



450-2022019-002

Agenda Item **No. 5(b)**
Meeting of February 19, 2019

MEMORANDUM

TO: Community Investment and Infrastructure Commissioners

FROM: Nadia Sesay, Executive Director

SUBJECT: Authorizing a Memorandum of Understanding with the City and County of San Francisco, acting through its Department of Public Works, in an amount not to exceed \$5,581,677 including project construction, and for a term of four years, for design, bidding, and construction management services, for the Building 101 Improvements Project; Hunters Point Shipyard Project Area

EXECUTIVE SUMMARY

In 2006 and 2007, the federal Economic Development Administration ("EDA") awarded the former San Francisco Redevelopment Agency ("SFRA") two grants ("EDA Grant #4" and "EDA Grant #5", together the "Grants") for projects at Hunters Point Shipyard (the "Shipyard"). The EDA Grants are designed to leverage investments in infrastructure to promote economic development in innovative industries and the arts, and may be used for planning, design, and construction. Upon the dissolution of the SFRA, OCII took on all obligations associated with the Grants.

Remaining funds in the Grants total \$5,581,677. The EDA has approved use of these funds to construct improvements to Shipyard Building 101, an existing building at the Shipyard which houses artists' studios. OCII has worked with San Francisco Public Works ("Public Works") to estimate costs and determine a scope that is feasible within available budget. Contingent on construction bid amounts to be received, that scope now includes:

- conversion of lecture hall to gallery to facilitate the display and sale of artworks;
- conversion of public restrooms to ADA-accessible restrooms;
- installation of a wheelchair ramp at the primary building entrance;
- other accessibility improvements to common areas; and
- improvements to emergency exits (together, the "Project")

London N. Breed
MAYOR

Nadia Sesay
EXECUTIVE DIRECTOR

Marily Mondejar
CHAIR

Miguel Bustos
Dr. Carolyn Ransom-Scott
Mara Rosales
Darshan Singh
COMMISSIONERS

One S. Van Ness Ave.
5th Floor
San Francisco, CA
94103

415 749 2400

www.sfocii.org

To implement the Project, OCII staff have prepared a Memorandum of Understanding (“MOU”) with Public Works (***Attachment 2: Public Works MOU***) for the design, bidding, and construction management of the Project, for a term of four years, with a total budget of \$5,581,677, of which \$1,152,199 is allocated to fees for services; \$98,200 is allocated to a Project Delivery Contingency; and \$4,330,478 is allocated to construction.

Staff recommends approval of the MOU with Public Works.

BACKGROUND

EDA Grants #4 and #5

The U.S. Department of Commerce’s Economic Development Administration awarded the former San Francisco Redevelopment Agency EDA Grant #4 in 2006 and EDA Grant #5 in 2007. The primary objective of the Grants is economic development and job creation. Upon the dissolution of the San Francisco Redevelopment Agency, OCII assumed all obligations of the Grants.

EDA Grant #4 originally totaled \$4,222,223. Funds have been used for design studies for Shipyard Building 813 and Building 101. \$2,121,124 remains in EDA Grant #4.

EDA Grant #5 originally totaled \$5,066,667. Of that amount, \$1,606,114 has been expended for previous improvements to Building 101 and the Shipyard Site Office Building. \$3,460,553 remains in EDA Grant #5.

Together, the funds remaining in EDA Grant #4 and EDA Grant #5 total \$5,581,677. The EDA has approved use of these remaining funds to construct improvements to Building 101.

Building 101

Building 101 is a 121,000 square-foot, two-story wood-framed building constructed in 1947, located on Shipyard Parcel A-1. Building 101 has been occupied by artists since the mid-1970s and is the hub of the Shipyard artists’ community, with studios occupied by approximately 160 of the 300 artists that work at the Shipyard.

Scope of Work

In cooperation with Public Works and the Shipyard artists, OCII has identified the following scope of work. The scope will be adjusted as needed based on the funding available in EDA Grant #4 and EDA Grant #5 and bid amounts received.

- Gallery expansion and conversion. Convert use from lecture hall to multipurpose gallery space and increase area from 997 to 1,336 sq ft.
- Removal of barriers to access for persons with disabilities. Upgrade and remove barriers to access as needed in common areas.

- Convert primary restrooms for wheelchair access. Upgrade primary restrooms to establish access.
- Install wheelchair ramp at main entry.
- Install metal emergency egress stairs. Existing emergency egress ladders will be upgraded to fireproof metal stairs for safer emergency egress.

These improvements are designed to attract visitors to the Shipyard, to create opportunities for the production, promotion, and sale of art; to support economic activity and employment at local businesses; to help establish the Shipyard as a destination for the arts; and to improve building accessibility and life safety.

Previous OCII Commission and Oversight Board Actions

OCII staff have periodically returned to the OCII Commission and the OCII Oversight Board to report progress, solicit feedback, and recommend action related to the EDA Grants and Building 101. The OCII Commission and the Oversight Board took actions on the following occasions:

- October 12, 2012: Resolution 14-2012 (Oversight Board). Pursuant to California Health and Safety Code Section 34180(e), OCII's Oversight Board was granted the authority to continue or discontinue acceptance of federal grants with a local match of greater than 5 percent at the time of the SFRA's dissolution in 2012. The Oversight Board exercised this authority with respect to EDA Grant #4 and EDA Grant #5, and continued acceptance of both grants.
- January 26, 2016: Resolution 2-2016 (Oversight Board). OCII staff advised the Oversight Board of a re-scope of EDA Grant #4 shifting the scope from design studies of Building 813 to improvements at Building 101; and a time extension of EDA Grant #4 and EDA Grant #5. The Oversight Board approved the changes.
- May 17, 2016: Resolution 22-2016 (OCII Commission). OCII staff advised the OCII Commission of the same re-scope of EDA Grant #4 shifting the scope from design studies of Building 813 to improvements at Building 101; and time extension of EDA Grant #4 and EDA Grant #5. OCII Commission approved the changes.
- September 18, 2018: Resolution 40-2018 (OCII Commission). OCII staff advised the OCII Commission of the need to extend the deadline for completion of EDA Grant #4 and EDA Grant #5. OCII Commission authorized the Executive Director to enter into a Seventh Amendment to EDA Grant #4 and a Fifth Amendment to EDA Grant #5, extending the time for completion of both grants by up to 42 months.

RECOMMENDED COMMISSION ACTION

Public Works has extensive experience in the design, bidding, and construction of public facilities, including experience in obtaining required permits and approvals from City agencies. OCII has worked collaboratively with Public Works to complete the first phase of the Project, including site investigations, review of existing documents, determination of code requirements, and establishment of a feasible Project scope.

To implement the Project, OCII must now engage a party to design, bid, and manage construction. Public Works has specific knowledge of the Project gained during the first phase of Building 101 improvements, and unique expertise in the implementation of similar public projects. Based on these qualifications, OCII staff recommend entering an MOU with Public Works for a term of four years, with a total budget of \$5,581,677, of which \$1,152,199 is allocated to fees for design, bidding and construction management services; \$98,200 is allocated to a project contingency; and \$4,330,478 is allocated to construction. The MOU will be substantially in the form of **Attachment 2: Public Works MOU**.

ENVIRONMENTAL TESTING AND SITE REMEDIATION

The Shipyard is divided into two development projects: Phase 1 and Phase 2. Phase 1 includes Hilltop (Parcel A-1) and Hillside (Parcel A-2), and Phase 2 covers all remaining land in the Shipyard. The land in Phase 2 is an environmental "superfund" site that required extensive clean-up by the Navy.

Prior to development, all property in the Shipyard was owned by the Navy. The Navy is responsible for full environmental remediation of each parcel, and the Navy retains ownership of each parcel until remediation is complete and the parcel is safe to transfer and safe for its intended use. Remediation work is overseen by the U.S. Environmental Protection Agency ("EPA"), the California Department of Toxic Substances Control ("DTSC"), and the San Francisco Bay Regional Water Quality Control Board ("SFBRWQCB"). Once remediation is complete and approved by the EPA, the DTSC, and the SFBRWQCB, the Navy transfers property parcels to OCII for development.

In 2012 the Navy identified discrepancies in soil sample data at Phase 2 taken by the Navy's contractor Tetra Tech. The U.S Nuclear Regulatory Commission investigated these discrepancies and fined Tetra Tech. In 2016, former contract employees at the Shipyard made additional allegations of fraud by Tetra Tech in the Phase 2 site remediation process. The Navy has reviewed these allegations, agreed to re-test affected portions of Phase 2, and issued a draft work plan. Tetra Tech is no longer working in the Shipyard, and OCII did not have any contractual relationship with Tetra Tech. No development is currently occurring on the Phase 2 parcels.

Parcel A-1, where Building 101 and the Shipyard Arts and Technology District is located, is not implicated in the allegations against Tetra Tech. The Navy and the EPA have conducted a thorough regulatory review process and have confirmed the safety of Parcel A-1, as well as the safety of artists' studios on Parcel B and a San Francisco Police Department crime laboratory on Parcel E-1. However, to assure residents, workers and visitors that Parcel A-1 is safe, OCII, the City of San Francisco, the EPA and the

Navy requested that the California Department of Public Health ("CDPH") perform a health and safety radiological scan of Parcel A-1 and Parcel A-2.

On September 7, 2018, in the course of this scan, CDPH discovered a naval deck marker 1.5 inches in diameter that contained radium beneath approximately 10 inches of soil in an undeveloped area behind a fence on Parcel A-1. On September 11, 2018 a Navy contractor, under CDPH observation, removed the deck marker. Soil removed with the deck marker and the hole containing the deck marker were scanned, and no radiation above background was found. Radiation readings prior to the removal indicate that there was no health or safety hazard to any person at that location prior to the removal of the deck marker.

CDPH issued a final report for Parcel A-1 on February 5, 2019. The final report found that Parcel A-1 is free of radiological health and safety hazards.

WORKFORCE HIRING AND SMALL BUSINESS UTILIZATION GOALS

Work performed under EDA Grant #4 and EDA Grant #5 will meet EDA workforce hiring requirements for women and minorities, which can be found at 13 CFR Chapter III. In addition, Public Works has agreed to adopt OCII's Small Business Enterprise Program 50% goal for participation of small businesses. Geographically-based preferences for hiring will not be used, as they are prohibited on federal projects.

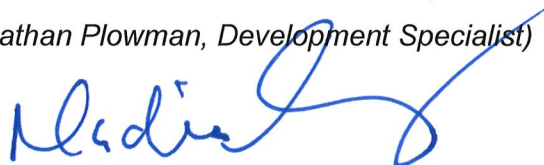
CITIZENS ADVISORY COMMITTEE AND COMMUNITY REVIEW

The Building 101 improvements have been developed in consultation with key stakeholders, including the Hunters Point Shipyard Citizens Advisory Committee ("CAC") and the Shipyard artists, both of which have supported the planned improvements. OCII staff will periodically communicate updates to the Shipyard artists as the improvements move forward.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

The Project is categorically exempt from the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Sections 15301(a) and 15301(d) because it consists of repair and maintenance of existing structures, and will not directly cause any change in the physical environment.

(Originated by Jonathan Plowman, Development Specialist)



Nadia Sesay
Executive Director

Attachment 1: Building 101 Location Map

Attachment 2: Public Works MOU

Attachment 1

● Public Art Installations



**MEMORANDUM OF UNDERSTANDING BETWEEN
THE DEPARTMENT OF PUBLIC WORKS
AND
THE OFFICE OF COMMUNITY INVESTMENT AND INFRASTRUCTURE
FOR THE
SECOND PHASE OF THE HUNTERS POINT SHIPYARD BUILDING 101 PROJECT**

This Memorandum of Understanding (the “MOU”) is entered into as of February 19, 2019 (the “Effective Date”) by and between the OFFICE OF COMMUNITY INVESTMENT AND INFRASTRUCTURE, SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body, corporate and politic (“OCII”), and the City and County of San Francisco, State of California (the “City”), acting through San Francisco Public Works, (“Public Works”, together with OCII, the “Parties” and each, individually, a “Party”).

RECITALS

- A. Built in 1947, Building 101 is a two-story office building located at the former Hunters Point Naval Shipyard (“Shipyard”). For decades, the building has been used as studios for local artists, an activity which local, state and federal stakeholders have collectively agreed to preserve and incorporate.
- B. OCII acquired Building 101 in August 2009. OCII has prepared, and the State of California Department of Finance has approved, a Long Range Property Management Plan, under which Building 101 is planned for transfer to the City of San Francisco (“City”) after completion of the surrounding infrastructure.
- C. The former San Francisco Redevelopment Agency (“SFRA”) received, and OCII in its role as the Successor Agency to the San Francisco Redevelopment Agency now administers, grant funding (the “Grants”) from the U.S. Department of Commerce’s Economic Development Administration (“EDA”). The objective of the Grants is to support economic development through planning, design and construction activities at the Shipyard.
- D. To implement the objectives of the Grants, in 2017 the Parties entered a first-phase Memorandum of Understanding to study improvements to Building 101 to support economic development and commercial activity at the Shipyard (the “First Phase MOU”). The improvements include a gallery space for the display and sale of art works, and improvements to accessibility and life safety systems, and are more particularly described in the Scope of Improvements attached hereto as Attachment A (herein, the “Improvements”). The Parties have prepared a schedule and a budget for the Improvements.
- E. The Parties now desire to enter into a second-phase Memorandum of Understanding for the design, bidding, construction management and final completion of the Improvements (referred to herein as the “Project”) in accordance with the attached Scope of Improvements (Attachment A), Budget (Attachment B), Schedule (Attachment C), and Scope of Services

(Attachment D). Building 101 will remain occupied by the current artist-tenants during construction of the Improvements.

- F. The design and construction activities under this MOU are categorically exempt from the California Environmental Quality Act (“CEQA”) pursuant to Title 14 of the California Code of Regulations Section 15301, because they consist of repair, maintenance and minor alteration of an existing structure, and will not directly cause any change in the physical environment.

AGREEMENT

NOW, THEREFORE, OCII and Public Works agree as follows:

I. SCOPE OF WORK

The Improvements are generally expected to include the following improvements to Building 101 within available funding:

- a) Modification of existing auditorium area into a shared art gallery.
- b) Code-required path of travel upgrades triggered by art gallery construction.
- c) Renovation of one set of existing restrooms, to be determined by OCII, for ADA compliance and to provide one (1) accessible all-gender facility.
- d) Installation of new egress stairways for emergency egress.
- e) Replace existing sliding fire separation doors with accessible swinging fire separation doors.
- f) Fire service or fire sprinkler riser work as budget allows.

These improvements are subject to change based on bid amounts received. Attachment A provides a detailed Scope of Improvements.

II. TERM OF AGREEMENT

The term of this Agreement shall begin, and work under this Agreement shall commence, as of the Effective Date. The term of this Agreement shall end upon the final reimbursement of Project costs by OCII to Public Works, but no later than October 31, 2022, unless sooner terminated or extended in accordance with this Agreement. This Agreement may be extended with the written approval of the Executive Director of OCII and the Director of Public Works. OCII may terminate this Agreement at any time without cause upon written Notice of Termination to Public Works; provided, however, that in the event of such termination, OCII shall compensate Public Works for work completed to the satisfaction of OCII as of the date of such notice or the date of termination specified in such notice.

III. PROJECT BUDGET

The total project budget is \$5,581,677. Of this budget, \$4,330,478 is allocated for construction (the “Target Construction Budget”); \$1,152,999 is allocated for project delivery, including design, bidding, and construction management; and \$98,200 is allocated to project delivery contingency.

During bidding, OCII and Public Works will structure the Improvements bid into a base bid and multiple additive alternates. Additive alternates are scope items which are bid separately, and may or may not be awarded, at OCII’s option and in conformance with the bid instructions, in order to keep within the Target Construction Budget if bid amounts differ from current estimates. If bids are higher than expected, some or all of the additive alternates may be removed from the Improvements; if bids are lower than expected, some or all of the additive alternates may be added. Of the construction budget of \$4,330,478, \$342,330 is allocated to additive alternates. The amount actually spent on base bid and additive alternates will vary based on actual bids, but the Target Construction Budget, consisting of the total of the base bid and the additive alternates, shall not be exceeded absent a corresponding reduction in other line items to maintain the same overall budget.

In addition to the budget flexibility provided by using additive alternates, and in addition to the \$98,200 Project Delivery Contingency, a Change Order Contingency of \$564,845 is reserved out of the Target Construction Budget to address contingencies, such as change orders, which occur subsequent to bidding.

The funding source for the Project is two grants from the EDA. When available funding is exhausted, there will be no opportunity to increase it, and no alternate funding source for the Project. Accordingly, Public Works will diligently monitor and control Project schedule and expenditures to avoid cost overruns.

See Attachment B and Attachment B1 for cost control, base bid and add alternate options.

IV. PROJECT SCHEDULE

See Attachment C for Project Schedule.

V. SCOPE OF SERVICES AND DELIVERABLES (by Phase)

Public Works will design, bid, award, and manage construction of the Improvements (such activities referred to herein as the “Project”). See Attachment D for the Scope of Services. Deliverable due dates are as follows:

Deliverable	Due Date
100% Schematic Design	6 weeks after MOU approval

Design Development and 25% Construction Documents	4 weeks after Schematic Design approval
100% Construction Documents	13 weeks after Design Development and 25% Construction Documents approval
DBI Construction Permit	12 weeks after 100% Construction Documents approval
Bid and Award Processes including Contract Award	20 weeks after 100% Construction Documents approval
Construction Start	Upon Contract Award
Construction Final Completion	45 weeks after Construction Start
Project Closeout	16 weeks after Construction Final Completion

VI. PROJECT FEES

Professional Fees (i.e. fees for those services listed below) under this MOU shall not exceed \$1,152,999. There is an additional Project Delivery Contingency of \$98,200 to be used only with the written authorization of the Executive Director of OCII.

The Fee Schedule for Public Works services is listed below, and is based on the Parties understanding of the Scope of Improvements, Project Schedule and Deliverables, and Budget. Public Works shall inform OCII in advance of (i) any costs that exceed budget line item amount, and (ii) any work that it anticipates will exceed the agreed-upon scope of services set forth in this MOU. Upon receipt of any such information from Public Works regarding additional scope of services, OCII shall review the submittal and, as set forth in Fee Schedule below, either provides written authorization for the additional scope of services or deny the request and set forth the reason(s) for the denial. Both parties agree and understand that during the term of this MOU any budget revisions, including use and/or reallocation of project contingencies, will require prior written approval by OCII.

A. Architectural Services:	\$345,499
B. Structural Engineering Services:	\$ 95,000
C. Mechanical Engineering Services:	\$ 85,000
D. Electrical Engineering Services:	\$ 45,000
E. Construction Management Services:	\$417,500
F. SAR (Site Assessment & Remediation) Services	\$ 55,000
G. Miscellaneous Non-Design Project Delivery Costs:	\$110,000
PROFESSIONAL FEES	\$1,152,999

PROJECT DELIVERY CONTINGENCY	\$98,200
PROJECT DELIVERY TOTAL	\$1,251,199
CONSTRUCTION BUDGET	\$4,330,478
PROJECT TOTAL	\$5,581,677

VII. PROJECT TEAM

The Project Team, including billing codes, is as follows:

A. Department of Public Works

1. Building Design & Construction (BDC) Staff:

- a. Will Kwan, Senior Architect (5211) (Public Works Project Manager)
- b. Vito Vanoni, Senior Architect (5211)
- c. Andrew Maloney, Architect (5268)
- d. Rafael Gutierrez, Architectural Associate (5266)
- e. John Paul Scott, Disability Access Coordinator (6335)

2. Infrastructure Design & Construction (IDC) Staff:

- a. Structural / Electrical / Mechanical (5241)

B. Office of Community Investment and Infrastructure:

- 1. Jonathan Plowman, Development Specialist (OCII Project Manager)

See attachment E for Responsibility Matrix.

VIII. EDA GRANT FUNDS AND ASSOCIATED REQUIREMENTS

On behalf of the Office of Economic Adjustment (“OEA”) within the U.S. Department of Defense, the EDA awarded the Grants to the Redevelopment Agency of the City and County of San Francisco (“SFRA”) which was authorized under the California Community Redevelopment Law (Cal. Health and Safety Code §§ 33000 et seq.). The Grants were two financial assistance awards under EDA’s Economic Adjustment Assistance Program authorized under Section 209 of the Public Works and Economic Development Assistance Act of 1965 (PWEDA) (42 U.S.C. § 3149). The EDA Awards supported the redevelopment of the Shipyard located along the southeastern waterfront of San Francisco and have been amended over time as follows:

- 1. EDA Grant #4 (Award No. 07-49-05947 – September 21, 2006)

Federal Share: \$3,800,000; Recipient Share (OCII local match): \$422,223 for a Total Estimated Cost of \$4,222,223 (90% grant rate).

Remaining funds: Federal Share: \$1,909,011; Recipient Share (OCII local match): \$212,113 for a Total Estimated Cost of \$2,121,124.

Original scope	Earlier amended scope	Current scope
Preliminary feasibility study for Arts District Buildings 101, 808, and 813	Preliminary feasibility study for Arts District Building 813	Complete Building 101, including the interior of Building 101's artist spaces

2. EDA Grant #5 (Award No. 07-49-06113 – September 20, 2007)

Federal Share: \$4,560,000; Recipient Share (OCII local match): \$506,667 for a Total Estimated Cost of \$5,066,667 (90% grant rate).

Remaining funds: Federal Share: \$3,114,467; Recipient Share (OCII local match): \$346,086 for a Total Estimated Cost of \$3,460,553.

Original scope	Earlier amended scope	Current scope
Complete master plan and construction for the Arts and Technology District	Original scope of work, plus Building 813 improvements	A Cultural Historic Recognition Program, Community Facilities Demonstration Project, and Building 101 improvements, including renovation and improvements to the auditorium and lounge; upgrading and/or replacing life and fire safety systems, electrical panels and lighting, and bathrooms for greater accessibility and usability; and other related improvements identified in the design process.

Effective February 1, 2012, California state law dissolved all redevelopment agencies and community development agencies and provided for the designation of successor agencies to wind down the affairs of the dissolved agencies, including completing unfulfilled enforceable obligations, including the EDA Awards, and disposing of all Redevelopment Agency assets. OCII is the Successor Agency to the Redevelopment Agency and is the current recipient under the EDA Awards.

By operation of State law, OCII has a distinct relationship with the City of San Francisco. The California Community Redevelopment Law authorized redevelopment agencies to use the services of cities and counties for redevelopment activities and the California Redevelopment Dissolution Law authorized successor agencies to use city staff for

administration and operations if the expenditures for this purpose are listed in the administrative budget.

Public Works will provide design coordination, project management, and construction management services under the EDA Awards as per the scope of services outlined in Attachment D: Scope of Services. Both OCII and Public Works recognize that under the terms of the EDA Awards, OCII holds beneficial title to all property and equipment acquired and improved under the EDA Awards and, under federal law, EDA maintains a reversionary interest therein. OCII and Public Works also recognize that in accordance with EDA's regulation at 13 CFR § 314.3(d), in order for any other party to hold property acquired or improved under the EDA Awards, that party must become a Successor Recipient, remaining responsible for complying with EDA's property rules set out at 13 CFR part 314 and the relevant terms and conditions of the EDA Awards.

In addition, per the terms of the EDA Awards, OCII must continue to comply with all Award provisions, as amended and as indicated on the relevant Forms CD-450 and Forms CD-451 applicable to the award, including EDA's regulations at 13 CFR Chapter III; the relevant EDA Standard Terms and Conditions for Construction Projects; all special award conditions and attachments; the most recently approved line item budget; 15 CFR part 24 Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments; OMB Circular A 87 Cost Principles for State and Local Governments and Indian Tribal Governments; and Subpart F to 2 CFR part 200 Audit Requirements.

In accordance with the terms of this MOU, as Public Works carries out its management responsibilities under the EDA Awards, Public Works will comply with relevant terms of the EDA Awards, including the procurement regulations at 15 CFR § 24.36 ("Procurement") and relevant provisions of EDA's Public Works and Economic Development Investments at 13 CFR part 305, including 13 CFR §§ 305.6 ("Allowable methods for procurement for construction services"), 305.10 ("Bid underrun and overrun"), 305.11 ("Contract awards; early construction start"), 305.12 ("Project sign"), 305.13 ("Contract change orders"), and 305.14 ("Occupancy prior to completion"). In addition, Public Works will use the "EDA Contracting Provisions for Construction Projects," which provides a list of applicable EDA and other federal requirements as guidance in developing all construction contracts. OCII remains responsible for ensuring Public Works' compliance with relevant terms and conditions of the EDA Awards.

OCII will remain responsible for reporting and communicating with EDA under the EDA Awards; however, either OCII or Public Works, as appropriate, or both will contact EDA immediately to report any event that will or may have a significant impact upon the Project, including delays or adverse conditions that materially may affect the ability of OCII to attain Project objectives within established time periods or meet the development time schedule.

IX. ASSUMPTIONS

The Parties agree to the following assumptions, which have been accounted for the in the Project Schedule and Deliverables, Scope of Services, and Budget.

- A. Community Meetings.** OCII will be responsible for scheduling presentations, preparing agendas for and conducting meetings with community groups, including the local artists leasing space in Building 101 and the Shipyard Trust for the Arts (“STAR”). Public Works staff will prepare documents for one (1) and participate in up to three (3) community meeting if requested by OCII.
- B. Building Documents.** OCII will be responsible for providing Public Works with dimensioned plans of the existing building to be used as a basis of code analysis. While minor field verification of specific existing conditions is included with this scope of services, over-all building information shall be provided by OCII.
- C. Construction Liaison.** The Parties acknowledge that Building 101 will be used by the artist-tenants during construction of the Improvements. OCII will act as construction liaison to the Building 101 artist-tenants during construction of the Improvements.

X. EXCLUSIONS & ADDITIONAL SERVICES

The services and/or tasks listed below are not included in the Scope of Services. OCII may request Public Works to include such services and/or tasks as an additional service by modification to this MOU.

- A. Planning:** San Francisco Planning Department General Plan Referral; Notice of Exemption (NOE) from the California Environmental Quality Act; Environmental review and clearance; other planning or environmental review as required for the project (not required because the work to be performed is categorically exempt from CEQA pursuant to CEQA Guidelines Sections 15301(a) and 15301(d); and because OCII, rather than the San Francisco Planning Department, holds jurisdiction over planning code and environmental review of projects in the Hunters Point Shipyard Redevelopment Project Area);
- B. Surveys,** indicating site boundaries, utilities, location of structures, topographic information and services associated with surveying;
- C. Peer review** for any design disciplines;
- D. Services** required for LEED certification and commissioning for green building requirements.
- E. Services** made necessary by reversals of authorizations, approvals or instructions previously given by OCII staff, OCII Commission, other City authorities or regulatory agencies;
- F. Services** required in connection with construction performed by others that is not part of the Project, including archaeological assessment, underground pipelines

assessment, biotic and biological studies, and construction phase environmental support services;
G. Additional services due to changes of scope.

XI. COMPLIANCE WITH EDA GRANT AWARD REQUIREMENTS AND OCII SMALL BUSINESS ENTERPRISE PROGRAM

EDA requirements (the “EDA Requirements”) apply to all contracts for goods or services covered by this MOU. The EDA Requirements can be downloaded at <https://sfocii.org/sites/default/files/OCII-DPW%20MOU-%20EDA%20requirements.pdf>.

Public Works agrees to comply with EDA grant award requirements and shall enforce compliance among its contractors and subcontractors in the performance of this MOU. OCII will enforce EDA requirements by harmonizing its requirements to the greatest extent possible with OCII’s equal opportunity program. EDA requires a contractor to comply with Davis-Bacon prevailing wage labor standards; exercise affirmative action to ensure equal employment opportunities with goals for minority and female participation on construction work of 25.6% and 6.9%, respectively; and take affirmative steps to contract with small-, minority- and women-owned businesses.

Public Works shall assist OCII with enforcement of EDA and OCII requirements, as further explained below. OCII will accept the following City ordinances as being comparable to OCII equal opportunity policies. Accordingly, Public Works shall enforce Chapter 12B of the San Francisco Administrative Code (the "Equal Benefits Ordinance"), the Minimum Compensation Ordinance, and the Health Care Accountability Ordinance in its contracts with contractors for all work covered by this MOU, and shall cause its contractors to enforce the same with its subcontractors. In addition to the federal Davis-Bacon Act, all construction work performed under this MOU is subject to the OCII and Department of Industrial Relations prevailing wage labor standards.

OCII will not implement, and Public Works shall not enforce, OCII’s 50% local construction workforce requirement to comply with federal prohibitions on geographic preferences but will continue to implement other aspects of OCII’s workforce program, including but not limited to working with the Office of Economic and Workforce Development (OEWD) CityBuild Division on requests for referrals, placements and monitoring, to ensure the minority and female participation goals are met.

OCII implements a Small Business Enterprises (“SBE”) Program that was adopted by OCII Resolution No. 43-2015. The OCII SBE Program can be downloaded at <https://sfocii.org/sites/default/files/OCII-DPW%20MOU-%20EDA%20requirements.pdf>.

Public Works shall make good faith efforts to achieve a 50% level of SBE participation on all professional services, personal services, and construction contracts that it awards under this MOU; provided, however, that this goal may vary depending on the extent of subcontracting opportunities under the contract and the availability of SBE

subcontractors capable of providing goods or services required by the contract; and provided further, that OCII has the sole discretion to modify the 50% SBE participation goal consistent with the SBE Program, as specified in the SBE Policy. Consistent with EDA requirements, affirmative steps also shall be taken to contract with minority- and women-owned businesses.

OCII relies on the information that a business may have provided to qualify under another public entities' business certification program in determining whether that business qualifies as an SBE under OCII's SBE Program. Those other programs include: City and County of San Francisco Local Business Enterprises (LBE) certification, information available at - <http://sfgsa.org/index.aspx?page=5364>; State of California – Small Business Enterprises certification – <http://www.dgs.ca.gov/pd/Programs/OSDS/GetCertified.aspx>; and U.S. Department of Transportation Disadvantaged Business Enterprise certification, among others. OCII retains the discretion, however, to determine if the information provided for those other programs meets SBE eligibility under OCII's SBE Program. (See Attachment G: OCII SBE Policy) Where the EDA requirements conflict with OCII requirements, the EDA requirements shall govern.

Before advertising the bid, Public Works shall provide OCII with the bidding documents and OCII shall review and approve same.

Public Works also agrees to follow, and to require any contractor engaged in the completion of the Project to follow, the federal contract provisions in Attachment F: Federal Contract Provisions.

XII. FINANCIAL OVERSIGHT & AUDITS

Public Works and OCII agree to the accounting methods and procedures per this MOU which are intended to serve as guidelines for accounting activities and communication by and between OCII and Public Works.

- A. Spending Authority.** The costs for this MOU were included in the Fiscal Year 18/19 Recognized Obligations Payment Schedule ("ROPS"), in line 62, which was approved by the Commission on Community Investment and Infrastructure, Successor Agency Oversight Board, and the California Department of Finance. OCII will continue to seek ROPS approval for costs associated with this MOU.
- B. Details of Payments & Funding.** All billings, including documents supporting all charges, shall be submitted to OCII within 30 days after the end of each quarter that costs were incurred for the Project. Upon request for additional information or dispute from OCII, Public Works shall respond within 10 days of receipt of the request. OCII shall prepare and submit Requests for Reimbursement to the EDA within 30 days of Public Works's submittal of complete billing documentation. OCII shall provide payment to Public Works upon receipt of Reimbursements from the EDA. Since this

is a reimbursable arrangement, Public Works is required to incur the costs ahead of payment from OCII.

- C. Supporting Cost Documentation.** On a quarterly basis, Public Works shall review for accuracy and submit all appropriate support (invoices, timesheets, etc.) for labor and non-labor costs performed by Public Works.
- D. Audits.** Public Works shall make available to OCII upon request all personnel time records, contractual records, and other records used to justify reimbursement within a reasonable period of time, not to exceed 30 days from the date Public Works receives a written request. If in response to an external audit, Public Works shall make available to OCII upon request all reimbursement records within the sooner of (a) five (5) business days, or (b) within the time period required to meet audit deadlines.
- E. Record Retention.** Public Works will follow the record retention and storage policies in the EDA Requirements.
- F. Insurance.** The parties acknowledge and agree that the City and County of San Francisco (“City”) self-insures in the areas of general liability, automobile liability and workers’ compensation and that such self-insurance shall cover any losses, claims or damages incurred by the City directly or indirectly arising out of or connected with this MOU, and any of Public Works' activities under this MOU, excluding the willful misconduct or gross negligence of the person or entity seeking to be defended, indemnified or held harmless. However, at its sole discretion, City may purchase a policy of insurance to cover against any potential exposure to loss under this MOU. Public Works shall require any contractors to maintain insurance in compliance with City Policy.

XIII. RIGHT OF ACCESS

OCII hereby grants Public Works a non-exclusive right to access Building 101 for the purposes of performing the Improvements, which is subject to rights of ingress and egress by OCII and others who are authorized to access portions of Building 101, including without limitation the artist-tenants. OCII grants this access, and allows Public Works to assign such access to its contractors, subject to the following terms and conditions:

- A.** Public Works acknowledges, and shall require its contractors to acknowledge, that the artist-tenants will continue to use Building 101 during construction of the Improvements. Public Works and its contractors shall take all reasonable actions to minimize disturbance to the artist-tenants while performing work contemplated under this MOU.
- B.** Public Works shall provide, and shall require its contractors to provide, OCII with at least one-week prior notice if the Improvements will result in a planned disruption of

utilities, for example, HVAC, irrigation, electrical, telecommunications, and security. Such disruptions shall be limited to the minimum duration reasonably necessary.

- C. Construction activities shall be limited to the hours of 8 am and 5 pm Monday through Friday, except as expressly permitted by OCII. To the extent OCII has provided Public Works with a schedule of events taking place at Building 101, Public Works shall take these events into account and seek to avoid disturbance to these events when planning construction activities.
- D. Public Works and OCII acknowledge that mechanics' liens are not available on public property or on public works projects. Public Works shall use all reasonable legal means to ensure no mechanics' or other liens are levied against Building 101 for any labor or material furnished to Public Works or claimed to have been furnished to Public Works or to Public Works' agents or contractors in connection with the Improvements. This paragraph does not limit any right to file a stop payment notice under section 9000 et seq. of the California Civil Code or pursue any other remedies otherwise available at equity or law.
- E. Building 101 is accepted "AS IS" and Public Works and its contractors enter upon Building 101 to perform the activities under this MOU based on Public Works' knowledge of Building 101 obtained during work under the First Phase MOU and inspections for this MOU. Public Works shall make its contractors aware of all dangerous conditions in Building 101 known to Public Works as of the Effective Date or discovered by Public Works thereafter. All dangerous conditions in Building 101, or its immediately surrounding premises, known to Public Works or its contractors are to be made and kept in a secure condition for the term of the MOU. Public Works shall maintain, and shall require its contractors to maintain, Building 101 so that it will not be unsafe, unsightly or unsanitary. Upon termination of the MOU, Public Works and its contractors shall vacate Building 101 and remove any and all personal property located thereon. Any and all personal property left by either Public Works or its contractors after they have vacated Building 101 will be disposed of without notice. OCII makes no representations or warranties, express or implied, with respect to the environmental condition of Building 101 or the surrounding property (including without limitation all facilities, improvements, structures and equipment thereon and soil and groundwater thereunder), or compliance with any Environmental Laws, and gives no indemnification, express or implied, for any costs of liabilities arising out of or related to the presence, discharge, migration or Release or threatened Release of any Hazardous Substance in or from the Permit Area.
- F. Hazardous Materials Acknowledgement and Indemnification. Public Works recognizes that, in entering Building 101 and performing the Improvements hereunder, its employees, invitees, subpermittees and contractors may be working with, or be exposed to substances or conditions which are toxic or otherwise hazardous. Public Works acknowledges that OCII is relying on Public Works to identify and evaluate the potential risks involved and to take all appropriate precautions to avoid such risks to its employees, invitees, subpermittees and subcontractors. Public Works agrees that

it is assuming full responsibility for ascertaining the existence of such risks, evaluating their significance, implementing appropriate safety precautions for its employees, invitees, subpermittees and subcontractors and determining how (and whether) to enter Building 101 and carry out the Improvements, with due regard to such risks and appropriate safety precautions.

1. Proper Disposal of Hazardous Materials: Public Works assumes sole responsibility for managing, removing and properly disposing of any waste produced during or in connection with Public Works' entry and/or Improvements within Building 101, including without limitation, preparing and executing any manifest or other documentation required for or associated with the removal, transportation and disposal of hazardous substances to the extent required in connection with the Permittee's activities hereunder.

Toxics Indemnification: Each Party shall defend, hold harmless and indemnify the other Party and its respective commissioners, members, officers, agents and employees from and against any and all claims, demands, actions, causes of action or suits (actual or threatened), losses, costs, expenses, obligations, liabilities, or damages, including interest, penalties, engineering consultant and attorneys' fees of every kind, nature and description, resulting from any release or threatened release of a hazardous substance, pollutant, or contaminant, or any condition of pollution, contamination, or nuisance in the vicinity of Building 101 or in ground or surface waters associated with or in the vicinity of Building 101 to the extent that such release or threatened release, or condition is directly created or aggravated by indemnifying Party's actions undertaken pursuant to this MOU or by any breach of or failure to duly perform or observe any term, covenant or agreement in this MOU to be performed or observed by the indemnifying Party, including but not limited to any violation of any Environmental Law (as defined below); **provided, however**, that the indemnifying Party shall have no liability, nor any obligation to defend, hold harmless or indemnify any person for any claim, action, loss, cost, liability, expense or damage resulting from the discovery or disclosure of any pre-existing condition on or in the vicinity of Building 101 unknown to the indemnifying Party on the Effective Date; and **provided further** that Public Works shall be held to a standard of care no higher than the standard of care applicable to environmental and geotechnical professionals in San Francisco.

2. Hazardous Substances: For purposes of this MOU, the term "Hazardous Substance" shall have the meaning set forth in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U. S. C. Section 9601(14), and in addition shall include, without limitation, petroleum, (including crude oil or any fraction thereof), asbestos, asbestos-containing materials, polychlorinated biphenyls ("PCBs" or "PCB"), PCB-containing materials, all hazardous substances identified at California Health & Safety Code Sections 25316 and 25281(d), all chemicals listed pursuant to California Health & Safety Code Section 25249.8, and any substance deemed a hazardous substance,

hazardous material, hazardous waste, pollutant or contaminant under applicable state or local law.

3. Environmental Laws: For purposes of this MOU, the term "Environmental Laws" shall include but not be limited to all federal, state and local laws, regulations, ordinances, and judicial and administrative directives, orders and decrees dealing with or pertaining to solid or hazardous waste, wastewater discharges, drinking water, air emissions, Hazardous Substance releases or reporting requirements, Hazardous Substance use or storage, and employee and community right-to-know requirements, related to the Work.
 4. Release: For purposes of this MOU, the term "Release" shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any Hazardous Substance or pollutant or contaminant).
- G. The right of access granted in this Section XIII shall mean and include all contractors, subpermittees, agents and employees of Public Works. In this regard, Public Works assumes all responsibility for the safety of all persons and property and any contents placed in the Building 101 pursuant to this Section. All actions performed in Building 101 and all persons entering Building 101 and all property and equipment placed therein in furtherance of the permission granted herein is presumed to be with the express authorization of Public Works.

XIV. GENERAL INDEMNIFICATION.

To the fullest extent allowable by law, each Party shall hold harmless, defend at its own expense and indemnify the other Party and its respective commissioners, members, officers, agents and employees ("Indemnitees") against any and all liability, claims, losses, damages or expenses, including reasonable attorney's fees, arising directly or indirectly from all acts or omissions to act of the indemnifying Party or its officers, agents, employees or invitees in rendering services under this MOU; excluding, however, such liability, claims, losses, damages or expenses as arise from the indemnified Party's gross negligence or willful acts and are not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on, the indemnifying Party, its officers, agents or employees. In addition to its obligation to indemnify, each indemnifying Party specifically acknowledges and agrees that it has an immediate and independent obligation to defend the other Party from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to the indemnifying Party by the other Party and continues at all times thereafter. This section does not apply to permits for construction design services provided by a design professional, as defined in California Civil Code Section 2782.8.

XV. DISPUTE RESOLUTION

Public Works and OCII agree that this MOU provides a general description and understanding of the services to be provided, and of the schedule and costs associated with these services. The respective managers of Public Works and OCII shall resolve disputes arising out of this MOU expeditiously.

XVI. ENTIRE AGREEMENT

This MOU sets forth the entire agreement between the OCII and Public Works and supersedes all other prior written or oral provisions.

XVII. GOVERNING LAW

All transactions described herein are subject to and must be conducted in accordance with the applicable requirements of the City's Charter and codes and applicable state and/or federal laws.

XVIII. SEVERABILITY

The invalidity or unenforceability of a particular provision of this MOU shall not affect the other provisions hereof.

Prepared by:

Will Kwan **Date**

Senior Architect
San Francisco Public Works

Recommended by:

Julia Laue **Date**

Bureau Manager, BDC-Architecture
San Francisco Public Works

Edgar Lopez **Date**

City Architect & Deputy Director
San Francisco Public Works

Approvals:

Nadia Sesay **Date**

Executive Director
Office of Community Investment
and Infrastructure

Mohammed Nuru **Date**

Director
San Francisco Public Works

ATTACHMENTS

- A.** Scope of Improvements
- B.** Cost Control with Budget, Base Bid and Add Alternate options
- B1.** Bid Summary
- C.** Project Schedule
- D.** Public Works Scope of Services with Associated Fees
- E.** Responsibility Matrix
- F.** Federal Provisions
- G.** Certification Regarding Lobbying

Attachment A: Scope of Improvements

Building 101 Second Phase MOU

Scope of Improvements

The Scope of Improvements includes the following:

- a) Modify and expand existing first floor auditorium for use as shared art gallery.
- b) Provide all “Code Triggered Path of Travel” upgrades to serve art gallery.
- c) Renovate one set of existing Men’s and Women’s restrooms on the first floor, to be determined by OCII, and install a new single-user All-Gender restroom adjacent to the Men’s and Women’s restrooms.
- d) Verify condition of sewer pipe serving renovated restrooms above and repair or replace as necessary.
- e) Install new accessible ramp at Building 101 main entry. Repair existing ramp for delivery use.
- f) Install new exterior exit stairs at ends of each wing of building. Eight (8) stairs shall be provided as base scope. An additional four (4) stairs may be included as alternates to account for market conditions at time of bid.
- g) Replace existing non-accessible sliding fire separation doors with accessible swinging fire separation doors. This work may be included as an additive alternate to account for market conditions at time of bid.
- h) While not estimated to be fully within available budget, design work shall include verification of water capacity at existing hydrants adjacent to Building 101. If capacity is not adequate for Building 101 fire-sprinkler demand, exploration and design for a new connection is included with this scope. If capacity is adequate, fees shall be used to include partial sprinkler scope, such as riser, to be bid as an alternate to account for market conditions at time of bid.
- i) All work shall meet all applicable health and safety and accessibility requirements.

Attachment B: Project Cost Control & Budget

Building 101 Second Phase MOU

TOTAL PROJECT BUDGET		\$ 5,581,677
CONSTRUCTION BUDGET - TO BE BID OUT		\$ 4,330,478
Base Scope	\$ 3,936,798	
Base Bid Budget	\$ 3,423,303	
15% Change Order Contingency	\$ 513,495	
Additive Alternates (10% of Base Scope)	\$ 393,680	
Additive Alternate Budget	\$ 342,330	
15% Change Order Contingency	\$ 51,350	
PUBLIC WORKS DESIGN & NON-DESIGN FEES		\$ 1,152,999
Design Fees	\$ 570,499	
Architecture & Project Coordination	\$ 345,499	
Structural Engineering	\$ 95,000	
Mechanical Engineering	\$ 85,000	
Electrical Engineering	\$ 45,000	
Construction Management	\$ 417,500	
Non-Design Fees	\$ 165,000	
SAR (Site Assessment & Remediation)	\$ 55,000	
PW Contract Procurement	\$ 30,000	
Materials Testing/Investigation	\$ 25,000	
SFFD Fire Flow Tests	\$ 10,000	
Reproduction/Printing Costs	\$ 15,000	
DBI Permit/Review Fees	\$ 30,000	
PROJECT DELIVERY CONTINGENCY		\$ 98,200

Attachment B-1: Cost Summary Table
Building 101 Second Phase MOU

BASE BID, ADDITIVE ALTERNATES & FUTURE SCOPE

	Item	Improvement	Description	Construction Cost - Budget Estimate					15% CO Contingency	
				UNIT COST	QTY	UNIT	CONSTRUCTION	CUMULATIVE	TOTAL	CUMULATIVE
BASE SCOPE	1	Gallery expansion	Convert from lecture hall to art gallery, increase area from 997 to 1,336 sq ft.	\$ 217.40	1,400	sq ft	\$ 304,360	\$ 304,360	\$ 45,654	\$ 45,654
	2	ADA barrier removal	Upgrade/remove barriers in common areas (drinking fountains, doors, handrails, signage, etc.) <i>Priority: code requirement (ADA, CA Building Code).</i>	\$ 3.48	51,960	sq ft	\$ 180,821	\$ 485,181	\$ 27,123	\$ 72,777
	3	ADA restroom conversion	Upgrade first floor restrooms (men's / women's / all gender). Cost estimate requires site investigation to confirm: assumes sewer lateral replacement which site investigation may determine is not necessary. <i>Priority: code requirement (ADA, CA Building Code)</i>	\$ 521.75	1,600	sq ft	\$ 834,800	\$ 1,319,981	\$ 125,220	\$ 197,997
	4	ADA main entry ramp	Install ADA ramp at main entry. <i>Priority: code requirement (ADA, CA Building Code).</i>	\$ 124,000	1	ls	\$ 124,000	\$ 1,443,981	\$ 18,600	\$ 216,597
	5	1st priority emergency egress stairways x8	Install 8 exterior metal stairways (replacing wooden ladder egress) and lighted exit signs. <i>Priority: SFFD priority to facilitate egress. Cannot omit.</i>	\$ 182,600	8	stairs	\$ 1,460,800	\$ 2,904,781	\$ 219,120	\$ 435,717
	6	Fire door replacement (Ground Floor)	Install accessible doors to replace 8 pair interior corridor doors <i>Priority: DPW Access Coordinator priority; possible to omit (ADA costs already exceed 20% construction cost)</i>	\$ 13,000.00	8	pairs	\$ 104,000	\$ 3,008,781	\$ 15,600	\$ 451,317
	7	Fire door replacement (Second Floor)	Install accessible doors to replace 8 pair interior corridor doors <i>Priority: DPW Access Coordinator priority; possible to omit (ADA costs already exceed 20% construction cost)</i>	\$ 13,000.00	8	pairs	\$ 104,000	\$ 3,112,781	\$ 15,600	\$ 466,917
	8	Secondary entry ramp upgrades	Repair non-code compliant issues on existing ramp at secondary entry. <i>Priority: Possible to omit (access provided at primary entrance - see item 4).</i>	\$ 50,000	1	ls	\$ 50,000	\$ 3,162,781	\$ 7,500	\$ 474,417
ADD ALT / BASE BID OPTIONS- TBD W/ OCII	9	2nd priority emergency egress stairways x2	New exterior metal stairway, lighted exit sign at one building wing end where corridor may exist in future. <i>Priority: optional. Improves egress from adjacent studio and building exterior symmetry.</i>	\$ 182,600	2	ls	\$ 365,200	\$ 3,527,981	\$ 54,780	\$ 529,197
	10	Fire service line	8" service line and backflow preventer. Not independently functional; component of potential fire sprinkler system not part of this project. Cost estimate requires site investigation to confirm: required service line length must be confirmed. <i>Priority: optional</i>	\$ 239	1000	feet	\$ 239,000	\$ 3,766,981	\$ 35,850	\$ 565,047
	11	Fire sprinkler riser	Riser with check valves, FDC and primary distribution. Not independently functional; component of potential fire sprinkler system not part of this project. <i>Priority: optional.</i>	\$ 260,900	1	ls	\$ 260,900	\$ 4,027,881	\$ 39,135	\$ 604,182
OUT OF BUDGET	12	Fire Sprinkler System	Complete installation of new wet pipe sprinkler system throughout building, Basement, First & Second Floor plus exterior canopies. Basement: 8,850 sf; First: 51,790 sf; Second: 50,960 sf; Vault: 10,000	\$ 13.28	121,600	sq ft	\$ 1,614,848	\$ 5,642,729	\$ 242,227	\$ 846,409

Attachment D: Scope of Services

Building 101 Second Phase MOU

Professional Services by San Francisco Public Works (SFPW)

SFPW Division	Scope of Work	Fee
BDC- Architecture	<u>Project Coordination</u> SFPW Project Manager will oversee and manage the various SFPW departments, and all consultants and contractors, to provide: • Schematic Design, Design Development and Construction Documents incorporating review and comment by OCII and all other applicable parties, including document drafting, review, solicitation and incorporation of comments, revision, QA/QC, and any required approvals • Incorporation of sustainable design guidelines in all designs • Review and approval of Schematic Design, Design Development and Construction Documents by SFPW Disability Access Coordinator • Division 0 and Division 1 (including Hazmat) specifications to accompany bid package (SFPW Contract Prep and SFPW SAR Group) • Issuance of all required building permits including DBI construction permit • Construction phasing and staging • Advertisement, bidding and award of construction contract, including all required coordination with OCII and other applicable City agencies, including pre-bid conference, administration of bid protest(s) and resolutions, SFPW Order to Award, processing of Contract, Agreement, Bonds, and Insurance Requirements • Issuance of Contract and Notice to Proceed • Construction management including pre-construction conference, attendance at job meetings, drafting and circulation of job meeting minutes, issuance of site visit observation reports, review and approval of shop drawings, material submittals, change order requests, Requests for Information, and progress payment requests • Documentation of items to be bid as base scope and additive alternates • Attendance at up to one (1) public meeting including materials preparation, presentation of relevant project parameters and details and incorporation of feedback • Project closeout including review and approval of contractor's notice of substantial completion; preparation, circulation and completion of corrective work punch list, preparation of final change orders as applicable, final architectural and engineering inspections, processing of Certificate for Payment and final payment, Access Coordinator sign-off, and financial closeout, and	\$345,499

	packaging and delivery of operations and maintenance manuals - Contractor-prepared As-Built construction drawings with as-built final locations of all mechanical equipment, utility lines, ducts and outlets, and any changes made in the field SFPW Project Manager will serve as the contact for the OCII Project Manager and will schedule and lead regular project oversight meetings for OCII Project Manager and present project progress, schedules, next steps, anticipated challenges and information needed from OCII. SFPW Project Architect will oversee and manage SFPW architectural staff to provide: - Architectural content of Schematic Design, Design Development and Construction Documents incorporating review and comment by OCII and all other applicable parties	
IDC- Structural	Under the oversight of the SFPW Project Manager, the IDC-Structural team will: - Provide Structural Design services under the oversight of the SFPW Project Manager for exit stairs and associated foundations - Respond to bidders' questions and DBI plan check comments during bidding, award and DBI permit processes - Review project design documents, attend progress meetings as needed, and respond to contractor RFIs during construction - Provide final inspection of structural scope and other services during project closeout	\$95,000
IDC- Mechanical	Under the oversight of the SFPW Project Manager, the IDC-Mechanical team will: - Provide Mechanical Design & Investigation services, including investigation (E) of sewer line, investigation (E) of fire service capacity, calculation of fire service requirements, and adjustment of scope to incorporate fire service or partial sprinkler buildout - Provide Mechanical Design services for restroom and gallery components of the Scope of Improvements - Respond to bidders questions and DBI plan check comments during bidding, award and DBI permit processes - Review project design documents, attend progress meetings as needed, and respond to contractor RFIs during construction - Provide final inspection of mechanical scope and other	\$85,000

	services during project closeout	
IDC- Electrical	Under the oversight of the SFPW Project Manager, the IDC-Electrical team will: • Provide Electrical Design services for restroom and gallery • Respond to bidders questions and DBI plan check comments during bidding, award and DBI permit processes • Review project design documents, attend progress meetings as needed, and respond to contractor RFIs during construction • Provide final inspection of electrical scope and other services during project closeout	\$45,000
BDC- Construction Management	Under the oversight of the SFPW Project Manager, the BDC-Construction Management team will: • Perform Constructability Review of 25% Construction Documents and 95% Construction Documents and provide input to design team • Lead the Pre-Construction Meeting • Issue Notice to Proceed and secure approval of DBI construction permit • Lead construction progress meetings • Inspect construction regularly and monitor construction progress • Work with applicable City agencies to document and confirm compliance with workforce and hiring requirements • Perform regular site visits at intervals consistent with the pace of construction, not to exceed one visit per week • Contract with necessary testing agency and coordinate with contractor for all code required special inspections of the work. • Review, process and respond to contractor RFIs and project submittals • Review, process and respond to Change Orders and Payment Requests • Provide final inspection, document review, and other services during project closeout	\$417,500
PCS- SAR	Under the oversight of the SFPW Project Manager, the PCS-SAR team will: • Oversee, manage, and deliver completion of project area assessment by as-needed consultant	\$55,000

	• Prepare bid specifications for work practices and abatement • Oversee abatement work during construction • Monitor construction progress and review change order requests • Perform clearance inspections • Provide final inspection, document review, and other services during Abatement Closeout	
PCS- Contracts	Under the oversight of the SFPW Project Manager, the PCS-Contracts team will: • Prepare Division 0 & 1 specifications in compliance with Federal EDA and OCII requirements. • Advertise Project • Oversee and manage bidding process • Award contract and process all associated tasks • Process Progress Payments during construction • Provide services as needed during project closeout	\$30,000
PCS- Materials PW-BBR SFPUC	Under the oversight of the SFPW Project Manager, the following team members will access existing conditions: • Investigate condition of the existing restroom sewer line (PW-BBR or SFPUC depending on availability) • Investigate condition of Gallery wall/floor framing (PW-BBR and/or PCS- Materials) • Investigate condition of existing restrooms (PW-BBR and/or PCS- Materials) • Investigate condition of construction adjacent to stairs (PW-BBR and/or PCS- Materials) • Investigate existing construction adjacent to existing ramp and planned new ramp (PW-BBR and/or PCS- Materials)	\$25,000
SFFD	Allowance for SFFD fees associated with fire flow tests	\$10,000
BDC-Architecture ARC Repro City Reproduction	Allowance for: • Reproduction costs for community meeting presentations • Bid documents reproduction • Advertisement costs	\$15,000
SFDBI	DBI Plan check and permit allowance	\$30,000

Definitions

SFDBI: San Francisco Department of Building Inspection

SFFD: San Francisco Fire Department

SFPW: San Francisco Public Works

BBR: Bureau of Building Repair

BDC: Building Design & Construction Division

IDC: Infrastructure Design & Construction Division

PCS: Project Controls and Services Division

SAR: Site Assessment and Remediation Division

SFPUC: Public Utilities Commission

Design Document Deliverables

Schematic Design Package:

Architectural

Overall Project Site Plan

Floor Plans, including enlarged plans of Gallery Space and Restrooms

Exterior Elevations at areas impacted by new exit stairs

Building Code Analysis

Outline of materials and finishes

SD Cost estimate

List of Specialty items

Outline specifications of specialty items

Structural

Exit stair framing with preliminary member sizes.

Mechanical/Plumbing

Sewer line condition assessment

Fire service capacity assessment

Electrical

Lighting design criteria for standard commercial occupancy use. Specialty gallery lighting excluded.

100% Design Development and 25% Construction Document Package (*In addition to Schematic Design Documents listed above*):

Cost Estimate

Cost Estimate of the 100% DD, 25% CD package

Specifications

Specification sections for non-typical products incorporated into project.

General

Cover sheet

Index

ADA compliance information draft

Architectural

- Egress and ADA path of travel plan
- Building plans
- Enlarged Restroom floor plans
- Enlarged partial elevations
- Exterior exit stair plans and elevations
- Interior elevations
- Exterior elevations
- Non-standard project details

Structural:

- General requirements and notes
- Structural plans, sections and details for exit stairs

Mechanical/Ventilation/Plumbing (no new heating work)

- General notes
- Restroom floor plans with all components indicated
- Water, waste and vent riser diagrams
- Equipment schedule
- Coordinated drawings for restroom exhaust fan duct runs

Fire Protection (if underground utility work is not required)

- Partial fire protection scope that can be accomplished with available project budget.
- Design calculations

Electrical:

- General notes
- Master single line diagram
- Plans (lighting, power and data)
- Coordination with A and M for all equipment electrical loads in project

Construction Documents:

Cost Estimate:

- 95% CD Cost Estimate
- Based on cost estimate, any proposed revisions to fees for BDC-Construction Management and PCS-SAR

Specifications:

- Complete technical specification including front end documents

General:

- Cover sheet
- Index
- Sheet of symbols, abbreviations, etc.
- Regulatory forms and documents
- ADA compliance information and requirements

Architectural:

- Site Plan
- Egress and ADA path of travel plan
- Building plans
- Enlarged floor plans

- Reflected ceiling plans
- Building exterior elevations
- Enlarged partial elevations
- Interior elevations
- Stair plans, sections and elevations
- Finish, door and frame and partition schedules
- Exterior and interior details

Site (if required):

- New and/or repair of underground utilities (sewer repair, new fire service)
- Pipe Sizes and construction details

Structural:

- General requirements and notes
- Structural plans, sections and details for exit stairs
- Structural calculations
- Structural specifications

Mechanical/Ventilation/Plumbing (no new heating work):

- General notes
- Restroom floor plans with all components and required service access areas drawn to actual scale.
- Indicate duct sizes and air flow quantities relative to each room including CFM in and out of all doors
- Water, waste and vent riser diagrams
- Equipment schedule
- Duct run plans and details for restroom exhaust system
- Typical plumbing details including structural support requirements
- Miscellaneous details

Fire Protection (if underground utility work is not required):

- Partial fire protection plans with header and riser layout with indication of required services access area
- Fire protection service entrance details
- Penetration details
- Design calculations

Electrical:

- CA T-24 lighting calculations
- General notes
- Master single line diagram
- Panel schedules
- Lighting schedule
- Plans (lighting, power and data)
- Electrical details

Attachment E: Roles Responsibilities

Building 101 Second Phase MOU

Tasks/Activities	PARTICIPATING PARTIES							
	OCII	Arch.	Struct.	Mech.	Elect.	CM	SAR	Contracts
A. PROJECT INITIATION								
Obtain necessary funding for the project	P							
Establish overall project budget	P	X						
Establish overall project schedule	X	P						
Prepare Project Plan including scope, objectives, budget, and schedule	X	P						
Prepare cost proposals for A/E services, for all phases		P	X	X	X	X	X	
Provide cost proposals for City Agency Peer Review A/E, SAR, Contract Prep and CM services		P						
Prepare final signed, Project MOU between OCII and PW	P	X						
B. SCHEMATIC DESIGN PHASE								
Project Kick-Off Site Meeting	X	P						
Secure and coordinate hazmat report		X					P	
Secure and coordinate hydrant water flow test		X		P				
Secure and coordinate sewer line condition assessment		X		P				
Prepare schematic designs		P	X	X	X			
Schedule community meetings	P							
Attend community meetings	P	P						
Present at community meetings	P	P						
Review and comply with City Codes, Regulations, and Guidelines		P	X	X	X		X	
Coordinate work of all design disciplines		P						
Provide cost estimate for Schematic Design submittal		P	X	X	X			
Secure OCII Commission approvals if required	P							
Prepare presentation materials for OCII Commission	P							
C. DESIGN PHASE (Design Development & Construction Document Phases)								
Monitor project schedule	P	P	X	X	X		X	
Monitor project expenditures	P	P	X	X	X		X	
Schedule & conduct project team meetings		P						
Prepare 100% DD/25% CD Submittal Documents		P	X	X	X		X	
Identify and incorporate design alternates	X	P						
Provide OCII comments to design team PL	P							
Conduct constructability review of drawings, specifications, estimates, & schedules		P	X	X	X	X	X	
Prepare Divisions 0 & 1 specs		X						P
Secure building permits		P	X	X	X			
Prepare 100% Bid Documents. Get final approval signatures for advertisement (professl. stamp; ADA Coordtr., all regulatory approvals)	X	P	X	X	X			X
D. Advertisement & Award								
Deliver electronic copy of Drawings, Specs and Estimates to Contract Prep for advertising. These should be collated and reviewed against Drawing Index and Table of Contents (Specifications).		P	X	X	X		X	
Perform outreach to interested bidders	X	P						
Conduct pre-bid meeting		P						X
Answer questions from bidders during bid phase	X	P	X	X	X		X	
Prepare and issue addenda if needed		P	X	X	X		X	X
Review bids	X	X						P
Resolve bid protests	X	X						P
Obtain OCII Commission approval to award contract /reject bids	P							
Award construction contract		X						P
Adjust project plan (scope, schedule, budget) to reflect actual bid results as required.	P	P						
E. Construction Phase								
Conduct pre-construction conference		X				P		
Review schedule of values	X	X				P		
Conduct & document progress meetings	X	X				P		

Attachment E: Roles Responsibilities

Building 101 Second Phase MOU

Tasks/Activities	PARTICIPATING PARTIES							
	OCII	Arch.	Struct.	Mech.	Elect.	CM	SAR	Contracts
Perform construction observation & coordinate special inspections		X	X	X		P		
Review submittals, shop drawings, RFIs and contractor as-builts		P	X	X	X	P	X	
Prepare Supplemental instructions, clarifications, and sketches as required		P	X	X	X		X	
Conduct site visits and make observations on work		P	X	X	X		X	
Monitor construction contract & schedule	X	X				P		
Negotiate & prepare change orders	X	X				P		
Approve change orders	P	X						
Approve progress payments (OCII needs to review and sign Progress payments)	X	X				P		
Establish and track substantial & final completion dates per the contract.		X				P		
Submit completion certificates						P		
Prepare punch list and verify items completed by contractor		P	X	X	X	X		
Conduct closeout walk through with OCII	X	P		P		X		
Secure affidavit of release of liens/ stop notices, affidavit of payment, consent of surety from contractor				P				
Submit GC as-builts to PW Contract Prep & OCII PM; and O&M Manuals & Warranty info to OCII PM				P		X		
Provide warranties, manuals to OCII		X				P		
Submit closeout documents to PW Accounting		X				P		
F. Financial Management of City Agency work								
Process all financial transactions related to respective departmental FPS transactions	P	P						X

ABBREVIATIONS**OCII PM:** Office of Community Investment and Infrastructure Project Manager or Staff**Arch.:** PW BDC architecture and project lead**Struct.:** PW IDC structural engineer**Mech.:** PW IDC mechanical engineer**Elect.:** PW IDC electrical engineer**CM:** PW BDC construction management**SAR:** PW PCS site assessment and remediation**Contracts:** PW PCS contract preparation

Attachment F: Federal Contract Provisions

Building 101 Second Phase MOU

(A) Equal Employment Opportunity

Contractor shall to comply with 41 CFR 60–1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964–1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies

invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

(B) Davis-Bacon Act

Contractor shall comply with the Davis-Bacon Act, as amended (40 U.S.C. 3141–3148), as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors are required to pay wages not less than once a week. A copy of the current prevailing wage determination issued by the Department of Labor is available: <https://www.wdol.gov/dba.aspx>.

(C) Copeland “Anti-Kickback” Act

Contractor shall comply with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). Contractor agrees to prohibit from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

(D) Contract Work Hours and Safety Standards Act

Contractor shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701–3708). As applicable, all contracts in excess of \$100,000 that involve the employment of mechanics or laborers require Contractors to agree to the provisions of 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor is required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Under 40 U.S.C. 3704, each contractor agrees that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(E) Clean Air Act and Federal Water Pollution Control Act

As applicable to all contracts in excess of \$150,000, contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387).

(F) Energy Policy and Conservation Act

Contractor shall comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).

(G) Debarment and Suspension

Contractor declares that it is not debarred, suspended, or otherwise listed on the government wide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), "Debarment and Suspension." Contractor declares that it is eligible to enter into a contract that received federal financial assistance.

(H) Byrd Anti-Lobbying Amendment

Contractors that apply or bid for an award of \$100,000 or more shall file the required certification (form attached) pursuant to Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.

CERTIFICATION REGARDING LOBBYING

(This Certification is required pursuant to 31 U.S.C. 1352)

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$11,000 and not more than \$110,000 for each such failure.

Please check appropriate box:

No nonfederal funds have been used or are planned to be used for lobbying in connection with this application/award/contract.

or

Attached is Standard Form LLL, "Disclosure of Lobbying Activities," which describes the use (past or planned) of nonfederal funds for lobbying in connection with this application/award/contract.

Executed this _____ day of _____, 20____

by _____
(Type or Print Name)

(Title of Executing Official)

(Signature of Executing Official)

(Name of organization/applicant)

CONTRACT CLAUSE NEW RESTRICTIONS ON LOBBYING

This contract, subcontract, or subgrant is subject to Section 319 of Public Law 101-121, which added section 1352, regarding lobbying restrictions, to Chapter 13 of Title 31 of the United States Code. The new section is explained in the common rule, 15 CFR Part 28 (55 FR 6736-6748, 2/26/90). Each bidder/applicant/recipient of this contract subcontract, or subgrant and subrecipients are generally prohibited from using Federal funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with this Award.

Contract Clause Threshold

This Contract Clause regarding lobbying must be included in each application for a subgrant and in each bid for a contract or subcontract exceeding \$100,000 of Federal funds at any tier under the Federal Award.

Certification and Disclosure

Each applicant/recipient of a subgrant and each bidder/applicant/ recipient of a contract or subcontract exceeding \$100,000 of Federal funds at any tier under the Federal Award must file a "Certification Regarding Lobbying" and, if applicable, Standard Form LLL, "Disclosure of Lobbying Activities," regarding the use of any nonfederal funds for lobbying. Certifications shall be retained by the next higher tier. All disclosure forms, however, shall be forwarded from tier to tier until received by the Recipient of the Federal Award (grant), who shall forward all disclosure forms to the Federal agency.

Continuing Disclosure Requirement

Each subgrantee, contractor, or subcontractor that is subject to the Certification and Disclosure provision of this Contract Clause is required to file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person. Disclosure forms shall be forwarded from tier to tier until received by the Recipient of the Federal Award (grant) who shall forward all disclosure forms to the Federal agency.

Indian Tribes, Tribal Organizations, or Other Indian Organizations

Indian tribes, tribal organizations, or any other Indian organizations, including the Alaskan Native organizations, are excluded from the above lobbying restrictions and reporting requirements, but only with respect to expenditures that are by such tribes or organizations for lobbying activities permitted by other Federal law. An Indian tribe or organization that is seeking an exclusion from Certification and Disclosure requirements must provide (preferably in an attorney's opinion) EDA with the citation of the provision or provisions of Federal law upon which it relies to conduct lobbying activities that would otherwise be subject to the prohibitions in and to the Certification and Disclosure requirements of Section 319 of Public Law No. 101-121. Note, also, that a non-Indian subgrantee, contractor, or subcontractor under an award (grant) to an Indian tribe, for example, is subject to the restrictions and reporting requirements.