

**FACADE IMPROVEMENT PROGRAM GRANT AGREEMENT**

**[ECONOMIC DEVELOPMENT BENEFIT AGREEMENT]**

This Façade Improvement Program Grant Agreement (“Agreement”) is entered into effective \_\_\_\_\_, 202\_\_ (“Effective Date”), by and between the CITY OF CARSON, a charter city and municipal corporation (the “City”), on the one hand, and KY AND KY, LLC, a California limited liability company (“Grantee”), owner of property or renter or lessee of property with the property owner’s consent located at 302 E. Carson Street, Carson, California (“Property”), on the other hand. The parties hereto are collectively referred to as the “Parties.”

**RECITALS**

WHEREAS, on June 21, 2022, the City passed Resolution No. 22-131 which established a Citywide Commercial Façade Improvement Program (the “Program”) pursuant to the adopted Carson Façade Improvement Program Guidelines (“Program Guidelines”) for the public purpose of encouraging the improvement, stimulation and revitalization of the exterior facades of existing commercial buildings in various commercial corridors such as along Avalon Boulevard, Main Street, Sepulveda Boulevard, Carson Street, and Figueroa Street.

WHEREAS, the Program is administered by the City and funded by City’s General Fund pursuant to an authorized allocation of \$1,000,000 made by the City Council during its meeting of June 21, 2022.

WHEREAS, on November 6, 2018, City’s voters approved a new Charter for the City which included a comprehensive set of economic development incentives and programs to promote the development of the City of Carson given the unique environmental constraints, to create jobs and to preserve the sound fiscal basis of City. City has determined that under the Charter, City has broad economic development powers to enact measures, to enter into agreements, and to loan, grant, fund, or finance projects which will provide public benefit and protect the public health, safety and welfare of the community, which programs may be carried out singly or in combination in a manner to promote the economic development objectives set forth in Section 206 of the Charter, which specifically allows for the use of “Tax and Assistance Agreements” for sales taxes, transient occupancy taxes, utility taxes or other taxes to be shared with the generator, and rebates or waivers of franchise fees, business license fees, development impact fees, or other revenue sources, or any other economic development subsidy, after a public hearing identifying the amount and terms of such assistance and the justification for such assistance.

WHEREAS, the incentives provided in this Agreement are intended by the City to be consistent with and promote the purposes of Section 206 of the Charter by City providing a grant to Grantee for the purpose of, without limitation, stimulating commercial

development within the City, increasing jobs, decreasing blight, and increasing tax revenue to the City. This Agreement constitutes a “Tax and Assistance Agreement” for purposes of Section 206 of the Charter and has been approved by the City Council following all legally required notices and hearings.

WHEREAS, the Property is a commercial business located within the geographical limits contemplated under the Program and is eligible for participation in the Program.

WHEREAS, the City created the Program in order to grant to commercial businesses funds of (1) up to \$2,500 of unmatched funds or (2) a maximum of \$25,000 of funds so long as applicant matches City funds with a \$22,500 private contribution (for non multi-tenant centers). The grant increases on a dollar-for-dollar basis over \$2,500, up to the \$25,000 cap. For multi-tenant centers, the maximum grant is \$250,000 based on a total expenditure of no less than \$497,500.

WHEREAS, below is a table that illustrates various scenarios of funding contributions between City and a grant recipient:

Grantee Expenses (Total Project Costs)	City Contribution (Reimbursement)	Grantee Out-of-Pocket (After reimbursement)
\$2,500	\$2,500	\$0
\$5,000	\$3,750	\$1,250
\$10,000	\$6,250	\$3,750
\$22,500	\$12,500	\$10,000
\$47,500	\$25,000 (cap for non multi-tenant)	\$22,500
\$497,500 (multi-tenant)	\$250,000 (cap for multi-tenant)	\$247,500

WHEREAS, Section 206 of the Carson Charter is consistent with Government Code Section 53083 which authorizes local agencies to provide economic development subsidies in the amount \$100,000 or more where the local agency provides written notice through its website concerning the economic development subsidy and the information required under subsection (a) therein.

WHEREAS, the City intends to provide Grantee a grant in the amount of \$100,000 or more thereby subjecting such grant to the provisions of Government Code Section 53083.

WHEREAS, on May 7, 2024, the City Council held a public hearing, duly noticed pursuant to Government Code Section 53803 and published on the City’s website, including the information required by Section 53083, considered all written documentation and testimony provided at the hearing and closed the public hearing regarding City’s provision of the grant as contemplated herein and approval of this Agreement.

WHEREAS, this Agreement has been reviewed by City with respect to applicability of the California Environmental Quality Act (“CEQA”), the State CEQA

Guidelines (California Code of Regulations, Title 14, §§ 15000 *et seq.*, hereafter the “CEQA Guidelines”), and any applicable local CEQA policies and procedures and City has determined that this Agreement is not a “project” for purposes of CEQA, as that term is defined by CEQA Guidelines section 15378, because City has determined, in its discretion and based on substantial evidence, that this Agreement presents no potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment, or alternatively, even if it did constitute a project, it would be exempt pursuant to Section 15301 of the CEQA Guidelines (Class 1 exemption for minor alteration of existing public or private structures involving negligible or no expansion of existing use).

WHEREAS, in accordance with the City’s Charter powers and Government Code Section 53083, the City Council wishes to enter into this Agreement with Grantee to provide a grant in order to further the objectives of the Program, it being understood that Section 206 of the Charter allows the City to pursue economic development to the maximum degree permitted by the California Constitution.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the mutual covenants, agreements and conditions contained herein, and upon acknowledgement of each of the Parties of the receipt of valuable consideration, it is agreed as follows:

#### **SECTION 1: GRANT FUNDING; PUBLIC BENEFITS**

The City agrees to disburse to Grantee an amount not to exceed \$250,000 (“Grant Funds”) to allow Grantee to pay eligible costs associated with construction of the Project (as defined below), on a reimbursement basis after Grantee completes the Project or each Project phase, as may be applicable, and submits the documentation required in Section 3 of this Agreement. Grantee shall contribute a total of at least \$497,500 (or \$247,500 after reimbursement) towards completion of the Project.

Under the Program Guidelines, City funds are eligible for uses including: installation of new or repair or replacement of Exterior Signs; installation of new or repair or replacement of awnings, canopies, or sunshades; painting or replace or repair exterior surface treatment; asphalt paving, replacement or repair of tiles or decorative pavers; sidewalk or courtyard repaving; repair or replacement of masonry walls or footings; outdoor lighting: installation of new exterior lighting fixtures or repair or replacement of existing exterior lighting fixtures; installation, repair or replacement of decorative or security fencing; replacement of plate glass windows; re-glazing of windows or change of window mullions with the approval of application by the City.

The City Council finds that the Program, as implemented in part through completion of the Project, will without limitation, stimulate commercial development within the City, increase jobs, decrease blight, and increase tax revenue to the City (“Public Benefits”). As additional Public Benefits, where feasible for Grantee when hiring

contractors to perform work for the Project, Grantee shall use commercially reasonable, good faith efforts to hire contractors whose principal address is located within the City of Carson.

## **SECTION 2: WORK COMPLETION; PREVAILING WAGES**

### **2.1 SCOPE OF WORK AND SCHEDULE OF PERFORMANCE**

Grantee agrees that it shall utilize the Grant Funds to pay for those improvements specified in the Scope of Work attached hereto and incorporated herein as Exhibit "A," which is at times referred to herein as the "Project," in accordance with Grantee's completed application ("Application") on file at City Hall. No changes or additions to the Scope of Work will be permitted without prior written approval of the City's Contract Officer, and any changes made without the requisite approval will not be eligible for funding and will be deemed a material breach of this Agreement. All work toward such Project will be performed and completed (i) within the Project Guidelines, (ii) by a State licensed contractor within the time period(s) established in the "Schedule of Performance," attached hereto and incorporated herein as Exhibit "B," unless otherwise authorized by the City, and (iii) in accordance with approved construction documents, attached hereto and incorporated herein as Exhibit "C." Grantee agrees to allow the City or its agents access to buildings and the storefront improvements at the Property, when convenient for the Parties, for inspection of the Project work. Such inspections shall not replace any required permit inspections by the City's Building Inspectors. All work which is not in conformance with the approved plans, design drawings and specifications shall be immediately remedied by the Grantee at Grantee's sole expense and deficient or improper work shall be replaced and made to comply with the approved plans, design drawings and specifications and the terms of the Agreement.

### **2.2 PREVAILING WAGES**

Certain or all portions of the Project may be subject to prevailing wages under the Labor Code. More specifically, if the amount of the Grant Funds exceeds \$1,000 and is 2% or more of the total cost of the Project, the below provisions will apply.

Grantee acknowledges that the construction and construction-related activities for the Project are subject to the California Prevailing Wage Law, and Grantee is required to pay the general prevailing wage rates of per diem wages and overtime and holiday wages determined by the Director of the Department of Industrial Relations ("DIR") under Section 1720, *et seq.*, of the California Labor Code for all covered work performed on the Project. The applicable prevailing rates are on file with, and open to inspection at, the office of the City Clerk and is referred to and made a part hereof. Due to the fact that Prevailing Wage Law applies to construction work performed for the Project, the Grantee's contractor(s) shall submit weekly certified payrolls of all workers employed on the construction of the Project to the City in a form acceptable to the City. Grantee acknowledges the possibility of wage increases during construction work performed for the Project and that Grantee and/or its contractor(s) shall be responsible for paying such

increases. Grantee acknowledges that it is aware of and shall comply with, and that its contractor(s) shall be aware of and shall comply with, the following sections of the California Labor Code: (i) Section 1725.5 requiring that all contractors and subcontractors performing work on the Project be registered with, and pay an annual fee to, the DIR prior to and during the performance of any work towards the Project; (ii) Section 1775 prescribing penalties for failure to pay prevailing wage rates; (iii) Section 1776 requiring the making, keeping, and disclosing of detailed certified payroll records and prescribing penalties for failure to do so; (iv) Section 1777.5 prescribing the terms and conditions for employing registered apprentices; (v) Section 1810 providing that eight hours of labor shall constitute a day's work; and (vi) Section 1813 prescribing penalties for violations of the provisions concerning eight-hour work days and forty-hour work weeks. If Grantee violates the foregoing or any other Prevailing Wage Laws, Grantee shall be solely liable for the cost thereof and shall indemnify and hold the City harmless from any liability or penalties therefor. This Project will be developed and budgeted for assuming the payment of prevailing wages as needed.

## **2.3 PROJECT FUNDING**

Grant Funds shall only be used to pay for the improvements as stipulated under the Scope of Work (Exhibit A) and in the time and manner specified under the Schedule of Performance (Exhibit B). It is incumbent upon the Grantee to ensure that Project is carried out in accordance with the Project's approved scope and timeline. Any deviation in the Scope of Work and/or Schedule of Performance must be approved by the City in advance and in writing. Work performed outside the specification of the Scope of Work and/or outside the timeframe established under the Schedule of Performance are not eligible for Grant Funds.

## **SECTION 3: POST-CONSTRUCTION REQUIREMENTS; REIMBURSEMENT**

Upon completion of the Project or each phase, if any, of the Project by Grantee, as provided in the Schedule of Performance, and upon final inspections for the Project and/or each phase of the Project by the City, the Grantee shall submit to the City the following properly executed and notarized forms: (i) Grantee's sworn statement showing the full cost of the work and each separate component amount due to its contractor(s) and each and every subcontractor involved in furnishing labor, materials or equipment in the work; (ii) proof of payment of the contract cost pursuant to Grantee's statement and final lien waivers from all contractors and subcontractors; and (iii) an invoice for payment of the Grant Funds. The City will endeavor to remit payment of the Grant Funds to Grantee within forty five (45) days after City's receipt of all required documentation. Failure by Grantee to submit all required documents or, to comply with the provisions of this Agreement, or complete all improvements in accordance with the approved plans and specifications in the time specified, will result in City not paying Grantee the Grant Funds.

## **SECTION 4: AUDITS; MISUSE OF FUNDS**

City reserves the right to designate its own employee representative(s) or its

contracted representative(s) with a Certified Public Accounting firm who shall have the right to audit Grantee's accounting procedures and internal controls of Grantee's financial systems as they relate to the Grant Funds and to examine any cost, revenue, payment, claim, other records or supporting documentation resulting from any items set forth in this Agreement. Any such audit(s) shall be undertaken by City or its representative(s) at mutually agreed upon reasonable times and in conformance with generally accepted auditing standards. Grantee agrees to fully cooperate with any such audit(s).

If the Grantee, or Grantee's designated contractor should utilize the funds for anything other than as stated in the Application, the City may thereupon recover the entire amount of the Grant Funds from Grantee and/or the subsequent operator of the Property, together with reasonable attorney fees and costs incurred in enforcing this provision. This provision shall **not** apply where the proposed changes are first reviewed and approved by the City. Approval shall not be unreasonably withheld to the extent the proposed changes are authorized in the Program Guidelines.

## **SECTION 5: REMEDIES FOR BREACH**

In the event the Grantee or any subsequent operator breaches Sections 3 or 4 of this Agreement, in addition to all legal and equitable remedies available to the City, the City may thereupon deny any request(s) for reimbursement and/or recover the entire amount of the Grant Funds from the Grantee and/or the subsequent operator of the Property, together with reasonable attorney fees and costs incurred in enforcing this provision.

## **SECTION 6: INSURANCE AND INDEMNIFICATION.**

### **6.1 INDEMNIFICATION**

To the maximum extent permitted by law, the Grantee hereby agrees, at its sole cost and expense, to defend protect, indemnify, and hold harmless the City, its elected and appointed officials, officers, employees, volunteers, attorneys, and agents (collectively "Indemnitees") from and against any and all claims, including, without limitation, claims for bodily injury, death or damage to property, demands, charges, obligations, damages, causes of action, proceedings, suits, losses, stop payment notices, judgments, fines, liens, penalties, liabilities, costs and expenses of every kind and nature whatsoever, in any manner arising out of, incident to, related to, in connection with or arising from any act, failure to act, error or omission of the Grantee's performance or work hereunder (including any of its officers, agents, employees, contractors) or its failure to comply with any of its obligations contained in the Agreement, or its failure to comply with any current or prospective law, or any loss of business in connection with construction over the course of completion of the Project and damage to City property, or any construction defect that may arise from City-provided design services or the Project's compliance with City-recommended designs, except for such loss or damage which was caused by the sole negligence or willful misconduct of the City. The Grantee's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the Grantee or Indemnitees.

This indemnification obligation shall survive this Agreement and shall not be limited by any term of any insurance policy required under this Agreement.

Indemnitees do not and shall not waive any rights that they may possess against the Grantee because the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement.

The Grantee, on behalf of itself and all parties claiming under or through it, hereby waives all rights of subrogation and contribution against the Indemnitees.

## 6.2 INSURANCE.

A. Without limiting Grantee's obligations to City under Section 6.1, and prior to commencement of any construction toward the Project, Grantee and all Grantee's contractors that will perform any work on the Project shall obtain, provide and maintain at their own expense during the term of this Agreement (at times extending beyond the term), policies of insurance of the types and amounts described below and in a form satisfactory to City.

(i) Commercial General Liability Insurance (Occurrence Form CG0001 or equivalent). Grantee and all Grantee's contractors that will perform any work on the Project shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form ISO CGL CG 00 01 or equivalent, in an amount not less than \$2,000,000 per occurrence, \$4,000,000 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

(ii) Worker's Compensation Insurance. Grantee and all Grantee's contractors that will perform any work on the Project shall maintain a policy of worker's compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for Grantee and such contractors against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by the Grantee or its contractors in the course of carrying out the work contemplated in this Agreement.

(iii) Automotive Insurance. Grantee's contractors that will perform any work on the Project shall maintain ISO Form Number CA 00 01 covering any auto (Code 1), or if the Grantee has no owned autos, covering hired (Code 8), and non-owned autos (Code 9), with limit no less than \$1,000,000 combined single limit for each accident for bodily injury and property damage.

(iv) Professional Liability. For any design professional retained by Grantee to prepare designs for the Project, professional liability insurance appropriate to such profession. This coverage may be written on a "claims made" basis, and must include

coverage for contractual liability. The professional liability insurance required by this Agreement must be endorsed to be applicable to claims based upon, arising out of or related to obligations carried out under this Agreement. The insurance must be maintained for at least 5 consecutive years following the completion of the professional services. During this additional 5-year period, Grantee shall annually and upon request of the City submit written evidence of this continuous coverage.

(v) Flood Insurance. If Grantee receives \$50,000 or more from the City as Grant Funds and the Property is located in a FEMA designated high-risk area (zones A or V), Grantee shall maintain flood insurance in an amount not less than the total cost of the improvements specified in the Scope of Work.

(vi) Builder's Risk Insurance. Grantee shall maintain Builder's Risk (Course of Construction) insurance utilizing an "All Risk" (Special Perils) coverage form, with limits equal to the completed value of the Project and no coinsurance penalty provisions or provisional limit provisions. The policy must include: (1) coverage for any ensuing loss from faulty workmanship, nonconforming work, omission or deficiency in design or specifications; (2) coverage against machinery accidents and operational testing; (3) coverage for removal of debris, and insuring the buildings, structures, machinery, equipment, materials, facilities, fixtures and all other properties constituting a part of the project; (4) ordinance or law coverage for contingent rebuilding, demolition, and increased costs of construction; (5) transit coverage (unless insured by the supplier or receiving contractor), with sub-limits sufficient to insure the full replacement value of any key equipment item; (6) ocean marine cargo coverage insuring any project materials or supplies, if applicable; (7) coverage with sub-limits sufficient to insure the full replacement value of any property or equipment stored either on or off the Project site or any staging area. The City shall be included as a "loss payee" in the amount of the Grant Funds.

If the Grant Funds is less than \$50,000, then at the option of City, an Installation Floater may be acceptable in lieu of Builder's Risk Insurance. For such projects, a Property Installation Floater shall be obtained that provides for the improvement, remodel, modification, alteration, conversion or adjustment to existing buildings, structures, processes, machinery and equipment. The Property Installation Floater shall provide property damage coverage for any building, structure, machinery or equipment damaged, impaired, broken, or destroyed during the performance of the work, including during transit, installation, and testing at the Project site.

B. General Insurance Requirements. Except for professional liability insurance and commercial general liability insurance maintained by Grantee, all of the above policies of insurance shall be primary insurance and shall name the City, its elected and appointed officers, employees and agents as additional insureds and any insurance maintained by City or its officers, employees or agents may apply in excess of, and not contribute with the insured's insurance. The commercial general liability insurance maintained by Grantee's contractors shall also name Grantee as an additional insured. The insurer is deemed hereof to waive all rights of subrogation and contribution it may have against the City, its officers, employees and agents and their respective insurers. The



insurance policy must specify that where the primary insured does not satisfy the self-insured retention, any additional insured may satisfy the self-insured retention. All of said policies of insurance shall provide that said insurance may not be amended, cancelled or non-renewed by the insurer or any Party hereto without providing thirty (30) days prior written notice by certified mail return receipt requested to the City. In the event any of said policies of insurance are cancelled, the Grantee or Grantee's contractors shall, prior to the cancellation date, submit new evidence of insurance in conformance with this section to the Contract Officer. No work or services under this Agreement shall commence until the Grantee and its contractors have provided the City with Certificates of Insurance, additional insured endorsement forms or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by the City. City reserves the right to inspect complete, certified copies of and endorsements to all required insurance policies at any time. Any failure to comply with the reporting or other provisions of the policies including breaches or warranties shall not affect coverage provided to City.

The insurance required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A-" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the City's Risk Manager or other designee of the City due to unique circumstances.

## **SECTION 7: ADDITIONAL WORK**

Nothing contained in this Agreement is intended to limit, restrict, or prohibit the Grantee from undertaking additional work in or about the subject premises, which is unrelated to the approved improvements provided for in this Agreement.

## **SECTION 8: TERM**

This Agreement shall be binding upon the City and upon the Grantee and Grantee's successor(s) to the Property for a period of two (2) years after the Effective Date. It shall be the responsibility of the Grantee to inform subsequent owner(s)/lessee(s) of the Property of the provisions of this Agreement.

## **SECTION 9: DESIGNS**

Notwithstanding any provision of this Agreement, Grantee is responsible for obtaining applicable design review approvals, obtaining all required permits, and complying with all applicable laws and Program Guidelines. As part of the Program, City has offered Grantee complimentary design guidance services for the Project ("Design Guidance Services") and, unless Grantee indicates by checking the box below, Grantee agrees to utilize City's Design Guidance Services for the Project. Grantee utilizing the Program's complimentary design guidance are also subject to requirements of this section.

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By checking the box above, Grantee acknowledges that City has offered Grantee complimentary Design Guidance Services but Grantee has declined such services and instead, is electing to obtain its own licensed architect to prepare designs for the Project. In so doing, Grantee understands and agrees that all designs prepared by Grantee's architect must comply with City's recommended designs for the Project.

## **SECTION 10: MISCELLANEOUS PROVISIONS**

### **10.1 RECITALS.**

All recitals in this Agreement are hereby incorporated into this Agreement as if set forth fully herein.

### **10.2 COVENANT AGAINST DISCRIMINATION.**

Grantee covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that in the performance of this Agreement, there shall be no discrimination against or segregation of any person or group of persons on account of race, religious creed, color, gender, national origin, ancestry, physical disability, mental disability, medical condition, pregnancy, marital status, age, sexual orientation, or any other basis pertaining to a protected characteristic under applicable federal, state, or local law.

### **10.3 CONFLICTS OF INTEREST.**

Grantee, its agents and employees shall comply with applicable federal, state, and local laws and regulations governing conflict of interest. Grantee covenants that it presently has no interest and shall not acquire any interest, direct or indirect, that may be affected by its obligations to perform under this Agreement, or that would conflict in any manner with its obligations hereunder. Grantee further covenants that, in performing this Agreement, no person having any such interest shall be employed by it. Furthermore, Grantee shall avoid the appearance of having any interest that would conflict in any manner with the performance of its services pursuant to this agreement. Grantee agrees not to accept any employment or representation during the term of this Agreement that is or may likely make Grantee "financially interested" (as provided in California Government Code Sections 1090 and 87100) in any decision made by City on any manner in connection with which Grantee has been retained pursuant to this Agreement.

### **10.4 WARRANTY AND REPRESENTATION OF NON-COLLUSION.**

City hereby warrants and represents that no official, officer, or employee of the City has any financial interest, direct or indirect, in this Agreement, nor shall any official, officer, or employee of the City participate in any decision relating to this Agreement which may affect his/her financial interest or the financial interest of any corporation, partnership, or association in which (s)he is directly interested, or in violation of any state

or municipal statute or regulation. The determination of “financial interest” shall be consistent with State law and shall not include interest found to be “remote” or “non interest” pursuant to California Government Code Sections 1091 and 1091.5. Grantee hereby warrants and represents that (s)he/it has not engaged in any act(s), omission(s), or other conduct or collusion that would result in the payment of any money, consideration, or other thing of value to any third party including, but not limited to, any City official, officer, or employee, as a result or consequence of obtaining or being awarded any agreement. Grantee is aware of and understands that any such act(s), omission(s), or other conduct resulting in the payment of money, consideration, or other thing of value will render this Agreement void and of no force and effect.

Grantee Representative Initials \_\_\_\_\_

#### 10.5 PROHIBITED AND PERMITTED USE OF FUNDS.

Grantee acknowledges and understands that it is prohibited from using the Grant Funds for any purpose that is not permitted under the Program Guidelines. Grantee agrees to use Grant Funds only for the purpose stated in Grantee’s application and for the purpose of completion of the Project.

#### 10.6 FALSE STATEMENTS.

Grantee understands that making false statements or claims in connection with this Agreement is a violation of federal law and may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or contracts, and/or any other remedy available by law.

#### 10.7 NOTICES.

All notices, demands, invoices, and communications shall be in writing and delivered to the following addresses or such other addresses as the Parties may designate by written notice:

To City: City of Carson  
701 East Carson Street  
Carson, CA 90745  
Attn: James Nguyen, Special Projects Manager  
Email: [jnguyen@carsonca.gov](mailto:jnguyen@carsonca.gov)

To Grantee: Ky and Ky, LLC  
1905 Lombardy Road  
San Marino, CA 91108  
Attn: Sean Ky, Property Owner  
Email: [seanky.dds@gmail.com](mailto:seanky.dds@gmail.com)

#### 10.8 SEVERABILITY.

Any provision of this Agreement that is found invalid or unenforceable shall be deemed severed and all remaining provisions of this Agreement shall remain enforceable to the fullest extent permitted by law.

#### 10.9 CORPORATE AUTHORITY.

The persons executing this Agreement on behalf of the Parties warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said Party, (iii) by so executing this Agreement, such Party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said Party is bound. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the Parties.

#### 10.10 GRANTEE REPRESENTATIVE AND CITY'S CONTRACT OFFICER.

The following principal(s) and/or representative(s) of Grantee is/are hereby designated as the person(s) authorized to act on Grantee's behalf with respect to this Agreement and to make all decisions in connection herewith:

Sean Ky, Property Owner (Ky and Ky, LLC) ("Grantee Representative")

James Nguyen, Special Projects Manager, or such person as may be designated by the City Manager, is hereby designated as being the representative the City authorized to act in its behalf with respect to the work and Project specified herein and to make all decisions in connection therewith ("Contract Officer").

#### 10.11 WAIVER.

The waiver by the City of any breach of any term or provision of this Agreement shall not be construed as a waiver of any subsequent breach.

#### 10.12 GOVERNING LAW AND VENUE.

This Agreement shall be construed in accordance with the laws of the State of California without regard to principles of conflicts of law. Venue for any litigation or other action arising hereunder shall reside exclusively in the Superior Court of the County of Los Angeles, Southwest Judicial District.

#### 10.13 INTERPRETATION.

Grantee acknowledges that it has had ample opportunity seek legal advice with respect to the negotiation of this Agreement. This Agreement shall be interpreted as if drafted by both parties.

#### 10.14 TIME OF ESSENCE.

Time is of the essence of this Agreement.

10.15 THIRD PARTIES.

Nothing herein shall be interpreted as creating any rights or benefits in any third parties. For purposes hereof, transferees or assignees as permitted under this Agreement shall not be considered "third parties."

10.16 NON-LIABILITY OF OFFICIALS AND EMPLOYEES OF THE CITY.

No official or employee of the City shall be personally liable for any default or liability under this Agreement.

10.17 COUNTERPARTS AND SIGNATURES.

This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement, and all of which, when taken together, will be deemed to constitute one and the same agreement. The facsimile, email or other electronically delivered signatures of the Parties shall be deemed to constitute original signatures.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

WITNESS WHEREOF, the Parties have executed this Agreement on the date first above written.

**CITY:**

CITY OF CARSON, a California  
charter city

\_\_\_\_\_  
David C. Roberts, Jr., City Manager

ATTEST:

\_\_\_\_\_  
Dr. Khaleah R. Bradshaw, City Clerk

APPROVED AS TO FORM:  
Aleshire & Wynder, LLP

\_\_\_\_\_  
Sunny K. Soltani, City Attorney  
[rjl]

**GRANTEE:**

KY AND KY LLC, a California  
limited liability company

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Title:

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Title:

**\*Two corporate officer signatures required when Grantee is a corporation, with one signature required from each of the following groups: 1) Chairman of the Board, President or any Vice President; and 2) Secretary, any Assistant Secretary, Chief Financial Officer or any Assistant Treasurer. GRANTEE'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO CONTRACTOR'S BUSINESS ENTITY.**

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

On \_\_\_\_\_, 2024 before me, \_\_\_\_\_, personally appeared \_\_\_\_\_, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_

### OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form

#### CAPACITY CLAIMED BY SIGNER

☐

INDIVIDUAL

☐

CORPORATE OFFICER

☐

TITLE(S)  
PARTNER(S)

☐

LIMITED

☐

GENERAL

☐

ATTORNEY-IN-FACT

☐

TRUSTEE(S)

☐

GUARDIAN/CONSERVATOR

☐

OTHER \_\_\_\_\_

#### DESCRIPTION OF ATTACHED DOCUMENT

\_\_\_\_\_  
TITLE OR TYPE OF DOCUMENT

\_\_\_\_\_  
NUMBER OF PAGES

\_\_\_\_\_  
DATE OF DOCUMENT

\_\_\_\_\_  
SIGNER(S) OTHER THAN NAMED ABOVE

#### SIGNER IS REPRESENTING:

(NAME OF PERSON(S) OR ENTITY(IES))

\_\_\_\_\_  
\_\_\_\_\_

### CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

On \_\_\_\_\_, 2024 before me, \_\_\_\_\_, personally appeared \_\_\_\_\_, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_

#### OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form

##### CAPACITY CLAIMED BY SIGNER

☐

INDIVIDUAL

☐

CORPORATE OFFICER

☐

PARTNER(S)

☐

LIMITED

☐

GENERAL

☐

ATTORNEY-IN-FACT

☐

TRUSTEE(S)

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GUARDIAN/CONSERVATOR

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(NAME OF PERSON(S) OR ENTITY(IES))

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



**EXHIBIT "A"**  
**SCOPE OF WORK**

*Commercial Façade Improvement Program*

Name: Ky and Ky, LLC	
Address: 302 E. Carson Street	Date: May 2024

All work is to be done per City of Carson building, planning, and public works codes after submission of all applicable contractor's licenses to the City's Contract Officer. In order to establish standards of quality, the detailed specifications may refer to a certain product by name and/or from a major manufacturer. This procedure is not to be construed as eliminating from competition of other product of equal or better quality by other manufacturers. The Grantee shall furnish a list of proposed desired substitutions prior to signing of the contract. All items listed on work write-up, unless otherwise specified, shall include all finish work, including all trim hardware, patching, and finish painting and/or staining. All overhead and profit should be included in each line item. Use of lead-based paint is prohibited. Removal or work on asbestos and lead containing materials is subject to applicable federal, state, and local regulations. The City reserves the right at any time to make any modifications to the Scope of Work to meet the goals of the Program.

Any questions regarding this project, the plans, and specifications should be submitted to Aaron Whiting, Associate Planner (Project Planner) at [awhiting@carsonca.gov](mailto:awhiting@carsonca.gov) or 310-952-1700 ext. 1315.

**WORK DESCRIPTION AND STANDARD SPECIFICATIONS**

<b><u>ITEM DESCRIPTION</u></b>	<b><u>ESTIMATE</u></b>
--------------------------------	------------------------

- |  |                  |
|--|------------------|
| <b>1 Roofing / Remove and Replace Exteriors</b>  | <b>\$87,100</b>  |
| Remove (E) Spanish tile, replace with grey seam sheet metal roofing. (Approximately 128 linear feet; 4 feet high) - Finish to match Pre-Weathered Galvalume (Est. \$31,900). |                  |
| Patch, repair, and refinish stucco, to soffit roof (Est. \$12,900)   |                  |
| Parapet capping (Est. \$31,700)  |                  |
| Anodized AL channel detail/reveal, under roof cap (Est. \$10,600)  |                  |
| <b>2 Exterior Finishes</b>   | <b>\$142,300</b> |
| Repair, patch, prime and paint existing stucco. Sherwin Williams - SW 2819 Downing Slate (approx. 7,200 sq. ft) & SW 7102 (approx. 1,700 sq. ft) White                       |                  |

Flour. Paint cornice to match Midnight Bronze – Cool Roof Color (570 sq. ft upper cornice, 234 sq. ft. lower cornice) (Est. \$88,300)

Prep, prime and paint all existing doors and window mullions. Color black. Take care to protect existing storefront glass. (Est. \$35,000)

(10) Doors:

- a. (10) 3' standard doors

(11) Window:

- b. (3) 13'x6' windows
- c. (1) 20'x6' window
- d. (2) 16'x6'6" windows
- e. (3) 6'6"x6' windows
- f. (2) 12'x6' windows

Paint (E) guardrail, handrailing, walkway dark grey/charcoal color. (Est. \$9,000)

Replace Handrail at balcony – color to match stair handrail. (Approx. 55 Linear Feet) (Est. \$10,000)

### **3 Landscaping**

**\$80,700**

Existing Planter. Install Trex cladding wall (295 sq. ft.) with new landscape at existing planter fronting E Carson St. and near the bus stop. Trex Color – Spiced Rum. Remove old landscape. New plants at existing planter to include (Est. \$28,700):

- a. (5) Purple Fountain Grass
- b. (2) Golden Barrel Cactus
- c. (3) Blue Glow Agave
- d. (3) Bougainvillea
- e. (2) Mexican Sage
- f. (1) Tree – TBD (Suggested Purple-Leaf Acacia (If approved) OR Eastern Redbud 'Forest Pansy')
- g. Blue Elf Aloe
- h. (5) Small Boulders
- i. (1) Large River Rock drainage accent (approximately 60 sq. ft)
- j. Brown Mulch (approximately 196 sq. ft)

New Landscaping Strip at corner of Dolores and Carson. Remove asphalt for new landscaping strip – 2 ft strip of landscape between parking lot curb stops and sidewalk at Delores Street. Remove Asphalt to expand plant bed at Trash Enclosure location. New plants and amenities to include (Est. \$52,000):

- a. (2) Trees – TBD (Suggested Purple-Leaf Acacia (If approved) OR Eastern Redbud 'Forest Pansy') at diamond tree wells.
- b. (2) 5ft diamond tree wells.
- c. (1) Tree in expanded planter by new trash enclosure. TBD Type.
- d. (4) Purple Fountain Grass
- e. (7) Mexican Sage
- f. (4) Golden Barrel Cactus
- g. (6) Blue Elf Aloe
- h. (7) Blue Glow Agave

- i. Brown Mulch (Approx 280 sf)
- j. River Rocks (Approx 75 sf)
- k. (5) Small Accent Boulders

#### **4 Sitework (Parking and Walkways) \$105,000**

Bring ADA Parking stall and loading zone up to walkway level. Slope not to exceed 5%. 36" deep truncated domes to be installed where asphalt is flush with walkway. Roughly 307 sq. ft for the stall and loading zone. Existing curb is approximately 3-4" higher than the asphalt. Sloping of approximately 500 sq. ft. from 0-3" to meet the loading zone to walkway. (Est. \$68,100)

Repaint Striping Parking Stalls. ADA Parking sign. Remove and Reinstall Wheel Stops. (Est. \$15,900)

Install (N) pipe guardrail/handrail at steps, near bus stop. (Est. \$9,000)\_

2 wall mounted security lights for parking lot. Replace the sconce at the exterior stair with a new, modern, large wall sconce. Replace undermounted soffit light fixtures with new UL listed exterior lights (9) fixtures total. (Est. \$12,000)

#### **5 Signage \$37,500**

Removing existing Pylon Sign and build 8' tall new monument sign. Setback 7'6." New center sign on building (6'x3'6"). New individual signs over each entrance (4'x12") to be uniform in appearance. Cut out letters on plaque background.

Remove all window signs. Only appropriately sized permanent logo decals will be used/approved. No more than 15% of window space and no temporary signs.

#### **6 Trash Enclosure (including gates & foundations over slab on grade) \$28,000**

New trash enclosure in Parking Spot 19 (where dumpster is currently located with no enclosure) (see Exhibit C-2) with lifted, corrugated metal roof, a man-gate, and metal with wood face front gates. To be constructed of 6'sp lit-face CMU, with integral color to match existing CMU on site and landscape at Parking Spot 19. Cast stone cap on CMU wall.

#### **7 Planning fees, building permits, and other eligible items \$16,900**

### **NOTES:**

Grantee must obtain and pay for City of Carson building permits, business license, and inspections. All work shall include the protection of building as well as maintaining the premises clean at all times.

All debris resulting from any work conducted in connection with this contract shall be the property of the Grantee, who is responsible for its timely removal and lawful disposal. Work site shall be maintained in a clean and orderly manner, and upon completion, property shall be left in a "broom clean" condition.

**PROJECT TOTAL: \$497,500**

**EXHIBIT “B”**  
**SCHEDULE OF PERFORMANCE**

**PERMITS:** Before commencement of any Project work, Grantee shall obtain any and all permits and approvals which may be required by the City or any other governmental agency with jurisdiction. Execution of this Agreement by City shall not be construed as any commitment by City to issue any permits and Grantee must obtain all permits pursuant to the City’s standard process and requirements.

**COMMENCEMENT OF PROJECT WORK:** Grantee agrees that the Project work shall not commence until all permits are issued and City has issued a Notice to Proceed and delivered same to Grantee (“Notice to Proceed”). **Grantee agrees that the City will not be responsible to reimburse Grantee for any funds the Grantee may advance to the contractor prior to the issuance of the Notice to Proceed.** Grantee agrees that materials purchased, work commenced, or construction agreements signed prior to the Notice to Proceed are solely Grantee’s responsibility and are not eligible for reimbursement under this Agreement.

**PLAN DEVELOPMENT & ENTITLEMENT SCHEDULE:** The plan development shall be complete within sixty (60) days from the Notice to Proceed. The Planning Commission Public Hearing shall occur within one hundred and eighty (180) days after final plan development. The Grantee shall obtain the Building Permit for the Project within one hundred and eighty (180) days after Planning Commission approval.

**CONSTRUCTION SCHEDULE:** The Project work shall commence not later than ten (10) days after the City issues the building permits to Grantee and shall be completed within ninety (90) days thereafter except as stated otherwise or as mutually agreed in writing by Grantee and City. The Project work shall be deemed complete upon written notification specifying that the Project work has been completed issued by the Citywide Façade Improvement Program manager or designee and delivered to Grantee.

When requested by the Grantee, extensions to the time period(s) may be approved in writing by the Contract Officer but not exceeding one hundred (180) days cumulatively.

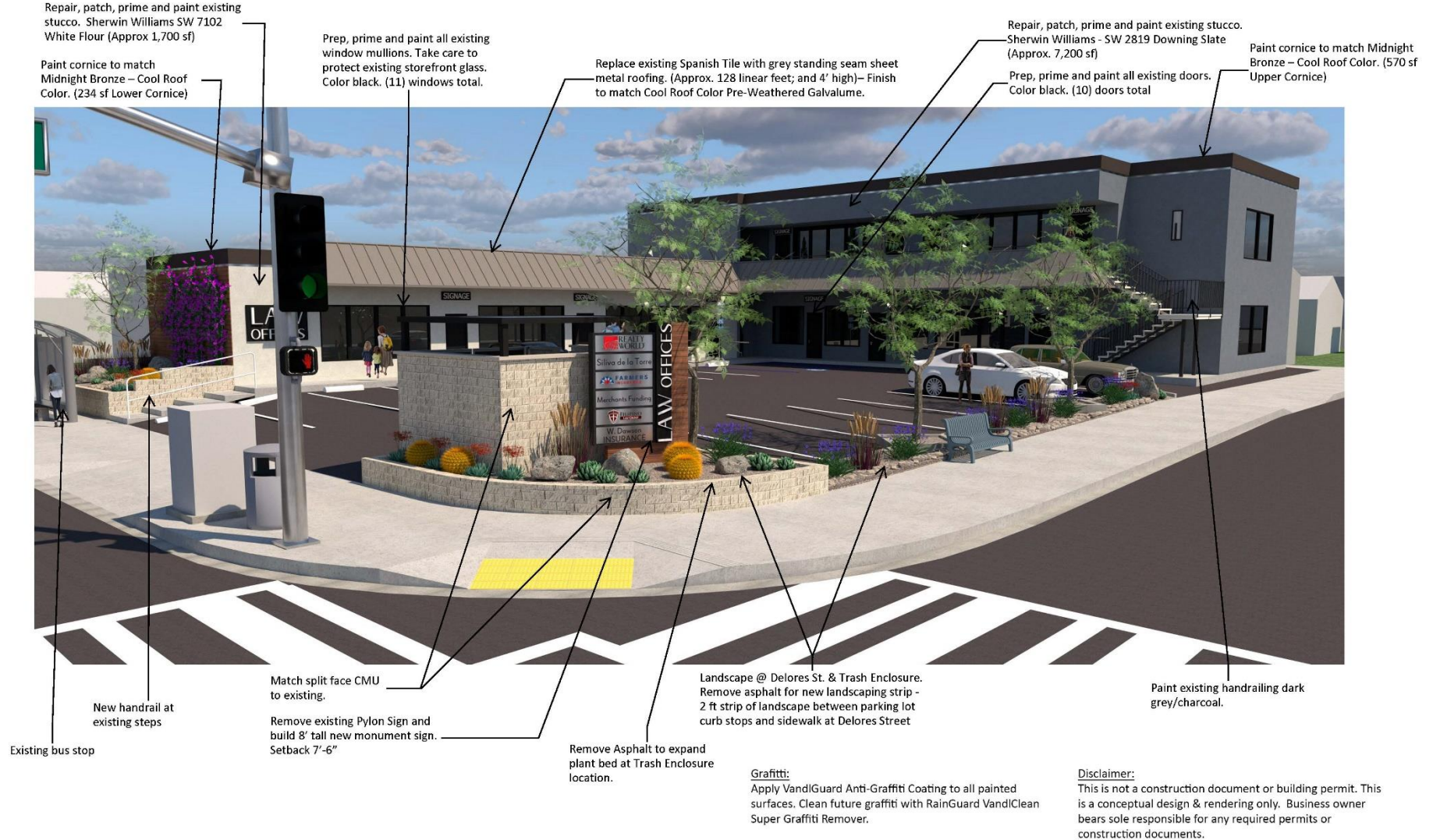
## **EXHIBIT “C”**

### **APPROVED CONSTRUCTION DOCUMENTS**

Final construction document to be approved by the Planning Division. Immediately following this page is the current design concept for project.

[SEE ATTACHED]

## Design Concept – View 1



CITY OF CARSON STOREFRONT  
IMPROVEMENT PROGRAM

LAW OFFICES - 302 East Carson Street  
Carson, CA

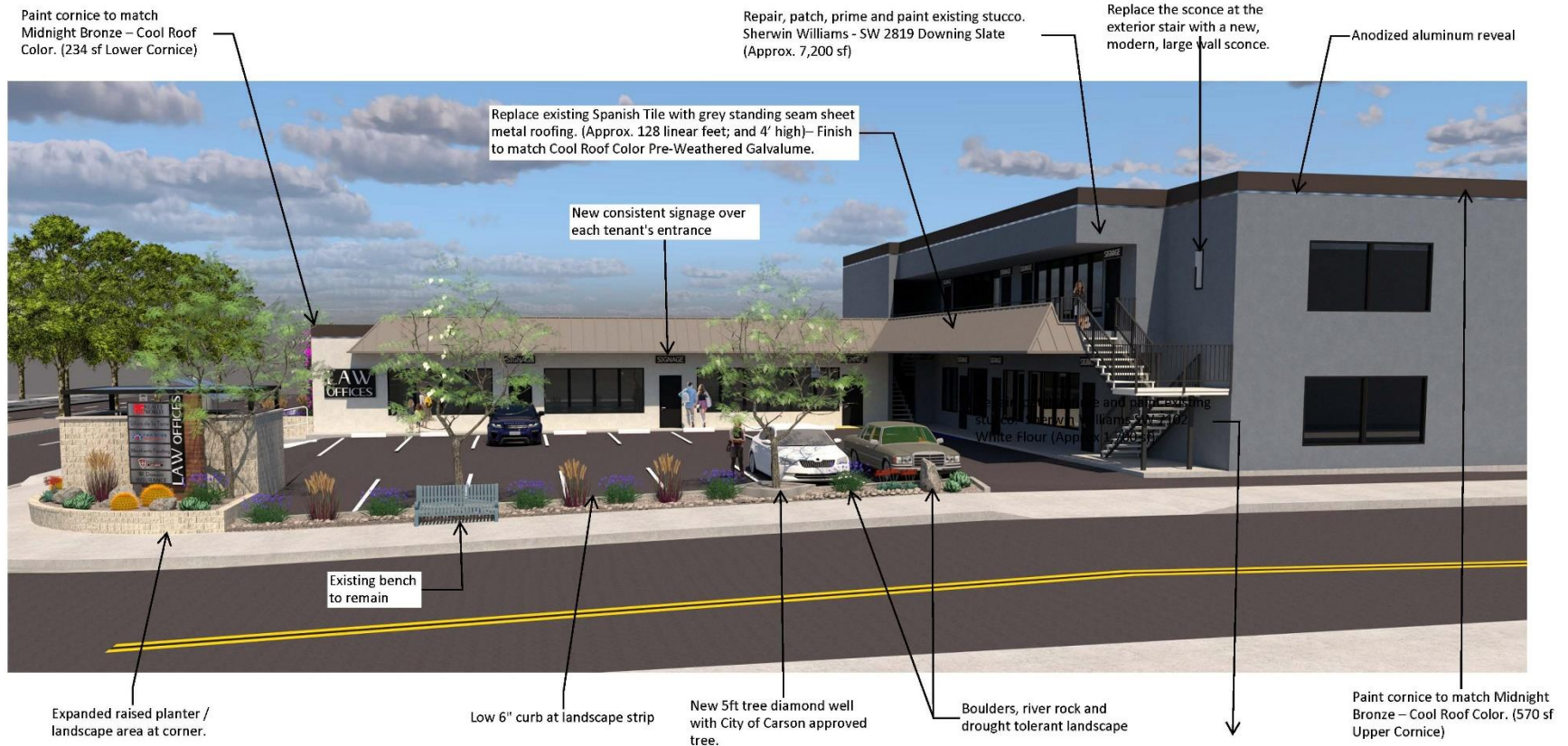
DESIGN CONCEPT - View 1  
March 29, 2024



Mour Group Engineering + Design  
6593 RIVERDALE STREET  
SAN DIEGO, CA 92120  
TEL: 619.727.4800



## Design Concept – View 2



### Graffiti:

Apply VandlGuard Anti-Graffiti Coating to all painted surfaces. Clean future graffiti with RainGuard VandlClean Super Graffiti Remover.

### Disclaimer:

This is not a construction document or building permit. This is a conceptual design & rendering only. Business owner bears sole responsible for any required permits or construction documents.

CITY OF CARSON STOREFRONT  
IMPROVEMENT PROGRAM

LAW OFFICES - 302 East Carson Street  
Carson, CA

DESIGN CONCEPT - View 2  
March 29, 2024



**Mour Group Engineering + Design**  
6593 RIVERDALE STREET  
SAN DIEGO, CA 92120  
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## Design Concept – View 3



### Graffiti:

Apply VandlGuard Anti-Graffiti Coating to all painted surfaces. Clean future graffiti with RainGuard VandlClean Super Graffiti Remover.

### Disclaimer:

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CITY OF CARSON STOREFRONT  
IMPROVEMENT PROGRAM

LAW OFFICES - 302 East Carson Street  
Carson, CA

DESIGN CONCEPT - View 3  
March 29, 2024



**Mour Group Engineering + Design**  
6593 RIVERDALE STREET  
SAN DIEGO, CA 92120  
TEL: 619.727.4800

## Design Concept – View 4



New masonry trash enclosure with corrugated metal roof.

Remove existing Pylon Sign and replace with monument sign not to exceed 8ft in height.

### Graffiti:

Apply VandlGuard Anti-Graffiti Coating to all painted surfaces. Clean future graffiti with RainGuard VandlClean Super Graffiti Remover.

### Disclaimer:

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CITY OF CARSON STOREFRONT  
IMPROVEMENT PROGRAM

LAW OFFICES - 302 East Carson Street  
Carson, CA

DESIGN CONCEPT - View 4  
March 29, 2024



**Mour Group Engineering + Design**  
6593 RIVERDALE STREET  
SAN DIEGO, CA 92120  
TEL: 619.727.4800



## Design Concept – View 5



### Graffiti:

Apply VandGuard Anti-Graffiti Coating to all painted surfaces. Clean future graffiti with RainGuard VandlClean Super Graffiti Remover.

### Disclaimer:

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CITY OF CARSON STOREFRONT  
IMPROVEMENT PROGRAM

LAW OFFICES - 302 East Carson Street  
Carson, CA

DESIGN CONCEPT - View 5  
March 29, 2024



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# EXHIBIT "C-2"

## EXISTING PARKING LOT SITE PLAN

