

# APPROVED

10-19-2016

BOARD REPORT

BOARD OF RECREATION  
AND PARK COMMISSIONERS

NO. 16-223

DATE October 19, 2016

C.D. 15

## BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: CABRILLO MARINE AQUARIUM – PROVISION OF SCIENTIFIC ILLUSTRATIONS AND EXHIBIT DESIGNS – AMENDMENT TO PERSONAL SERVICES CONTRACT NO. 3478 WITH EVELINA TEMPLETON, SCIENTIFIC ILLUSTRATOR

AP Diaz	_____	V. Israel	_____
R. Barajas	_____	K. Regan	_____
H. Fujita	_____	*N. Williams	<u>nmw</u>

  
\_\_\_\_\_  
General Manager

Approved \_\_\_\_\_

Disapproved \_\_\_\_\_

Withdrawn \_\_\_\_\_

### RECOMMENDATIONS

1. Approve a proposed Amendment to Personal Services Contract No. 3478, herein included as Attachment 1, between the City of Los Angeles and Evelina Templeton, a sole proprietor, to continue the provision of as-needed scientific illustrations and exhibit designs for the Cabrillo Marine Aquarium (Aquarium), subject to the approval of the Mayor, and City Attorney as to form;
2. Find, in accordance with Charter Section 1022, that the Department of Recreation and Parks (RAP) does not have personnel available in its employ, with sufficient expertise to undertake these specialized professional tasks in a timely manner, and that these services can be performed more feasibly by a qualified independent contractor than by a City employee;
3. Find, pursuant to Charter Section 371 (e)(2), that the services to be provided are professional, expert, technical and special services of a temporary and occasional character for which competitive bidding is not practicable or advantageous and RAP does not currently have employees with the expertise to perform such services;
4. Direct the Board Secretary to transmit forthwith the proposed Personal Services Contract Amendment concurrently to the Mayor in accordance with Executive Directive No. 3 and to the City Attorney for approval as to form;
5. Authorize the Board President and Secretary to execute forthwith the Amendment upon receipt of the necessary approvals; and
6. Authorize the General Manager, or Designee, to make technical corrections as necessary to the contract, to carry out the intent of this Report.

## BOARD REPORT

PG. 2 NO. 16-223

### SUMMARY

Ms. Evelina Templeton is an independent artist and biological illustrator who has provided, on an as-needed basis, scientific illustrations and designs for the marine life exhibits on display at the Aquarium since 1981. Ms. Templeton has been able to create a consistent design style for all exhibits with her specialized skills.

Per Charter Section 371(e)(2), the services to be provided are professional, expert, technical and special services of a temporary and occasional character for which competitive bidding is not practicable or advantageous, and because it is necessary for RAP to be able to call on a contractor to perform this work as needed without engaging in a new competitive process for each individual project to be performed.

On August 14, 2013, the Board approved Contract No. 3478 (Contract) for a potential term of three years (Report No. 13-218) which was executed on November 6, 2013 (Attachment 2). RAP Staff recommends extending the term of the Contract by one year with two one-year extension options to be exercised at the discretion of the General Manager or Designee, for a total term of six contract years, changing the three-year contract total of One Hundred Six Thousand Dollars (\$106,000.00) to a six-year contract with a not-to-exceed amount of Two Hundred Forty-One Thousand Dollars (\$241,000.00). RAP Staff also recommends an increase in Ms. Templeton's hourly rate, from Thirty Dollars (\$30.00) per hour which is the hourly rate contracted for since 2010, to Thirty-Five Dollars (\$35.00) per hour effective November 6, 2016. Each of the Contract year(s) four through six will increase to a not-to-exceed amount of Forty-Five Thousand Dollars (\$45,000.00) to cover the estimated work required for those years at the new hourly rate.

### CHARTER SECTION 1022 DETERMINATION

On June 25, 2013, the Personnel Department completed a Charter Section 1022 Review (Attachment 3), and determined that there are no City employees that can perform the work proposed for the Contract. RAP confirms that none of its current staff possess the necessary expertise to perform the scientifically accurate marine life illustrations and exhibit design critical to maintaining a consistent design style to the Aquarium's exhibits.

### FISCAL IMPACT STATEMENT

Funding for this Contract is provided in the Aquarium's contractual services Account 3040, Fund 302, Department 88 under line items entitled "Cabrillo Marine Aquarium Illustrator Services and Design and Exhibit Services."

This report was prepared by Nancy Jeffers, Management Analyst II, Service Contracts Group, Finance Division.

### LIST OF ATTACHMENTS

- 1) Proposed Amendment to Contract No. 3478
- 2) Contract No. 3478
- 3) Charter Section 1022 Review

**AMENDMENT TO PERSONAL SERVICES CONTRACT NO. 3478  
BETWEEN  
THE CITY OF LOS ANGELES  
AND  
EVELINA TEMPLETON, SCIENTIFIC ILLUSTRATOR**

This AMENDMENT to Contract No. 3478 is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 201\_, 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 Evelina Templeton, a sole proprietor (herein referred to as CONTRACTOR).

RECITALS

WHEREAS, per contract award by CITY on August 14, 2013 (Report No. 13-218), on November 6, 2013, CITY executed Contract No. 3478 with CONTRACTOR for a term of one (1) year, with two (2) one-year options to extend, for the scientific illustrations and exhibit planning services at the Cabrillo Marine Aquarium; and

WHEREAS, the two (2) one-year options to extend were exercised; and

WHEREAS, the Department of Recreation and Parks (DEPARTMENT) continues to require the services of CONTRACTOR;

WHEREAS, CONTRACTOR is experienced in providing services of the type required, is willing to perform such services, and can provide such services to DEPARTMENT, having done so, directly for over thirty-five (35) years; and

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

WHEREAS, CITY finds, in accordance with Charter Section 1022, that the DEPARTMENT does not have personnel available in its employ with the expertise and experience to provide the aforementioned services; and

WHEREAS, CITY finds, in accordance with Charter Section 371 (e)(2), that the services to be provided are professional, expert, technical and special services of a temporary and occasional character for which competitive bidding is not practicable or advantageous and because it is necessary for the DEPARTMENT to be able to call on a contractor to perform this work as needed without engaging in a new competitive process for each individual project to be performed; and

WHEREAS, it is necessary to amend Contract No. 3478 with CONTRACTOR in order to continue the use of said Contract for up to an additional three (3) years, and to increase the yearly and the total contract not-to-exceed dollar amounts;

WHEREAS, CONTRACTOR is willing and able to provide the services requested by the DEPARTMENT;

NOW, THEREFORE, the CITY and CONTRACTOR agree that Contract No. 3478 shall be amended as follows:

1. **FULL FORCE AND EFFECT:** Except as specifically modified by this Amendment, the terms and conditions contained in Contract No. 3478 between the CITY and CONTRACTOR, executed on November 6, 2013, shall remain in effect.
2. SECTION 2. A. in TERM OF PERFORMANCE is amended to read:
  - A. The term of this Contract shall be for one (1) year, with five (5) one-year options to renew at the sole discretion of the General Manager. The first year of the Contract shall commence on November 6, 2013 and shall expire on November 5, 2014.

DEPARTMENT has exercised the first and second options to extend the Contract by notifying the CONTRACTOR in writing. The CITY approves the third (3rd) option to extend the Contract upon the execution of this Contract Amendment, which begins November 6, 2016 and ends November 5, 2017. The fourth (4th) and fifth (5th) subsequent options to extend the Contract are to be exercised by the General Manager, by letter, on or before October 6, 2017, for the fifth (5th) contract year and on or before October 6, 2018 for the sixth (6th) and final year of the Contract.

3. SECTION 4. A. in COMPENSATION AND INVOICING is amended to read:
  - A. The DEPARTMENT shall pay CONTRACTOR for as needed services rendered under this AGREEMENT at the rate of Thirty Dollars (\$30.00) per hour, in an amount not to exceed Forty Thousand dollars (\$40,000.00) for services provided during the first year of the contract, an amount not to exceed Thirty-Three Thousand Dollars (\$33,000.00) for the second (2nd) and third (3rd) year. The hourly rate changes to Thirty-Five Dollars (\$35.00) per hour on November 6, 2016, the beginning of the fourth (4th) year of the Contract, and the DEPARTMENT shall pay an amount not to exceed Forty-Five Thousand Dollars (\$45,000.00) for services provided during the fourth (4th) year of the Contract, and an amount not to exceed Forty-Five Thousand Dollars (\$45,000) for years five (5) and six (6), should the options to extend those years be exercised by the General Manager. If all options to renew are exercised, the total not-to-exceed amount of the Contract will be Two Hundred Forty-One Thousand Dollars (\$241,000.00).

*(Signature Page to Follow)*

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representatives to execute this Contract.

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

By: \_\_\_\_\_  
President

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Secretary

Date: \_\_\_\_\_

EVELINA TEMPLETON  
3619 So. Meyler Street  
San Pedro, CA 90731

By: \_\_\_\_\_  
EVELINA TEMPLETON  
Sole Proprietor

Date: \_\_\_\_\_

Approved as to Form:  
MICHAEL N. FEUER

City Attorney

By: \_\_\_\_\_  
Stefan Fauble  
Deputy City Attorney III

Date: \_\_\_\_\_

**PERSONAL SERVICES CONTRACT  
BETWEEN  
THE CITY OF LOS ANGELES  
AND  
EVELINA TEMPLETON, SCIENTIFIC ILLUSTRATOR**

This contract is entered into this 6<sup>th</sup> day of November 2013, by and between the City of Los Angeles, a municipal corporation, acting by and through its Board of Recreation and Park Commissioners, and Evelina Templeton, a sole proprietor (CONTRACTOR), to provide scientific illustrations and exhibit planning services at the Cabrillo Marine Aquarium.

**RECITALS**

WHEREAS, Department of Recreation and Parks (DEPARTMENT) owns, operates and maintains various parks and recreational facilities throughout the City of Los Angeles, and

WHEREAS, DEPARTMENT owns, operates, and maintains the Cabrillo Marine Aquarium; and

WHEREAS, the Cabrillo Marine Aquarium has a need for the production of as-needed scientific illustrations with a focus on updating aging exhibits, temporary exhibits, courtyard models and murals; and

WHEREAS, DEPARTMENT desires to secure these professional services from an experienced and qualified contractor on an as-needed basis, to provide planning, design, and creation of marine related scientific illustrations and exhibits; and

WHEREAS, the Board finds, in accordance with Charter Section 371(e)(2), that the services to be provided by CONTRACTOR are professional, expert and specialized services of a temporary and occasional character for which competitive bidding is not practicable or advantageous and because it is necessary for the DEPARTMENT to be able to call on a contractor to perform this work as needed without engaging in a new competitive process for each individual project to be performed; and

WHEREAS, the Board finds, in accordance with Charter Section 371(e)(10) that for the performance of professional, expert and technical services of a temporary and occasional character, competitive bidding is undesirable and impractical because the total compensation to be provided to CONTRACTOR does not exceed \$40,000.00 per year, and the cost of soliciting bids would be unwarranted and wasteful in comparison to the amount of services required by DEPARTMENT and

would result in an expenditure of City funds in excess of any benefit that could be gained by soliciting bids; and

WHEREAS, CONTRACTOR is an experienced professional in providing services of the type required, is willing to perform the services, and can provide the services economically and feasibly to DEPARTMENT; and

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

WHEREAS, in accordance with Charter Section 1022, the Board of Recreation and Park Commissioners finds that the City does not have in its employ personnel with expertise and experience to provide the aforementioned as-needed services; and

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

#### SECTION 1. SERVICES TO BE PROVIDED

Under the direction of the Director of the Cabrillo Marine Aquarium or designee, CONTRACTOR shall provide the following services on an as-needed basis:

- A. Plan and design scientifically accurate exhibits in collaboration with curatorial staff;
- B. Assist in planning exhibit projects, including recommending the latest design techniques and projecting budget requirements;
- C. Design illustrations of scientific concepts in a clear, understandable style for exhibits and educational materials;
- D. Execute exhibit artwork using a wide variety of techniques, including pen and ink acrylic paints, air brush, three-dimensional modeling, and photography;
- E. Work with live and dead material and technical literature to produce accurate, detailed illustrations of marine organisms;
- F. Design and make camera-ready copy for brochures and other informational material and handle all work with painters to produce final products.
- G. CONTRACTOR shall receive specific assignments, including completion dates and progress milestones for each assignment, from the Director of the Cabrillo Marine Aquarium or designee.

- H. CONTRACTOR warrants and represents that the services rendered in the performance of this contract shall conform to the highest professional standards for such services.

SECTION 2. TERM OF PERFORMANCE

- A. The term of this contract shall be for one (1) year, with two (2) one (1)-year options to extend at the sole discretion of the General Manager. The first year of the contract will begin upon execution of contract.
- B. CONTRACTOR shall bear all costs for necessary permits, insurance, taxes, and all matters required for compliance with this contract.
- C. 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. 3/09), attached hereto and incorporated herein by reference as Appendix A.

SECTION 3. REPRESENTATIVES AND FORMAL NOTICES

- A. The representatives of the respective parties authorized to administer this AGREEMENT, and to whom formal notices, demands, and communications shall be given are as follows:

The representative of the DEPARTMENT shall be:

Michael Schaadt  
Director  
Cabrillo Marine Aquarium  
3720 Stephen M White Drive  
San Pedro, CA 90731

The representative of the CONTRACTOR shall be:

Evelina Templeton  
3619 N. Meyler Street  
San Pedro, CA 90731

Phone # 310-548-2035, Fax # 310-548-2649

- B. Formal notices, demands, and communications required hereunder by either party shall be made in writing and may be effected by personal delivery or by registered or certified mail, postage prepaid, return receipt requested. Service in such manner by registered or certified mail shall be effective upon receipt.

**SECTION 4. COMPENSATION AND INVOICING**

- A. DEPARTMENT shall pay CONTRACTOR for services rendered under this AGREEMENT at the rate of thirty dollars (\$30.00) per hour, in an amount not to exceed forty thousand dollars (\$40,000.00) the first (1<sup>st</sup>) year, thirty-three thousand dollars (\$33,000.00) the second (2<sup>nd</sup>) and the third (3<sup>rd</sup>) year if options are exercised, and the total amount paid to CONTRACTOR over three (3) years shall not exceed one hundred six thousand dollars (\$106,000.00).
- B. CONTRACTOR understands that services shall be provided only as-needed by the DEPARTMENT, and that the DEPARTMENT, in entering into this contract, guarantees no minimum amount of business or compensation to CONTRACTOR.
- C. To receive Payment, CONTRACTOR shall submit invoices to:
- City of Los Angeles Department of Recreation and Parks  
Cabrillo Marine Aquarium  
Attention: Michael Schaadt, Director  
3720 Stephen M White Drive  
San Pedro, CA 90731
- D. Invoices 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. Invoices shall be submitted within (thirty) calendar 30 days of service, or monthly.

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.

Tasks that are completed by subcontractors shall be supported by subcontractor invoices, copies of pages from reports, brochures, photographs, or other unique documentation that substantiates their charges.

**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.

#### SECTION 5. OWNERSHIP

- A. CONTRACTOR acknowledges and agrees that all documents, publications, databases, videos, reports, analysis, studies, drawing, information, or data (hereinafter collectively referred to as "materials"), originated and prepared by CONTRACTOR pursuant to the terms of this contract, are "Works Made for Hire" and shall become the property of the DEPARTMENT for its use in any manner it deems appropriate. CONTRACTOR assigns any and all of its respective interests and rights in such property to DEPARTMENT.
- B. All documents and records (hereinafter collectively referred to as "documents") provided by the DEPARTMENT to CONTRACTOR shall remain the property of the DEPARTMENT and must be returned to the DEPARTMENT upon termination of this contract or at the request of DEPARTMENT.

#### SECTION 6. RATIFICATION

At the request of the DEPARTMENT, and because of the need therefor, CONTRACTOR began performance of the services required hereunder prior to the execution hereof. By its execution hereof, the DEPARTMENT hereby accepts such service subject to all the terms, covenants, and conditions of this agreement, and CONTRACTOR's performance of such services.

#### SECTION 7. INCORPORATION OF DOCUMENTS

This contract and appendix represents the entire integrated agreement of the parties and supersedes all prior written or oral representations, discussions, and agreements. The following document is incorporated and made a part hereof by reference:

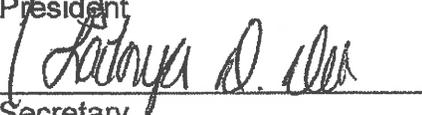
Appendix A. Standard Provisions for City Contracts (Rev. 3/09)

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

*(Signature page to follow)*

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representatives to execute this AGREEMENT.

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

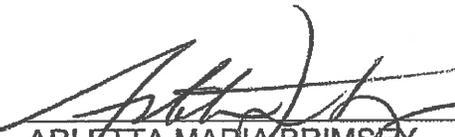
By:  Date: 11/6/13  
President  
By:  Date: 11/6/13  
Secretary

EVELINA TEMPLETON, a Sole Proprietor

By:  Date: 10.23.2013  
Evelina Templeton

APPROVED AS TO FORM:

MICHAEL N. FEUER, City Attorney

By:  Date: 11/6/2013  
ARLETTA MARIA BRIMSEY  
Deputy City Attorney

Agreement Number: 3478

## APPENDIX A

## 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 hereof. The language of this Contract shall be construed according to its fair meaning and not strictly for or against the **CITY** or **CONTRACTOR**. The word "**CONTRACTOR**" herein in this Contract includes the party or parties identified in the Contract. The singular shall include the plural; if there is more than one **CONTRACTOR** herein, unless expressly stated otherwise, their obligations and liabilities hereunder shall be joint and several. Use of the feminine, masculine, or neuter genders shall be deemed to include the genders not used.

### **PSC-2. NUMBER OF ORIGINALS**

The number of original texts of this Contract shall be equal to the number of the parties hereto, one text being retained by each party. At the **CITY'S** option, one or more additional original texts of this Contract may also be retained by the City.

### **PSC-3. APPLICABLE LAW, INTERPRETATION AND ENFORCEMENT**

Each party's performance hereunder shall comply with all applicable laws of the United States of America, the State of California, and the **CITY**, including but not limited to, laws regarding health and safety, labor and employment, wage and hours and licensing laws which affect employees. 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, and/or procedures that apply to the performance of this Contract.

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 law of a federal, state or local government having jurisdiction over this Contract, the validity of the remaining parts, terms or provisions of the Contract shall not be affected thereby.

**PSC-4. 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** hereto;
- 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 the **CITY** by the person designated by the City Council, or by the board, officer or employee authorized to enter into this Contract.

**PSC-5. INTEGRATED CONTRACT**

This Contract sets forth all of the rights and duties of the parties with respect to the subject matter hereof, 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 paragraph PSC-6 hereof.

**PSC-6. AMENDMENT**

All amendments to this Contract shall be in writing and signed and approved pursuant to the provisions of PSC-4.

**PSC-7. EXCUSABLE DELAYS**

In the event that performance on the part of any party hereto is delayed or suspended as a result of circumstances beyond the reasonable control and without the fault and negligence of said party, none of the parties shall incur any liability to the other parties as a result of such delay or suspension. Circumstances deemed to be beyond the control of the parties hereunder include, but are not limited to, acts of God or of the public enemy; insurrection; acts of the Federal Government or any unit of State or Local Government in either sovereign or contractual capacity; fires; floods; earthquakes; epidemics; quarantine restrictions; strikes; freight embargoes or delays in transportation, to the extent that they are not caused by the party's willful or negligent acts or omissions, and to the extent that they are beyond the party's reasonable control.

**PSC-8. BREACH**

Except for excusable delays as described in PSC-7, if any party fails to perform, in whole or in part, any promise, covenant, or agreement set forth herein, or should any representation made by it be untrue, any aggrieved party may avail itself of all rights

and remedies, at law or equity, in the courts of law. Said rights and remedies are cumulative of those provided for herein except that in no event shall any party recover more than once, suffer a penalty or forfeiture, or be unjustly compensated.

**PSC-9. 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-10. TERMINATION**

**A. TERMINATION FOR CONVENIENCE**

The CITY may terminate this Contract for the CITY'S convenience at any time by giving CONTRACTOR thirty days written notice thereof. Upon receipt of said notice, CONTRACTOR shall immediately take action not to incur any additional obligations, cost or expenses, except as may be reasonably necessary to terminate its activities. The 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 affect such termination. Thereafter, CONTRACTOR shall have no further claims against the CITY under this Contract. All finished and unfinished documents and materials procured for or produced under this Contract, including all intellectual property rights thereto, shall become CITY property upon the date of such termination. CONTRACTOR agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights provided herein.

**B. TERMINATION FOR BREACH OF CONTRACT**

1. Except for excusable delays as provided in PSC-7, 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, the CITY may give CONTRACTOR written notice of such default. If CONTRACTOR does not cure such default or provide a plan to cure such default which is acceptable to the CITY within the time permitted by the CITY, then the CITY may terminate this Contract due to CONTRACTOR'S breach of this Contract.
2. 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 the CITY may immediately terminate this Contract.
3. If CONTRACTOR engages in any dishonest conduct related to the performance or administration of this Contract or violates the

**CITY'S** lobbying policies, then the **CITY** may immediately terminate this Contract.

4. In the event the **CITY** terminates this Contract as provided in this section, the **CITY** may procure, upon such terms and in such manner as the **CITY** may deem appropriate, services similar in scope and level of effort to those so terminated, and **CONTRACTOR** shall be liable to the **CITY** for all of its costs and damages, including, but not limited, any excess costs for such services.
5. All finished or unfinished documents and materials produced or procured under this Contract, including all intellectual property rights thereto, shall become **CITY** property upon date of such termination. **CONTRACTOR** agrees to execute any documents necessary for the **CITY** to perfect, memorialize, or record the **CITY'S** ownership of rights provided herein.
6. 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-10(A) Termination for Convenience.
7. The rights and remedies of the **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.

**PSC-11. INDEPENDENT CONTRACTOR**

**CONTRACTOR** is acting hereunder as an independent contractor and not as an agent or employee of the **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 the **CITY**.

**PSC-12. CONTRACTOR'S PERSONNEL**

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

**CONTRACTOR** shall not use subcontractors to assist in performance of this Contract without the prior written approval of the **CITY**. If the **CITY** permits the use of subcontractors, **CONTRACTOR** shall remain responsible for performing all aspects of

this Contract. The CITY has the right to approve **CONTRACTOR'S** subcontractors, and the CITY reserves the right to request replacement of subcontractors. The CITY does not have any obligation to pay **CONTRACTOR'S** subcontractors, and nothing herein creates any privity between the CITY and the subcontractors.

**PSC-13. PROHIBITION AGAINST ASSIGNMENT OR DELEGATION**

**CONTRACTOR** may not, unless it has first obtained the written permission of the 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-14. PERMITS**

**CONTRACTOR** and its directors, officers, partners, agents, employees, and subcontractors, to the extent allowed hereunder, shall obtain and maintain all licenses, permits, certifications and other documents necessary for **CONTRACTOR'S** performance hereunder and shall pay any fees required therefor. **CONTRACTOR** certifies to immediately notify the CITY of any suspension, termination, lapses, non-renewals, or restrictions of licenses, permits, certificates, or other documents.

**PSC-15. CLAIMS FOR LABOR AND MATERIALS**

**CONTRACTOR** shall promptly pay when due all amounts payable 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), against **CONTRACTOR'S** rights to payments hereunder, or against the CITY, and shall pay all amounts due under the Unemployment Insurance Act with respect to such labor.

**PSC-16. CURRENT LOS ANGELES CITY BUSINESS TAX REGISTRATION CERTIFICATE REQUIRED**

If applicable, **CONTRACTOR** represents that it has obtained and presently holds the Business Tax Registration Certificate(s) required by the CITY'S Business Tax Ordinance, Section 21.00 *et seq.* of the Los Angeles Municipal Code. For the term covered by this Contract, **CONTRACTOR** shall maintain, or obtain as necessary, all such Certificates required of it under the Business Tax Ordinance, and shall not allow any such Certificate to be revoked or suspended.

**PSC- 17. 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, in accordance with

requirements prescribed by the CITY. These records shall be retained for a period of no less than three years following final payment made by the CITY hereunder or the expiration date of this Contract, whichever occurs last. Said records shall be subject to examination and audit by authorized CITY personnel or by the CITY'S representative at any time during the term of this Contract or within the three years following final payment made by the CITY hereunder or the expiration date of this Contract, whichever occurs last. CONTRACTOR shall provide any reports requested by the CITY regarding performance of this Contract. Any subcontract entered into by CONTRACTOR, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract.

#### **PSC-18. FALSE CLAIMS ACT**

CONTRACTOR acknowledges that it is aware of liabilities resulting from submitting a false claim for payment by the CITY under the False Claims Act (Cal. Gov. Code §§ 12650 *et seq.*), including treble damages, costs of legal actions to recover payments, and civil penalties of up to \$10,000 per false claim.

#### **PSC-19. BONDS**

All bonds which may be required hereunder shall conform to CITY requirements established by Charter, ordinance or policy, and shall be filed with the Office of the City Administrative Officer, Risk Management for its review and acceptance in accordance with Sections 11.47 through 11.56 of the Los Angeles Administrative Code.

#### **PSC-20. INDEMNIFICATION**

Except for the active negligence or willful misconduct of the CITY, or any of its Boards, Officers, Agents, Employees, Assigns and Successors in Interest, CONTRACTOR undertakes and agrees to defend, indemnify and hold harmless the CITY and any of its Boards, Officers, Agents, Employees, Assigns, and Successors in Interest from and against all suits 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 the 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 the negligent acts, errors, omissions or willful misconduct incident to the performance of this Contract by CONTRACTOR or its subcontractors of any tier. Rights and remedies available to the CITY under this provision are cumulative of those provided for elsewhere in this Contract and those allowed under the laws of the United States, the State of California, and the CITY. The provisions of PSC-20 shall survive expiration or termination of this Contract.

#### **PSC-21. INTELLECTUAL PROPERTY INDEMNIFICATION**

CONTRACTOR, at its own expense, undertakes and agrees to defend, indemnify, and hold harmless the CITY, and any of its Boards, Officers, Agents, Employees, Assigns,

and Successors in Interest from and against all suits 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 the CITY, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever 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 right (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 of any tier, in performing the work under this Contract; or (2) as a result of the CITY'S actual or intended use of any Work Product furnished by CONTRACTOR, or its subcontractors of any tier, under the Agreement. Rights and remedies available to the CITY under this provision are cumulative of those provided for elsewhere in this Contract and those allowed under the laws of the United States, the State of California, and the CITY. The provisions of PSC-21 shall survive expiration or termination of this Contract.

#### **PSC-22. 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, patents, copyrights, trademarks, trade secrets, right of publicity and proprietary information.

#### **PSC-23. OWNERSHIP AND LICENSE**

Unless otherwise provided for herein, all Work Products originated and prepared by CONTRACTOR or its subcontractors of any tier under this Contract shall be and remain the exclusive property of the CITY for its use in any manner it deems appropriate. Work Products are all works, tangible or not, created under this Contract including, without limitation, documents, material, data, reports, manuals, specifications, artwork, drawings, sketches, 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. CONTRACTOR hereby assigns, and agrees to assign, all goodwill, copyright, trademark, patent, trade secret and all other intellectual property rights worldwide in any Work Products originated and prepared by CONTRACTOR under this Contract. CONTRACTOR further agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights provided herein.

For all Work Products delivered to the CITY that are not originated or prepared by CONTRACTOR or its subcontractors of any tier under this Contract, CONTRACTOR hereby grants 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 the **CITY**.

Any subcontract entered into by **CONTRACTOR** relating to this Contract, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract to contractually bind or otherwise oblige its subcontractors performing work under this Contract such that the **CITY'S** ownership and license rights of all Work Products are preserved and protected as intended herein. Failure of **CONTRACTOR** to comply with this requirement or to obtain the compliance of its subcontractors with such obligations shall subject **CONTRACTOR** to the imposition of any and all sanctions allowed by law, including but not limited to termination of **CONTRACTOR'S** contract with the **CITY**.

**PSC-24. INSURANCE**

During the term of this Contract and without limiting **CONTRACTOR'S** indemnification of the **CITY**, **CONTRACTOR** shall provide and maintain at its own expense a program of insurance having the coverages and limits customarily carried and actually arranged by **CONTRACTOR**, but not less than the amounts and types listed on the Required Insurance and Minimum Limits sheet (Form General 146 in Exhibit 1 hereto), covering its operations hereunder. Such insurance shall conform to **CITY** requirements established by Charter, ordinance or policy, shall comply with the Insurance Contractual Requirements (Form General 133 in Exhibit 1 hereto) and shall 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-25. DISCOUNT TERMS**

**CONTRACTOR** agrees to offer the **CITY** any discount terms that are offered to its best customers for the goods and services to be provided hereunder and apply such discount to payments made under this Contract which meet the discount terms.

**PSC-26. 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-27. NON-DISCRIMINATION**

Unless otherwise exempt, this Contract is subject to the non-discrimination provisions in Sections 10.8 through 10.8.2 of the Los Angeles Administrative Code, as amended from time to time. The **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 the **CITY**. In performing this Contract, **CONTRACTOR** shall not

discriminate in its employment practices against any employee or applicant for employment because of such person's race, religion, national origin, ancestry, sex, sexual orientation, age, disability, domestic partner status, marital status or medical condition. Any subcontract entered into by **CONTRACTOR**, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract.

Failure of **CONTRACTOR** to comply with this requirement or to obtain the compliance of its subcontractors with such obligations shall subject **CONTRACTOR** to the imposition of any and all sanctions allowed by law, including but not limited to termination of **CONTRACTOR'S** contract with the **CITY**.

#### **PSC-28. EQUAL EMPLOYMENT PRACTICES**

Unless otherwise exempt, this Contract is subject to the equal employment practices provisions in Section 10.8.3 of the Los Angeles Administrative Code, as amended from time to time.

- A. During the performance of this Contract, **CONTRACTOR** agrees and represents that it will provide equal employment practices and **CONTRACTOR** and each subcontractor hereunder will ensure that in his or her employment practices persons are employed and employees are treated equally and without regard to or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
  - 1. This provision applies to work or service performed or materials manufactured or assembled in the United States.
  - 2. Nothing in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.
  - 3. **CONTRACTOR** agrees to post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.
- B. **CONTRACTOR** will, in all solicitations or advertisements for employees placed by or on behalf of **CONTRACTOR**, state that all qualified applicants will receive consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
- C. As part of the **CITY'S** supplier registration process, and/or at the request of the awarding authority, or the Board of Public Works, Office of Contract Compliance, **CONTRACTOR** shall certify in the specified format that he or she has not discriminated in the performance of **CITY** contracts against any employee or applicant for employment on the basis or because of

race, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status or medical condition.

- D. **CONTRACTOR** shall permit access to and may be required to provide certified copies of all of his or her records pertaining to employment and to employment practices by the awarding authority or the Office of Contract Compliance for the purpose of investigation to ascertain compliance with the Equal Employment Practices provisions of **CITY** contracts. On their or either of their request **CONTRACTOR** shall provide evidence that he or she has or will comply therewith.
- E. The failure of any **CONTRACTOR** to comply with the Equal Employment Practices provisions of this Contract may be deemed to be a material breach of **CITY** contracts. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made or penalties assessed except upon a full and fair hearing after notice and an opportunity to be heard has been given to **CONTRACTOR**.
- F. Upon a finding duly made that **CONTRACTOR** has failed to comply with the Equal Employment Practices provisions of a **CITY** contract, the contract may be forthwith canceled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the **CITY**. In addition thereto, such failure to comply may be the basis for a determination by the awarding authority or the Board of Public Works that the **CONTRACTOR** is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Charter of the City of Los Angeles. In the event of such a determination, **CONTRACTOR** shall be disqualified from being awarded a contract with the **CITY** for a period of two years, or until **CONTRACTOR** shall establish and carry out a program in conformance with the provisions hereof.
- G. Notwithstanding any other provision of this Contract, the **CITY** shall have any and all other remedies at law or in equity for any breach hereof.
- H. Intentionally blank.
- I. Nothing contained in this Contract shall be construed in any manner so as to require or permit any act which is prohibited by law.
- J. At the time a supplier registers to do business with the **CITY**, or when an individual bid or proposal is submitted, **CONTRACTOR** shall agree to adhere to the Equal Employment Practices specified herein during the performance or conduct of **CITY** Contracts.

- K. Equal Employment Practices shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:
1. Hiring practices;
  2. Apprenticeships where such approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;
  3. Training and promotional opportunities; and
  4. Reasonable accommodations for persons with disabilities.
- L. Any subcontract entered into by **CONTRACTOR**, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract. Failure of **CONTRACTOR** to comply with this requirement or to obtain the compliance of its subcontractors with all such obligations shall subject **CONTRACTOR** to the imposition of any and all sanctions allowed by law, including but not limited to termination of the **CONTRACTOR'S** Contract with the **CITY**.

#### **PSC-29. AFFIRMATIVE ACTION PROGRAM**

Unless otherwise exempt, this Contract is subject to the affirmative action program provisions in Section 10.8.4 of the Los Angeles Administrative Code, as amended from time to time.

- A. During the performance of a **CITY** contract, **CONTRACTOR** certifies and represents that **CONTRACTOR** and each subcontractor hereunder will adhere to an affirmative action program to ensure that in its employment practices, persons are employed and employees are treated equally and without regard to or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
1. This provision applies to work or services performed or materials manufactured or assembled in the United States.
  2. Nothing in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.
  3. **CONTRACTOR** shall post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.
- B. **CONTRACTOR** will, in all solicitations or advertisements for employees placed by or on behalf of **CONTRACTOR**, state that all qualified applicants will receive consideration for employment without regard to

their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.

- C. As part of the **CITY'S** supplier registration process, and/or at the request of the awarding authority or the Office of Contract Compliance, **CONTRACTOR** shall certify on an electronic or hard copy form to be supplied, that **CONTRACTOR** has not discriminated in the performance of **CITY** contracts against any employee or applicant for employment on the basis or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
- D. **CONTRACTOR** shall permit access to and may be required to provide certified copies of all of its records pertaining to employment and to its employment practices by the awarding authority or the Office of Contract Compliance, for the purpose of investigation to ascertain compliance with the Affirmative Action Program provisions of **CITY** contracts, and on their or either of their request to provide evidence that it has or will comply therewith.
- E. The failure of any **CONTRACTOR** to comply with the Affirmative Action Program provisions of **CITY** contracts may be deemed to be a material breach of contract. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made except upon a full and fair hearing after notice and an opportunity to be heard has been given to **CONTRACTOR**.
- F. Upon a finding duly made that **CONTRACTOR** has breached the Affirmative Action Program provisions of a **CITY** contract, the contract may be forthwith cancelled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the **CITY**. In addition thereto, such breach may be the basis for a determination by the awarding authority or the Board of Public Works that the said **CONTRACTOR** is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Los Angeles City Charter. In the event of such determination, such **CONTRACTOR** shall be disqualified from being awarded a contract with the **CITY** for a period of two years, or until he or she shall establish and carry out a program in conformance with the provisions hereof.
- G. In the event of a finding by the Fair Employment and Housing Commission of the State of California, or the Board of Public Works of the City of Los Angeles, or any court of competent jurisdiction, that **CONTRACTOR** has been guilty of a willful violation of the California Fair Employment and Housing Act, or the Affirmative Action Program provisions of a **CITY** contract, there may be deducted from the amount payable to **CONTRACTOR** by the **CITY** under the contract, a penalty of ten dollars

(\$10.00) for each person for each calendar day on which such person was discriminated against in violation of the provisions of a **CITY** contract.

- H. Notwithstanding any other provisions of a **CITY** contract, the **CITY** shall have any and all other remedies at law or in equity for any breach hereof.
- I. Intentionally blank.
- J. Nothing contained in **CITY** contracts shall be construed in any manner so as to require or permit any act which is prohibited by law.
- K. **CONTRACTOR** shall submit an Affirmative Action Plan which shall meet the requirements of this chapter at the time it submits its bid or proposal or at the time it registers to do business with the **CITY**. The plan shall be subject to approval by the Office of Contract Compliance prior to award of the contract. The awarding authority may also require contractors and suppliers to take part in a pre-registration, pre-bid, pre-proposal, or pre-award conference in order to develop, improve or implement a qualifying Affirmative Action Plan. Affirmative Action Programs developed pursuant to this section shall be effective for a period of twelve months from the date of approval by the Office of Contract Compliance. In case of prior submission of a plan, **CONTRACTOR** may submit documentation that it has an Affirmative Action Plan approved by the Office of Contract Compliance within the previous twelve months. If the approval is 30 days or less from expiration, **CONTRACTOR** must submit a new Plan to the Office of Contract Compliance and that Plan must be approved before the contract is awarded.
  - 1. Every contract of \$5,000 or more which may provide construction, demolition, renovation, conservation or major maintenance of any kind shall in addition comply with the requirements of Section 10.13 of the Los Angeles Administrative Code.
  - 2. **CONTRACTOR** may establish and adopt as its own Affirmative Action Plan, by affixing his or her signature thereto, an Affirmative Action Plan prepared and furnished by the Office of Contract Compliance, or it may prepare and submit its own Plan for approval.
- L. The Office of Contract Compliance shall annually supply the awarding authorities of the **CITY** with a list of contractors and suppliers who have developed Affirmative Action Programs. For each contractor and supplier the Office of Contract Compliance shall state the date the approval expires. The Office of Contract Compliance shall not withdraw its approval for any Affirmative Action Plan or change the Affirmative Action Plan after the date of contract award for the entire contract term without the mutual agreement of the awarding authority and **CONTRACTOR**.

- M. The Affirmative Action Plan required to be submitted hereunder and the pre-registration, pre-bid, pre-proposal or pre-award conference which may be required by the Board of Public Works, Office of Contract Compliance or the awarding authority shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:
1. Apprenticeship where approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;
  2. Classroom preparation for the job when not apprenticeable;
  3. Pre-apprenticeship education and preparation;
  4. Upgrading training and opportunities;
  5. Encouraging the use of contractors, subcontractors and suppliers of all racial and ethnic groups, provided, however, that any contract subject to this ordinance shall require the contractor, subcontractor or supplier to provide not less than the prevailing wage, working conditions and practices generally observed in private industries in the contractor's, subcontractor's or supplier's geographical area for such work;
  6. The entry of qualified women, minority and all other journeymen into the industry; and
  7. The provision of needed supplies or job conditions to permit persons with disabilities to be employed, and minimize the impact of any disability.
- N. Any adjustments which may be made in the contractor's or supplier's work force to achieve the requirements of the **CITY'S** Affirmative Action Contract Compliance Program in purchasing and construction shall be accomplished by either an increase in the size of the work force or replacement of those employees who leave the work force by reason of resignation, retirement or death and not by termination, layoff, demotion or change in grade.
- O. Affirmative Action Agreements resulting from the proposed Affirmative Action Plan or the pre-registration, pre-bid, pre-proposal or pre-award conferences shall not be confidential and may be publicized by the contractor at his or her discretion. Approved Affirmative Action Agreements become the property of the **CITY** and may be used at the discretion of the **CITY** in its Contract Compliance Affirmative Action Program.
- P. Intentionally blank.

- Q. All contractors subject to the provisions of this section shall include a like provision in all subcontracts awarded for work to be performed under the contract with the **CITY** and shall impose the same obligations, including but not limited to filing and reporting obligations, on the subcontractors as are applicable to the contractor. Failure of the contractor to comply with this requirement or to obtain the compliance of its subcontractors with all such obligations shall subject the contractor to the imposition of any and all sanctions allowed by law, including but not limited to termination of the contractor's contract with the **CITY**.

### **PSC-30. CHILD SUPPORT ASSIGNMENT ORDERS**

This Contract is subject to the Child Support Assignment Orders Ordinance, Section 10.10 of the Los Angeles Administrative Code, as amended from time to time. Pursuant to the Child Support Assignment Orders Ordinance, **CONTRACTOR** will fully comply with all applicable State and Federal employment reporting requirements for **CONTRACTOR'S** employees. **CONTRACTOR** shall also certify (1) that the Principal Owner(s) of **CONTRACTOR** are in compliance with any Wage and Earnings Assignment Orders and Notices of Assignment applicable to them personally; (2) that **CONTRACTOR** will fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment in accordance with Section 5230, *et seq.* of the California Family Code; and (3) that **CONTRACTOR** will maintain such compliance throughout the term of this Contract.

Pursuant to Section 10.10(b) of the Los Angeles Administrative Code, the failure of **CONTRACTOR** to comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignment Orders or Notices of Assignment, or the failure of any Principal Owner(s) of **CONTRACTOR** to comply with any Wage and Earnings Assignment Orders or Notices of Assignment applicable to them personally, shall constitute a default by the **CONTRACTOR** under this Contract, subjecting this Contract to termination if such default shall continue for more than ninety (90) days after notice of such default to **CONTRACTOR** by the **CITY**.

Any subcontract entered into by **CONTRACTOR**, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract. Failure of **CONTRACTOR** to obtain compliance of its subcontractors shall constitute a default by **CONTRACTOR** under this Contract, subjecting this Contract to termination where such default shall continue for more than ninety (90) days after notice of such default to **CONTRACTOR** by the **CITY**.

**CONTRACTOR** certifies that, to the best of its knowledge, it is fully complying with the Earnings Assignment Orders of all employees, and is providing the names of all new employees to the New Hire Registry maintained by the Employment Development Department as set forth in Section 7110(b) of the California Public Contract Code.

**PSC-31. LIVING WAGE ORDINANCE AND SERVICE CONTRACTOR WORKER RETENTION ORDINANCE**

- A. Unless otherwise exempt, this Contract is subject to the applicable provisions of the Living Wage Ordinance (LWO), Section 10.37 *et seq.* of the Los Angeles Administrative Code, as amended from time to time, and the Service Contractor Worker Retention Ordinance (SCWRO), Section 10.36 *et seq.*, of the Los Angeles Administrative Code, as amended from time to time. These Ordinances require the following:
1. **CONTRACTOR** assures payment of a minimum initial wage rate to employees as defined in the LWO and as may be adjusted each July 1 and provision of compensated and uncompensated days off and health benefits, as defined in the LWO.
  2. **CONTRACTOR** further pledges that it will comply with federal law proscribing retaliation for union organizing and will not retaliate for activities related to the LWO. **CONTRACTOR** shall require each of its subcontractors within the meaning of the LWO to pledge to comply with the terms of federal law proscribing retaliation for union organizing. **CONTRACTOR** shall deliver the executed pledges from each such subcontractor to the **CITY** within ninety (90) days of the execution of the subcontract. **CONTRACTOR'S** delivery of executed pledges from each such subcontractor shall fully discharge the obligation of **CONTRACTOR** with respect to such pledges and fully discharge the obligation of **CONTRACTOR** to comply with the provision in the LWO contained in Section 10.37.6(c) concerning compliance with such federal law.
  3. **CONTRACTOR**, whether an employer, as defined in the LWO, or any other person employing individuals, shall not discharge, reduce in compensation, or otherwise discriminate against any employee for complaining to the **CITY** with regard to the employer's compliance or anticipated compliance with the LWO, for opposing any practice proscribed by the LWO, for participating in proceedings related to the LWO, for seeking to enforce his or her rights under the LWO by any lawful means, or otherwise asserting rights under the LWO. **CONTRACTOR** shall post the Notice of Prohibition Against Retaliation provided by the **CITY**.
  4. Any subcontract entered into by **CONTRACTOR** relating to this Contract, to the extent allowed hereunder, shall be subject to the provisions of PSC-31 and shall incorporate the provisions of the LWO and the SCWRO.

5. **CONTRACTOR** shall comply with all rules, regulations and policies promulgated by the **CITY'S** Designated Administrative Agency which may be amended from time to time.
- B. Under the provisions of Sections 10.36.3(c) and 10.37.6(c) of the Los Angeles Administrative Code, the **CITY** shall have the authority, under appropriate circumstances, to terminate this Contract and otherwise pursue legal remedies that may be available if the **CITY** determines that the subject **CONTRACTOR** has violated provisions of either the LWO or the SCWRO, or both.
- C. Where under the LWO Section 10.37.6(d), the **CITY'S** Designated Administrative Agency has determined (a) that **CONTRACTOR** is in violation of the LWO in having failed to pay some or all of the living wage, and (b) that such violation has gone uncured, the **CITY** in such circumstances may impound monies otherwise due **CONTRACTOR** in accordance with the following procedures. Impoundment shall mean that from monies due **CONTRACTOR**, **CITY** may deduct the amount determined to be due and owing by **CONTRACTOR** to its employees. Such monies shall be placed in the holding account referred to in LWO Section 10.37.6(d)(3) and disposed of under procedures described therein through final and binding arbitration. Whether **CONTRACTOR** is to continue work following an impoundment shall remain in the sole discretion of the **CITY**. **CONTRACTOR** may not elect to discontinue work either because there has been an impoundment or because of the ultimate disposition of the impoundment by the arbitrator.
- D. **CONTRACTOR** shall inform employees making less than Twelve Dollars (\$12.00) per hour of their possible right to the federal Earned Income Credit (EIC). **CONTRACTOR** shall also make available to employees the forms informing them about the EIC and forms required to secure advance EIC payments from **CONTRACTOR**.

**PSC- 32. AMERICANS WITH DISABILITIES ACT**

**CONTRACTOR** hereby certifies that it will comply with the Americans with Disabilities Act, 42 U.S.C. §§ 12101 *et seq.*, and its implementing regulations. **CONTRACTOR** will provide reasonable accommodations to allow qualified individuals with disabilities to have access to and to participate in its programs, services and activities in accordance with the provisions of the Americans with Disabilities Act. **CONTRACTOR** will not discriminate against persons with disabilities nor against persons due to their relationship to or association with a person with a disability. Any subcontract entered into by **CONTRACTOR**, relating to this Contract, to the extent allowed hereunder, shall be subject to the provisions of this paragraph.

**PSC-33. CONTRACTOR RESPONSIBILITY ORDINANCE**

Unless otherwise exempt, this Contract is subject to the provisions of the Contractor Responsibility Ordinance, Section 10.40 *et seq.*, of the Los Angeles Administrative Code, as amended from time to time, which requires **CONTRACTOR** to update its responses to the responsibility questionnaire within thirty calendar days after any change to the responses previously provided if such change would affect **CONTRACTOR'S** fitness and ability to continue performing this Contract.

In accordance with the provisions of the Contractor Responsibility Ordinance, by signing this Contract, **CONTRACTOR** pledges, under penalty of perjury, to comply with all applicable federal, state and local laws in the performance of this Contract, including but not limited to, laws regarding health and safety, labor and employment, wages and hours, and licensing laws which affect employees. **CONTRACTOR** further agrees to: (1) notify the **CITY** within thirty calendar days after receiving notification that any government agency has initiated an investigation which may result in a finding that **CONTRACTOR** is not in compliance with all applicable federal, state and local laws in performance of this Contract; (2) notify the **CITY** within thirty calendar days of all findings by a government agency or court of competent jurisdiction that **CONTRACTOR** has violated the provisions of Section 10.40.3(a) of the Contractor Responsibility Ordinance; (3) unless exempt, ensure that its subcontractor(s), as defined in the Contractor Responsibility Ordinance, submit a Pledge of Compliance to the **CITY**; and (4) unless exempt, ensure that its subcontractor(s), as defined in the Contractor Responsibility Ordinance, comply with the requirements of the Pledge of Compliance and the requirement to notify the **CITY** within thirty calendar days after any government agency or court of competent jurisdiction has initiated an investigation or has found that the subcontractor has violated Section 10.40.3(a) of the Contractor Responsibility Ordinance in performance of the subcontract.

**PSC-34. MINORITY, WOMEN, AND OTHER BUSINESS ENTERPRISE OUTREACH PROGRAM**

**CONTRACTOR** agrees and obligates itself to utilize the services of Minority, Women and Other Business Enterprise firms on a level so designated in its proposal, if any. **CONTRACTOR** certifies that it has complied with Mayoral Directive 2001-26 regarding the Outreach Program for Personal Services Contracts Greater than \$100,000, if applicable. **CONTRACTOR** shall not change any of these designated subcontractors, nor shall **CONTRACTOR** reduce their level of effort, without prior written approval of the **CITY**, provided that such approval shall not be unreasonably withheld.

**PSC-35. EQUAL BENEFITS ORDINANCE**

Unless otherwise exempt, this Contract is subject to the provisions of the Equal Benefits Ordinance (EBO), Section 10.8.2.1 of the Los Angeles Administrative Code, as amended from time to time.

- A. During the performance of the Contract, **CONTRACTOR** certifies and represents that **CONTRACTOR** will comply with the EBO.
- B. The failure of **CONTRACTOR** to comply with the EBO will be deemed to be a material breach of this Contract by the **CITY**.
- C. If **CONTRACTOR** fails to comply with the EBO the **CITY** may cancel, terminate or suspend this Contract, in whole or in part, and all monies due or to become due under this Contract may be retained by the **CITY**. The **CITY** may also pursue any and all other remedies at law or in equity for any breach.
- D. Failure to comply with the EBO may be used as evidence against **CONTRACTOR** in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40 *et seq.*, Contractor Responsibility Ordinance.
- E. If the **CITY'S** Designated Administrative Agency determines that a **CONTRACTOR** has set up or used its contracting entity for the purpose of evading the intent of the EBO, the **CITY** may terminate the Contract. Violation of this provision may be used as evidence against **CONTRACTOR** in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40 *et seq.*, Contractor Responsibility Ordinance.

**CONTRACTOR** shall post the following statement in conspicuous places at its place of business available to employees and applicants for employment:

"During the performance of a Contract with the City of Los Angeles, the Contractor will provide equal benefits to its employees with spouses and its employees with domestic partners. Additional information about the City of Los Angeles' Equal Benefits Ordinance may be obtained from the Department of Public Works, Office of Contract Compliance at (213) 847-1922."

#### **PSC 36. SLAVERY DISCLOSURE ORDINANCE**

Unless otherwise exempt, this Contract is subject to the Slavery Disclosure Ordinance, Section 10.41 of the Los Angeles Administrative Code, as amended from time to time. **CONTRACTOR** certifies that it has complied with the applicable provisions of the Slavery Disclosure Ordinance. Failure to fully and accurately complete the affidavit may result in 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](http://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-4, to the extent that any other section or provision conflicts with or impairs the provisions of this Section.

**Exhibit 1 (Continued)  
Required Insurance and Minimum Limits**

Name: Evelina Templeton Date: July 2, 2014

**Agreement/Reference:** Provide As-needed Scientific Illustrations and Exhibit Designs for Cabrillo Marine Aquarium  
Evidence of coverages checked below, with the specified minimum limits, must be submitted and approved prior to occupancy/start of operations. Amount 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.

	WC		Limits
<input checked="" type="checkbox"/> <b>Workers' Compensation - Workers' Compensation (WC) and Employer's Liability (EL)</b>	WC		<u>Statutory</u>
<input type="checkbox"/> Waiver of Subrogation in favor of City			
<input type="checkbox"/> Longshore & Harbor Workers			
<input type="checkbox"/> Jones Act			
<input checked="" type="checkbox"/> <b>General Liability</b>			<u>\$1,000,000</u>
<input checked="" type="checkbox"/> Products/Completed Operations			
<input type="checkbox"/> Fire Legal Liability			
<input type="checkbox"/> _____			
<input type="checkbox"/> Sexual Misconduct			
<input type="checkbox"/> <b>Automobile Liability</b> (for any and all vehicles used for this Contract, other than commuting to/from work)			
<input type="checkbox"/> <b>Professional Liability (Errors and Omissions)</b> Discovery period - 12 Months After Completion of Work or Date of Termination			
<input type="checkbox"/> <b>Property Insurance</b> (to cover replacement cost of building - as determined by insurance company)			
<input type="checkbox"/> All Risk Coverage			
<input type="checkbox"/> Flood			
<input type="checkbox"/> Earthquake			
<input type="checkbox"/> Boiler and Machinery			
<input type="checkbox"/> Builder's Risk			
<input type="checkbox"/> _____			
<input type="checkbox"/> <b>Pollution Liability</b>			
<input type="checkbox"/> _____			
<input type="checkbox"/> <b>Surety Bonds - Performance and Payment (Labor and Materials) Bonds</b>			<u>100 % of Contract Price</u>
<input type="checkbox"/> <b>Crime Insurance</b>			

**Other:** General Notes: 1) 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>  
2) 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.

## PERSONNEL DEPARTMENT CONTRACT REVIEW REPORT

1. Requesting Department: Recreation and Parks
2. Contacts:
 

Department: <u>Nancy Jeffers</u>	Phone No. <u>213-202-4352</u>	Fax No. <u>213-202-3213</u>
CAO: <u>Claudia Aguilar</u>	Phone No. <u>213-473-7579</u>	Fax No. <u>213-473-7514</u>
3. Work to be performed:
 

Recreation and Parks is seeking a new contract with Evelina Templeton, a sole proprietor, for the production of scientific and biological illustrations, and designing and updating marine exhibits at the Cabrillo Marine Aquarium on an as-needed basis. The contractor will provide services such as: planning and designing scientifically accurate exhibits; designing illustrations of scientific concepts for exhibits and educational materials; executing exhibit artwork using a wide variety of techniques; working with live and dead material and technical literature to produce illustrations of marine organisms; designing and making camera-ready copy for brochures and other informational material; and handling all work with painters to produce final products.
4. Is this a contract renewal?    Yes     No
5. Proposed length of contract: One year, with the option of two 1-year renewals  
 Start Date: August or September 2013
6. Proposed cost of contract (if known): Not to exceed \$40,000 per year or a total of \$120,000
7. Name of proposed contractors: Evelina Templeton, a sole proprietor
8. Unique or special qualifications required to perform the work:  
The contractor must have knowledge, expertise and artistic abilities in providing scientific illustrations and exhibit designs.
9. Are there City employees that can perform the work being proposed for contracting?  
 Yes                       No 

If yes,

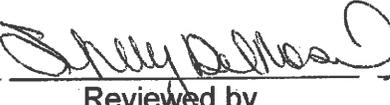
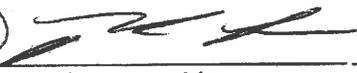
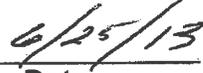
  - a. Which class(es) and Department(s):
  - b. Is there sufficient Department staff available to perform the work? Yes  No
  - c. Is there a current eligible list for the class(es)? Yes  No  Expiration Date:
  - d. Estimated time to fill position(s) through CSC process?
  - e. Can the requesting department continue to employ staff hired for the project after project completion?    Yes  No
  - f. Are there City employees currently performing the work?    Yes  No
10. Findings
  - City employees DO NOT have the expertise to perform the work
  - City employees DO have the expertise to perform work. (Please see summary section.)

Check if applicable (explanation attached) and send to CAO for further analysis

- Project of limited duration would have to layoff staff at end of project
- Time constraints require immediate staffing of project
- Work assignment exceeds staffing availability

**SUMMARY:**

The Department of Recreation and Parks seeks a new contract with Evelina Templeton, a sole proprietor, for the production of as-needed scientific illustrations for the Cabrillo Marine Aquarium. The Department has previously had a similar contract with this firm. Although the classification of Graphics Designer can perform some of the services such as designing basic exhibits and preparing pamphlets, posters and brochures, this classification does not possess the expertise in working with live or dead marine organisms and producing specialized marine scientific illustrations.

			
Submitted by	Reviewed by	Approved by	Date
Elizabeth A. Terry	Shelly Del Rosario	Raul Lemus	
Sr. Personnel Analyst I	Sr. Personnel Analyst II	Chief Personnel Analyst	