

Robert E. Shannon
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802-4664
Telephone (562) 570-2200

AGREEMENT

30015

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3 THIS AGREEMENT is made and entered, in duplicate, as of March 13, 2007
4 for reference purposes only, pursuant to a minute order adopted by the City Council of the
5 City of Long Beach at its meeting on March 13, 2007, by and between J.K. MIKLIN, INC.
6 dba YAMADA ENTERPRISES, a California corporation, with a place of business at 16552
7 Burke Lane, Huntington Beach, California 92647 ("Vendor"), and the CITY OF LONG
8 BEACH, a municipal corporation ("City").

9 WHEREAS, pursuant to a "Notice Inviting Bids to Furnish and Install
10 Children's Furniture at MacArthur Park Branch Library in the City of Long Beach,
11 California", dated January 25, 2007, and published by City, bids were received, publicly
12 opened and declared on the date specified in said Notice;

13 WHEREAS, the City Manager accepted the bid of Vendor; and

14 WHEREAS, the City Council authorized the City Manager to enter a contract
15 with Vendor for the work described in said Notice.

16 NOW, THEREFORE, in consideration of the mutual terms, covenants, and
17 conditions in this Agreement, the parties agree as follows:

18 1. SCOPE OF WORK.

19 A. Vendor shall furnish all necessary labor, tools, materials, supplies,
20 appliances and equipment more particularly described in Exhibit "A", attached to this
21 Agreement and incorporated by this reference, in accordance with the standards of the
22 profession. This Agreement is intended to provide to City complete and finished materials
23 and work and, to that end, Vendor shall do everything necessary to complete the work,
24 whether or not specifically described in Exhibit "A".

25 B. Vendor represents that Vendor has obtained all necessary information on
26 conditions and circumstances that may affect its performance and has conducted site
27 visits, if necessary.

28 2. PRICE AND PAYMENT.

1 A. City shall pay for the above services in the manner described below, not
2 to exceed One Hundred Seventy Three Thousand Four Hundred Sixty-Four Dollars
3 (\$173,464.00), plus Eight Thousand Six Hundred Seventy-Three Dollars (\$8,673.00) for
4 unforeseen expenses, at the rates or charges shown in Exhibit "A".

5 B. City shall pay Vendor in due course of payments following receipt from
6 Vendor and approval by City of invoices showing the materials delivered, the services or
7 task performed, the time expended (if billing is hourly), and the name of the Project.
8 Vendor shall certify on the invoices that Vendor has delivered the materials and performed
9 the services in full conformance with this Agreement and is entitled to receive payment.
10 Each invoice shall be accompanied by a progress report indicating the progress of the
11 Project to date and covered by the invoice, including a brief statement of any Project
12 problems and potential causes of delay in performance, and listing those services that are
13 projected for performance by Vendor during the next invoice cycle. Where billing is done
14 and payment is made on an hourly basis, the parties acknowledge that this arrangement
15 is either customary practice for Vendor's profession, industry or business, or is necessary
16 to satisfy audit and legal requirements which may arise due to the fact that City is a
17 municipality.

18 3. TIME FOR AGREEMENT. A. Vendor shall commence work on a date
19 to be specified in a written Notice to Proceed from City and shall complete all work no later
20 than one hundred five (105) calendar days thereafter, subject to strikes, lockouts and
21 events beyond the control of Vendor.

22 B. Time is of the essence hereunder. City will suffer damage if the work is
23 not completed within the time stated, but those damages would be difficult or impractical
24 to determine at this time. So, Vendor shall pay to City, as liquidated damages, \$1,500.00
25 for each day after the completion date specified above that the Project is not complete.

26 4. COORDINATION AND ORGANIZATION. Vendor shall coordinate its
27 performance with City's representative, if any, named in Exhibit "B", attached to this
28 Agreement and incorporated by this reference. Vendor shall advise and inform City's

1 representative of the work in progress on the Project in sufficient detail so as to assist
2 City's representative in making presentations and in holding meetings on the Project.

3 5. ACCEPTANCE OF WORK NOT TO CONSTITUTE A WAIVER. The
4 acceptance of any work or the payment of any money by City shall not operate as a waiver
5 of any provision of this Agreement, including the Exhibits hereto, of any power reserved
6 to City, or of any right to damages or indemnity hereunder. The waiver of any breach or
7 any default hereunder shall not be deemed a waiver of any other or subsequent breach or
8 default.

9 6. CLAIMS FOR EXTRA WORK. No claim shall be made at any time upon
10 City by Vendor for and on account of any extra or additional work performed or materials
11 furnished, unless such extra or additional work or materials shall have been expressly
12 required by the City Manager or the City Engineer and the quantities and prices thereof
13 shall have been first agreed upon, in writing, by the parties hereto.

14 7. CLAIMS. Vendor shall, upon completion of the work, deliver possession
15 thereof to City ready for use and free and discharged from all claims for labor and materials
16 in doing the work and shall assume and be responsible for, and shall protect, defend,
17 indemnify and hold harmless City from and against any and all claims, demands, causes
18 of action, liability, loss, costs or expenses for injuries to or death of persons, or damages
19 to property, including property of City, which arises from or is connected with the
20 performance of the work.

21 8. INDEPENDENT CONTRACTOR. In performing its services, Vendor is
22 and shall act as an independent contractor and not an employee, representative or agent
23 of City. Vendor acknowledges and agrees that (a) City will not withhold taxes of any kind
24 from Vendor's compensation; (b) City will not secure workers' compensation or pay
25 unemployment insurance to, for or on Vendor's behalf; and (c) City will not provide and
26 Vendor is not entitled to any of the usual and customary rights, benefits or privileges of City
27 employees. Vendor expressly warrants that neither Vendor nor any of Vendor's employees
28 or agents shall represent themselves to be employees or agents of City.

1 9. INSURANCE.

2 A. As a condition precedent to the effectiveness of this Agreement, Vendor
3 shall procure and maintain at Vendor's expense for the duration of this Agreement from
4 insurance companies that are admitted to write insurance in California or from authorized
5 non-admitted insurance companies that have ratings of or equivalent to A:VIII by A.M. Best
6 Company the following insurance:

7 (a) Commercial general liability insurance (equivalent in scope to ISO
8 form CG 00 01 11 85 or CG 00 01 11 88) in an amount not less than
9 \$1,000,000 per each occurrence and \$2,000,000 general aggregate. This
10 coverage shall include but not be limited to broad form contractual liability,
11 cross liability, independent contractors liability, and products and completed
12 operations liability. City, its officials, employees and agents shall be named
13 as additional insureds by endorsement (on City's endorsement form or on an
14 endorsement equivalent in scope to ISO form CG 20 10 11 85 or to both CG
15 20 10 10 01 and CG 20 37 10 01), and this insurance shall contain no
16 special limitations on the scope of protection given to City, its officials,
17 employees and agents.

18 (b) Workers' Compensation insurance as required by the California
19 Labor Code and employer's liability insurance in an amount not less than
20 \$1,000,000.

21 (c) Professional liability or errors and omissions insurance in an
22 amount not less than \$1,000,000 per claim.

23 (d) Commercial automobile liability insurance (equivalent in scope to
24 ISO form CA 00 01 06 92), covering Auto Symbol 1 (Any Auto) in an amount
25 not less than \$500,000 combined single limit per accident.

26 B. Any self-insurance program, self-insured retention, or deductible must be
27 separately approved in writing by City's Risk Manager or designee and shall protect City,
28 its officials, employees and agents in the same manner and to the same extent as they

1 would have been protected had the policy or policies not contained retention or deductible
2 provisions. Each insurance policy shall be endorsed to state that coverage shall not be
3 reduced, non-renewed or canceled except after thirty (30) days prior written notice to City,
4 and shall be primary and not contributing to any other insurance or self-insurance
5 maintained by City. Vendor shall notify City in writing within five (5) days after any
6 insurance has been voided by the insurer or cancelled by the insured. If this coverage is
7 written on a "claims made" basis, it must provide for an extended reporting period of not
8 less than one year, commencing on the date this Agreement expires or is terminated,
9 unless Vendor guarantees that Vendor will provide to City evidence of uninterrupted,
10 continuing coverage for a period of not less than three (3) years, commencing on the date
11 this Agreement expires or is terminated.

12 C. Vendor shall require that all subcontractors that Vendor uses in the
13 performance of these services maintain insurance in compliance with this Section unless
14 otherwise agreed in writing by City's Risk Manager or designee.

15 D. Prior to the start of performance, Vendor shall deliver to City certificates
16 of insurance and the endorsements for approval as to sufficiency and form. In addition,
17 Vendor shall, within thirty (30) days prior to expiration of the insurance, furnish to City
18 certificates of insurance and endorsements evidencing renewal of the insurance. City
19 reserves the right to require complete certified copies of all policies of Vendor and Vendor's
20 subcontractors, at any time. Vendor shall make available to City's Risk Manager or
21 designee all books, records and other information relating to this insurance, during normal
22 business hours.

23 E. Any modification or waiver of these insurance requirements shall only be
24 made with the approval of City's Risk Manager or designee. Not more frequently than
25 once a year, City's Risk Manager or designee may require that Vendor, Vendor's
26 subcontractors change the amount, scope or types of coverages required in this Section
27 if, in his or her sole opinion, the amount, scope or types of coverages are not adequate.

28 F. The procuring or existence of insurance shall not be construed or deemed

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1 as a limitation on liability relating to Vendor's performance or as full performance of or
2 compliance with the indemnification provisions of this Agreement.

3 10. WORKERS' COMPENSATION CERTIFICATION. Concurrently
4 herewith, Vendor shall submit certification of Workers' Compensation coverage in
5 accordance with California Labor Code Sections 1860 and 3700, a copy of which is
6 attached hereto as Exhibit "C".

7 11. WORK DAY. Vendor shall comply with Sections 1810 through 1815 of
8 the California Labor Code regarding hours of work. Vendor shall forfeit, as a penalty to
9 City, the sum of Twenty-Five Dollars (\$25) for each worker employed by Vendor or any
10 subcontractor for each calendar day such worker is required or permitted to work more
11 than eight (8) hours unless that worker receives compensation in accordance with Section
12 1815.

13 12. PREVAILING WAGE RATES. Vendor is directed to the prevailing wage
14 rates. Vendor shall forfeit, as a penalty to the City, Fifty Dollars (\$50) for each laborer,
15 worker or mechanic employed for each calendar day, or portion thereof, that such laborer,
16 worker or mechanic is paid less than the prevailing wage rates for any work done by
17 Vendor or any subcontractor under this Agreement.

18 13. CERTIFIED PAYROLL RECORDS. Vendor shall keep and cause each
19 subcontractor to keep an accurate payroll record in accordance with Division 2, Part 7,
20 Article 2 of the California Labor Code. Vendor's failure to furnish such record to City in the
21 manner provided herein for notices shall entitle City to withhold the penalty prescribed by
22 law from progress payments due to Vendor.

23 14. COORDINATION WITH GOVERNMENTAL REGULATIONS.

24 A. If the work is terminated pursuant to an order of any federal or state
25 authority, Vendor shall accept as full and complete compensation under this Agreement
26 such amount of money as will equal the product of multiplying the Agreement price stated
27 herein by the percentage of work completed by Vendor as of the date of such termination,
28 and for which Vendor has not been paid. If the work is so terminated, the City Engineer,

1 after consultation with Vendor, shall determine the percentage of work completed and the
2 determination of the City Engineer shall be final.

3 B. If Vendor is prevented, in any manner, from strict compliance with this
4 Agreement or the Specifications due to any federal or state law, rule or regulation, in
5 addition to all other rights and remedies reserved to the parties City may by resolution of
6 the City Council suspend performance hereunder until the cause of disability is removed,
7 extend the time for performance, make changes in the character of the work or materials,
8 or terminate this Agreement without liability to either party.

9 15. TAXES AND TAX REPORTING.

10 A. As required by federal and state law, City is obligated to report the
11 payment of compensation to Vendor on Form 1099-Misc. and Vendor acknowledges that
12 Vendor is not entitled to payment under this Agreement until it has provided its Employer
13 Identification Number to City. Vendor shall be solely responsible for payment of all federal
14 and state taxes resulting from payments under this Agreement.

15 B. Vendor shall cooperate with City in all matters relating to taxation and the
16 collection of taxes, particularly with respect to the self-accrual of use tax. Vendor shall
17 cooperate as follows: for all leases and purchases of materials, equipment, supplies, or
18 other tangible personal property totaling over \$100,000 shipped from outside California,
19 a qualified Vendor shall complete and submit to the appropriate governmental entity the
20 form in Appendix "A" attached hereto. "Qualified" means that Vendor purchased at least
21 \$500,000 in tangible personal property that was subject to sales or use tax in the previous
22 calendar year.

23 In completing the form and obtaining the permit(s), Vendor shall use the
24 address of the work site as its business address and may use any address for its mailing
25 address. Copies of the form and permit(s) shall also be delivered to the City Engineer.
26 The form must be submitted and the permit(s) obtained promptly following execution of this
27 Agreement by both parties. Vendor shall not order any materials or equipment over
28 \$100,000 from vendors outside California until the form is submitted and the permit(s)

1 obtained and, if Vendor does so, it shall be a material breach of this Agreement. In
2 addition, Vendor shall make all purchases from the Long Beach sales office of its vendors
3 if those vendors have a Long Beach office and all purchases made by Vendor under this
4 Agreement which are subject to use tax of \$500,000 or more shall be allocated to the City
5 of Long Beach. Vendor shall require the same form and permit(s) from its subcontractors.

6 Vendor shall not be entitled to and by signing this Agreement waives any
7 claim or damages for delay against City if Vendor does not timely submit these forms to
8 the appropriate governmental entity. Vendor may contact the City Controller at (562) 570-
9 6450 for assistance with the form.

10 16. INDEMNITY. Vendor shall, with respect to materials furnished and
11 services performed in connection with this Agreement, indemnify and hold harmless City,
12 its Boards, Commissions, and their officials, employees and agents (collectively in this
13 Section, "City") from and against any and all liability, claims, demands, damage, loss,
14 causes of action, proceedings, penalties, costs and expenses (including attorneys' fees,
15 court costs, and expert and witness fees) (collectively "Claims" or individually "Claim").
16 Claims include allegations and include by way of example but are not limited to: Claims for
17 property damage, personal injury or death arising in whole or in part from any negligent act
18 or omission of Vendor, its officers, employees, agents, subcontractors or anyone under
19 Vendor's control (collectively "Indemnitor"); willful misconduct; misrepresentation; and
20 Claims by any employee of Indemnitor relating in any way to worker's compensation.
21 Independent of the duty to indemnify and as a free-standing duty on the part of Vendor,
22 Vendor shall defend City and shall continue this defense until the Claim is resolved,
23 whether by settlement, judgment or otherwise. No finding or judgment of negligence, fault,
24 breach or the like on the part of Indemnitor shall be required for the duty to defend to arise.
25 Vendor shall notify City of any Claim within ten (10) days. Likewise, City shall notify
26 Vendor of any Claim, shall tender the defense of the Claim to Vendor, and shall assist
27 Vendor, as may be reasonably requested, in the defense.

28 17. ADVERTISING. Vendor shall not use the name of City, its officials or

1 employees in any advertising or solicitation for business, nor as a reference, without the
2 prior approval of the City Manager, City Engineer or designee.

3 18. NONDISCRIMINATION.

4 A. In connection with performance of this Agreement and subject to
5 applicable rules and regulations, Vendor shall not discriminate against any employee or
6 applicant for employment because of race, religion, national origin, color, age, sex, sexual
7 orientation, AIDS, HIV status, handicap or disability. Vendor shall ensure that applicants
8 are employed, and that employees are treated during their employment, without regard to
9 these bases. These actions shall include, but not be limited to, the following: employment,
10 upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or
11 termination; rates of pay or other forms of compensation; and selection for training,
12 including apprenticeship.

13 B. It is the policy of City to encourage the participation of Disadvantaged,
14 Minority and Women-Owned Business Enterprises in City's procurement process, and
15 Vendor agrees to use its best efforts to carry out this policy in its use of subcontractors and
16 vendors to the fullest extent consistent with the efficient performance of this Agreement.
17 Vendor may rely on written representations by subcontractors and vendors regarding their
18 status. City's policy is attached as Exhibit "D" to this Agreement. Vendor shall report to
19 City in May and in December or, in the case of short-term agreements, prior to invoicing
20 for final payment, the names of all subcontractors hired by Vendor for this Project and
21 information on whether or not they are a Disadvantaged, Minority or Women-Owned
22 Business Enterprise, as defined in Section 8 of the Small Business Act (15 U.S.C.
23 Sec. 637).

24 19. COVENANT AGAINST CONTINGENT FEES. Vendor warrants that
25 Vendor has not employed or retained any entity or person to solicit or obtain this
26 Agreement and that Vendor has not paid or agreed to pay any entity or person any fee,
27 commission or other monies based on or from the award of this Agreement. If Vendor
28 breaches this warranty, City shall have the right to terminate this Agreement immediately

1 or, in its discretion, to deduct from payments due under this Agreement or otherwise
2 recover the full amount of the fee, commission or other monies.

3 20. NOTICES. Any notice or approval required by this Agreement shall be
4 in writing and personally delivered or deposited in the U.S. Postal Service, first class,
5 postage prepaid, addressed to Vendor at the address first stated above, and to City at 333
6 West Ocean Boulevard, Long Beach, California 90802, Attn: City Manager, with a copy to
7 the City Engineer at the same address. Notice of change of address shall be given in the
8 same manner as stated for other notices. Notice shall be deemed given on the date
9 deposited in the mail or on the date personal delivery is made, whichever occurs first.

10 21. AUDIT. City shall have the right at all reasonable times to examine,
11 audit, inspect, review, extract information from, and copy all books, records, accounts and
12 other information relating to this Agreement.

13 22. THIRD PARTY BENEFICIARY. This Agreement is intended by the
14 parties to benefit themselves only and is not in any way intended or designed to or entered
15 for the purpose of creating any benefit or right of any kind for any person or entity that is
16 not a party to this Agreement.

17 23. ENTIRE AGREEMENT. This Agreement, including all Exhibits,
18 constitutes the entire understanding between the parties and supersedes all other
19 agreements, oral or written, with respect to the subject matter in this Agreement.

20 24. LAW. This Agreement shall be governed by and construed pursuant to
21 the laws of the State of California (except those provisions of California law pertaining to
22 conflicts of laws). Vendor shall comply with all laws, ordinances, rules and regulations of
23 and obtain all permits, licenses and certificates required by all federal, state and local
24 governmental authorities.

25 25. AMENDMENT. This Agreement, including all Exhibits, shall not be
26 amended, nor any provision or breach waived, except in writing signed by the parties which
27 expressly refers to this Agreement.

28 26. COVENANT AGAINST ASSIGNMENT. Neither this Agreement nor any

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1 of the moneys that may become due Vendor hereunder may be assigned by Vendor
2 without the written consent of City first had and obtained.

3 27. CONTINUATION. Termination or expiration of this Agreement shall not
4 terminate the rights or liabilities of either party which rights or liabilities accrued or existed
5 prior to termination or expiration of this Agreement.

6 28. AMBIGUITY. In the event of any conflict or ambiguity between this
7 Agreement and any Exhibit, the provisions of this Agreement shall govern.

8 29. COSTS. If there is any legal proceeding between the parties to enforce
9 or interpret this Agreement or to protect or establish any rights or remedies under it, the
10 prevailing party shall be entitled to its costs, including reasonable attorneys' fees.

11 IN WITNESS WHEREOF, the parties have caused this document to be duly
12 executed with all formalities required by law as of the date first stated above.

13 J.K. MIKLIN, INC. dba YAMADA ENTERPRISES
14 March 28, 2007 By [Signature]
15 President
16 Michael Scheffler
(Type or Print Name)

17 March 28, 2007 By [Signature]
18 Secretary
19 Linda Braverman
(Type or Print Name)

"Vendor"

20 April 11, 2007 By [Signature]
21 ASSISTANT City Manager
22 CITY OF LONG BEACH

"City"

APPROVED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER.

23 This Agreement is approved as to form on 4/6, 2007.

24 ROBERT E. SHANNON, City Attorney

25 By [Signature]
26 Deputy

EXHIBIT A

**BID TO FURNISH AND INSTALL CHILDREN'S FURNITURE
AT MACARTHUR PARK BRANCH LIBRARY
IN THE CITY OF LONG BEACH, CALIFORNIA**

In accordance with the Notice Inviting Bids for the above titled work in the City of Long Beach, California, a copy of which is attached hereto and is made a part hereof, to be opened on February 7, 2007, at 10:00 a.m., we propose to furnish all necessary labor, tools, materials, appliances and equipment for and perform all work mentioned in said Notice Inviting Bids, in full compliance with Specifications at the following prices:

ITEM NO.	ITEM DESCRIPTION	ESTIMATED QUANTITY	UNIT	UNIT PRICE (IN FIGURES)	ITEM TOTAL (IN FIGURES)
	Children's Furniture	1	LS	173,464.39	173,464.39
TOTAL BID				\$173,464.39	



ADDENDA ACKNOWLEDGMENT / SIGNATURE PAGE

If Bidder is an individual, his/her signature shall be set forth below. If the Bidder is a joint venture, the name of the joint venture shall be set forth below, with the signature of an authorized representative of each venturer. If the Bidder is a partnership, the name of the partnership shall be set forth below, together with the signature of the general partner. If the Bidder is a limited liability company, the legal name of the company shall be set forth below, with the signature of a member or manager authorized to bind the company. If the Bidder is a corporation, the legal name of the corporation shall be set forth below, together with the signature of an officer of the corporation.

Is the Bidder a Minority-Owned or Woman-Owned Business Enterprise? Yes No
(Please check one or both, if applicable). (Circle One)

Woman-Owned _____
Minority-Owned _____ Which Racial Minority? _____

This information will be used for statistical analysis only. The contract will be awarded to the lowest responsible bidder.

Bidder hereby acknowledges receipt of Addendum No. 1 2 3 4 5 6
(Initial above all appropriate numbers)

Respectfully submitted,
J.K. Miklin, Inc.
dba Yamada Enterprises

By [Signature]
Signature
Michael Scheffler, President

____ Individual
____ Joint Venture
____ Partnership (General) Names of Other General Partners
____ Partnership (Limited) Names of Other Partners
____ Limited Liability Company
 Corporation Incorporated Under the Laws of the State of CA

Business Address 16552 Burke Lane
(Actual Address - Do NOT list a post office box)
Huntington Beach, CA 92647

Business Telephone (800) 444-4594 Fax Telephone (714) 843-9202

~~Under Chapter 9 of Division 3 of the Business and Professions Code, (Contractors' License Law), of the State of California, the undersigned has been issued a Class _____ license, Number _____; license termination date is _____.~~

Contractor's Employer Identification Number or Social Security # is [Redacted].

Under Chapter 1, Article VI, Municipal Code of the City of Long Beach, the undersigned has been issued license number 582159; license termination date is 03-31-08.

Address listed on license _____
(If different from business address listed above)

EXHIBIT “B”

The City’s Representative for this project shall be Denise
Scribner.

EXHIBIT C


WORKERS' COMPENSATION CERTIFICATION

In accordance with California Labor Code Sections 1860 and 3700, I certify that I am aware of the provisions of Section 3700 which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with said provisions before commencing the performance of the Work of this contract.

Contractor's Name:

Yamada Enterprises

Signature of Contractor, or a corporate officer of Contractor, or a general partner of Contractor:



Title: President

Date: 3/28/07

EXHIBIT “D”

CITY’S POLICY FOR DISADVANTAGED, MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES

The City of Long Beach is committed to provide maximum opportunities for Disadvantaged, Minority, and Women-Owned Business Enterprises to compete successfully in supplying our needs for products and services.