

**BOARD OF RECREATION
AND PARK COMMISSIONERS**

BOARD REPORT

NO. 23-159

DATE: September 07, 2023

C.D. 4

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: GRIFFITH OBSERVATORY – CONTRACT WITH CARL ZEISS JENA GmbH FOR THE REGULAR MAINTENANCE AND SPECIAL REPAIR OF THE UNIVERSARIUM MIX MODEL 555 STAR PROJECTOR AT THE SAMUEL OSCHIN PLANETARIUM.

B. Aguirre	<u>BA</u>	M. Rudnick	_____
B. Jones	_____	C. Santo Domingo	_____
B. Jackson	_____	N. Williams	_____



General Manager

Approved X Disapproved _____ Withdrawn _____

RECOMMENDATIONS

1. Approve the awarding and execution of a proposed three (3) year Contract (Contract) between the Department of Recreation and Parks (RAP) and Carl Zeiss Jena GmbH, a German Corporation (Contractor), for the regular maintenance and special repair of the Universarium MIX Model 555 Star Projector installed in the Samuel Oschin Planetarium at Griffith Observatory (Services), substantially in the form attached to this Report as Attachment 1, subject to the approval of the Mayor, and the City Attorney as to form;
2. Find, in accordance with Charter Section 1022, that it is necessary, feasible and economical to secure these services by contract as the Department of Recreation and Parks (RAP) lacks sufficient and necessary personnel to undertake these specialized professional services;
3. Find, pursuant to Charter Section 371(e)(2), that the services to be provided are professional, scientific, expert, technical, or other special services of a temporary and occasional character for which competitive bidding is not practicable or advantageous because the Contractor is the sole source for these Services;
4. Find, pursuant to Charter Section 371(e)(10), that the use of competitive bidding would be undesirable, impractical, or impossible as the Contractor is the sole source for these Services;
5. Find, pursuant to Charter Section 371(e)(7), that the use of competitive bidding is excused because the proposed Contract is for equipment repairs or parts obtained from the manufacturer of the equipment or its exclusive agent;

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6. Approve the total encumbrance and payment in the amount not to exceed One Hundred Fifty Thousand Dollars (\$150,000) in aggregate, throughout the duration of the three (3) year Contract term;
7. Authorize RAP's Chief Accounting Employee to make technical corrections as necessary to implement the intent of this Report;
8. Direct the Board of Recreation and Parks Commissioners (Board) Secretary to transmit the Contract to the Mayor in accordance with Executive Directive No. 3 (Villaraigosa Series) and, concurrently, to the City Attorney for review and approval as to form; and
9. Authorize the General Manager to execute the Contract upon receipt of the necessary approvals.

SUMMARY

Griffith Observatory (Observatory) is located at 2800 East Observatory Road in Griffith Park. The Observatory opened in 1935 and is an icon of Los Angeles, a national leader in public astronomy, and one of Southern California's most popular attractions.

The Universarium MIX #555 Star Projector (also known as the Universarium Mark IX Model 555 Star Projector or the Zeiss Universarium Mark IX Sky Projector) ("Projector"), located in the Samuel Oschin Planetarium at Griffith Observatory, is the most sophisticated planetarium projector in the world. It is an essential element of every public and school show the Observatory produces and presents. The Observatory presents eight (8) to ten (10) live planetarium shows to the public each day it is open. The Samuel Oschin Planetarium generates over \$3 million in revenue for the City each year from ticket sales.

The Projector was purchased by Friends Of The Observatory (FOTO) – now Griffith Observatory Foundation – in 2000 as part of the renovation and expansion of the Observatory. Later, FOTO transferred ownership of the Projector to the City of Los Angeles via a gift agreement (signed November 2, 2005). The terms of the FOTO purchase contract included five (5) no-cost annual maintenance and service visits for the Projector by technicians from Carl Zeiss Jen GmbH, and FOTO paid for subsequent yearly maintenance through 2012. The first service contract for maintenance was Contract No. C-123951 entered into May 23, 2014. The current Contract, approved by the Board in Board Report No. 19-100 on June 5, 2019, was the third maintenance and service contract requested by Griffith Observatory since the original purchase warranty expired. Carl Zeiss Jena GmbH is the sole manufacturer of the Universarium MIX #555 Star Projector and likewise the sole contractor capable of providing necessary maintenance, service, and repairs. While Griffith Observatory staff performs basic projector maintenance (changing bulbs and ballasts, lubrication, cleaning), the annual maintenance and servicing of the instrument is essential for proper long-term operation and care. Critical parts – and their installation – are proprietary to the manufacturer of the equipment. Not properly servicing and repairing the projector would be placing at risk a multi-million dollar instrument at the heart of the Griffith Observatory experience.

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CONTRACT NO. 3730

Contract No. 3730 was executed October 7, 2019. It was originally for a term of three years (July 1, 2019, to June 30, 2022) and provided for three (3) annual servicing visits by Zeiss technicians to the Observatory. The Board approved Amendment No. 1 to the contract (Attachment 3) on August 19, 2021, increasing the term of the Contract by 15 months to September 30, 2023, due to the impact of the COVID-19 pandemic (Board Report No. 21-146). The contract had a compensation amount not to exceed \$25,000 per year and \$75,000 in the aggregate. The Board approved Amendment No. 2 to the contract, which changed Section I (Scope of Services) of the Contract to include the provision for essential repairs, in addition to regular maintenance, to the Projector as requested by RAP and amended Section III (Compensation) of the contract to add clarifying the language that adds a new Item B to the Section that specifies an amount not to exceed Sixty Thousand Dollars (\$60,000) for essential repair activities and materials that are NOT part of maintenance and servicing visits during the contract term. Payment amounts for individual repair visits are based on the work to be performed, but the total of all repair expenditures would not exceed the repair limit.

PROPOSED CONTRACT

The proposed Contract would have a term of October 1, 2023, to September 30, 2026, and would enshrine the changes made in Amendment 2 to contract No. 3730. The Contract would authorize \$90,000 for three service visits during the Contract term. The increased funding amount allocated for service visits (compared with Contract No. 3730) is the result of inflation over the last 11 years and changes in tax regulations. The proposed Contract would also authorize up to \$60,000 for special repairs as needed that were not handled during the service visits. The proposed contract does not include previous language regarding "annual" visits or annual payment limits. This change recognizes the need for flexibility in scheduling service or repairs (and making payments for those services) at times that are most advantageous for the Observatory and Projector.

FISCAL IMPACT

Aggregate costs for regular maintenance services shall not exceed ninety thousand dollars (\$90,000) throughout the term of the three year Contract. Aggregate costs for special repair activities and materials shall not exceed \$60,000 throughout the term of the three-year Contract. Sufficient Griffith Observatory funds for these expenditures have been identified in Fund 302, Department 88, Account 3040. There is no additional impact to RAPs General Fund.

This report was prepared by Drew Vazinpour, Management Analyst, Griffith Observatory.

LIST OF ATTACHMENTS

- 1) Proposed Contract
- 2) Contract No. 3730, with Amendments
- 3) Annexure of Maintenance Services
- 4) Insurance Requirements

**PERSONAL SERVICES CONTRACT
BETWEEN
THE CITY OF LOS ANGELES
DEPARTMENT OF RECREATION AND PARKS
AND
CARL ZEISS JENA GMBH
FOR THE GRIFFITH OBSERVATORY**

This Contract ("Contract" or "Agreement") is entered into this ____ day of ____ 2023, by and between the City of Los Angeles, a municipal corporation, acting by and through its Board of Recreation and Park Commissioners (hereinafter referred to as "CITY"), and Carl Zeiss Jena GmbH (hereinafter referred to as "CONTRACTOR") located in Jena, Germany and fully owned by the Carl Zeiss Foundation, to provide regular maintenance and special repair of the Universarium MIX Model 555 Star Projector installed in the Samuel Oschin Planetarium at Griffith Observatory. CITY and CONTRACTOR shall be referred to herein each as a "Party" and collectively as the "PARTIES".

RECITALS

WHEREAS, the Department of Recreation and Parks of the City of Los Angeles (hereinafter referred to as the "DEPARTMENT") owns, operates and maintains various parks and recreational facilities throughout the City of Los Angeles including Griffith Observatory; and

WHEREAS, CONTRACTOR, an international leader in the fields of optics and optoelectronics, built the Universarium MIX Model 555 Star Projector (also known as the Universarium Mark IX Model 555 Star Projector or the Zeiss Universarium Mark IX sky projector) (hereinafter referred to as the "PROJECTOR") which was purchased by Friends Of The Observatory (FOTO) in 2000; and,

WHEREAS, FOTO donated the PROJECTOR to the City of Los Angeles as a gift on November 2, 2005; and,

WHEREAS, the PROJECTOR, installed in 2005 in the Samuel Oschin Planetarium at Griffith Observatory, began presenting live programs to the public on November 2, 2006, and has been seen by nearly six million people since that time; and,

WHEREAS, CONTRACTOR is the sole manufacturer of the PROJECTOR, has proprietary rights to the parts, and is the only entity capable of providing the necessary regular maintenance and special repair of the PROJECTOR which is essential for proper long-term operation and care of the PROJECTOR;

WHEREAS, the CITY, as a condition of the gift from FOTO (now Griffith Observatory Foundation), is responsible for the ongoing operation, maintenance and repair of the PROJECTOR; and,

WHEREAS, DEPARTMENT desires to secure the professional services of CONTRACTOR, the builder and the only contracting firm capable of performing regular maintenance and special repair on the PROJECTOR at Griffith Observatory; and,

WHEREAS, CONTRACTOR is experienced in providing services of the type required, is willing to perform such services, and can provide such services to the DEPARTMENT, having done so, directly and indirectly, since 2005; and,

WHEREAS, it is in the DEPARTMENT'S best interest to secure said services from CONTRACTOR; and,

WHEREAS, the Board of Recreation and Park Commissioners (BOARD) in its capacity as the contract awarding authority for the DEPARTMENT, finds pursuant to Charter Sections 371(e)(7), 371(e)(2) and 371(e)(10), that competitive bidding is not required for the services to be performed under this Contract because this Contract is for equipment maintenance and repairs or parts obtained from the manufacturer of the equipment and the use of competitive bidding for these services would be impracticable and impossible as the CONTRACTOR is the sole source for these services.

NOW, THEREFORE, CITY and CONTRACTOR, in consideration of the recitals above and of the terms, covenants, and conditions contained herein, agree as follows:

I. SCOPE OF SERVICES

Under the direction of the DEPARTMENT's General Manager, the Griffith Observatory Director, or designee, CONTRACTOR shall perform regular routine maintenance and repair of the PROJECTOR as follows:

A. General description of services by CONTRACTOR:

1. Regular maintenance service shall be scheduled by DEPARTMENT and CONTRACTOR three times during the three-year contract period. Special repair service shall be scheduled as needed due to PROJECTOR malfunction.

B. Regular maintenance service to be provided by CONTRACTOR:

1. Regular maintenance includes, but is not limited to, all features specified in the Annexure (attached hereto and incorporated herein by reference as Exhibit B).
2. After completion of the regular maintenance, a service report shall be signed by CONTRACTOR's service engineer and presented to the DEPARTMENT's representative(s) for countersigning.
3. The checklist shall be subject to changes according to modifications to the PROJECTOR caused by technological improvements.

4. Basic routine maintenance tasks (*i.e.*, including but not limited to such things as cleaning, lamp changes, operational tests, *etc.*) as stipulated in the CONTRACTOR-provided instruction manual shall be completed by DEPARTMENT'S technicians on a regular basis between the regular maintenance visits by CONTRACTOR.
5. CONTRACTOR will send at least one service engineer per regular maintenance visit. The service engineer shall write a service report, including a record of the daily work and a description of the work carried out and of any spare parts and auxiliary materials used. The service report shall be signed by the service engineer and DEPARTMENT's representative.
6. Upon the failure of the PROJECTOR to perform in proper condition and functioning for safe operation as manufactured and tested according to the parameters of this Agreement, CONTRACTOR will correct the equipment or software by adjustment or repair in place, or at CONTRACTOR's option, by replacement part(s) so that the PROJECTOR will be capable of meeting the performance specified in this agreement.
7. CONTRACTOR shall provide remote troubleshooting advice and counsel (primarily via email) regarding PROJECTOR issues that arise between regular maintenance services visits.

C. Special repair services to be provided by CONTRACTOR:

1. Special repairs to the PROJECTOR which are not part of regular maintenance visits shall be subject to separate negotiations and charged separately. In case the necessity of such repairs occurs during the regular maintenance service visit, CONTRACTOR shall submit an estimate immediately.
2. CONTRACTOR will send at least one service engineer per special repair visit. The service engineer shall write a service report, including a record of the daily work and description of the work carried out and of any spare parts and auxiliary materials used. The service report shall be signed by the service engineer and DEPARTMENT's representative.

D. Parts and Materials:

1. DEPARTMENT shall regularly purchase wearing parts from the CONTRACTOR and keep a supply on hand. DEPARTMENT will make wearing parts available to the CONTRACTOR's service engineer if they are needed as part of the maintenance visit.

2. Unless arranged otherwise, CONTRACTOR will keep all spare parts and when needed, CONTRACTOR's service engineer will bring those spare parts that correspond to the defect description and install them. This Contract does not include the cost of any parts that might be needed during the maintenance such as the wearing parts (e.g. lamps) and spare parts (e.g. for repair).
 3. Use of any replacement parts other than those recommended by CONTRACTOR will invalidate any liability claim against CONTRACTOR, whether concerning any malfunction of the PROJECTOR or any consequential damage in connection therewith.
 4. DEPARTMENT orders for parts may be fulfilled by CONTRACTOR's exclusive agent, Seiler Instrument Inc.
- E. DEPARTMENT shall:
1. Assist CONTRACTOR in performing the obligations of this Agreement by providing, in advance of a scheduled regular maintenance visit, a detailed written description of any defects found in the PROJECTOR, damage to and/or problems with the PROJECTOR. In addition, DEPARTMENT shall also provide a logbook for the PROJECTOR listing all irregularities with the PROJECTOR.
 2. Assist with the customs clearance of the service luggage and other relevant formalities if applicable.
 3. DEPARTMENT and CONTRACTOR shall schedule the date for the regular maintenance service at least three months before the start of the planned service.

II. TERM OF PERFORMANCE

- A. The term of this Contract ("Term") shall be for three (3) years, starting _____ 2023, and expiring on _____.
- B. Each regular maintenance visit of the PROJECTOR shall not exceed fifty (50) working hours or five (5) working days in total per service visit (not including travelling hours). The PROJECTOR shall not be used by CITY during the time that the regular maintenance service is being done. All other Observatory activities within the Samuel Oschin Planetarium during the servicing should be coordinated with CONTRACTOR's service engineer.

- C. CONTRACTOR shall provide materials, equipment, and personnel necessary for performance of services as described under SCOPE OF SERVICES. CONTRACTOR shall bear all costs for necessary permits, insurance, taxes, and all matters required for compliance with this agreement.
- D. CONTRACTOR shall comply with the mandatory CITY terms and conditions in performing this Contract with the DEPARTMENT, as described in the Standard Provisions for City Contracts (Rev.9/22) [v.1], attached hereto and incorporated herein by reference as Exhibit A.
- E. Representatives with formal notice address provided below are the parties authorized to administer this agreement, and with whom formal notices, demands, and communications shall be given.

The Representatives of the DEPARTMENT shall be:

Patrick So, Observatory Program Supervisor
Griffith Observatory
Samuel Oschin Planetarium
2800 East Observatory Road
Los Angeles, CA 90027 USA

with a courtesy copy to:

Mark Pine, Deputy Director
Griffith Observatory
Samuel Oschin Planetarium
2800 East Observatory Road
Los Angeles, CA 90027 USA

The Representatives of the CONTRACTOR shall be:

Ann Lakey, Project Manager, Planetarium Division
Carl Zeiss Jena GmbH Planetariums
Carl-Zeiss-Promenade 10
07745 Jena GERMANY

and

Hendrik Merkel, Head of Service and Quality, Planetariums
Carl Zeiss Jena GmbH Planetariums
Carl-Zeiss-Promenade 10
07745 Jena GERMANY

III. **COMPENSATION**

- A. The DEPARTMENT shall pay CONTRACTOR an amount not to exceed Thirty Thousand Dollars (\$30,000.00) per regular maintenance visit. There shall be up to three (3) regular maintenance visits authorized during the Term. The total amount for all maintenance visits will not exceed Ninety Thousand Dollars (\$90,000.00).
- B. The DEPARTMENT is authorized to pay CONTRACTOR a total amount not to exceed Sixty Thousand Dollars (\$60,000.00) for special repair activities and materials for the PROJECTOR that are NOT part of regular maintenance visits during the Term. The payment amount for individual special repair visits shall be based on the work to be performed by CONTRACTOR. Total of all special repair expenditures shall not exceed the total listed above (\$60,000).
- C. To receive payments, CONTRACTOR shall submit invoices to:
- Patrick So, Observatory Program Supervisor
Griffith Observatory
Samuel Oschin Planetarium
2800 East Observatory Road
Los Angeles, CA 90027 USA
- With a courtesy copy to:
- Mark Pine, Deputy Director
Griffith Observatory
Samuel Oschin Planetarium
2800 East Observatory Road
Los Angeles, CA 90027 USA
- D. The invoice shall conform to CITY standards and include, at a minimum, the following information:
1. Name and address of CONTRACTOR
 2. Date of invoice and period covered
 3. Contract Number
 4. Description of the completed task and amount due for the task, including:
 - a. Name of personnel working on the task
 - b. Hours spent on the task and timesheet supporting charges (if applicable)
 - c. Rate per hour (if applicable) and/or total due
 5. Certification by a duly authorized officer

6. Remittance address (if different from company address)

All invoices shall be submitted on CONTRACTOR's letterhead, containing CONTRACTOR's official logo, or other unique and identifying information such as the name and address of CONTRACTOR. Evidence that tasks have been completed, in the form of a report, brochure, or photographs, shall be attached to all invoices. CONTRACTOR shall submit invoices within thirty (30) days of services. CITY shall endeavor to make payment within thirty (30) days after receiving the invoice.

Invoices and supporting documentation shall be prepared at the sole expense and responsibility of CONTRACTOR. The CITY will not compensate CONTRACTOR for costs incurred in invoice preparation. The CITY may request changes to the content and format of the invoice and supporting documentation at any time. The CITY reserves the right to request additional supporting documentation to substantiate costs at any time.

Any use of subcontractors by CONTRACTOR shall be approved by CITY in advance. Tasks completed by subcontractors shall be supported by subcontractor invoices, copies of pages from reports, brochures, photographs, or other unique documentation that substantiates their charges. These charges shall be made to the CONTRACTOR and included as part of the overall service invoice to the CITY (within the total agreed payment amount).

Failure to adhere to these policies may result in nonpayment pursuant to Charter Section 262(a), which requires the City Controller to inspect the quality, quantity, and condition of services, labor, materials, supplies, or equipment received by any City office or department, and to approve demands before they are drawn on the Treasury.

IV. WARRANTY

- A. CONTRACTOR warrants that it will rectify, at no cost to the CITY, any defects in connection with service it supplies to City, whether performed by itself or its subcontractor, if CITY provides evidence that the service has been performed inadequately or inexpertly.
- B. The limitation period for warranty claims in connection with the regular maintenance service shall be no less than six months after the maintenance service is completed.
- C. Defects occurring on the repaired PROJECTOR that do not result from improper service but from normal wear and tear, improper treatment or other influence, shall not be covered by this warranty.

V. INSURANCE

CONTRACTOR is required to carry General Liability, Employer Liability, and Worker’s Compensation insurance as specified in the Standard Provisions for City Contracts (Exhibit A to this Agreement, PSC - 23) and specified on Form 146 (Exhibit C Form 146 Insurance Requirements).

VI. INDEMNIFICATION

CONTRACTOR agrees to the indemnification obligations, including the intellectual property indemnification, specified in the Standard Provisions for City Contracts (Exhibit A to this Agreement, PSC-18, PSC-19).

VII. WORK PRODUCT OWNERSHIP AND LICENSE

CONTRACTOR acknowledges that its services performed and products delivered under this Agreement shall be considered “Work Product” for purposes of section PSC-21 “Ownership and License” of the Standard Provisions for City Contract, attached as Exhibit A to this Agreement and incorporated herein and made a part hereof by this reference, and CONTRACTOR agrees to comply with, and be bound by, the provisions of such section.

VIII. RATIFICATION

At the request of the DEPARTMENT, and because of the need therefore, CONTRACTOR may have begun performance of the services required hereunder prior to the execution of this Contract. By its execution hereof, CONTRACTOR hereby accepts that such services are subject to all of the terms, covenants, and conditions of this contract, and CONTRACTOR’s performance of such services.

IX. INCORPORATION OF DOCUMENTS

This Contract and incorporated documents represent the entire integrated agreement of the parties and supersedes all prior written or oral representations, discussions, and agreements. The following documents are incorporated and made a part hereof by this reference:

- Exhibit A. Standard Provisions for City Contracts (Rev.9/22) [v.1]
- Exhibit B. Annexure – Maintenance Service for UNIVERSARIUM MIX Model 555 Griffith Observatory
- Exhibit C. Form 146 Insurance Requirements

The order of precedence in resolving conflicting language, if any, in the documents shall be: (1) This Contract; and (2) Exhibit A; and (3) Exhibit C; and (4) Exhibit B.

(Signature Page to Follow)

IN WITNESS WHEREOF, the PARTIES have executed this CONTRACT as of the date first written above.

The CITY OF LOS ANGELES, a municipal corporation, acting by and through its BOARD OF RECREATION AND PARK COMMISSIONERS

By _____ Date _____
General Manager

CARL ZEISS JENA GMBH

By _____ Date _____
Dr. Martin Kraus
Head of Business Field Planetariums

By _____ Date _____
Dr. Bernard Ohnesorge
Managing Director
Carl Zeiss Jena GmbH

APPROVED AS TO FORM:

HYDEE FELDSTEIN SOTO, City Attorney

By: _____
Steven Hong
Deputy City Attorney IV

Date: _____

BOARD OF COMMISSIONERS

SYLVIA PATSAOURAS
PRESIDENT

LYNN ALVAREZ
VICE PRESIDENT

NICOLE CHASE
PILAR DIAZ
JOSEPH HALPER

IRIS L. DAVIS
BOARD SECRETARY (213) 202-2640



ERIC GARCETTI
MAYOR

MICHAEL A. SHULL
GENERAL MANAGER

ANTHONY-PAUL (AP) DIAZ, ESQ.
EXECUTIVE OFFICER &
CHIEF OF STAFF

VICKI ISRAEL
ASSISTANT GENERAL MANAGER

SOPHIA PIÑA-CORTEZ
ASSISTANT GENERAL MANAGER

CATHIE SANTO DOMINGO
ACTING ASSISTANT GENERAL MANAGER

(213) 202-2633 FAX (213) 202-2614

October 8, 2019

Carl Zeiss Jena GmbH Planetariums
Carl-Zeiss-Promenade 10
07745 Jena GERMANY

Attention: Ann Lakey, Project Manager, Planetarium Division,
Hendrik Merkel, Head of Service and Quality, Planetariums

Gentlepersons:

Enclosed is Agreement No. 3730, between the City of Los Angeles, by and through its Board of Recreation and Park Commissioners, and your organization, executed on October 7, 2019, for the routine maintenance and service of the Universarium MIX #555 Star Projector located in the Samuel Oschin Planetarium at Griffith Observatory (Services) in an amount not to exceed Twenty-Five Thousand Dollars (\$25,000.00) for the Service referenced above in each of fiscal years 2020, 2021, and 2022 to equal a total of Seventy-Five Thousand Dollars (\$75,000.00) for the three (3) year Contract.

If you have any questions with regard to the Agreement at this time, please contact Ms. Nancy Jeffers, Management Analyst II, Grants Administration, Finance Division at (213) 202-5628.

Very truly yours,

BOARD OF RECREATION AND
PARK COMMISSIONERS

Handwritten signature: H. Davis for

IRIS L. DAVIS
Commission Executive Assistant II

Enclosures

cc: City Controller
City Attorney
Departmental Chief Accountant
Nancy Jeffers, Management Analyst II, Grants Administration, Finance Division
Mark Pine, Deputy Director, Griffith Observatory



AGREEMENT NO. 3730

BETWEEN

THE CITY OF LOS ANGELES DEPARTMENT OF
RECREATION AND PARKS

AND

CARL ZEISS JENA GMBH PLANETARIUMS

FOR

THE ROUTINE MAINTENANCE AND SERVICE OF THE UNIVERSARIUM
MIX #555 STAR PROJECTOR LOCATED IN THE SAMUEL OSCHIN
PLANETARIUM AT GRIFFITH OBSERVATORY

**PERSONAL SERVICES CONTRACT
BETWEEN
THE CITY OF LOS ANGELES
DEPARTMENT OF RECREATION AND PARKS
AND
CARL ZEISS JENA GMBH
FOR THE GRIFFITH OBSERVATORY**

This Contract ("Contract" or "Agreement") is entered into this 7th day of October 2019, by and between the City of Los Angeles, a municipal corporation, acting by and through its Board of Recreation and Park Commissioners (hereinafter referred to as "CITY"), and Carl Zeiss Jena GmbH (hereinafter referred to as "CONTRACTOR") located in Jena, Germany and fully owned by the Carl Zeiss Foundation, to provide annual maintenance and service of the Universarium MIX Model 555 Star Projector installed in the Samuel Oschin Planetarium at Griffith Observatory. CITY and CONTRACTOR shall be referred to herein each as a "Party" and collectively as the "PARTIES".

RECITALS

WHEREAS, the Department of Recreation and Parks of the City of Los Angeles (hereinafter referred to as the "DEPARTMENT") owns, operates and maintains various parks and recreational facilities throughout the City of Los Angeles including Griffith Observatory; and

WHEREAS, CONTRACTOR, an international leader in the fields of optics and optoelectronics, built the Universarium MIX Model 555 Star Projector (also known as the Universarium Mark IX Model 555 Star Projector or the Zeiss Universarium Mark IX sky projector) (hereinafter referred to as the "PROJECTOR") which was purchased by Friends Of The Observatory (FOTO) in 2000; and,

WHEREAS, FOTO donated the PROJECTOR to the City of Los Angeles as a gift on November 2, 2005; and,

WHEREAS, on November 2, 2006 the PROJECTOR, installed in 2005 in the Samuel Oschin Planetarium at Griffith Observatory, began presenting live programs to the public; and,

WHEREAS, CONTRACTOR is the sole manufacturer of the PROJECTOR, has proprietary rights to the parts, and is the only entity capable of providing the necessary annual maintenance and servicing of the PROJECTOR which is essential for proper long-term operation and care of the PROJECTOR;

WHEREAS, the CITY, as a condition of the gift from FOTO, is responsible for the ongoing operation, maintenance and repair of the PROJECTOR; and,

WHEREAS, DEPARTMENT desires to secure the professional services of CONTRACTOR, the builder and the only contracting firm capable of performing maintenance on the PROJECTOR at Griffith Observatory; and,

WHEREAS, CONTRACTOR is experienced in providing services of the type required, is willing to perform such services, and can provide such services to the DEPARTMENT, having done so, directly and indirectly, since 2005; and,

WHEREAS, it is in the DEPARTMENT'S best interest to secure said services from CONTRACTOR; and,

WHEREAS, the Board of Recreation and Park Commissioners (BOARD) in its capacity as the contract awarding authority for the DEPARTMENT, finds pursuant to Charter Sections 371(e)(7), 371(e)(2) and 371(e)(10), competitive bidding is not required for the services to be performed under this Contract because this Contract is for equipment repairs or parts obtained from the manufacturer of the equipment and the use of competitive bidding for these services would be impracticable and impossible as the CONTRACTOR is the sole source for these services.

NOW, THEREFORE, CITY and CONTRACTOR, in consideration of the recitals above and of the terms, covenants, and conditions contained herein, agree as follows:

I. SCOPE OF SERVICES

Under the direction of the DEPARTMENT's General Manager, the Griffith Observatory Deputy Director, or designee, CONTRACTOR shall perform annual routine maintenance of the PROJECTOR as follows:

A. Maintenance Service to be provided by CONTRACTOR:

1. Maintenance includes, but is not limited to, all features specified in the Annexure (attached hereto and incorporated herein by reference as Exhibit B).
2. After completion of the maintenance, a service report shall be signed by CONTRACTOR's service engineer and presented to the DEPARTMENT's representative(s) for countersigning.
3. The checklist shall be subject to changes according to modifications to the PROJECTOR caused by technological improvements.
4. Basic routine maintenance tasks (*i.e.*, including but not limited to such things as cleaning, lamp changes, operational tests, *etc.*) as stipulated in the CONTRACTOR-provided instruction manual shall be done by DEPARTMENT'S technicians on a regular basis between the annual CONTRACTOR visits.

5. CONTRACTOR will send at least one service engineer per annual visit. The service engineer shall write a service report, including a record of the daily work and description of the work carried out and of any spare parts and auxiliary materials used. The service report shall be signed by the service engineer and DEPARTMENT's representative.
6. Repairs to the PROJECTOR which are not part of this maintenance and service agreement shall be subject to separate negotiations and charged separately. In case the necessity of such repairs occurs during the annual maintenance service, CONTRACTOR shall submit an estimate immediately.
7. Upon the failure of the equipment to perform in proper condition and functioning for safe operation as manufactured and tested according to the parameters of this Agreement, CONTRACTOR will correct the equipment or software by adjustment or repair in place, or at CONTRACTOR's option, by replacement part(s) so that the PROJECTOR will be capable of meeting the performance specified in this agreement.
8. CONTRACTOR shall provide remote troubleshooting advice and counsel (primarily via email) regarding PROJECTOR issues that arise between annual maintenance services visits.

B. Parts and Materials:

1. DEPARTMENT shall regularly purchase wearing parts from the CONTRACTOR and keep a supply on hand. DEPARTMENT will make wearing parts available to the CONTRACTOR's service engineer if they are needed as part of the maintenance visit.
2. Unless arranged otherwise, CONTRACTOR will keep all spare parts and when needed, CONTRACTOR's service engineer will bring those spare parts that correspond to the defect description and install them. This Contract does not include the cost of any parts that might be needed during the maintenance such as the wearing parts (e.g. lamps) and spare parts (e.g. for repair).
3. Use of any replacement parts other than those recommended by CONTRACTOR will invalidate any liability claim against CONTRACTOR, whether concerning any malfunction of the PROJECTOR or any consequential damage in connection therewith.

C. DEPARTMENT shall:

1. Assist CONTRACTOR in performing the obligations of this Agreement by providing, in advance of the annual service visit, a detailed written description of the defects found in the PROJECTOR, damage to and/or problems with the PROJECTOR. In addition, DEPARTMENT shall also provide a logbook for the PROJECTOR listing all irregularities with the PROJECTOR.
2. Assist with the customs clearance of the service luggage and other relevant formalities if applicable.
3. Assist in facilitating CONTRACTOR's service engineer acquiring medical treatment in case of illness or accident. Notwithstanding the foregoing, City shall not be held liable in any manner regarding the provision of any medical treatment or the acquisition thereof in connection with this provision.
4. DEPARTMENT and CONTRACTOR shall schedule the date for the annual maintenance service at least three months before the start of the planned service.

II. TERM OF PERFORMANCE

- A. The term of this Contract shall be for three (3) years, starting July 1, 2019 and expiring on June 30, 2022.
- B. Maintenance of the PROJECTOR shall not exceed fifty (50) working hours or five (5) working days in total per annual service visit (not including travelling hours). The PROJECTOR shall not be used by CITY during the time that the maintenance service is being done. All other Observatory activities within the Samuel Oschin Planetarium during the servicing should be coordinated with CONTRACTOR's service engineer.
- C. CONTRACTOR shall provide materials, equipment, and personnel necessary for performance of services as described under SCOPE OF SERVICES. CONTRACTOR shall bear all costs for necessary permits, insurance, taxes, and all matters required for compliance with this agreement.
- D. CONTRACTOR shall comply with the mandatory CITY terms and conditions in performing this Contract with the DEPARTMENT, as described in the Standard Provisions for City Contracts (Rev.10/17) [v.3], attached hereto and incorporated herein by reference as Exhibit A.
- E. Representatives with formal notice address provided below are the parties authorized to administer this agreement, and with whom formal notices, demands, and communications shall be given:

The Representatives of the DEPARTMENT shall be:

Patrick So, Observatory Program Supervisor
Griffith Observatory
Samuel Oschin Planetarium
2800 East Observatory Road
Los Angeles, CA 90027 USA

with a courtesy copy to:

Mark Pine, Deputy Director
Griffith Observatory
Samuel Oschin Planetarium
2800 East Observatory Road
Los Angeles, CA 90027 USA

The Representatives of the CONTRACTOR shall be:

Ann Lakey, Project Manager, Planetarium Division
Carl Zeiss Jena GmbH Planetariums
Carl-Zeiss-Promenade 10
07745 Jena GERMANY

And

Hendrik Merkel, Head of Service and Quality, Planetariums
Carl Zeiss Jena GmbH Planetariums
Carl-Zeiss-Promenade 10
07745 Jena GERMANY

II. COMPENSATION

- A. The DEPARTMENT shall pay CONTRACTOR an amount not to exceed Twenty-Five Thousand Dollars (\$25,000.00) per year, for services provided from September 23, 2019 through September 22, 2022. Department shall pay CONTRACTOR for services rendered under this agreement in a single annual payment. The total contract amount for the three years of service will not exceed Seventy-Five Thousand Dollars (\$75,000.00).
- B. To receive payments, CONTRACTOR shall submit invoices to:

Patrick So, Observatory Program Supervisor
Griffith Observatory
Samuel Oschin Planetarium
2800 East Observatory Road

Los Angeles, CA 90027 USA

With a courtesy copy to:

Mark Pine, Deputy Director
Griffith Observatory
Samuel Oschin Planetarium
2800 East Observatory Road
Los Angeles, CA 90027 USA

- C. The invoice shall conform to CITY standards and include, at a minimum, the following information:
1. Name and address of CONTRACTOR
 2. Date of invoice and period covered
 3. Contract Number
 4. Description of the completed task and amount due for the task, including:
 - a. Name of personnel working on the task
 - b. Hours spent on the task and timesheet supporting charges (if applicable)
 - c. Rate per hour (if applicable) and/or total due
 5. Certification by a duly authorized officer
 6. Remittance address (if different from company address)

All invoices shall be submitted on CONTRACTOR's letterhead, containing CONTRACTOR's official logo, or other unique and identifying information such as the name and address of CONTRACTOR. Evidence that tasks have been completed, in the form of a report, brochure, or photographs, shall be attached to all invoices. CONTRACTOR shall submit invoices within thirty (30) days of services. CITY shall endeavor to make payment within thirty (30) days after receiving the invoice.

Invoices and supporting documentation shall be prepared at the sole expense and responsibility of CONTRACTOR. The CITY will not compensate CONTRACTOR for costs incurred in invoice preparation. The CITY may request changes to the content and format of the invoice and supporting documentation at any time. The CITY reserves the right to request additional supporting documentation to substantiate costs at any time.

Any use of subcontractors by CONTRACTOR shall be approved by CITY in advance. Tasks completed by subcontractors shall be supported by subcontractor invoices, copies of pages from reports, brochures, photographs, or other unique documentation that substantiates their charges. These charges shall be made to the CONTRACTOR and included as part of the overall annual service invoice to the CITY (within the total agreed payment amount).

Failure to adhere to these policies may result in nonpayment pursuant to Charter Section 262(a), which requires the City Controller to inspect the quality, quantity, and condition of services, labor, materials, supplies, or equipment received by any City office or department, and to approve demands before they are drawn on the Treasury.

IV. WARRANTY

- A. CONTRACTOR warrants that it will rectify, at no cost to the CITY, any defects in connection with service it supplies to City, whether performed by itself or its subcontractor, if CITY provides evidence that the service has been performed inadequately or inexpertly.
- B. The limitation period for warranty claims in connection with the annual maintenance service is six months after the maintenance service is completed.
- C. Defects occurring on the repaired PROJECTOR that do not result from improper service but from normal wear and tear, improper treatment or other influence, shall not be covered by this warranty.

V. INSURANCE

CONTRACTOR is required to carry General Liability, Employer Liability, and Worker's Compensation insurance as specified in the Standard Provisions for City Contracts (Exhibit A to this Agreement, PSC - 23) and specified on Form 146 (Exhibit C Form 146 Insurance Requirements).

VI. INDEMNIFICATION

CONTRACTOR agrees to the indemnification obligations, including the intellectual property indemnification, specified in the Standard Provisions for City Contracts (Exhibit A to this Agreement, PSC-18, PSC-19).

VII. INDEMNIFICATION

CONTRACTOR acknowledges that its services performed and products delivered under this Agreement shall be considered "Work Product" for purposes of section PSC-21 "Ownership and License" of the Standard Provisions for City Contract, attached as Exhibit A to this Agreement and incorporated herein and made a part hereof by this reference, and CONTRACTOR agrees to comply with, and be bound by, the provisions of such section.

VIII. RATIFICATION

At the request of the DEPARTMENT, and because of the need therefore, CONTRACTOR may have begun performance of the services required

hereunder prior to the execution of this Contract. By its execution hereof, CONTRACTOR hereby accepts that such services are subject to all of the terms, covenants, and conditions of this contract, and CONTRACTOR's performance of such services.

IX. INCORPORATION OF DOCUMENTS

This Contract and incorporated documents represent the entire integrated agreement of the parties and supersedes all prior written or oral representations, discussions, and agreements. The following documents are incorporated and made a part hereof by this reference:

Exhibit A. Standard Provisions for City Contracts (Rev.10/17) [v.3]

Exhibit B. Annexure – Maintenance Service for UNIVERSARIUM
MIX Model 555 Griffith Observatory

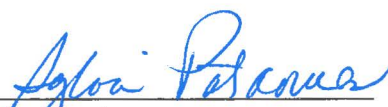
Exhibit C. Form 146 Insurance Requirements

The order of precedence in resolving conflicting language, if any, in the documents shall be: (1) This Contract; and (2) Exhibit A; and (3) Exhibit C; and (4) Exhibit B.

(Signature Page to Follow)

IN WITNESS WHEREOF, the PARTIES have executed this CONTRACT as of the date first written above.

The CITY OF LOS ANGELES, a municipal corporation, acting by and through its BOARD OF RECREATION AND PARK COMMISSIONERS

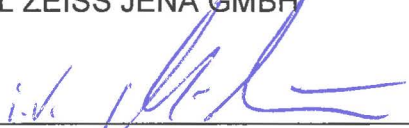
By 
President

Date 10/02/2019

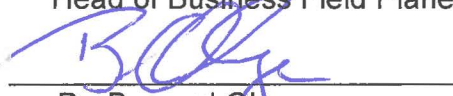
By 
Secretary

Date 10/02/2019

CARL ZEISS JENA GMBH

By 
Dr. Martin Kraus
Head of Business Field Planetariums

Date 08/19/2019

By 
Dr. Bernard Ohnesorge
Managing Director
Carl Zeiss Jena GmbH

Date 09/07/2019

APPROVED AS TO FORM:

MICHAEL N. FEUER, City Attorney

By: 
Steven Hong
Deputy City Attorney III

Date: 10.7.19

STANDARD PROVISIONS FOR CITY CONTRACTS

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STANDARD PROVISIONS FOR CITY CONTRACTS

PSC-1. Construction of Provisions and Titles Herein

All titles, subtitles, or headings in this Contract have been inserted for convenience, and shall not be deemed to affect the meaning or construction of any of the terms or provisions of this Contract. The language of this Contract shall be construed according to its fair meaning and not strictly for or against **CITY** or **CONTRACTOR**. The word "**CONTRACTOR**" includes the party or parties identified in this Contract. The singular shall include the plural and if there is more than one **CONTRACTOR**, unless expressly stated otherwise, their obligations and liabilities shall be joint and several. Use of the feminine, masculine, or neuter genders shall be deemed to include the genders not used.

PSC-2. Applicable Law, Interpretation and Enforcement

Each party's performance shall comply with all applicable laws of the United States of America, the State of California, and **CITY**, including but not limited to, laws regarding health and safety, labor and employment, wage and hours and licensing. This Contract shall be enforced and interpreted under the laws of the State of California without regard to conflict of law principles. **CONTRACTOR** shall comply with new, amended, or revised laws, regulations, or procedures that apply to the performance of this Contract with no additional compensation paid to **CONTRACTOR**.

In any action arising out of this Contract, **CONTRACTOR** consents to personal jurisdiction, and agrees to bring all such actions, exclusively in state or federal courts located in Los Angeles County, California.

If any part, term or provision of this Contract is held void, illegal, unenforceable, or in conflict with any federal, state or local law or regulation, the validity of the remaining parts, terms or provisions of this Contract shall not be affected.

PSC-3. Time of Effectiveness

Unless otherwise provided, this Contract shall take effect when all of the following events have occurred:

- A. This Contract has been signed on behalf of **CONTRACTOR** by the person or persons authorized to bind **CONTRACTOR**;
- B. This Contract has been approved by the City Council or by the board, officer or employee authorized to give such approval;
- C. The Office of the City Attorney has indicated in writing its approval of this Contract as to form; and
- D. This Contract has been signed on behalf of **CITY** by the person designated by the City Council, or by the board, officer or employee authorized to enter into this Contract.

PSC-4. Integrated Contract

This Contract sets forth all of the rights and duties of the parties with respect to the subject matter of this Contract, and replaces any and all previous Contracts or understandings, whether written or oral, relating thereto. This Contract may be amended only as provided for in the provisions of PSC-5 hereof.

PSC-5. Amendment

All amendments to this Contract shall be in writing and signed and approved pursuant to the provisions of PSC-3.

PSC-6. Excusable Delays

Neither party shall be liable for its delay or failure to perform any obligation under and in accordance with this Contract, if the delay or failure arises out of fires, floods, earthquakes, epidemics, quarantine restrictions, other natural occurrences, strikes, lockouts (other than a lockout by the party or any of the party's Subcontractors), freight embargoes, terrorist acts, insurrections or other civil disturbances, or other similar events to those described above, but in each case the delay or failure to perform must be beyond the control and without any fault or negligence of the party delayed or failing to perform (these events are referred to in this provision as "Force Majeure Events").

Notwithstanding the foregoing, a delay or failure to perform by a Subcontractor of **CONTRACTOR** shall not constitute a Force Majeure Event, unless the delay or failure arises out of causes beyond the control of both **CONTRACTOR** and Subcontractor, and without any fault or negligence of either of them. In such case, **CONTRACTOR** shall not be liable for the delay or failure to perform, unless the goods or services to be furnished by the Subcontractor were obtainable from other sources in sufficient time to permit **CONTRACTOR** to perform timely. As used in this Contract, the term "Subcontractor" means a subcontractor at any tier.

In the event **CONTRACTOR'S** delay or failure to perform arises out of a Force Majeure Event, **CONTRACTOR** agrees to use commercially reasonable best efforts to obtain the goods or services from other sources, and to otherwise mitigate the damages and reduce the delay caused by the Force Majeure Event.

PSC-7. Waiver

A waiver of a default of any part, term or provision of this Contract shall not be construed as a waiver of any succeeding default or as a waiver of the part, term or provision itself. A party's performance after the other party's default shall not be construed as a waiver of that default.

PSC-8. Suspension

At **CITY'S** sole discretion, **CITY** may suspend any or all services provided under this Contract by providing **CONTRACTOR** with written notice of suspension. Upon receipt of the notice of suspension, **CONTRACTOR** shall immediately cease the services suspended and shall not incur any additional obligations, costs or expenses to **CITY** until **CITY** gives written notice to recommence the services.

PSC-9. Termination

A. Termination for Convenience

CITY may terminate this Contract for **CITY'S** convenience at any time by providing **CONTRACTOR** thirty days written notice. Upon receipt of the notice of termination, **CONTRACTOR** shall immediately take action not to incur any additional obligations, costs or expenses, except as may be necessary to terminate its activities. **CITY** shall pay **CONTRACTOR** its reasonable and allowable costs through the effective date of termination and those reasonable and necessary costs incurred by **CONTRACTOR** to effect the termination. Thereafter, **CONTRACTOR** shall have no further claims against **CITY** under this Contract. All finished and unfinished documents and materials procured for or produced under this Contract, including all intellectual property rights **CITY** is entitled to, shall become **CITY** property upon the date of the termination. **CONTRACTOR** agrees to execute any documents necessary for **CITY** to perfect, memorialize, or record **CITY'S** ownership of rights provided herein.

B. Termination for Breach of Contract

1. Except as provided in PSC-6, if **CONTRACTOR** fails to perform any of the provisions of this Contract or so fails to make progress as to endanger timely performance of this Contract, **CITY** may give **CONTRACTOR** written notice of the default. **CITY'S** default notice will indicate whether the default may be cured and the time period to cure the default to the sole satisfaction of **CITY**. Additionally, **CITY'S** default notice may offer **CONTRACTOR** an opportunity to provide **CITY** with a plan to cure the default, which shall be submitted to **CITY** within the time period allowed by **CITY**. At **CITY'S** sole discretion, **CITY** may accept or reject **CONTRACTOR'S** plan. If the default cannot be cured or if **CONTRACTOR** fails to cure within the period allowed by **CITY**, then **CITY** may terminate this Contract due to **CONTRACTOR'S** breach of this Contract.
2. If the default under this Contract is due to **CONTRACTOR'S** failure to maintain the insurance required under this Contract, **CONTRACTOR** shall immediately: (1) suspend performance of any services under this Contract for which insurance was required; and (2) notify its employees and Subcontractors of the loss of insurance coverage and Contractor's obligation to suspend performance of

services. **CONTRACTOR** shall not recommence performance until **CONTRACTOR** is fully insured and in compliance with **CITY'S** requirements.

3. If a federal or state proceeding for relief of debtors is undertaken by or against **CONTRACTOR**, or if **CONTRACTOR** makes an assignment for the benefit of creditors, then **CITY** may immediately terminate this Contract.
4. If **CONTRACTOR** engages in any dishonest conduct related to the performance or administration of this Contract or violates **CITY'S** laws, regulations or policies relating to lobbying, then **CITY** may immediately terminate this Contract.
5. Acts of Moral Turpitude
 - a. **CONTRACTOR** shall immediately notify **CITY** if **CONTRACTOR** or any Key Person, as defined below, is charged with, indicted for, convicted of, pleads nolo contendere to, or forfeits bail or fails to appear in court for a hearing related to, any act which constitutes an offense involving moral turpitude under federal, state, or local laws ("Act of Moral Turpitude").
 - b. If **CONTRACTOR** or a Key Person is convicted of, pleads nolo contendere to, or forfeits bail or fails to appear in court for a hearing related to, an Act of Moral Turpitude, **CITY** may immediately terminate this Contract.
 - c. If **CONTRACTOR** or a Key Person is charged with or indicted for an Act of Moral Turpitude, **CITY** may terminate this Contract after providing **CONTRACTOR** an opportunity to present evidence of **CONTRACTOR'S** ability to perform under the terms of this Contract.
 - d. Acts of Moral Turpitude include, but are not limited to: violent felonies as defined by Penal Code Section 667.5, crimes involving weapons, crimes resulting in serious bodily injury or death, serious felonies as defined by Penal Code Section 1192.7, and those crimes referenced in the Penal Code and articulated in California Public Resources Code Section 5164(a)(2); in addition to and including acts of murder, rape, sexual assault, robbery, kidnapping, human trafficking, pimping, voluntary manslaughter, aggravated assault, assault on a peace officer, mayhem, fraud, domestic abuse, elderly abuse, and child abuse, regardless of whether such acts are punishable by felony or misdemeanor conviction.

- e. For the purposes of this provision, a Key Person is a principal, officer, or employee assigned to this Contract, or owner (directly or indirectly, through one or more intermediaries) of ten percent or more of the voting power or equity interests of **CONTRACTOR**.
 6. In the event **CITY** terminates this Contract as provided in this section, **CITY** may procure, upon such terms and in the manner as **CITY** may deem appropriate, services similar in scope and level of effort to those so terminated, and **CONTRACTOR** shall be liable to **CITY** for all of its costs and damages, including, but not limited to, any excess costs for such services.
 7. If, after notice of termination of this Contract under the provisions of this section, it is determined for any reason that **CONTRACTOR** was not in default under the provisions of this section, or that the default was excusable under the terms of this Contract, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to PSC-9(A) Termination for Convenience.
 8. The rights and remedies of **CITY** provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.
- C. In the event that this Contract is terminated, **CONTRACTOR** shall immediately notify all employees and Subcontractors, and shall notify in writing all other parties contracted with under the terms of this Contract within five working days of the termination.

PSC-10. Independent Contractor

CONTRACTOR is an independent contractor and not an agent or employee of **CITY**. **CONTRACTOR** shall not represent or otherwise hold out itself or any of its directors, officers, partners, employees, or agents to be an agent or employee of **CITY**.

PSC-11. Contractor's Personnel

Unless otherwise approved by **CITY**, **CONTRACTOR** shall use its own employees to perform the services described in this Contract. **CITY** has the right to review and approve any personnel who are assigned to work under this Contract. **CONTRACTOR** shall remove personnel from performing work under this Contract if requested to do so by **CITY**.

CONTRACTOR shall not use Subcontractors to assist in performance of this Contract without the prior written approval of **CITY**. If **CITY** permits the use of Subcontractors, **CONTRACTOR** shall remain responsible for performing all aspects of this Contract and paying all Subcontractors. **CITY** has the right to approve **CONTRACTOR'S** Subcontractors, and **CITY** reserves the right to request replacement of any

Subcontractor. **CITY** does not have any obligation to pay **CONTRACTOR'S** Subcontractors, and nothing herein creates any privity of contract between **CITY** and any Subcontractor.

PSC-12. Assignment and Delegation

CONTRACTOR may not, unless it has first obtained the written permission of **CITY**:

- A. Assign or otherwise alienate any of its rights under this Contract, including the right to payment; or
- B. Delegate, subcontract, or otherwise transfer any of its duties under this Contract.

PSC-13. Permits

CONTRACTOR and its directors, officers, partners, agents, employees, and Subcontractors, shall obtain and maintain all licenses, permits, certifications and other documents necessary for **CONTRACTOR'S** performance of this Contract. **CONTRACTOR** shall immediately notify **CITY** of any suspension, termination, lapses, non-renewals, or restrictions of licenses, permits, certificates, or other documents that relate to **CONTRACTOR'S** performance of this Contract.

PSC-14. Claims for Labor and Materials

CONTRACTOR shall promptly pay when due all amounts owed for labor and materials furnished in the performance of this Contract so as to prevent any lien or other claim under any provision of law from arising against any **CITY** property (including reports, documents, and other tangible or intangible matter produced by **CONTRACTOR** hereunder), and shall pay all amounts due under the Unemployment Insurance Act or any other applicable law with respect to labor used to perform under this Contract.

PSC-15. Current Los Angeles City Business Tax Registration Certificate Required

For the duration of this Contract, **CONTRACTOR** shall maintain valid Business Tax Registration Certificate(s) as required by **CITY'S** Business Tax Ordinance, Section 21.00 *et seq.* of the Los Angeles Municipal Code ("LAMC"), and shall not allow the Certificate to lapse or be revoked or suspended.

PSC-16. Retention of Records, Audit and Reports

CONTRACTOR shall maintain all records, including records of financial transactions, pertaining to the performance of this Contract, in their original form or as otherwise approved by **CITY**. These records shall be retained for a period of no less than three years from the later of the following: (1) final payment made by **CITY**, (2) the expiration of this Contract or (3) termination of this Contract. The records will be subject to examination and audit by authorized **CITY** personnel or **CITY'S** representatives at any time. **CONTRACTOR** shall provide any reports requested by **CITY** regarding

performance of this Contract. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

In lieu of retaining the records for the term as prescribed in this provision, **CONTRACTOR** may, upon **CITY'S** written approval, submit the required information to **CITY** in an electronic format, e.g. USB flash drive, at the expiration or termination of this Contract.

PSC-17. Bonds

All bonds required by **CITY** shall be filed with the Office of the City Administrative Officer, Risk Management for its review and acceptance in accordance with Los Angeles Administrative Code ("LAAC") Sections 11.47 *et seq.*, as amended from time to time.

PSC-18. Indemnification

Except for the active negligence or willful misconduct of **CITY**, or any of its boards, officers, agents, employees, assigns and successors in interest, **CONTRACTOR** shall defend, indemnify and hold harmless **CITY** and any of its boards, officers, agents, employees, assigns, and successors in interest from and against all lawsuits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by **CITY**, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever, for death or injury to any person, including **CONTRACTOR'S** employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of an act, error, or omission by **CONTRACTOR**, Subcontractors, or their boards, officers, agents, employees, assigns, and successors in interest. The rights and remedies of **CITY** provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract. This provision will survive expiration or termination of this Contract.

PSC-19. Intellectual Property Indemnification

CONTRACTOR, at its own expense, shall defend, indemnify, and hold harmless the **CITY**, and any of its boards, officers, agents, employees, assigns, and successors in interest from and against all lawsuits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by **CITY**, including but not limited to, costs of experts and consultants), damages or liability of any nature arising out of the infringement, actual or alleged, direct or contributory, of any intellectual property rights, including, without limitation, patent, copyright, trademark, trade secret, right of publicity, and proprietary information: (1) on or in any design, medium, matter, article, process, method, application, equipment, device, instrumentation, software, hardware, or firmware used by **CONTRACTOR**, or its Subcontractors, in performing the work under this Contract; or (2) as a result of **CITY'S** actual or intended use of any Work Product (as defined in PSC-21) furnished by **CONTRACTOR**, or its Subcontractors, under this Contract. The rights and remedies of **CITY** provided in this section shall not be exclusive

and are in addition to any other rights and remedies provided by law or under this Contract. This provision will survive expiration or termination of this Contract.

PSC-20. Intellectual Property Warranty

CONTRACTOR represents and warrants that its performance of all obligations under this Contract does not infringe in any way, directly or contributorily, upon any third party's intellectual property rights, including, without limitation, patent, copyright, trademark, trade secret, right of publicity and proprietary information.

PSC-21. Ownership and License

Unless otherwise provided for herein, all finished and unfinished works, tangible or not, created under this Contract including, without limitation, documents, materials, data, reports, manuals, specifications, artwork, drawings, sketches, blueprints, studies, memoranda, computation sheets, computer programs and databases, schematics, photographs, video and audiovisual recordings, sound recordings, marks, logos, graphic designs, notes, websites, domain names, inventions, processes, formulas, matters and combinations thereof, and all forms of intellectual property originated and prepared by **CONTRACTOR** or its Subcontractors under this Contract (each a "Work Product"; collectively "Work Products") shall be and remain the exclusive property of **CITY** for its use in any manner **CITY** deems appropriate. **CONTRACTOR** hereby assigns to **CITY** all goodwill, copyright, trademark, patent, trade secret and all other intellectual property rights worldwide in any Work Products originated and prepared under this Contract. **CONTRACTOR** further agrees to execute any documents necessary for **CITY** to perfect, memorialize, or record **CITY'S** ownership of rights provided herein.

CONTRACTOR agrees that a monetary remedy for breach of this Contract may be inadequate, impracticable, or difficult to prove and that a breach may cause **CITY** irreparable harm. **CITY** may therefore enforce this requirement by seeking injunctive relief and specific performance, without any necessity of showing actual damage or irreparable harm. Seeking injunctive relief or specific performance does not preclude **CITY** from seeking or obtaining any other relief to which **CITY** may be entitled.

For all Work Products delivered to **CITY** that are not originated or prepared by **CONTRACTOR** or its Subcontractors under this Contract, **CONTRACTOR** shall secure a grant, at no cost to **CITY**, for a non-exclusive perpetual license to use such Work Products for any **CITY** purposes.

CONTRACTOR shall not provide or disclose any Work Product to any third party without prior written consent of **CITY**.

Any subcontract entered into by **CONTRACTOR** relating to this Contract shall include this provision to contractually bind its Subcontractors performing work under this Contract such that **CITY'S** ownership and license rights of all Work Products are preserved and protected as intended herein.

PSC-22. Data Protection

- A. **CONTRACTOR** shall protect, using the most secure means and technology that is commercially available, **CITY**-provided data or consumer-provided data acquired in the course and scope of this Contract, including but not limited to customer lists and customer credit card or consumer data, (collectively, the “City Data”). **CONTRACTOR** shall notify **CITY** in writing as soon as reasonably feasible, and in any event within twenty-four hours, of **CONTRACTOR’S** discovery or reasonable belief of any unauthorized access of City Data (a “Data Breach”), or of any incident affecting, or potentially affecting City Data related to cyber security (a “Security Incident”), including, but not limited to, denial of service attack, and system outage, instability or degradation due to computer malware or virus. **CONTRACTOR** shall begin remediation immediately. **CONTRACTOR** shall provide daily updates, or more frequently if required by **CITY**, regarding findings and actions performed by **CONTRACTOR** until the Data Breach or Security Incident has been effectively resolved to **CITY’S** satisfaction. **CONTRACTOR** shall conduct an investigation of the Data Breach or Security Incident and shall share the report of the investigation with **CITY**. At **CITY’S** sole discretion, **CITY** and its authorized agents shall have the right to lead or participate in the investigation. **CONTRACTOR** shall cooperate fully with **CITY**, its agents and law enforcement.
- B. If **CITY** is subject to liability for any Data Breach or Security Incident, then **CONTRACTOR** shall fully indemnify and hold harmless **CITY** and defend against any resulting actions.

PSC-23. Insurance

During the term of this Contract and without limiting **CONTRACTOR’S** obligation to indemnify, hold harmless and defend **CITY**, **CONTRACTOR** shall provide and maintain at its own expense a program of insurance having the coverages and limits not less than the required amounts and types as determined by the Office of the City Administrative Officer of Los Angeles, Risk Management (template Form General 146 in Exhibit 1 hereto). The insurance must: (1) conform to **CITY’S** requirements; (2) comply with the Insurance Contractual Requirements (Form General 133 in Exhibit 1 hereto); and (3) otherwise be in a form acceptable to the Office of the City Administrative Officer, Risk Management. **CONTRACTOR** shall comply with all Insurance Contractual Requirements shown on Exhibit 1 hereto. Exhibit 1 is hereby incorporated by reference and made a part of this Contract.

PSC-24. Best Terms

Throughout the term of this Contract, **CONTRACTOR**, shall offer **CITY** the best terms, prices, and discounts that are offered to any of **CONTRACTOR’S** customers for similar goods and services provided under this Contract.

PSC-25. Warranty and Responsibility of Contractor

CONTRACTOR warrants that the work performed hereunder shall be completed in a manner consistent with professional standards practiced among those firms within **CONTRACTOR'S** profession, doing the same or similar work under the same or similar circumstances.

PSC-26. Mandatory Provisions Pertaining to Non-Discrimination in Employment

Unless otherwise exempt, this Contract is subject to the applicable non-discrimination, equal benefits, equal employment practices, and affirmative action program provisions in LAAC Section 10.8 et seq., as amended from time to time.

- A. **CONTRACTOR** shall comply with the applicable non-discrimination and affirmative action provisions of the laws of the United States of America, the State of California, and **CITY**. In performing this Contract, **CONTRACTOR** shall not discriminate in any of its hiring or employment practices against any employee or applicant for employment because of such person's race, color, religion, national origin, ancestry, sex, sexual orientation, gender, gender identity, age, disability, domestic partner status, marital status or medical condition.
- B. The requirements of Section 10.8.2.1 of the LAAC, the Equal Benefits Ordinance, and the provisions of Section 10.8.2.1(f) are incorporated and made a part of this Contract by reference.
- C. The provisions of Section 10.8.3 of the LAAC are incorporated and made a part of this Contract by reference and will be known as the "Equal Employment Practices" provisions of this Contract.
- D. The provisions of Section 10.8.4 of the LAAC are incorporated and made a part of this Contract by reference and will be known as the "Affirmative Action Program" provisions of this Contract.

Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-27. Child Support Assignment Orders

CONTRACTOR shall comply with the Child Support Assignment Orders Ordinance, Section 10.10 of the LAAC, as amended from time to time. Pursuant to Section 10.10(b) of the LAAC, **CONTRACTOR** shall fully comply with all applicable State and Federal employment reporting requirements. Failure of **CONTRACTOR** to comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignment or Notices of Assignment, or the failure of any principal owner(s) of **CONTRACTOR** to comply with any Wage and Earnings Assignment or Notices of Assignment applicable to them personally, shall constitute a default by the **CONTRACTOR** under this Contract. Failure of **CONTRACTOR** or principal owner to cure

the default within 90 days of the notice of default will subject this Contract to termination for breach. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-28. Living Wage Ordinance

CONTRACTOR shall comply with the Living Wage Ordinance, LAAC Section 10.37 *et seq.*, as amended from time to time. **CONTRACTOR** further agrees that it shall comply with federal law proscribing retaliation for union organizing. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-29. Service Contractor Worker Retention Ordinance

CONTRACTOR shall comply with the Service Contractor Worker Retention Ordinance, LAAC Section 10.36 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-30. Access and Accommodations

CONTRACTOR represents and certifies that:

- A. **CONTRACTOR** shall comply with the Americans with Disabilities Act, as amended, 42 U.S.C. Section 12101 *et seq.*, the Rehabilitation Act of 1973, as amended, 29 U.S.C. Section 701 *et seq.*, the Fair Housing Act, and its implementing regulations and any subsequent amendments, and California Government Code Section 11135;
- B. **CONTRACTOR** shall not discriminate on the basis of disability or on the basis of a person's relationship to, or association with, a person who has a disability;
- C. **CONTRACTOR** shall provide reasonable accommodation upon request to ensure equal access to **CITY**-funded programs, services and activities;
- D. Construction will be performed in accordance with the Uniform Federal Accessibility Standards (UFAS), 24 C.F.R. Part 40; and
- E. The buildings and facilities used to provide services under this Contract are in compliance with the federal and state standards for accessibility as set forth in the 2010 ADA Standards, California Title 24, Chapter 11, or other applicable federal and state law.

CONTRACTOR understands that **CITY** is relying upon these certifications and representations as a condition to funding this Contract. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-31. Contractor Responsibility Ordinance

CONTRACTOR shall comply with the Contractor Responsibility Ordinance, LAAC Section 10.40 *et seq.*, as amended from time to time.

PSC-32. Business Inclusion Program

Unless otherwise exempted prior to bid submission, **CONTRACTOR** shall comply with all aspects of the Business Inclusion Program as described in the Request for Proposal/Qualification process, throughout the duration of this Contract. **CONTRACTOR** shall utilize the Business Assistance Virtual Network (“BAVN”) at <https://www.labavn.org/>, to perform and document outreach to Minority, Women, and Other Business Enterprises. **CONTRACTOR** shall perform subcontractor outreach activities through BAVN. **CONTRACTOR** shall not change any of its designated Subcontractors or pledged specific items of work to be performed by these Subcontractors, nor shall **CONTRACTOR** reduce their level of effort, without prior written approval of **CITY**.

PSC-33. Slavery Disclosure Ordinance

CONTRACTOR shall comply with the Slavery Disclosure Ordinance, LAAC Section 10.41 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-34. First Source Hiring Ordinance

CONTRACTOR shall comply with the First Source Hiring Ordinance, LAAC Section 10.44 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-35. Local Business Preference Ordinance

CONTRACTOR shall comply with the Local Business Preference Ordinance, LAAC Section 10.47 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-36. Iran Contracting Act

In accordance with California Public Contract Code Sections 2200-2208, all contractors entering into, or renewing contracts with **CITY** for goods and services estimated at \$1,000,000 or more are required to complete, sign, and submit the "Iran Contracting Act of 2010 Compliance Affidavit."

PSC-37. Restrictions on Campaign Contributions and Fundraising in City Elections

Unless otherwise exempt, if this Contract is valued at \$100,000 or more and requires approval by an elected **CITY** office, **CONTRACTOR**, **CONTRACTOR’S** principals, and **CONTRACTOR’S** Subcontractors expected to receive at least \$100,000 for performance under the Contract, and the principals of those Subcontractors (the “Restricted Persons”)

shall comply with Charter Section 470(c)(12) and LAMC Section 49.7.35. Failure to comply entitles **CITY** to terminate this Contract and to pursue all available legal remedies. Charter Section 470(c)(12) and LAMC Section 49.7.35 limit the ability of the Restricted Persons to make campaign contributions to and engage in fundraising for certain elected **CITY** officials or candidates for elected **CITY** office for twelve months after this Contract is signed. Additionally, a **CONTRACTOR** subject to Charter Section 470(c)(12) is required to comply with disclosure requirements by submitting a completed and signed Ethics Commission Form 55 and to amend the information in that form as specified by law. Any **CONTRACTOR** subject to Charter Section 470(c)(12) shall include the following notice in any contract with any Subcontractor expected to receive at least \$100,000 for performance under this Contract:

“Notice Regarding Restrictions on Campaign Contributions and Fundraising in City Elections

You are a subcontractor on City of Los Angeles Contract #_____. Pursuant to the City of Los Angeles Charter Section 470(c)(12) and related ordinances, you and your principals are prohibited from making campaign contributions to and fundraising for certain elected City of Los Angeles (“**CITY**”) officials and candidates for elected **CITY** office for twelve months after the **CITY** contract is signed. You are required to provide the names and contact information of your principals to the **CONTRACTOR** and to amend that information within ten business days if it changes during the twelve month time period. Failure to comply may result in termination of this Contract and any other available legal remedies. Information about the restrictions may be found online at ethics.lacity.org or by calling the Los Angeles City Ethics Commission at (213) 978-1960.”

PSC-38. Contractors’ Use of Criminal History for Consideration of Employment Applications

CONTRACTOR shall comply with the City Contractors’ Use of Criminal History for Consideration of Employment Applications Ordinance, LAAC Section 10.48 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-39. Limitation of City’s Obligation to Make Payment to Contractor

Notwithstanding any other provision of this Contract, including any exhibits or attachments incorporated therein, and in order for **CITY** to comply with its governing legal requirements, **CITY** shall have no obligation to make any payments to **CONTRACTOR** unless **CITY** shall have first made an appropriation of funds equal to or in excess of its obligation to make any payments as provided in this Contract. **CONTRACTOR** agrees that any services provided by **CONTRACTOR**, purchases made by **CONTRACTOR** or expenses incurred by **CONTRACTOR** in excess of the appropriation(s) shall be free and without charge to **CITY** and **CITY** shall have no obligation to pay for the services, purchases or expenses. **CONTRACTOR** shall have no obligation to provide any services,

provide any equipment or incur any expenses in excess of the appropriated amount(s) until **CITY** appropriates additional funds for this Contract.

PSC-40. Compliance with Identity Theft Laws and Payment Card Data Security Standards

CONTRACTOR shall comply with all identity theft laws including without limitation, laws related to: (1) payment devices; (2) credit and debit card fraud; and (3) the Fair and Accurate Credit Transactions Act (“FACTA”), including its requirement relating to the content of transaction receipts provided to Customers. **CONTRACTOR** also shall comply with all requirements related to maintaining compliance with Payment Card Industry Data Security Standards (“PCI DSS”). During the performance of any service to install, program or update payment devices equipped to conduct credit or debit card transactions, including PCI DSS services, **CONTRACTOR** shall verify proper truncation of receipts in compliance with FACTA.

PSC-41. Compliance with California Public Resources Code Section 5164

California Public Resources Code Section 5164 prohibits a public agency from hiring a person for employment or as a volunteer to perform services at any park, playground, or community center used for recreational purposes in a position that has supervisory or disciplinary authority over any minor, if the person has been convicted of certain crimes as referenced in the Penal Code, and articulated in California Public Resources Code Section 5164(a)(2).

If applicable, **CONTRACTOR** shall comply with California Public Resources Code Section 5164, and shall additionally adhere to all rules and regulations that have been adopted or that may be adopted by **CITY**. **CONTRACTOR** is required to have all employees, volunteers and Subcontractors (including all employees and volunteers of any Subcontractor) of **CONTRACTOR** working on premises to pass a fingerprint and background check through the California Department of Justice at **CONTRACTOR’S** sole expense, indicating that such individuals have never been convicted of certain crimes as referenced in the Penal Code and articulated in California Public Resources Code Section 5164(a)(2), if the individual will have supervisory or disciplinary authority over any minor.

PSC-42. Possessory Interests Tax

Rights granted to **CONTRACTOR** by **CITY** may create a possessory interest. **CONTRACTOR** agrees that any possessory interest created may be subject to California Revenue and Taxation Code Section 107.6 and a property tax may be levied on that possessory interest. If applicable, **CONTRACTOR** shall pay the property tax. **CONTRACTOR** acknowledges that the notice required under California Revenue and Taxation Code Section 107.6 has been provided.

PSC-43. Confidentiality

All documents, information and materials provided to **CONTRACTOR** by **CITY** or developed by **CONTRACTOR** pursuant to this Contract (collectively “Confidential Information”) are confidential. **CONTRACTOR** shall not provide or disclose any Confidential Information or their contents or any information therein, either orally or in writing, to any person or entity, except as authorized by **CITY** or as required by law. **CONTRACTOR** shall immediately notify **CITY** of any attempt by a third party to obtain access to any Confidential Information. This provision will survive expiration or termination of this Contract.

EXHIBIT 1

INSURANCE CONTRACTUAL REQUIREMENTS

CONTACT For additional information about compliance with City Insurance and Bond requirements, contact the Office of the City Administrative Officer, Risk Management at (213) 978-RISK (7475) or go online at www.lacity.org/cao/risk. The City approved Bond Assistance Program is available for those contractors who are unable to obtain the City-required performance bonds. A City approved insurance program may be available as a low cost alternative for contractors who are unable to obtain City-required insurance.

CONTRACTUAL REQUIREMENTS

CONTRACTOR AGREES THAT:

- 1. Additional Insured/Loss Payee.** The CITY must be included as an Additional Insured in applicable liability policies to cover the CITY'S liability arising out of the acts or omissions of the named insured. The CITY is to be named as an Additional Named Insured and a Loss Payee As Its Interests May Appear in property insurance in which the CITY has an interest, e.g., as a lien holder.
- 2. Notice of Cancellation.** All required insurance will be maintained in full force for the duration of its business with the CITY. By ordinance, all required insurance must provide at least thirty (30) days' prior written notice (ten (10) days for non-payment of premium) directly to the CITY if your insurance company elects to cancel or materially reduce coverage or limits prior to the policy expiration date, for any reason except impairment of an aggregate limit due to prior claims.
- 3. Primary Coverage.** CONTRACTOR will provide coverage that is primary with respect to any insurance or self-insurance of the CITY. The CITY'S program shall be excess of this insurance and non-contributing.
- 4. Modification of Coverage.** The CITY reserves the right at any time during the term of this Contract to change the amounts and types of insurance required hereunder by giving CONTRACTOR ninety (90) days' advance written notice of such change. If such change should result in substantial additional cost to CONTRACTOR, the CITY agrees to negotiate additional compensation proportional to the increased benefit to the CITY.
- 5. Failure to Procure Insurance.** All required insurance must be submitted and approved by the Office of the City Administrative Officer, Risk Management prior to the inception of any operations by CONTRACTOR.

CONTRACTOR'S failure to procure or maintain required insurance or a self-insurance program during the entire term of this Contract shall constitute a material breach of this Contract under which the CITY may immediately suspend or terminate this Contract or, at its discretion, procure or renew such insurance to protect the CITY'S interests and pay any and all premiums in connection therewith and recover all monies so paid from CONTRACTOR.

- 6. Workers' Compensation.** By signing this Contract, CONTRACTOR hereby certifies that it is aware of the provisions of Section 3700 *et seq.*, of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake

self-insurance in accordance with the provisions of that Code, and that it will comply with such provisions at all time during the performance of the work pursuant to this Contract.

7. California Licensee. All insurance must be provided by an insurer admitted to do business in California or written through a California-licensed surplus lines broker or through an insurer otherwise acceptable to the CITY. Non-admitted coverage must contain a **Service of Suit** clause in which the underwriters agree to submit as necessary to the jurisdiction of a California court in the event of a coverage dispute. Service of process for this purpose must be allowed upon an agent in California designated by the insurer or upon the California Insurance Commissioner.

8. Aggregate Limits/Impairment. If any of the required insurance coverages contain annual aggregate limits, CONTRACTOR must give the CITY written notice of any pending claim or lawsuit which will materially diminish the aggregate within thirty (30) days of knowledge of same. You must take appropriate steps to restore the impaired aggregates or provide replacement insurance protection within thirty (30) days of knowledge of same. The CITY has the option to specify the minimum acceptable aggregate limit for each line of coverage required. No substantial reductions in scope of coverage which may affect the CITY'S protection are allowed without the CITY'S prior written consent.

9. Commencement of Work. For purposes of insurance coverage only, this Contract will be deemed to have been executed immediately upon any party hereto taking any steps that can be considered to be in furtherance of or towards performance of this Contract. The requirements in this Section supersede all other sections and provisions of this Contract, including, but not limited to, PSC-3, to the extent that any other section or provision conflicts with or impairs the provisions of this Section.

Required Insurance and Minimum Limits

Name: _____

Date: _____

Agreement/Reference: _____

Evidence of coverages checked below, with the specified minimum limits, must be submitted and approved prior to occupancy/start of operations. Amounts shown are Combined Single Limits ("CSLs"). For Automobile Liability, split limits may be substituted for a CSL if the total per occurrence equals or exceeds the CSL amount.

Limits

___ **Workers' Compensation (WC) and Employer's Liability (EL)** _____

WC Statutory

EL _____

Waiver of Subrogation in favor of City

Longshore & Harbor Workers

Jones Act

___ **General Liability** _____

Products/Completed Operations

Sexual Misconduct _____

Fire Legal Liability _____

___ **Automobile Liability** (for any and all vehicles used for this contract, other than commuting to/from work) _____

___ **Professional Liability** (Errors and Omissions) _____

Discovery Period _____

___ **Property Insurance** (to cover replacement cost of building - as determined by insurance company) _____

All Risk Coverage

Boiler and Machinery

Flood _____

Builder's Risk

Earthquake _____

___ _____

___ **Surety Bonds - Performance and Payment (Labor and Materials) Bonds** _____

___ **Crime Insurance** _____

Other: _____

EXHIBIT B

ANNEXURE

Maintenance Services for UNIVERSARIUM MIX #555 Griffith Observatory

1) Mechanics/Optics

a) Starball

- i) check of firm seat of the most important screws and connection elements
- ii) check of the projection lamp regarding adjustment and blackening, control of the holder
- iii) general check-up of the projectors for Equator/Ecliptic
- iv) check and adjustment of the instrument axis
- v) check of gear backlash and oil level of all main drives
- vi) cleaning and greasing of the gear wheel engagements at the drives
- vii) check of the smooth run of the instrument, possible readjustment of the drives
- viii) control of slips and slip rings regarding wear and tear, cleaning and treatment with contact spray
- ix) cleaning of the optics and check for damages
- x) check of the fix star fields, of the bright stars, of the equatorial and ecliptical grid, as well as the constellations and the signs of Zodiac regarding positioning accuracy, illumination, sharpness and accuracy
- xi) check of accuracy for Precession scales/Ecliptic pole, Azimuth scale / Zenith marker, Vertical Circle, Hour Angle Scale / Celestial pole marker
- xii) adjustment of Milky Way projector
- xiii) test of all shutters and if necessary adjustment of the shutters

b) Projectors for Sun, Moon and Planets

- i) cleaning of the optical systems and check for damages
- ii) check of illumination and adjustment of beam paths
- iii) check of special functions of the projectors (rotation, zoom, eclipses, phases)
- iv) check of XBO cabinet, check and possible exchange of XBO lamp
- v) optimization of illumination
- vi) check of positioning and accuracy
- vii) cleaning and greasing of the drives

c) Mirror attachments

- i) cleaning of optical system
- ii) check of the x-y drives backlash
- iii) cleaning and greasing of the drives

2) Electrical/Electronics

a) Entire machine

- i) check of the switching-on behavior of the entire system
- ii) check of all main connections and fuses on firm seats
- iii) control of the operation voltage for the motor control and of the DCIDC-transformer
- iv) test of all single functions
- v) check of the computer

b) Check of the modules

- i) check of the proper seat of modules
- ii) check of the power supply at the diagnoses plugs of the modules

c) Control system

- i) check by means of the test programs for following functions:
- ii) operating display, main drives, small drives, control computer, INIT-functions, dimmer
- iii) check of all the functions in the operation regimen
- iv) control of all instrument functions via key board
- v) check of show file for precise run and position accuracy
- vi) check of all instrument functions via test file (short program for automatic operation of all individual machine functions)

Required Insurance and Minimum Limits

Name: _____

Date: _____

Agreement/Reference: _____

Evidence of coverages checked below, with the specified minimum limits, must be submitted and approved prior to occupancy/start of operations. Amounts shown are Combined Single Limits ("CSLs"). For Automobile Liability, split limits may be substituted for a CSL if the total per occurrence equals or exceeds the CSL amount.

Limits

____ **Workers' Compensation (WC) and Employer's Liability (EL)**

WC Statutory

EL _____

Waiver of Subrogation in favor of City

Longshore & Harbor Workers

Jones Act

____ **General Liability**

Products/Completed Operations

Sexual Misconduct _____

Fire Legal Liability _____

____ **Automobile Liability** (for any and all vehicles used for this contract, other than commuting to/from work)

____ **Professional Liability** (Errors and Omissions)

Discovery Period _____

____ **Property Insurance** (to cover replacement cost of building - as determined by insurance company)

All Risk Coverage

Boiler and Machinery

Flood _____

Builder's Risk

Earthquake _____

____ **Surety Bonds** - Performance and Payment (Labor and Materials) Bonds

____ **Crime Insurance**

Other:

BOARD OF COMMISSIONERS

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LYNN ALVAREZ
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NICOLE CHASE
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(213) 202-2640



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CHIEF OF STAFF

CATHIE SANTO DOMINGO
ASSISTANT GENERAL MANAGER

JIMMY KIM
ACTING ASSISTANT GENERAL MANAGER

MATTHEW RUDNICK
ACTING ASSISTANT GENERAL MANAGER

(213) 202-2633 FAX (213) 202-2614

September 13, 2021

Carl Zeiss Jena GmbH Planetariums
Carl-Zeiss-Promenade 10
07745 Jena GERMANY

Attention: Mr. Hendrik Merkel, Head of Service and Quality Planetariums

Gentlepersons:

Attached herewith is the executed Amendment No. 1 to Contract No. 3730, between the City of Los Angeles, by and through its Board of Recreation and Park Commissioners, and your organization to extend the term of Contract 3730 by fifteen (15) months to account for the period of the government-ordered closure of Griffith Observatory due to the COVID-19 pandemic for annual maintenance and service of the Universarium MIX Model 555 Star Projector located in the Samuel Oschin Planetarium at Griffith Observatory.

If you have any questions with regard to Amendment No. 1 to Contract No. 3730, please contact undersigned at (213) 202-2640.

Very truly yours,

BOARD OF RECREATION AND
PARK COMMISSIONERS

HAROLD ARRIVILLAGA
Commission Executive Assistant II

Attachment: Amendment No.1 to Contract 3730

cc: City Controller
City Attorney
Departmental Chief Accountant
John Busby, Senior Management Analyst I, Contracts Administration, Special
Operations Branch



**AMENDMENT NO. 1 TO CONTRACT NO. 3730
FOR THE ANNUAL MAINTENANCE AND SERVICE OF THE UNIVERSARIUM MIX MODEL
555 STAR PROJECTOR AT THE SAMUEL OSCHIN PLANETARIUM**

THIS AMENDMENT NO. 1 TO CONTRACT NO. 3730 (“AMENDMENT”) is made and entered into this 8th day of September, 2021, by and between the CITY OF LOS ANGELES, a municipal corporation (hereinafter referred to as “CITY”), acting by and through its Board of Recreation and Park Commissioners (hereinafter referred to as “BOARD”) and CARL ZEISS JENA GMBH PLANETARIUMS (hereinafter referred to as “CONTRACTOR”).

WITNESSETH

Whereas, on June 5, 2019, the BOARD approved Contract No. 3730 (hereinafter referred to as “AGREEMENT”) for THE ROUTINE MAINTENANCE AND SERVICE OF THE UNIVERSARIUM MIX #555 STAR PROJECTOR LOCATED IN THE SAMUEL OSCHIN PLANETARIUM AT GRIFFITH OBSERVATORY (hereinafter referred to as “CONTRACT”) with a term of three (3) years, starting July 1, 2019 and expiring on June 30, 2022 and authorized the Board President and Secretary to execute the AGREEMENT on behalf of the CITY; and

Whereas, the CITY and CONTRACTOR desires, by way of this AMENDMENT, to extend the original term of the AGREEMENT by an additional 15 months in light of the closure of the Griffith Observatory and travel restrictions related to the COVID-19 pandemic which delayed the performance of services under the AGREEMENT; and

Whereas, this AMENDMENT has been approved by the BOARD at its meeting on August 19, 2021 (Report No. 21-146).

Now, therefore, the CITY and CONTRACTOR hereby mutually agree to amend the AGREEMENT through this AMENDMENT as follows:

1. SECTION II. TERM OF PERFORMANCE

Paragraph A. of the above titled section of the AGREEMENT is hereby amended and replaced in its entirety with the following provisio:

“A. The term of this Contract shall be for four (4) years and three (3) months, starting July 1, 2019, and expiring on September 30, 2023.”

2. Except as amended herein, all other terms and conditions of the AGREEMENT shall remain in full force and effect.


(Signature Page to Follow)

IN WITNESS WHEREOF, the parties hereto have caused this AMENDMENT NO. 1 TO CONTRACT NO. 3730, to be executed by their duly authorized representatives.

THE CITY OF LOS ANGELES, a municipal corporation, acting by and through its Board of Recreation and Park Commissioners.

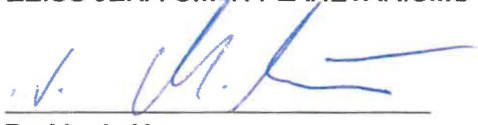
BY: 
President

DATE: September 2, 2021

BY: 
Secretary

DATE: September 2, 2021

CARL ZEISS JENA GmbH PLANETARIUMS

BY: 
Dr. Martin Krauss
Head of Business Field Planetariums

DATE: 09/01/2021

BY: 
Dr. Bernard Ohnesorge
Managing Director
Carl Zeiss Jena GmbH Planetariums

DATE: 09/01/2021

BTRC No.: 2703174

APPROVED AS TO FORM:

MICHAEL N. FUEUR
City Attorney

BY: 
Steven Hong
Deputy City Attorney

DATE: 9/8/21

BOARD OF COMMISSIONERS

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(213) 202-2640



KAREN BASS
MAYOR

JIMMY KIM
GENERAL MANAGER

MATTHEW RUDNICK
EXECUTIVE OFFICER

CATHIE SANTO DOMINGO
ASSISTANT GENERAL MANAGER

BELINDA JACKSON
ASSISTANT GENERAL MANAGER

BRENDA AGUIRRE
ASSISTANT GENERAL MANAGER

(213) 202-2633

February 7, 2023

Sent via email

Carl Zeiss Jena GmbH Planetariums
Carl-Zeiss-Promenade 10
07745 Jena Germany

Attention: Ann Lakey, Project Manager, Planetarium Division,
Hendrik Merkel, Head of Service and Quality, Planetariums

Gentlepersons:

Attached is Amendment No. 2 to Agreement No. 3730, executed February 7, 2023 between the City of Los Angeles, by and through its Board of Recreation and Park Commissioners, and your organization, to account for the provision of essential repairs to the Universarium Mix Model 555 Star Projector (Projector) at the Samuel Oschin Planetarium at the Griffith Observatory and to increase the total compensation payable under the Contract in connection.

If you have any questions with regard to the Agreement at this time, please contact the undersigned at (213) 202-2640.

Very truly yours,

BOARD OF RECREATION AND
PARK COMMISSIONERS

TAKISHA SARDIN
Commission Executive Assistant II

Attachment: Amendment No. 2 to Agreement No. 3730

cc: City Controller
City Attorney
Departmental Chief Accountant
Mark Pine, Observatory Director, Special Operations Branch



**AMENDMENT NO. 2 TO CONTRACT NO. 3730
FOR THE ANNUAL MAINTENANCE AND SERVICE OF THE UNIVERSARIUM MIX MODEL
555 STAR PROJECTOR AT THE SAMUEL OSCHIN PLANETARIUM**

THIS AMENDMENT NO. 2 TO CONTRACT NO. 3730 ("AMENDMENT") is made and entered into this 7th day of February, 2023, by and between the CITY OF LOS ANGELES, a municipal corporation (hereinafter referred to as "CITY"), acting by and through its Board of Recreation and Park Commissioners (hereinafter referred to as "BOARD") and CARL ZEISS JENA GMBH PLANETARIUMS (hereinafter referred to as "CONTRACTOR").

WITNESSETH

Whereas, on June 5, 2019, the BOARD approved Contract No. 3730 for THE ROUTINE MAINTENANCE AND SERVICE OF THE UNIVERSARIUM MIX #555 STAR PROJECTOR LOCATED IN THE SAMUEL OSCHIN PLANETARIUM AT GRIFFITH OBSERVATORY (hereinafter referred to as "CONTRACT") with a term of three (3) years, starting July 1, 2019 and expiring on June 30, 2022 and authorized the Board President and Secretary to execute the AGREEMENT on behalf of the CITY; and

Whereas, on August 19, 2021, the BOARD amended the CONTRACT (Report No. 21-146) to extend its term to September 30, 2023; and

Whereas, the CITY and CONTRACTOR desire, by way of this AMENDMENT, to increase the maximum amount of the CONTRACT by \$60,000 to cover expenses for essential repairs to the projector that cannot be completed as part of the regular maintenance and servicing activities; and

Whereas, this AMENDMENT has been approved by the BOARD at its meeting on 01-19-23 (Report No. 23-025).

Now, therefore, the CITY and CONTRACTOR hereby mutually agree to amend the CONTRACT through this AMENDMENT as follows:

1. SECTION I. SCOPE OF SERVICES

Section I of the CONTRACT entitled "Scope of Services" is hereby amended to add the following paragraph below in quotation marks, to be placed at the end of such Section I:

"In addition to the Maintenance Service set forth above, CONTRACTOR shall provide, at DEPARTMENT's request, essential repair activities and materials in connection thereto for the PROJECTOR that are not part of the maintenance and servicing activities set forth above."

2. SECTION III. COMPENSATION

Paragraph A. of the above titled section of the CONTRACT is hereby amended and replaced in its entirety with the following set forth in quotation marks below:

“A. The DEPARTMENT shall pay CONTRACTOR an amount not to exceed Twenty-Five Thousand Dollars (\$25,000.00) per maintenance and servicing visit, for services provided from September 23, 2019, through September 30, 2023. The total amount for maintenance and servicing activities will not exceed Seventy-Five Thousand Dollars (\$75,000.00). In addition the DEPARTMENT shall pay CONTRACTOR an amount not to exceed Sixty Thousand Dollars (\$60,000.00) for essential repair activities and materials in connection thereto for the PROJECTOR that are NOT part of maintenance and servicing visits, for repairs provided from September 23, 2019, through September 30, 2023. The payment amount for individual repair visits shall be based on the work to be performed by CONTRACTOR, but the total of all repair expenditures shall not exceed the total listed above (\$60,000).”

2. REMAINDER OF CONTRACT REMAINS UNCHANGED

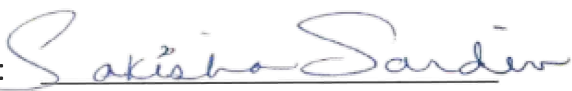
Except as amended herein, all other terms and conditions of the CONTRACT, as previously amended, shall remain unchanged and in full force and effect.

(Signature Page to Follow)


IN WITNESS WHEREOF, the parties hereto have caused this AMENDMENT NO. 2 TO CONTRACT NO. 3730, to be executed by their duly authorized representatives.


THE CITY OF LOS ANGELES, a municipal corporation, acting by and through its Board of Recreation and Park Commissioners.

BY:  DATE: 01/24/2023
President

BY:  DATE: 01/24/2023
Secretary

CARL ZEISS JENA GMBH PLANETARIUMS

BY:  DATE: 23.01.2023
~~Dr. Martin Krauss~~
Head of Business Field Planetariums

BY:  DATE: 23.01.2023
Dr. Bernard Ohnesorge
Managing Director
Carl Zeiss Jena GmbH ~~Planetariums~~

BTRC No.: _____

APPROVED AS TO FORM:

HYDEE FELDSTEIN SOTO
City Attorney

BY:  DATE: 2/7/23
Steven Hong
Deputy City Attorney

**CITY OF LOS ANGELES
INTER-DEPARTMENTAL CORRESPONDENCE**

DATE: August 18, 2023

MEMO TO: Steven Hong, Deputy City Attorney
General Counsel Division

FROM: Drew Vazinpour, Management Analyst, Griffith Observatory

SUBJECT: **Sole Source Justification** – Carl Zeiss Jena GmbH

Griffith Observatory (“the Observatory”) requests to engage in a sole source contract with Carl Zeiss Jena GmbH (“Zeiss”) to provide regular maintenance, service, and special repair of the Universarium MIX Model 555 Star Projector (“the Projector”) installed in the Samuel Oschin Planetarium. The Projector is the most sophisticated planetarium projector in the world, and is an essential element of every planetarium show the Observatory produces and presents. The Samuel Oschin Planetarium generates over \$3 million in revenue for the City each year from ticket sales.

Zeiss is the sole manufacturer of the Projector and likewise the sole contractor capable of providing maintenance, service, and special repair - no other company has the knowledge or expertise to provide such service. While Griffith Observatory staff performs basic projector maintenance (changing bulbs and ballasts, lubrication, cleaning), the annual maintenance and servicing of the instrument is essential for proper long-term operation and care. Zeiss has proprietary rights to critical parts needed for the Projector, and is the sole contractor capable of installing and replacing those parts without risking damage to the Projector.

The first service contract with Zeiss for maintenance of the Projector, Contract No. C-123951, was entered into on May 23, 2014. The current Zeiss Contract, No. 3730, approved by the Commission in Board Report No. 19-100 on June 5, 2019, is the third maintenance and service contract requested by the Observatory since the original purchase service warranty expired.

Not properly servicing and/or repairing the Projector would be placing at risk a multi-million dollar instrument at the heart of the Griffith Observatory experience. To date, all maintenance, service, and special repair of the Projector have been performed by Zeiss technicians.

Recommendation

That the Office of the City Attorney upholds its previous approvals of a sole source contract with Zeiss, and approve the proposed three-year agreement between the City of Los Angeles and Zeiss for regular maintenance and special repair of the Projector.

Required Insurance and Minimum Limits

Name: Carl Zeiss Jena GmbH

Date: 08/31/2023

Agreement/Reference: Maintenance & Service of Universarium MIX Model 555 Star Projector, Griffith Observatory

Evidence of coverages checked below, with the specified minimum limits, must be submitted and approved prior to occupancy/start of operations. Amounts shown are Combined Single Limits ("CSLs"). For Automobile Liability, split limits may be substituted for a CSL if the total per occurrence equals or exceeds the CSL amount.

Limits

Workers' Compensation (WC) and Employer's Liability (EL)

WC Statutory

EL 1,000,000

Waiver of Subrogation in favor of City

Longshore & Harbor Workers

Jones Act

General Liability _____ 3,000,000

Products/Completed Operations

Sexual Misconduct _____

Fire Legal Liability _____

____ **Automobile Liability** (for any and all vehicles used for this contract, other than commuting to/from work) _____

____ **Professional Liability** (Errors and Omissions) _____

Discovery Period 12 Months After Completion of Work or Date of Termination

____ **Property Insurance** (to cover replacement cost of building - as determined by insurance company) _____

All Risk Coverage

Boiler and Machinery

Flood _____

Builder's Risk

Earthquake _____

____ _____

Surety Bonds - Performance and Payment (Labor and Materials) Bonds 100% of the contract price

____ **Crime Insurance** _____

Other: Provided to: John Busby

If a contractor has no employees and decides to not cover herself/himself for workers' compensation, please complete the form entitled "Request for Waiver of Workers' Compensation Insurance Requirement" located at: <http://cao.lacity.org/risk/InsuranceForms.htm>

In the absence of imposed auto liability requirements, all contractors using vehicles during the course of their contract must adhere to the financial responsibility laws of the State of California.

Standard Provisions for City Contracts (Rev. 9/22) [v.1]

STANDARD PROVISIONS FOR CITY CONTRACTS

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STANDARD PROVISIONS FOR CITY CONTRACTS

PSC-1. Construction of Provisions and Titles Herein

All titles, subtitles, or headings in this Contract have been inserted for convenience, and shall not be deemed to affect the meaning or construction of any of the terms or provisions of this Contract. The language of this Contract shall be construed according to its fair meaning and not strictly for or against **CITY** or **CONTRACTOR**. The word "**CONTRACTOR**" includes the party or parties identified in this Contract. The singular shall include the plural and if there is more than one **CONTRACTOR**, unless expressly stated otherwise, their obligations and liabilities shall be joint and several. Use of the feminine, masculine, or neuter genders shall be deemed to include the genders not used.

PSC-2. Applicable Law, Interpretation and Enforcement

Each party's performance shall comply with all applicable laws of the United States of America, the State of California, and **CITY**, including but not limited to, laws regarding health and safety, labor and employment, wage and hours and licensing. This Contract shall be enforced and interpreted under the laws of the State of California without regard to conflict of law principles. **CONTRACTOR** shall comply with new, amended, or revised laws, regulations, or procedures that apply to the performance of this Contract with no additional compensation paid to **CONTRACTOR**.

In any action arising out of this Contract, **CONTRACTOR** consents to personal jurisdiction, and agrees to bring all such actions, exclusively in state or federal courts located in Los Angeles County, California.

If any part, term or provision of this Contract is held void, illegal, unenforceable, or in conflict with any federal, state or local law or regulation, the validity of the remaining parts, terms or provisions of this Contract shall not be affected.

PSC-3. Time of Effectiveness

Unless otherwise provided, this Contract shall take effect when all of the following events have occurred:

- A. This Contract has been signed on behalf of **CONTRACTOR** by the person or persons authorized to bind **CONTRACTOR**;
- B. This Contract has been approved by the City Council or by the board, officer or employee authorized to give such approval;
- C. The Office of the City Attorney has indicated in writing its approval of this Contract as to form; and
- D. This Contract has been signed on behalf of **CITY** by the person designated by the City Council, or by the board, officer or employee authorized to enter into this Contract.

PSC-4. Integrated Contract

This Contract sets forth all of the rights and duties of the parties with respect to the subject matter of this Contract, and replaces any and all previous Contracts or understandings, whether written or oral, relating thereto. This Contract may be amended only as provided for in the provisions of PSC-5 hereof.

PSC-5. Amendment

All amendments to this Contract shall be in writing and signed and approved pursuant to the provisions of PSC-3.

PSC-6. Excusable Delays

Neither party shall be liable for its delay or failure to perform any obligation under and in accordance with this Contract, if the delay or failure arises out of fires, floods, earthquakes, epidemics, quarantine restrictions, other natural occurrences, strikes, lockouts (other than a lockout by the party or any of the party's Subcontractors), freight embargoes, terrorist acts, insurrections or other civil disturbances, or other similar events to those described above, but in each case the delay or failure to perform must be beyond the control and without any fault or negligence of the party delayed or failing to perform (these events are referred to in this provision as "Force Majeure Events").

Notwithstanding the foregoing, a delay or failure to perform by a Subcontractor of **CONTRACTOR** shall not constitute a Force Majeure Event, unless the delay or failure arises out of causes beyond the control of both **CONTRACTOR** and Subcontractor, and without any fault or negligence of either of them. In such case, **CONTRACTOR** shall not be liable for the delay or failure to perform, unless the goods or services to be furnished by the Subcontractor were obtainable from other sources in sufficient time to permit **CONTRACTOR** to perform timely. As used in this Contract, the term "Subcontractor" means a subcontractor at any tier.

In the event **CONTRACTOR'S** delay or failure to perform arises out of a Force Majeure Event, **CONTRACTOR** agrees to use commercially reasonable best efforts to obtain the goods or services from other sources, and to otherwise mitigate the damages and reduce the delay caused by the Force Majeure Event.

PSC-7. Waiver

A waiver of a default of any part, term or provision of this Contract shall not be construed as a waiver of any succeeding default or as a waiver of the part, term or provision itself. A party's performance after the other party's default shall not be construed as a waiver of that default.

PSC-8. Suspension

At **CITY'S** sole discretion, **CITY** may suspend any or all services provided under this Contract by providing **CONTRACTOR** with written notice of suspension. Upon receipt of the notice of suspension, **CONTRACTOR** shall immediately cease the services suspended and shall not incur any additional obligations, costs or expenses to **CITY** until **CITY** gives written notice to recommence the services.

PSC-9. Termination

A. Termination for Convenience

CITY may terminate this Contract for **CITY'S** convenience at any time by providing **CONTRACTOR** thirty days written notice. Upon receipt of the notice of termination, **CONTRACTOR** shall immediately take action not to incur any additional obligations, costs or expenses, except as may be necessary to terminate its activities. **CITY** shall pay **CONTRACTOR** its reasonable and allowable costs through the effective date of termination and those reasonable and necessary costs incurred by **CONTRACTOR** to effect the termination. Thereafter, **CONTRACTOR** shall have no further claims against **CITY** under this Contract. All finished and unfinished documents and materials procured for or produced under this Contract, including all intellectual property rights **CITY** is entitled to, shall become **CITY** property upon the date of the termination. **CONTRACTOR** agrees to execute any documents necessary for **CITY** to perfect, memorialize, or record **CITY'S** ownership of rights provided herein.

B. Termination for Breach of Contract

1. Except as provided in PSC-6, if **CONTRACTOR** fails to perform any of the provisions of this Contract or so fails to make progress as to endanger timely performance of this Contract, **CITY** may give **CONTRACTOR** written notice of the default. **CITY'S** default notice will indicate whether the default may be cured and the time period to cure the default to the sole satisfaction of **CITY**. Additionally, **CITY'S** default notice may offer **CONTRACTOR** an opportunity to provide **CITY** with a plan to cure the default, which shall be submitted to **CITY** within the time period allowed by **CITY**. At **CITY'S** sole discretion, **CITY** may accept or reject **CONTRACTOR'S** plan. If the default cannot be cured or if **CONTRACTOR** fails to cure within the period allowed by **CITY**, then **CITY** may terminate this Contract due to **CONTRACTOR'S** breach of this Contract.
2. If the default under this Contract is due to **CONTRACTOR'S** failure to maintain the insurance required under this Contract, **CONTRACTOR** shall immediately: (1) suspend performance of any services under this Contract for which insurance was required; and (2) notify its employees and Subcontractors of the loss of insurance coverage and Contractor's obligation to suspend performance of

services. **CONTRACTOR** shall not recommence performance until **CONTRACTOR** is fully insured and in compliance with **CITY'S** requirements.

3. If a federal or state proceeding for relief of debtors is undertaken by or against **CONTRACTOR**, or if **CONTRACTOR** makes an assignment for the benefit of creditors, then **CITY** may immediately terminate this Contract.
4. If **CONTRACTOR** engages in any dishonest conduct related to the performance or administration of this Contract or violates **CITY'S** laws, regulations or policies relating to lobbying, then **CITY** may immediately terminate this Contract.
5. Acts of Moral Turpitude
 - a. **CONTRACTOR** shall immediately notify **CITY** if **CONTRACTOR** or any Key Person, as defined below, is charged with, indicted for, convicted of, pleads nolo contendere to, or forfeits bail or fails to appear in court for a hearing related to, any act which constitutes an offense involving moral turpitude under federal, state, or local laws ("Act of Moral Turpitude").
 - b. If **CONTRACTOR** or a Key Person is convicted of, pleads nolo contendere to, or forfeits bail or fails to appear in court for a hearing related to, an Act of Moral Turpitude, **CITY** may immediately terminate this Contract.
 - c. If **CONTRACTOR** or a Key Person is charged with or indicted for an Act of Moral Turpitude, **CITY** may terminate this Contract after providing **CONTRACTOR** an opportunity to present evidence of **CONTRACTOR'S** ability to perform under the terms of this Contract.
 - d. Acts of Moral Turpitude include, but are not limited to: violent felonies as defined by Penal Code Section 667.5, crimes involving weapons, crimes resulting in serious bodily injury or death, serious felonies as defined by Penal Code Section 1192.7, and those crimes referenced in the Penal Code and articulated in California Public Resources Code Section 5164(a)(2); in addition to and including acts of murder, rape, sexual assault, robbery, kidnapping, human trafficking, pimping, voluntary manslaughter, aggravated assault, assault on a peace officer, mayhem, fraud, domestic abuse, elderly abuse, and child abuse, regardless of whether such acts are punishable by felony or misdemeanor conviction.

- e. For the purposes of this provision, a Key Person is a principal, officer, or employee assigned to this Contract, or owner (directly or indirectly, through one or more intermediaries) of ten percent or more of the voting power or equity interests of **CONTRACTOR**.
 6. In the event **CITY** terminates this Contract as provided in this section, **CITY** may procure, upon such terms and in the manner as **CITY** may deem appropriate, services similar in scope and level of effort to those so terminated, and **CONTRACTOR** shall be liable to **CITY** for all of its costs and damages, including, but not limited to, any excess costs for such services.
 7. If, after notice of termination of this Contract under the provisions of this section, it is determined for any reason that **CONTRACTOR** was not in default under the provisions of this section, or that the default was excusable under the terms of this Contract, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to PSC-9(A) Termination for Convenience.
 8. The rights and remedies of **CITY** provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.
- C. In the event that this Contract is terminated, **CONTRACTOR** shall immediately notify all employees and Subcontractors, and shall notify in writing all other parties contracted with under the terms of this Contract within five working days of the termination.

PSC-10. Independent Contractor

CONTRACTOR is an independent contractor and not an agent or employee of **CITY**. **CONTRACTOR** shall not represent or otherwise hold out itself or any of its directors, officers, partners, employees, or agents to be an agent or employee of **CITY**.

PSC-11. Contractor's Personnel

Unless otherwise approved by **CITY**, **CONTRACTOR** shall use its own employees to perform the services described in this Contract. **CITY** has the right to review and approve any personnel who are assigned to work under this Contract. **CONTRACTOR** shall remove personnel from performing work under this Contract if requested to do so by **CITY**.

CONTRACTOR shall not use Subcontractors to assist in performance of this Contract without the prior written approval of **CITY**. If **CITY** permits the use of Subcontractors, **CONTRACTOR** shall remain responsible for performing all aspects of this Contract and paying all Subcontractors. **CITY** has the right to approve **CONTRACTOR'S** Subcontractors, and **CITY** reserves the right to request replacement of any

Subcontractor. **CITY** does not have any obligation to pay **CONTRACTOR'S** Subcontractors, and nothing herein creates any privity of contract between **CITY** and any Subcontractor.

PSC-12. Assignment and Delegation

CONTRACTOR may not, unless it has first obtained the written permission of **CITY**:

- A. Assign or otherwise alienate any of its rights under this Contract, including the right to payment; or
- B. Delegate, subcontract, or otherwise transfer any of its duties under this Contract.

PSC-13. Permits

CONTRACTOR and its directors, officers, partners, agents, employees, and Subcontractors, shall obtain and maintain all licenses, permits, certifications and other documents necessary for **CONTRACTOR'S** performance of this Contract. **CONTRACTOR** shall immediately notify **CITY** of any suspension, termination, lapses, non-renewals, or restrictions of licenses, permits, certificates, or other documents that relate to **CONTRACTOR'S** performance of this Contract.

PSC-14. Claims for Labor and Materials

CONTRACTOR shall promptly pay when due all amounts owed for labor and materials furnished in the performance of this Contract so as to prevent any lien or other claim under any provision of law from arising against any **CITY** property (including reports, documents, and other tangible or intangible matter produced by **CONTRACTOR** hereunder), and shall pay all amounts due under the Unemployment Insurance Act or any other applicable law with respect to labor used to perform under this Contract.

PSC-15. Current Los Angeles City Business Tax Registration Certificate Required

For the duration of this Contract, **CONTRACTOR** shall maintain valid Business Tax Registration Certificate(s) as required by **CITY'S** Business Tax Ordinance, Section 21.00 *et seq.* of the Los Angeles Municipal Code ("LAMC"), and shall not allow the Certificate to lapse or be revoked or suspended.

PSC-16. Retention of Records, Audit and Reports

CONTRACTOR shall maintain all records, including records of financial transactions, pertaining to the performance of this Contract, in their original form or as otherwise approved by **CITY**. These records shall be retained for a period of no less than three years from the later of the following: (1) final payment made by **CITY**, (2) the expiration of this Contract or (3) termination of this Contract. The records will be subject to examination and audit by authorized **CITY** personnel or **CITY'S** representatives at any time. **CONTRACTOR** shall provide any reports requested by **CITY** regarding

performance of this Contract. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

In lieu of retaining the records for the term as prescribed in this provision, **CONTRACTOR** may, upon **CITY'S** written approval, submit the required information to **CITY** in an electronic format, e.g. USB flash drive, at the expiration or termination of this Contract.

PSC-17. Bonds

All bonds required by **CITY** shall be filed with the Office of the City Administrative Officer, Risk Management for its review and acceptance in accordance with Los Angeles Administrative Code ("LAAC") Sections 11.47 *et seq.*, as amended from time to time.

PSC-18. Indemnification

Except for the active negligence or willful misconduct of **CITY**, or any of its boards, officers, agents, employees, assigns and successors in interest, **CONTRACTOR** shall defend, indemnify and hold harmless **CITY** and any of its boards, officers, agents, employees, assigns, and successors in interest from and against all lawsuits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by **CITY**, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever, for death or injury to any person, including **CONTRACTOR'S** employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of an act, error, or omission by **CONTRACTOR**, Subcontractors, or their boards, officers, agents, employees, assigns, and successors in interest. The rights and remedies of **CITY** provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract. This provision will survive expiration or termination of this Contract.

PSC-19. Intellectual Property Indemnification

CONTRACTOR, at its own expense, shall defend, indemnify, and hold harmless the **CITY**, and any of its boards, officers, agents, employees, assigns, and successors in interest from and against all lawsuits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by **CITY**, including but not limited to, costs of experts and consultants), damages or liability of any nature arising out of the infringement, actual or alleged, direct or contributory, of any intellectual property rights, including, without limitation, patent, copyright, trademark, trade secret, right of publicity, and proprietary information: (1) on or in any design, medium, matter, article, process, method, application, equipment, device, instrumentation, software, hardware, or firmware used by **CONTRACTOR**, or its Subcontractors, in performing the work under this Contract; or (2) as a result of **CITY'S** actual or intended use of any Work Product (as defined in PSC-21) furnished by **CONTRACTOR**, or its Subcontractors, under this Contract. The rights and remedies of **CITY** provided in this section shall not be exclusive

and are in addition to any other rights and remedies provided by law or under this Contract. This provision will survive expiration or termination of this Contract.

PSC-20. Intellectual Property Warranty

CONTRACTOR represents and warrants that its performance of all obligations under this Contract does not infringe in any way, directly or contributorily, upon any third party's intellectual property rights, including, without limitation, patent, copyright, trademark, trade secret, right of publicity and proprietary information.

PSC-21. Ownership and License

Unless otherwise provided for herein, all finished and unfinished works, tangible or not, created under this Contract including, without limitation, documents, materials, data, reports, manuals, specifications, artwork, drawings, sketches, blueprints, studies, memoranda, computation sheets, computer programs and databases, schematics, photographs, video and audiovisual recordings, sound recordings, marks, logos, graphic designs, notes, websites, domain names, inventions, processes, formulas, matters and combinations thereof, and all forms of intellectual property originated and prepared by **CONTRACTOR** or its Subcontractors under this Contract (each a "Work Product"; collectively "Work Products") shall be and remain the exclusive property of **CITY** for its use in any manner **CITY** deems appropriate. **CONTRACTOR** hereby assigns to **CITY** all goodwill, copyright, trademark, patent, trade secret and all other intellectual property rights worldwide in any Work Products originated and prepared under this Contract. **CONTRACTOR** further agrees to execute any documents necessary for **CITY** to perfect, memorialize, or record **CITY'S** ownership of rights provided herein.

CONTRACTOR agrees that a monetary remedy for breach of this Contract may be inadequate, impracticable, or difficult to prove and that a breach may cause **CITY** irreparable harm. **CITY** may therefore enforce this requirement by seeking injunctive relief and specific performance, without any necessity of showing actual damage or irreparable harm. Seeking injunctive relief or specific performance does not preclude **CITY** from seeking or obtaining any other relief to which **CITY** may be entitled.

For all Work Products delivered to **CITY** that are not originated or prepared by **CONTRACTOR** or its Subcontractors under this Contract, **CONTRACTOR** shall secure a grant, at no cost to **CITY**, for a non-exclusive perpetual license to use such Work Products for any **CITY** purposes.

CONTRACTOR shall not provide or disclose any Work Product to any third party without prior written consent of **CITY**.

Any subcontract entered into by **CONTRACTOR** relating to this Contract shall include this provision to contractually bind its Subcontractors performing work under this Contract such that **CITY'S** ownership and license rights of all Work Products are preserved and protected as intended herein.

PSC-22. Data Protection

- A. **CONTRACTOR** shall protect, using the most secure means and technology that is commercially available, **CITY**-provided data or consumer-provided data acquired in the course and scope of this Contract, including but not limited to customer lists and customer credit card or consumer data, (collectively, the “City Data”). **CONTRACTOR** shall notify **CITY** in writing as soon as reasonably feasible, and in any event within twenty-four hours, of **CONTRACTOR’S** discovery or reasonable belief of any unauthorized access of City Data (a “Data Breach”), or of any incident affecting, or potentially affecting City Data related to cyber security (a “Security Incident”), including, but not limited to, denial of service attack, and system outage, instability or degradation due to computer malware or virus. **CONTRACTOR** shall begin remediation immediately. **CONTRACTOR** shall provide daily updates, or more frequently if required by **CITY**, regarding findings and actions performed by **CONTRACTOR** until the Data Breach or Security Incident has been effectively resolved to **CITY’S** satisfaction. **CONTRACTOR** shall conduct an investigation of the Data Breach or Security Incident and shall share the report of the investigation with **CITY**. At **CITY’S** sole discretion, **CITY** and its authorized agents shall have the right to lead or participate in the investigation. **CONTRACTOR** shall cooperate fully with **CITY**, its agents and law enforcement.
- B. If **CITY** is subject to liability for any Data Breach or Security Incident, then **CONTRACTOR** shall fully indemnify and hold harmless **CITY** and defend against any resulting actions.

PSC-23. Insurance

During the term of this Contract and without limiting **CONTRACTOR’S** obligation to indemnify, hold harmless and defend **CITY**, **CONTRACTOR** shall provide and maintain at its own expense a program of insurance having the coverages and limits not less than the required amounts and types as determined by the Office of the City Administrative Officer of Los Angeles, Risk Management (template Form General 146 in Exhibit 1 hereto). The insurance must: (1) conform to **CITY’S** requirements; (2) comply with the Insurance Contractual Requirements (Form General 133 in Exhibit 1 hereto); and (3) otherwise be in a form acceptable to the Office of the City Administrative Officer, Risk Management. **CONTRACTOR** shall comply with all Insurance Contractual Requirements shown on Exhibit 1 hereto. Exhibit 1 is hereby incorporated by reference and made a part of this Contract.

PSC-24. Best Terms

Throughout the term of this Contract, **CONTRACTOR**, shall offer **CITY** the best terms, prices, and discounts that are offered to any of **CONTRACTOR’S** customers for similar goods and services provided under this Contract.

PSC-25. Warranty and Responsibility of Contractor

CONTRACTOR warrants that the work performed hereunder shall be completed in a manner consistent with professional standards practiced among those firms within **CONTRACTOR'S** profession, doing the same or similar work under the same or similar circumstances.

PSC-26. Mandatory Provisions Pertaining to Non-Discrimination in Employment

Unless otherwise exempt, this Contract is subject to the applicable non-discrimination, equal benefits, equal employment practices, and affirmative action program provisions in LAAC Section 10.8 et seq., as amended from time to time.

- A. **CONTRACTOR** shall comply with the applicable non-discrimination and affirmative action provisions of the laws of the United States of America, the State of California, and **CITY**. In performing this Contract, **CONTRACTOR** shall not discriminate in any of its hiring or employment practices against any employee or applicant for employment because of such person's race, color, religion, national origin, ancestry, sex, sexual orientation, gender, gender identity, age, disability, domestic partner status, marital status or medical condition.
- B. The requirements of Section 10.8.2.1 of the LAAC, the Equal Benefits Ordinance, and the provisions of Section 10.8.2.1(f) are incorporated and made a part of this Contract by reference.
- C. The provisions of Section 10.8.3 of the LAAC are incorporated and made a part of this Contract by reference and will be known as the "Equal Employment Practices" provisions of this Contract.
- D. The provisions of Section 10.8.4 of the LAAC are incorporated and made a part of this Contract by reference and will be known as the "Affirmative Action Program" provisions of this Contract.

Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-27. Child Support Assignment Orders

CONTRACTOR shall comply with the Child Support Assignment Orders Ordinance, Section 10.10 of the LAAC, as amended from time to time. Pursuant to Section 10.10(b) of the LAAC, **CONTRACTOR** shall fully comply with all applicable State and Federal employment reporting requirements. Failure of **CONTRACTOR** to comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignment or Notices of Assignment, or the failure of any principal owner(s) of **CONTRACTOR** to comply with any Wage and Earnings Assignment or Notices of Assignment applicable to them personally, shall constitute a default by the **CONTRACTOR** under this Contract. Failure of **CONTRACTOR** or principal owner to cure

the default within 90 days of the notice of default will subject this Contract to termination for breach. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-28. Living Wage Ordinance

CONTRACTOR shall comply with the Living Wage Ordinance, LAAC Section 10.37 *et seq.*, as amended from time to time. **CONTRACTOR** further agrees that it shall comply with federal law proscribing retaliation for union organizing. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-29. Service Contractor Worker Retention Ordinance

CONTRACTOR shall comply with the Service Contractor Worker Retention Ordinance, LAAC Section 10.36 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-30. Access and Accommodations

CONTRACTOR represents and certifies that:

- A. **CONTRACTOR** shall comply with the Americans with Disabilities Act, as amended, 42 U.S.C. Section 12101 *et seq.*, the Rehabilitation Act of 1973, as amended, 29 U.S.C. Section 701 *et seq.*, the Fair Housing Act, and its implementing regulations and any subsequent amendments, and California Government Code Section 11135;
- B. **CONTRACTOR** shall not discriminate on the basis of disability or on the basis of a person's relationship to, or association with, a person who has a disability;
- C. **CONTRACTOR** shall provide reasonable accommodation upon request to ensure equal access to **CITY**-funded programs, services and activities;
- D. Construction will be performed in accordance with the Uniform Federal Accessibility Standards (UFAS), 24 C.F.R. Part 40; and
- E. The buildings and facilities used to provide services under this Contract are in compliance with the federal and state standards for accessibility as set forth in the 2010 ADA Standards, California Title 24, Chapter 11, or other applicable federal and state law.

CONTRACTOR understands that **CITY** is relying upon these certifications and representations as a condition to funding this Contract. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-31. Contractor Responsibility Ordinance

CONTRACTOR shall comply with the Contractor Responsibility Ordinance, LAAC Section 10.40 *et seq.*, as amended from time to time.

PSC-32. Business Inclusion Program

Unless otherwise exempted prior to bid submission, **CONTRACTOR** shall comply with all aspects of the Business Inclusion Program as described in the Request for Proposal/Qualification process, throughout the duration of this Contract. **CONTRACTOR** shall utilize the Business Assistance Virtual Network (“BAVN”) at <https://www.labavn.org/>, to perform and document outreach to Minority, Women, and Other Business Enterprises. **CONTRACTOR** shall perform subcontractor outreach activities through BAVN. **CONTRACTOR** shall not change any of its designated Subcontractors or pledged specific items of work to be performed by these Subcontractors, nor shall **CONTRACTOR** reduce their level of effort, without prior written approval of **CITY**.

PSC-33. Slavery Disclosure Ordinance

CONTRACTOR shall comply with the Slavery Disclosure Ordinance, LAAC Section 10.41 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-34. First Source Hiring Ordinance

CONTRACTOR shall comply with the First Source Hiring Ordinance, LAAC Section 10.44 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-35. Local Business Preference Ordinance

CONTRACTOR shall comply with the Local Business Preference Ordinance, LAAC Section 10.47 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-36. Iran Contracting Act

In accordance with California Public Contract Code Sections 2200-2208, all contractors entering into, or renewing contracts with **CITY** for goods and services estimated at \$1,000,000 or more are required to complete, sign, and submit the "Iran Contracting Act of 2010 Compliance Affidavit."

PSC-37. Restrictions on Campaign Contributions and Fundraising in City Elections

Unless otherwise exempt, if this Contract is valued at \$100,000 or more and requires approval by an elected **CITY** office, **CONTRACTOR**, **CONTRACTOR’S** principals, and **CONTRACTOR’S** Subcontractors expected to receive at least \$100,000 for performance under the Contract, and the principals of those Subcontractors (the “Restricted Persons”)

shall comply with Charter Section 470(c)(12) and LAMC Section 49.7.35. Failure to comply entitles **CITY** to terminate this Contract and to pursue all available legal remedies. Charter Section 470(c)(12) and LAMC Section 49.7.35 limit the ability of the Restricted Persons to make campaign contributions to and engage in fundraising for certain elected **CITY** officials or candidates for elected **CITY** office for twelve months after this Contract is signed. Additionally, a **CONTRACTOR** subject to Charter Section 470(c)(12) is required to comply with disclosure requirements by submitting a completed and signed Ethics Commission Form 55 and to amend the information in that form as specified by law. Any **CONTRACTOR** subject to Charter Section 470(c)(12) shall include the following notice in any contract with any Subcontractor expected to receive at least \$100,000 for performance under this Contract:

“Notice Regarding Restrictions on Campaign Contributions and Fundraising in City Elections

You are a subcontractor on City of Los Angeles Contract # _____ Pursuant to the City of Los Angeles Charter Section 470(c)(12) and related ordinances, you and your principals are prohibited from making campaign contributions to and fundraising for certain elected City of Los Angeles (“**CITY**”) officials and candidates for elected **CITY** office for twelve months after the **CITY** contract is signed. You are required to provide the names and contact information of your principals to the **CONTRACTOR** and to amend that information within ten business days if it changes during the twelve month time period. Failure to comply may result in termination of this Contract and any other available legal remedies. Information about the restrictions may be found online at ethics.lacity.org or by calling the Los Angeles City Ethics Commission at (213) 978-1960.”

PSC-38. Contractors’ Use of Criminal History for Consideration of Employment Applications

CONTRACTOR shall comply with the City Contractors’ Use of Criminal History for Consideration of Employment Applications Ordinance, LAAC Section 10.48 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-39. Limitation of City’s Obligation to Make Payment to Contractor

Notwithstanding any other provision of this Contract, including any exhibits or attachments incorporated therein, and in order for **CITY** to comply with its governing legal requirements, **CITY** shall have no obligation to make any payments to **CONTRACTOR** unless **CITY** shall have first made an appropriation of funds equal to or in excess of its obligation to make any payments as provided in this Contract. **CONTRACTOR** agrees that any services provided by **CONTRACTOR**, purchases made by **CONTRACTOR** or expenses incurred by **CONTRACTOR** in excess of the appropriation(s) shall be free and without charge to **CITY** and **CITY** shall have no obligation to pay for the services, purchases or expenses. **CONTRACTOR** shall have no obligation to provide any services,

provide any equipment or incur any expenses in excess of the appropriated amount(s) until **CITY** appropriates additional funds for this Contract.

PSC-40. Compliance with Identity Theft Laws and Payment Card Data Security Standards

CONTRACTOR shall comply with all identity theft laws including without limitation, laws related to: (1) payment devices; (2) credit and debit card fraud; and (3) the Fair and Accurate Credit Transactions Act (“FACTA”), including its requirement relating to the content of transaction receipts provided to Customers. **CONTRACTOR** also shall comply with all requirements related to maintaining compliance with Payment Card Industry Data Security Standards (“PCI DSS”). During the performance of any service to install, program or update payment devices equipped to conduct credit or debit card transactions, including PCI DSS services, **CONTRACTOR** shall verify proper truncation of receipts in compliance with FACTA.

PSC-41. Compliance with California Public Resources Code Section 5164

California Public Resources Code Section 5164 prohibits a public agency from hiring a person for employment or as a volunteer to perform services at any park, playground, or community center used for recreational purposes in a position that has supervisory or disciplinary authority over any minor, if the person has been convicted of certain crimes as referenced in the Penal Code, and articulated in California Public Resources Code Section 5164(a)(2).

If applicable, **CONTRACTOR** shall comply with California Public Resources Code Section 5164, and shall additionally adhere to all rules and regulations that have been adopted or that may be adopted by **CITY**. **CONTRACTOR** is required to have all employees, volunteers and Subcontractors (including all employees and volunteers of any Subcontractor) of **CONTRACTOR** working on premises to pass a fingerprint and background check through the California Department of Justice at **CONTRACTOR’S** sole expense, indicating that such individuals have never been convicted of certain crimes as referenced in the Penal Code and articulated in California Public Resources Code Section 5164(a)(2), if the individual will have supervisory or disciplinary authority over any minor.

PSC-42. Possessory Interests Tax

Rights granted to **CONTRACTOR** by **CITY** may create a possessory interest. **CONTRACTOR** agrees that any possessory interest created may be subject to California Revenue and Taxation Code Section 107.6 and a property tax may be levied on that possessory interest. If applicable, **CONTRACTOR** shall pay the property tax. **CONTRACTOR** acknowledges that the notice required under California Revenue and Taxation Code Section 107.6 has been provided.

PSC-43. Confidentiality

All documents, information and materials provided to **CONTRACTOR** by **CITY** or developed by **CONTRACTOR** pursuant to this Contract (collectively “Confidential Information”) are confidential. **CONTRACTOR** shall not provide or disclose any Confidential Information or their contents or any information therein, either orally or in writing, to any person or entity, except as authorized by **CITY** or as required by law. **CONTRACTOR** shall immediately notify **CITY** of any attempt by a third party to obtain access to any Confidential Information. This provision will survive expiration or termination of this Contract.

PSC-44. COVID-19

Employees of Contractor and/or persons working on its behalf, including, but not limited to, subcontractors (collectively, “Contractor Personnel”), while performing services under this Agreement and prior to interacting in person with City employees, contractors, volunteers, or members of the public (collectively, “In-Person Services”) must be fully vaccinated against the novel coronavirus 2019 (“COVID-19”). “Fully vaccinated” means that 14 or more days have passed since Contractor Personnel have received the final dose of a two-dose COVID-19 vaccine series (Moderna or Pfizer-BioNTech) or a single dose of a one-dose COVID-19 vaccine (Johnson & Johnson/Janssen) and all booster doses recommended by the Centers for Disease Control and Prevention. Prior to assigning Contractor Personnel to perform In-Person Services, Contractor shall obtain proof that such Contractor Personnel have been fully vaccinated. Contractor shall retain such proof for the document retention period set forth in this Agreement. Contractor shall grant medical or religious exemptions (“Exemptions”) to Contractor Personnel as required by law. If Contractor wishes to assign Contractor Personnel with Exemptions to perform In-Person Services, Contractor shall require such Contractor Personnel to undergo weekly COVID-19 testing, with the full cost of testing to be borne by Contractor. If Contractor Personnel test positive, they shall not be assigned to perform In-Person Services or, to the extent they have already been performing In-Person Services, shall be immediately removed from those assignments. Furthermore, Contractor shall immediately notify City if Contractor Personnel performing In-Person Services (1) have tested positive for or have been diagnosed with COVID-19, (2) have been informed by a medical professional that they are likely to have COVID-19, or (3) meet the criteria for isolation under applicable government orders.

PSC-45. Contractor Data Reporting

If Contractor is a for-profit, privately owned business, Contractor shall, within 30 days of the effective date of the Contract and on an annual basis thereafter (i.e., within 30 days of the annual anniversary of the effective date of the Contract), report the following information to City via the Regional Alliance Marketplace for Procurement (“RAMP”) or via another method specified by City: Contractor’s and any Subcontractor’s annual revenue, number of employees, location, industry, race/ethnicity and gender of majority owner (“Contractor/Subcontractor Information”). Contractor shall further request, on an annual basis, that any Subcontractor input or update its business profile, including the Contractor/Subcontractor Information, on RAMP or via another method prescribed by City.

EXHIBIT 1

INSURANCE CONTRACTUAL REQUIREMENTS

CONTACT For additional information about compliance with City Insurance and Bond requirements, contact the Office of the City Administrative Officer, Risk Management at (213) 978-RISK (7475) or go online at www.lacity.org/cao/risk. The City approved Bond Assistance Program is available for those contractors who are unable to obtain the City-required performance bonds. A City approved insurance program may be available as a low cost alternative for contractors who are unable to obtain City-required insurance.

CONTRACTUAL REQUIREMENTS

CONTRACTOR AGREES THAT:

- 1. Additional Insured/Loss Payee.** The CITY must be included as an Additional Insured in applicable liability policies to cover the CITY'S liability arising out of the acts or omissions of the named insured. The CITY is to be named as an Additional Named Insured and a Loss Payee As Its Interests May Appear in property insurance in which the CITY has an interest, e.g., as a lien holder.
- 2. Notice of Cancellation.** All required insurance will be maintained in full force for the duration of its business with the CITY. By ordinance, all required insurance must provide at least thirty (30) days' prior written notice (ten (10) days for non-payment of premium) directly to the CITY if your insurance company elects to cancel or materially reduce coverage or limits prior to the policy expiration date, for any reason except impairment of an aggregate limit due to prior claims.
- 3. Primary Coverage.** CONTRACTOR will provide coverage that is primary with respect to any insurance or self-insurance of the CITY. The CITY'S program shall be excess of this insurance and non-contributing.
- 4. Modification of Coverage.** The CITY reserves the right at any time during the term of this Contract to change the amounts and types of insurance required hereunder by giving CONTRACTOR ninety (90) days' advance written notice of such change. If such change should result in substantial additional cost to CONTRACTOR, the CITY agrees to negotiate additional compensation proportional to the increased benefit to the CITY.
- 5. Failure to Procure Insurance.** All required insurance must be submitted and approved by the Office of the City Administrative Officer, Risk Management prior to the inception of any operations by CONTRACTOR.

CONTRACTOR'S failure to procure or maintain required insurance or a self-insurance program during the entire term of this Contract shall constitute a material breach of this Contract under which the CITY may immediately suspend or terminate this Contract or, at its discretion, procure or renew such insurance to protect the CITY'S interests and pay any and all premiums in connection therewith and recover all monies so paid from CONTRACTOR.

- 6. Workers' Compensation.** By signing this Contract, CONTRACTOR hereby certifies that it is aware of the provisions of Section 3700 *et seq.*, of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake

self-insurance in accordance with the provisions of that Code, and that it will comply with such provisions at all time during the performance of the work pursuant to this Contract.

7. California Licensee. All insurance must be provided by an insurer admitted to do business in California or written through a California-licensed surplus lines broker or through an insurer otherwise acceptable to the CITY. Non-admitted coverage must contain a **Service of Suit** clause in which the underwriters agree to submit as necessary to the jurisdiction of a California court in the event of a coverage dispute. Service of process for this purpose must be allowed upon an agent in California designated by the insurer or upon the California Insurance Commissioner.

8. Aggregate Limits/Impairment. If any of the required insurance coverages contain annual aggregate limits, CONTRACTOR must give the CITY written notice of any pending claim or lawsuit which will materially diminish the aggregate within thirty (30) days of knowledge of same. You must take appropriate steps to restore the impaired aggregates or provide replacement insurance protection within thirty (30) days of knowledge of same. The CITY has the option to specify the minimum acceptable aggregate limit for each line of coverage required. No substantial reductions in scope of coverage which may affect the CITY'S protection are allowed without the CITY'S prior written consent.

9. Commencement of Work. For purposes of insurance coverage only, this Contract will be deemed to have been executed immediately upon any party hereto taking any steps that can be considered to be in furtherance of or towards performance of this Contract. The requirements in this Section supersede all other sections and provisions of this Contract, including, but not limited to, PSC-3, to the extent that any other section or provision conflicts with or impairs the provisions of this Section.

Required Insurance and Minimum Limits

Name: _____

Date: _____

Agreement/Reference: _____

Evidence of coverages checked below, with the specified minimum limits, must be submitted and approved prior to occupancy/start of operations. Amounts shown are Combined Single Limits ("CSLs"). For Automobile Liability, split limits may be substituted for a CSL if the total per occurrence equals or exceeds the CSL amount.

Limits

Workers' Compensation (WC) and Employer's Liability (EL)

WC Statutory

EL _____

Waiver of Subrogation in favor of City

Longshore & Harbor Workers

Jones Act

General Liability

Products/Completed Operations

Sexual Misconduct _____

Fire Legal Liability _____

Automobile Liability (for any and all vehicles used for this contract, other than commuting to/from work)

Professional Liability (Errors and Omissions)

Discovery Period _____

Property Insurance (to cover replacement cost of building - as determined by insurance company)

All Risk Coverage

Boiler and Machinery

Flood _____

Builder's Risk

Earthquake _____

Pollution Liability

Surety Bonds - Performance and Payment (Labor and Materials) Bonds

Crime Insurance

Other: _____
