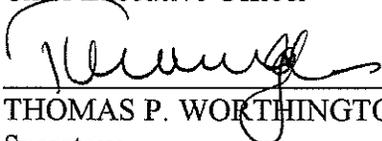
ATTEST:

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

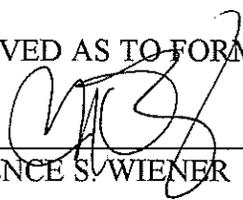
[Signatures continue]

CONSULTANT: IMPACT SCIENCES,  
INC.

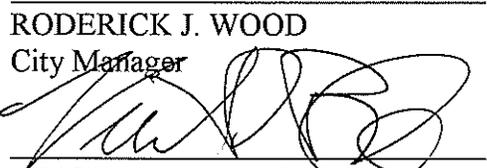
  
ERIC SAKOWICZ  
Chief Executive Officer

  
THOMAS P. WORTHINGTON  
Secretary

APPROVED AS TO FORM:

  
LAURENCE S. WIENER  
City Attorney

APPROVED AS TO CONTENT:

  
RODERICK J. WOOD  
City Manager

VINCENT P. BERTONI, AICP  
Director of Community Development

  
KARL KIRKMAN  
Risk Manager

**ATTACHMENT I**  
**9900 WILSHIRE PROJECT**  
**REQUEST FOR AMENDMENT**  
**TECHNICAL SCOPE OF WORK**

**JANUARY 9, 2008**

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**Task 1. Draft EIR**

This task is itemized in the cost scope to show the out-of-scope costs incurred during preparation of the Administrative Draft EIR (through May/June 2007) and the Public Draft EIR (May/June through August 2007).

The project schedule contained in Impact Sciences' original proposal of May 2006 estimated, based on the City's anticipated schedule, that the EIR would be ready for consideration by the City Council in February 2007. Accordingly, the Administrative Draft EIR was originally anticipated to be completed by September 29, 2006, whereas that task actually extended until May/June 2007, an increase of between 9 and 10 months. Delays were due, but not limited, to the following:

- Delays in finalizing significance thresholds to be used and, in some instances, methodologies.
- Delays in receipt of information from the Applicant (revised site plans, construction phasing, etc.).
- The need to prepare additional greenhouse gas emission analysis for inclusion in the Air Quality section.
- The need to coordinate analysis, reviews, and overall schedule with the Beverly Hilton Revitalization Plan EIR.
- Other project changes and events beyond Impact Sciences' control. The Public Draft EIR, originally expected to be completed in mid-November 2006, was completed in August 2007, a delay of approximately nine months. Delays and out-of-scope work were due in part to delayed review of draft work products by the City and City Attorney (owing in part to the large number of EIRs being processed simultaneously); the need to ensure consistency between the 9900 Wilshire and Hilton EIRs; and the unanticipated need to coordinate thresholds and methodologies with the 231-265 North Beverly Drive Project Draft EIR (William

Morris project), which necessitated coordination and revision of EIR sections and portions of the traffic study.

## **Task 2. Recirculated Draft EIR**

In September 2007, following initial circulation for public review of the Draft EIR, the City of Beverly Hills instructed Impact Sciences and its project team to revise affected EIR sections for recirculation, to reflect different baseline traffic counts, for consistency with the 231-265 North Beverly Drive Project Draft EIR (William Morris project) then under preparation by the City. Accordingly, Fehr & Peers revised the traffic study and Impact Sciences revised the EIR Air Quality, Noise and Traffic sections and prepared an Introduction summarizing the reason for recirculation and the new impact findings.

Impact Sciences produced 60 hard copies of the Recirculated Draft EIR for the City and provided CDs for posting on the City website and for printing. Impact Sciences also prepared and submitted the required NOC and accompanying materials to the State Clearinghouse, mailed the NOA to public agencies and homeowners groups, and filed the NOA with the County Clerk.

Following submittal of the Recirculated Draft EIR to the State Clearinghouse, Impact Sciences sought a shortened review period for the Recirculated Draft EIR from the Clearinghouse at the City's request. The shortened review period was approved and Impact Sciences prepared and mailed revised NOAs to public agencies and homeowners groups and filed the revised NOA with the County Clerk.

Impact Sciences then presented the findings of the Recirculated Draft EIR to the Planning Commission at the October 29, 2007 hearing.

## **Task 3. Planning Commission Hearings 1-5 and Additional Analysis**

Impact Sciences has attended five Planning Commission Hearings to date for this project: August 20, September 5, September 24, October 29, and a joint 9900 Wilshire/Hilton hearing on November 8. During the hearings, the Planning Commission requested the following additional analysis, all of which constitutes out-of-scope work for the EIR team (further detail is contained in the subconsultant scopes of work and cost estimates):

- Evaluation of five new Alternatives (*Impact Sciences, Fehr & Peers*):
  - Alternative 5A, Modified Height/Configuration of North & South Buildings

- Alternative 7, Modified Height/Configuration of North & South Buildings (increased South Building height)
- Alternative 8, Modified Height/Configuration of North & South Buildings (combination of Alternatives 3 and 5)
- Alternative 9, Additional Parking
- Alternative 10, Combination of Alternative 2 and Proposed Project
- Preparation of a report summarizing and comparing all the Alternatives evaluated for the project.
- Preparation of a report summarizing the cumulative impacts analysis for the 9900 Wilshire project and the Hilton project under two scenarios: the 9900 project as proposed and the 9900 Wilshire project Alternative 5A. (*Impact Sciences*)
- Preparation of a report summarizing construction phasing for the project in combination with the 9900 Wilshire project. (*Impact Sciences*)
- Preparation of reports containing written responses to Planning Commission questions and requests for clarification or additional information. (*Impact Sciences, Fehr & Peers*).
- Preparation of boards for presentation at hearings. (*Impact Sciences*)
- Preparation of graphics and boards related to traffic access and circulation. (*Impact Sciences, Fehr & Peers*)
- Preparation of new shade/shadow diagrams and analysis for each of the 10 Alternatives as well as a combined 9900 Wilshire/Hilton shade/shadow diagrams and associated analysis. (*Impact Sciences*)
- Preparation of new visual simulations, including five new vantage points, for the proposed project and each of the Alternatives. (*Impact Sciences, VisionScape*)
- Production of bound color booklets of visual simulations of 9900 Wilshire Alternative 5A and Hilton project (*Impact Sciences, VisionScape*)
- Preparation of a fly-over animation and seven drive-by animations from streets surrounding the project site and adjacent Hilton project site. (*Impact Sciences, VisionScape*), which necessitated the creation of digital 3D models of the project site and immediate surroundings.
- Preparation of bound color booklet of animation stills (*VisionScape*)
- Additional analysis to determine potential project impacts on the adjacent El Rodeo School, including evaluating the current level of congestion at the school

during specific times of day; identifying potential conflicts during the school's 2:00 PM to 4:00 PM pick-up/drop-off period; conducting additional pedestrian (student) counts along Whittier Drive, Merv Griffin Way, and other roadways adjacent to the project site. (*Impact Sciences, Fehr & Peers*)

- Additional analysis to determine whether the addition of a traffic signal at Santa Monica Boulevard/Merv Griffin Way would cause a significant impact on Whittier Drive based on the City's Residential Street Impact Criteria. (*Impact Sciences, Fehr & Peers*)
- Telecons with City, Commission Chair Furie, and Commissioner Cole regarding traffic. (*Fehr & Peers*)
- Presentations of findings at hearings. (*Impact Sciences, Fehr & Peers & VisionScape*)
- Hard and/or electronic copies of all written and graphical work products for inclusion in Staff Report Appendices. (*Impact Sciences, Fehr & Peers & VisionScape*)

Responses to Planning Commission requests for additional information tasks necessitated coordination with the City and the traffic and visual simulation subconsultants; the review of hearing videos posted on the City website and tabular summarization of Planning Commission requests for City review and approval; preparation for presentations at hearings; and review and revision of Staff Reports, as needed and when requested by the City.

#### **Task 4. Responses to Draft EIR Comments**

Impact Sciences and its team is preparing responses to all written comments submitted during *and following the close of* public review periods for the Draft EIR and Recirculated Draft EIR, at the City's direction. Also at the City's direction, Impact Sciences and its team have documented and are preparing responses to all oral comments provided at Planning Commission hearings. As of this date, the City has transmitted 41 written comment letters and Impact Sciences has identified an additional 28 oral commentors, and an approximate total of 350 actual comments requiring responses. It is anticipated that some additional research by Fehr & Peers, Jones and Stokes, and Impact Sciences may be necessary as part of the response to comment effort.

To manage this task and facilitate City and City Attorney review of responses, Impact Sciences has created a comprehensive list of all the commentors and a tabular summary

of all comment letters and comments raised, organized by environmental topic, and has assembled bound booklets of bracketed comment letters.

#### **Task 5. Planning Commission Hearings 6-9**

The cost scope includes projected hours for up to four additional Planning Commission hearings held after November 8, 2007 and that require Impact Sciences' input, presence or presentations, or responses to Planning Commission questions and requests for additional information. The projected costs for this task may not be incurred in full, depending on the future number of hearings and level of effort required of Impact Sciences and its subconsultants.

**Note:** The costs included in this task are **estimated projections** of the labor and expenses that will be necessary to complete this task. These projected costs **may not be incurred in full**, depending on the actual number of hearings and level of effort required of Impact Sciences and its subconsultants.

#### **Task 6. City Council Hearings 1-4**

This task includes preparations for, and attendance at, up to four City Council hearings that require Impact Sciences' input, presence or presentations, or responses to Council questions and requests for additional information.

**Note:** The costs included in this task are **estimated projections** of the labor and expenses that will be necessary to complete this task. These projected costs **may not be incurred in full**, depending on the actual number of hearings and level of effort required of Impact Sciences and its subconsultants.

#### **Task 7. Final EIR**

This task encompasses preparation of the Final EIR, excepting the Responses to Comments (presented separately in Task 4). The remainder of the Final EIR includes the Introduction, Corrections and Additions to the Draft EIR, and any other chapters required. This task also includes preparation of a Mitigation Monitoring and Reporting Program (MMRP) reflecting mitigation measures contained in the Draft and Recirculated EIRs and any subsequent modifications to those measures, or new measures defined during the project approval process. This task also assumes Impact Sciences will provide support to the City for the preparation of the Findings of Fact document, but does not

assume Impact Sciences will be solely responsible for preparation of the document in its entirety.

**Note:** The costs included in this task are **estimated projections** of the labor and expenses that will be necessary to complete this task. These projected costs **may not be incurred in full**, depending on the actual level of effort required of Impact Sciences and its subconsultants.

### **Task 8. Project Management**

The cost scope itemizes Project Management costs already incurred between May 2007 (when the original task ceiling was first exceeded by Impact Sciences) and the present, **as well as expected costs through project completion**. Project Management encompasses coordination between Impact Sciences and the City, Joyce Parker-Bozylinski, and the project subconsultants; preparation of invoices and amendment request documentation; the review of subconsultant proposals and invoices; regularly scheduled and as-needed teleconferences; reviews and revisions of schedule; review of City staff work products upon request; review of Impact Sciences staff work products; coordination with Impact Sciences staff; and other tasks.

Project circumstances and tasks that necessitated a greater level of effort than anticipated include, but were not limited to, schedule delays resulting in the extended period required for Draft EIR preparation, through August 2007; revision of Draft EIR thresholds in June and July, 2007, prior to Draft EIR circulation, for consistency with the William Morris EIR; preparation and circulation of the Recirculated Draft EIR; coordination with the City, subconsultants and internally for work related to Task 3 (Planning Commission Hearings 1-5 and Additional Analysis); and management of the response to comment effort.

### **Summary of Costs**

This augment requests reimbursement for out of scope costs incurred to date as well as projected costs to complete the project. The table on page 7 summarizes costs contained in the attached cost spreadsheet.

Note that Impact Sciences has already billed for some of the incurred costs in this amendment request, and there are also unbilled funds remaining in the original contract to be rolled over into the new contract. These “credited” funds are itemized in the table

below under “Less Recent Billings and Funds Remaining in Original Contract” and serve to reduce the amendment total by \$193,983.

**Table 1. Summary of Amendment Request for the  
9900 Wilshire EIR**

<b>Task</b>	<b>Task Cost</b>	<b>Less Recent Billings</b>	<b>Task Total</b>
Draft EIR	\$63,515		\$63,515
Recirculated Draft EIR	\$30,310		\$30,310
Planning Commission Hearings 1-5 & Additional Analysis	\$255,225	Milestone E Billing \$71,598 Contingency Billing \$50,000 VisionScape Expenses Billing \$6,900 Impact Sciences Expenses Billing \$11,034 Funds Remaining in Original Contract \$53,375 <i>(includes \$22,500 ISI accounting error + \$30,875 reduction in traffic scope after contract award)</i>	\$62,318
Planning Commission Hearings 6-9	\$161,085	-	\$161,085
Responses to Draft EIR Comments	\$62,114	-	\$62,114
City Council Hearings 1-4	\$17,990	-	\$17,990
Final EIR	\$22,235	-	\$22,235
Project Management	\$68,221	-	\$68,221
<b>Total</b>	<b>\$679,926</b>	<b>\$192,907</b>	<b>\$487,789</b>

**Table 2. Variance between Original Contract and Amendment Request**

<b>Original Basic Contract Value</b>	<b>Contingency</b>	<b>Total Original Contract Value</b>	<b>Unspent Funds Remaining in Total Contract Value</b>	<b>Amendment (Net Total)</b>	<b>Grand Total EIR Cost (Total Original Contract Value + Amendment, less rollover funds)</b>
\$408,063	\$50,000	\$458,063	\$53,375	\$487,789	\$892,477