

APPROVED

AUG 07 2019

BOARD OF RECREATION AND PARK COMMISSIONERS

BOARD REPORT

NO. 19-153

DATE August 7, 2019

C.D. 4

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: GRIFFITH OBSERVATORY – AWARD OF PERSONAL SERVICES CONTRACT TO CHRISTOPHER SHELTON FOR AS-NEEDED PERFORMANCE DIRECTOR SERVICES FOR THE LIVE PERFORMER PRESENTATIONS IN THE SAMUEL OSCHIN PLANETARIUM THEATER

AP Diaz	_____	S. Piña-Cortez	_____
H. Fujita	_____	C. Santo Domingo	_____
V. Israel	_____	*N. Williams	<u>NDW</u>



 General Manager

Approved X Disapproved _____ Withdrawn _____

RECOMMENDATIONS

1. Approve the award and execution of a Personal Services Contract (Contract) between the Department of Recreation and Parks (RAP) and Christopher Shelton, a sole proprietor, (Contractor) for Performance Director services for planning, co-writing, casting, direction, and related production responsibilities for the live performer portion of Samuel Oschin Planetarium Theater (Planetarium) productions at Griffith Observatory (Services), for a term of three (3) years and in the amount not to exceed Seventy Thousand Dollars (\$70,000) per year and Two Hundred Ten Thousand Dollars (\$210,000) over the three year term of the Contract, and 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, pursuant to Charter Section 1022 that the Performance Director services can be performed more economically and feasibly by the Contractor because RAP does not have in its employ personnel with the expertise and experience to provide the aforementioned 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 works on an as-needed basis and is the sole source for these services due to CONTRACTOR's extensive background and experience in theatrical, television, and film production and performance, his experience in developing the current performances and programs at the Planetarium, his knowledge of the relevant astronomical subject matter, and his previous services to the development and presentation of the new planetarium show currently in development and set to debut in 2020;

BOARD REPORT

PG. 2 NO. 19-153

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 and the compensation to be provided to the Contractor is for an amount not to exceed Seventy Thousand Dollars (\$70,000.00) per year and the cost of soliciting bids would be unwarranted and wasteful in comparison to the amount of services required by RAP;
5. Approve the total encumbrance and payment in the amount not to exceed Seventy Thousand Dollars (\$70,000.00) per year and Two Hundred Ten Thousand Dollars (\$210,000.00) for the three (3) year Contract;
6. Direct the Board of Recreation and Park 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;
7. Authorize the Board President and Secretary to execute the proposed Contract upon receipt of the necessary approvals, and,
8. Authorize RAP's Chief Accounting Employee to make technical corrections as necessary to implement the intent of this Report.

SUMMARY

Griffith Observatory (Observatory) has an eighty-four (84) year tradition of providing live planetarium presentations for its visitors. The Samuel Oschin Planetarium, re-opened in 2006 as part of the renovated and expanded Observatory building, uses performers for its shows. Initial and ongoing performer training, with related theatrical support services for the live performances, is critical for program success.

Observatory staff is requesting approval of an as-needed personal service contract with Christopher Shelton to provide training and theatrical support services. Mr. Shelton has done an exceptional job providing these services to Griffith Observatory under previous agreements (since 2006) and has gained the Observatory extensive praise for the quality, consistency and uniqueness of its planetarium performances and programs. Due to the ongoing nature of programming, development and staffing at the Samuel Oschin Planetarium, a contract with a term not to exceed thirty-six (36) months, in an amount not to exceed Seventy Thousand Dollars (\$70,000.00) annually, is proposed to provide the Observatory with a stable, capable, and reliable source of training services for planetarium performances. In particular, his role will be especially essential in the months leading up to and immediately following the May 2020 debut of *Signs of Life*, the new Samuel Oschin Planetarium program currently in development.

Christopher Shelton will report directly to and act under the direction of Dr. Laura Danly, Curator of the Observatory, and work with Observatory personnel on the coordination of stagecraft, acting, music and sound design for the live performances. His duties involve directing, casting, training and rehearsing with performers associated with the "live performer" portion of the Planetarium shows, while providing script writing and editing, lighting, sound, props, costume

BOARD REPORT

PG. 3 NO. 19-153

and makeup advice. In addition, Mr. Shelton will help with refining current show performances while continually training new performers due to staff turnover.

The Personnel Department has determined under Charter Section 1022 that there are no City classifications that provide the required services, and RAP confirms that none of its current staff possess the necessary expertise to perform these tasks. The requirement for a theatrical director and trainer with a clear focus on live performance taking place in a unique environment and incorporating scientific material is critical to maintaining the quality of all planetarium programming and integrating the performances with the technological elements of the Samuel Oschin Planetarium.

Mr. Shelton is considered a local (and likely regional) sole source provider for these theatrical support services because of his experience and expertise with very specialized planetarium programming and the unique dome performing environment, his background and experience in both theatrical arts and film/television production, and his knowledge of relevant astronomical subject matter. Mr. Shelton is located in Los Angeles and can perform the services on an as-needed and urgent basis. Just as critically, Mr. Shelton is a co-writer (and essential ongoing production advisor) for the new *Signs of Life* show for the Samuel Oschin Planetarium. This multi-year undertaking in partnership between RAP and Friends of the Observatory will yield an unprecedented production when it debuts in May 2020. Mr. Shelton will need to train all of the Observatory's performers on the new show in the next year, a daunting task for which he alone would be capable. To attempt to replace him with another performance director who has not been involved in the development of the new show would significantly hinder the timely development of the new show and the training of performers.

FISCAL IMPACT

Sufficient funds in the amount of Two Hundred Ten Thousand Dollars (\$210,000.00) have been identified in Fund No. 302, Department 88, Account 3040, Activity Code 7800. There is no additional impact to RAP's General Fund.

This report was prepared by Mark Pine, Observatory Director I, and Nancy Jeffers, Management Analyst II, Finance Division.

STRATEGIC PLAN INITIATIVES AND GOALS

Approval of this Board Report advances RAP's Strategic Plan by supporting:

Goal No. 7: Maintain a Diverse and Dynamic Workforce

Outcome No. 2: Development and retention of a workforce that meets the park system's public service and internal management needs

Key Metric: Observatory Lecturers are properly trained to give high-quality performances for the over 2,700 shows annually in the Samuel Oschin Planetarium

Result: High-quality, inspiring shows for the more than 400,000 people who purchase show tickets annually

LIST OF ATTACHMENTS/EXHIBITS

- 1) Proposed Contract with Mr. Christopher Shelton
- 2) 1022 Personnel Review 06.27.19

**PERSONAL SERVICES CONTRACT
BETWEEN
THE CITY OF LOS ANGELES
DEPARTMENT OF RECREATION AND PARKS
AND
CHRISTOPHER SHELTON, PERFORMANCE DIRECTOR**

This contract ("Contract" or "Agreement") is 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 Christopher Shelton, (hereinafter referred to as "CONTRACTOR") a sole proprietor located in the City of Los Angeles, to provide performance director services at 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, Griffith Observatory completed a major renovation and expansion in 2006, which included the Samuel Oschin Planetarium theater ("Planetarium"); and

WHEREAS, the renovated Samuel Oschin Planetarium theater incorporates a technically advanced, full-dome video projection system, Zeiss Mark IX Universarium Projector, and state-of-the-art sound and lighting systems, all requiring integration with Observatory lecturers and other staff who perform various live planetarium shows to create a complete experience for audiences; and

WHEREAS, the Observatory has presented only live planetarium shows since opening in 1935, with the live performance being essential to their success; and

WHEREAS, DEPARTMENT desires to secure the professional services from an experienced and qualified contractor on an as-needed basis, to provide Performance Direction services that comprise the training, direction and rehearsal of Observatory lecturers and other performers with guidance in areas of production including, but not limited to, live presentation, casting, script development and editing, lighting, sound, props, costume, and makeup; and

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

WHEREAS, the Board finds that CONTRACTOR is uniquely experienced and qualified in providing services of the type required, particularly with regard to specialized planetarium show performance and the domed performance environment, due to CONTRACTOR's extensive background and experience in theatrical, television, and film production and performance, his experience in developing the current performances and programs at the Planetarium, and his knowledge of the relevant astronomical subject matter; and

WHEREAS, CONTRACTOR has played a significant role in the development of the new show being produced for the Samuel Oschin Planetarium, a joint, multi-million dollar production by the DEPARTMENT and Friends Of The Observatory set to open in 2020;

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

WHEREAS, the Board finds, in accordance with Charter Section 371(e)(2), and 371(e)(10) 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

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 CONTRACTOR is the sole source for the services required under this Agreement due to his unique experience and background in working with performances and programs at the Planetarium and because the total compensation to be provided to CONTRACTOR does not exceed Seventy Thousand Dollars (\$70,000.00) per year, and the cost of soliciting bids would be unwarranted and wasteful in comparison to the amount of services required by DEPARTMENT; and

WHEREAS, CONTRACTOR is willing to perform the services and can provide the services economically and feasibly for the Department; and

NOW, THEREFORE, DEPARTMENT 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 Curator of Griffith Observatory, or her designee, CONTRACTOR shall serve as Performance Director of live performances at the Samuel Oschin Planetarium and provide the services set forth below.

- A. Services of the CONTRACTOR shall include:
- Determining with the show producers (Griffith Observatory Curator and Management) the type of storyteller/performer best suited for existing and new shows;
 - Supervise the casting sessions and assist with selection of new performers;
 - Continue a style of performance suitable for both male and female performers;
 - Direct the performers in the planetarium dome, through rehearsals, and during public operations;
 - Suggest guidelines for hairstyles, costumes, and makeup;
 - Advise on final number of performers necessary for each show;
 - Conduct the performer rehearsal and training sessions for new shows as well as rehearsing and training of performers for the indefinite run of shows in the Samuel Oschin Planetarium to maintain performance quality and consistency;
 - Work with technical staff on dedicated microphone adjustments for each performer's voice quality and timbre;
 - Work with technical staff to create lighting levels and sound levels; and,
 - Assist with the development of new shows, including idea conception, scripting, and training. Work on existing shows will include implementation of upgrades and improvements.
- B. CONTRACTOR shall receive specific assignments, including completion dates and progress milestones for each assignment, from the Observatory Curator or her designee.
- C. CONTRACTOR'S work, whether written, printed, verbal, electronic, computer or any other form of medium will be considered a work for hire, copyrighted by Griffith Observatory, Department of Recreation and Parks, City of Los Angeles.
- D. With the prior written approval of the Observatory Director, CONTRACTOR may make reasonable use of images from projects for promotional purposes after initial public presentation of the work in the Samuel Oschin Planetarium. Unless otherwise stated in said document, approval and authorization would apply to promotion of CONTRACTOR, the City of Los Angeles, the Department of Recreation and Parks, Griffith Observatory, or any combination thereof.

II. TERM

- A. The term of this Contract shall be for three (3) years, starting July 10, 2019, and expiring on July 9, 2022, subject to early termination by RAP as provided in the "Termination" (PSC-9) section of the Standard Provisions for City Contracts (Rev. 10/17)[v.3] which is attached to this Agreement as Appendix A and incorporated herein by this reference ("Term").
- B. CONTRACTOR shall provide materials, equipment, and personnel necessary for performance of services as described under Section I. SCOPE OF SERVICES. 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 standard terms of provisions for City contracts in performing this Contract with the DEPARTMENT, as set forth in the Standard Provisions for City Contracts (Rev. 10.17) [ver.3], attached hereto and incorporated herein by reference as Appendix A.

III. COMPENSATION AND PAYMENT

- A. DEPARTMENT shall pay CONTRACTOR for services rendered under this Contract at the rate of \$62.50 per hour, and the total amount paid to CONTRACTOR shall not exceed Seventy Thousand Dollars (\$70,000.00) per contract year to equal an amount not to exceed the total of Two Hundred Ten Thousand Dollars (\$210,000.00) for the three (3) year term of the Contract.

The DEPARTMENT shall reimburse CONTRACTOR for costs of photocopying and printing associated with CONTRACTOR'S work under this Contract, and such reimbursements shall not exceed (One Hundred Dollars (\$100.00) for the term of each contract year, equaling a not-to-exceed Three Hundred Dollar (\$300.00) total for the entire term of the Contract. Expenses incurred by CONTRACTOR must be itemized with original receipts attached to submitted invoices in order for CONTRACTOR to receive reimbursement.

- B. To receive payment, CONTRACTOR shall submit invoices to:

City of Los Angeles Department of Recreation and Parks
Griffith Observatory
Attention: Dr. Laura Danly
2800 East Observatory Road
Los Angeles, CA 90027

With a courtesy copy to:

Mark Pine, Deputy Director
Griffith Observatory
2800 East Observatory Road
Los Angeles, CA 90027

C. 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) 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.

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 monthly 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.

The Contract compensation amount is an estimate, and RAP does not guarantee that the contract maximum amount will be reached. The professional services that RAP is requesting under this Agreement shall be on an as-needed basis; RAP, in entering into this Agreement, guarantees no minimum amount of business or compensation. This Contract shall be subject to funding availability and early termination by RAP, as provided in the Standard Provisions for City Contracts PSC - 9 (Rev. 10/17)[v.3].

IV. 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 of this Agreement. By its execution hereof, DEPARTMENT hereby accepts such services subject to all of the terms, covenants, and conditions of this Agreement, and CONTRACTOR'S performance of such services.

V. 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 reference:

Exhibit A. Standard Provisions for City Contracts (Rev. 10.17) [ver.3]

Exhibit B. 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 B.

(Signature Page to Follow)

IN WITNESS WHEREOF, THE PARTIES have executed the 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: _____
President

BY: _____ DATE: _____
Secretary

CHRISTOPHER SHELTON, a sole proprietor

BY: _____ DATE: _____
Christopher Shelton

APPROVED AS TO FORM:

MICHAEL N. FEUER, City Attorney

BY: _____ DATE: _____
Steven Hong
Deputy City Attorney III

STANDARD PROVISIONS FOR CITY CONTRACTS

TABLE OF CONTENTS

PSC-1 Construction of Provisions and Titles Herein 1

PSC-2 Applicable Law, Interpretation and Enforcement..... 1

PSC-3 Time of Effectiveness..... 1

PSC-4 Integrated Contract 2

PSC-5 Amendment..... 2

PSC-6 Excusable Delays..... 2

PSC-7 Waiver..... 2

PSC-8 Suspension 3

PSC-9 Termination 3

PSC-10 Independent Contractor 5

PSC-11 Contractor’s Personnel..... 5

PSC-12 Assignment and Delegation 6

PSC-13 Permits..... 6

PSC-14 Claims for Labor and Materials 6

PSC-15 Current Los Angeles City Business Tax Registration Certificate Required 6

PSC-16 Retention of Records, Audit and Reports..... 6

PSC-17 Bonds..... 7

PSC-18 Indemnification 7

PSC-19 Intellectual Property Indemnification 7

PSC-20 Intellectual Property Warranty..... 8

PSC-21 Ownership and License..... 8

PSC-22 Data Protection 9

TABLE OF CONTENTS (Continued)

PSC-23 Insurance 9

PSC-24 Best Terms..... 9

PSC-25 Warranty and Responsibility of Contractor..... 10

PSC-26 Mandatory Provisions Pertaining to Non-Discrimination in Employment..... 10

PSC-27 Child Support Assignment Orders..... 10

PSC-28 Living Wage Ordinance 11

PSC-29 Service Contractor Worker Retention Ordinance 11

PSC-30 Access and Accommodations 11

PSC-31 Contractor Responsibility Ordinance..... 12

PSC-32 Business Inclusion Program..... 12

PSC-33 Slavery Disclosure Ordinance..... 12

PSC-34 First Source Hiring Ordinance..... 12

PSC-35 Local Business Preference Ordinance 12

PSC-36 Iran Contracting Act 12

PSC-37 Restrictions on Campaign Contributions in City Elections..... 12

PSC-38 Contractors’ Use of Criminal History for Consideration of Employment Applications 13

PSC-39 Limitation of City’s Obligation to Make Payment to Contractor 13

PSC-40 Compliance with Identity Theft Laws and Payment Card Data Security Standards 14

PSC-41 Compliance with California Public Resources Code Section 5164..... 14

PSC-42 Possessory Interests Tax..... 14

PSC-43 Confidentiality..... 15

Exhibit 1 Insurance Contractual Requirements..... 16

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: Christopher Shelton

Date: 07/02/2019

Agreement/Reference: -As-Needed Performance Director Services for the Live Performer Presentations in the Samuel Oschin Theater
 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
<hr/> <hr/>	
<input type="checkbox"/> Workers' Compensation - Workers' Compensation (WC) and Employer's Liability (EL)	WC <u>Statutory</u>
	EL _____
<input type="checkbox"/> Waiver of Subrogation in favor of City <input type="checkbox"/> Longshore & Harbor Workers <input type="checkbox"/> Jones Act	
<hr/> <hr/>	
<input checked="" type="checkbox"/> General Liability _____	\$1,000,000
<input checked="" type="checkbox"/> Products/Completed Operations <input type="checkbox"/> Sexual Misconduct _____ <input type="checkbox"/> Fire Legal Liability _____ <input type="checkbox"/> _____	
<hr/> <hr/>	
<input type="checkbox"/> Automobile Liability (for any and all vehicles used for this contract, other than commuting to/from work)	_____
<hr/> <hr/>	
<input type="checkbox"/> Professional Liability (Errors and Omissions)	_____
Discovery Period _____	
<hr/> <hr/>	
<input type="checkbox"/> Property Insurance (to cover replacement cost of building - as determined by insurance company)	_____
<input type="checkbox"/> All Risk Coverage <input type="checkbox"/> Boiler and Machinery <input type="checkbox"/> Flood _____ <input type="checkbox"/> Builder's Risk <input type="checkbox"/> Earthquake _____ <input type="checkbox"/> _____	
<hr/> <hr/>	
<input type="checkbox"/> Pollution Liability	_____
<hr/> <hr/>	
<input type="checkbox"/> Surety Bonds - Performance and Payment (Labor and Materials) Bonds	100% of the contract price
<input type="checkbox"/> Crime Insurance	_____

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

CITY OF LOS ANGELES

INSTRUCTIONS AND INFORMATION ON COMPLYING WITH CITY INSURANCE REQUIREMENTS

(Share this information with your insurance agent or broker)

1. **Agreement/Reference** All evidence of insurance should identify the nature of your business with the CITY. Clearly show any assigned number of a bid, contract, lease, permit, etc. or give the project name and the job site or street address to ensure that your submission will be properly credited. Provide the **types of coverage and minimum dollar amounts** specified on the Required Insurance and Minimum Limits sheet (Form Gen. 146) included in your CITY documents.

2. **When to Submit** Normally, no work may begin until a CITY insurance certificate approval number ("CA number") has been obtained, so insurance documents should be submitted as early as practicable. For **As-needed Contracts**, insurance need not be submitted until a specific job has been awarded. **Design Professionals** coverage for new construction work may be submitted simultaneously with final plans and drawings, but before construction commences.

3. **Acceptable Evidence and Approval** Electronic submission is the required method of submitting your documents. **KwikComply** is the CITY's online insurance compliance system and is designed to make the experience of submitting and retrieving insurance information quick and easy. The system is designed to be used by insurance brokers and agents as they submit client insurance certificates directly to the City. It uses the standard insurance industry form known as the **ACORD 25 Certificate of Liability Insurance** in electronic format. **KwikComply** advantages include standardized, universally accepted forms, paperless approval transactions (24 hours, 7 days per week), and security checks and balances. The easiest and quickest way to obtain approval of your insurance is to have your insurance broker or agent access **KwikComply** at <https://kwikcomply.org/> and follow the instructions to register and submit the appropriate proof of insurance on your behalf.

Contractor must provide City a thirty (30) day notice of cancellation (ten (10) days for non-payment of premium) AND an Additional Insured Endorsement naming the CITY an additional insured completed by your insurance company or its designee. If the policy includes an automatic or blanket additional insured endorsement, the Certificate must state the CITY is an automatic or blanket additional insured. An endorsement naming the CITY an Additional Named Insured and Loss Payee as Its Interests May Appear is required on property policies. All evidence of insurance must be authorized by a person with authority to bind coverage, whether that is the authorized agent/broker or insurance underwriter.

Additional Insured Endorsements DO NOT apply to the following:

- Indication of compliance with statute, such as Workers' Compensation Law.
- Professional Liability insurance.

Verification of approved insurance and bonds may be obtained by checking **KwikComply**, the CITY's online insurance compliance system, at <https://kwikcomply.org/>.

4. **Renewal** When an existing policy is renewed, have your insurance broker or agent submit a new Acord 25 Certificate or edit the existing Acord 25 Certificate through **KwikComply** at <https://kwikcomply.org/>.

5. **Alternative Programs/Self-Insurance** Risk financing mechanisms such as Risk Retention Groups, Risk Purchasing Groups, off-shore carriers, captive insurance programs and self-insurance programs are subject to separate approval after the CITY has reviewed the relevant audited financial statements. To initiate a review of your program, you should complete the

Applicant's Declaration of Self Insurance form (<http://cao.lacity.org/risk/InsuranceForms.htm>) to the Office of the City Administrative Officer, Risk Management for consideration.

6. **General Liability** insurance covering your operations (and products, where applicable) is required whenever the CITY is at risk of third-party claims which may arise out of your work or your presence or special event on City premises. **Sexual Misconduct** coverage is a required coverage when the work performed involves minors. **Fire Legal Liability** is required for persons occupying a portion of CITY premises. Information on two CITY insurance programs, the SPARTA program, an optional source of low-cost insurance which meets the most minimum requirements, and the Special Events Liability Insurance Program, which provides liability coverage for short-term special events on CITY premises or streets, is available at (www.2sparta.com), or by calling (800) 420-0555.

7. **Automobile Liability** insurance is required only when vehicles are used in performing the work of your Contract or when they are driven off-road on CITY premises; it is not required for simple commuting unless CITY is paying mileage. However, compliance with California law requiring auto liability insurance is a contractual requirement.

8. **Errors and Omissions** coverage will be specified on a project-by-project basis if you are working as a licensed or other professional. The length of the claims discovery period required will vary with the circumstances of the individual job.

9. **Workers' Compensation and Employer's Liability** insurance are not required for single-person contractors. However, under state law these coverages (or a copy of the state's Consent To Self Insure) must be provided if you have any employees at any time during the period of this contract. Contractors with no employees must complete a Request for Waiver of Workers' Compensation Insurance Requirement (<http://cao.lacity.org/risk/InsuranceForms.htm>). **A Waiver of Subrogation** on the coverage is required only for jobs where your employees are working on CITY premises under hazardous conditions, e.g., uneven terrain, scaffolding, caustic chemicals, toxic materials, power tools, etc. The Waiver of Subrogation waives the insurer's right to recover (from the CITY) any workers' compensation paid to an injured employee of the contractor.

10. **Property** Insurance is required for persons having exclusive use of premises or equipment owned or controlled by the CITY. **Builder's Risk/Course of Construction** is required during construction projects and should include building materials in transit and stored at the project site.

11. **Surety** coverage may be required to guarantee performance of work and payment to vendors and suppliers. A **Crime Policy** may be required to handle CITY funds or securities, and under certain other conditions. **Specialty coverages** may be needed for certain operations. For assistance in obtaining the CITY required bid, performance and payment surety bonds, please see the City of Los Angeles Contractor Development and Bond Assistance Program website address at <http://cao.lacity.org/risk/BondAssistanceProgram.pdf> or call (213) 258-3000 for more information.

12. **Cyber Liability & Privacy** coverage may be required to cover technology services or products for both liability and property losses that may result when a CITY contractor engages in various electronic activities, such as selling on the Internet or collecting data within its internal electronic network. Contractor's policies shall cover liability for a data breach in which the CITY employees' and/or CITY customers' confidential or personal information, such as but not limited to, Social Security or credit card information are exposed or stolen by a hacker or other criminal who has gained access to the CITY's or contractor's electronic network. The policies shall cover a variety of expenses associated with data breaches, including: notification costs, credit monitoring, costs to defend claims by state regulators, fines and penalties, and loss resulting from identity theft. The policies are required to cover liability arising from website media content, as well as property exposures from: (a) business interruption, (b) data loss/destruction, (c) computer fraud, (d) funds transfer loss, and (e) cyber extortion.

Required Insurance and Minimum Limits

Name: Christopher Shelton

Date: 07/02/2019

Agreement/Reference: -As-Needed Performance Director Services for the Live Performer Presentations in the Samuel Oschin Theater
 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
<hr/>	
<input type="checkbox"/> Workers' Compensation - Workers' Compensation (WC) and Employer's Liability (EL)	WC <u>Statutory</u>
	EL _____
<input type="checkbox"/> Waiver of Subrogation in favor of City	
<input type="checkbox"/> Longshore & Harbor Workers	
<input type="checkbox"/> Jones Act	
<hr/>	
<input checked="" type="checkbox"/> General Liability _____	\$1,000,000
<input checked="" type="checkbox"/> Products/Completed Operations	
<input type="checkbox"/> Fire Legal Liability _____	
<input type="checkbox"/> _____	
<input type="checkbox"/> Sexual Misconduct _____	
<hr/>	
<input type="checkbox"/> Automobile Liability (for any and all vehicles used for this contract, other than commuting to/from work)	_____
<hr/>	
<input type="checkbox"/> Professional Liability (Errors and Omissions)	_____
Discovery Period _____	
<hr/>	
<input type="checkbox"/> Property Insurance (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"/> _____	
<hr/>	
<input type="checkbox"/> Pollution Liability	_____
<input type="checkbox"/> _____	
<hr/>	
<input type="checkbox"/> Surety Bonds - Performance and Payment (Labor and Materials) Bonds	100% of the contract price
<input type="checkbox"/> Crime Insurance	_____

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: Department of Recreation and Parks
Christopher Shelton Performance Director – Griffith Observatory Planetarium Shows
 2. Contacts:
Department: Nancy Jeffers Phone No. (213) 202-5628 Fax No. (213) 202-3214
CAO: Jay Shin Phone No. (213) 473-7559 Fax No. (213) 473-7514
 3. Work to be performed: The Department of Recreation and Parks (RAP) intends to contract with Christopher Shelton, Performance Director, a sole proprietor (Contractor), as a sole source contractor with the expert skills to provide services in all areas related to the live performance of planetarium programs in the Samuel Oschin Planetarium by Observatory Lecturers (OL). The Contractor will direct storytelling performances in the Planetarium; train and rehearse the OLs in their performances of public planetarium programs; provide input into the editing of planetarium program scripts; and provide advice on other aspects of the presentations such as lighting, sound, props, stage blocking, and related effects.
 4. Is this a contract renewal? No.
 5. Length of contract: Total of 36 months

Proposed Start date: July 9, 2019
 6. Proposed cost of contract (if known): Not to Exceed \$180,000
 7. Name of proposed contractor(s): Christopher Shelton, Performance Director
 8. Unique or special qualifications required to perform the work: The Contractor must have knowledge and experience in the theatrical performance for staging of shows and programs, as well as familiarity with astronomical subject matter. The Contractor must have the expertise in presenting information theatrically in a dramatic fashion in a planetarium setting, including such areas as script editing, lighting, sound, props, casting, costume and makeup, and training and rehearsing the lecturers. The Contractor must have at least 15 years of experience in this field, as well as a Bachelor and Master degrees in Speech/Drama.
 9. Are there City employees that can perform the work being proposed for contracting?
Yes No
- If yes,
- a. List classes, eligible lists, and Departments:
 - b. Is there sufficient Department staff available to perform the work? Yes No
 - c. Estimated time to fill position(s) through CSC process?
 - d. Can the requesting department continue to employ staff hired for the project after project completion? Yes No
 - e. 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 the work

[Please see summary below.]

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 contract with Performance Director Christopher Shelton for all services related to the live performances by Observatory Lecturers at the Griffith Observatory's Planetarium. The Department indicated that because only a handful of planetariums worldwide offer shows with live lecturers there are only two or three theatrical directors in the United States who have the experience needed to plan and direct such planetarium performances. The Department indicated that Christopher Shelton is the only such director in Southern California with the required expertise in both astronomical subject matter and the theatrical arts. There are no City classifications that provide the required services, and the department indicated that none of its current staff possess the necessary expertise to perform these tasks.

Cynthia Panagiotidis

Submitted by
Cynthia Panagiotidis
Senior Personnel Analyst I

Don Harrahill

Reviewed by
Don Harrahill
Senior Personnel Analyst II

James Abalos

Approved by
James Abalos
Chief Personnel Analyst

6-27-18
Date