

APPROVED
2016-01-2016

BOARD OF RECREATION
& PARK COMMISSIONERS

BOARD REPORT

NO. 16-135

DATE: June 01, 2016

C.D. 4

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: GRIFFITH OBSERVATORY – PERSONAL SERVICES CONTRACT WITH CARL ZEISS AG FOR THE ANNUAL MAINTENANCE AND SERVICE OF THE UNIVERSARIUM MIX MODEL 555 STAR PROJECTOR AT THE SAMUEL OSCHIN PLANETARIUM

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



 General Manager

Approved _____ Disapproved _____ Withdrawn _____

RECOMMENDATIONS

1. Approve a proposed three year Personal Services Contract (Contract), between the City of Los Angeles and Carl Zeiss AG, a German Corporation ("Contractor"), for the routine maintenance and service of the Universarium MIX Model 555 Star Projector located in the Samuel Oschin Planetarium at Griffith Observatory, subject to the approval of the Mayor, and the City Attorney as to form;
2. Find that yearly maintenance of the Griffith Observatory Star Projector is exempt from competitive bidding, pursuant to Charter Section 371(e)(7), as the work is required to be performed by a sole source contractor, the projector manufacturer (Carl Zeiss AG), whose work is proprietary, with no training available for the services required;
3. Approve the total encumbrance and payment from Fund 302 Department 88 Account 003040, in the amount not to exceed Twenty-Five Thousand Dollars (\$25,000.00) per year for the aforementioned maintenance service in Fiscal Years 2015-2016, 2016-2017, 2017-2018, to equal a not-to-exceed total of Seventy-Five Thousand Dollars (\$75,000.00) for the proposed three year Contract;
4. Authorize the Department of Recreation and Parks' (RAP) Chief Accounting Employee to make technical corrections as necessary to those transactions included in the Report to carry out the intent of this Report;
5. Direct the Board Secretary to transmit the proposed Contract to the Mayor in accordance with Executive Directive No. 3 and, concurrently, to the City Attorney for review and approval as to form; and,
6. Authorize the Board President and Secretary to execute the Agreement upon receipt of the necessary approvals.

BOARD REPORT

PG. 2 NO. 16-135

SUMMARY

The Universarium MIX Model 555 Star Projector (also known as the Universarium Mark IX Model 555 Star Projector or the Zeiss Universarium Mark IX Sky Projector) located in the Samuel Oschin Planetarium at Griffith Observatory is the most sophisticated planetarium projector in the world. It is an essential element of every public and school show that the Griffith Observatory produces. The Observatory presents eight to ten live planetarium shows to the public each day it is open. The Samuel Oschin Planetarium generates over Two Million Dollars (\$2,000,000.00) each year in revenue.

The Observatory's Zeiss star projector was purchased by Friends Of The Observatory (FOTO) in 2000 as part of the renovation and expansion of the Observatory. Later, FOTO formally transferred ownership of the projector to the City of Los Angeles via a gift agreement (signed November 2, 2005). The terms of the FOTO purchase contract included five no-cost maintenance service visits for the projector by technicians from Carl Zeiss AG, which were exhausted in 2012. This proposed Contract will be the second maintenance contract requested by the Griffith Observatory since taking fiscal and schedule responsibility in 2013. The first contract was C-123951.

Carl Zeiss AG is the sole manufacturer of the Universarium MIX #555 Star Projector and likewise the sole contractor capable of providing necessary overall maintenance. While the Observatory staff can and does perform basic projector maintenance (changing bulbs and ballasts, lubrication, cleaning), the annual servicing of the instrument is essential for proper long-term operation and care. Critical parts – and the process of their installation – are proprietary to the manufacturer of the equipment. Not properly servicing the projector would be placing at risk a multi-million dollar instrument at the heart of the Griffith Observatory experience.

FISCAL IMPACT STATEMENT

Annual costs for the maintenance service visit shall not exceed Twenty-Five Thousand Dollars (\$25,000.00) per year. Sufficient Griffith Observatory funds in this amount have been identified in Fund No. 302, Department 88, Account 003040. There is no additional impact to the RAP's General Fund.

LIST OF ATTACHMENTS

- 1) Proposed Personal Services Contract with Carl Zeiss AG

This report was prepared by Mark Pine, Deputy Director, Griffith Observatory.

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

This Contract 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 Carl Zeiss AG (hereinafter referred to as "CONTRACTOR") located in Jena, Germany and fully owned by the Carl Zeiss Foundation, to provide annual maintenance and service of the Universarium MIX Model 555 Star Projector installed in the Samuel Oschin Planetarium at Griffith Observatory. CITY and CONTRACTOR shall be referred to collectively herein as the "PARTIES".

RECITALS

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

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

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

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

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

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

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

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

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

WHEREAS, the Board of Recreation and Park Commissioners (BOARD) in its capacity as the contract awarding authority for the DEPARTMENT, finds pursuant to Charter Section 371(e)(7), that the use of competitive bidding would be impossible as the CONTRACTOR is the sole source for these services;

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

I. SCOPE OF SERVICES

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

A. Maintenance Service to be provided by CONTRACTOR:

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

any spare parts and auxiliary materials used. The service report shall be signed by the service engineer and DEPARTMENT's representative.

6. Repairs to the PROJECTOR which are not part of this maintenance and service agreement shall be subject to separate negotiations and charged separately. In case the necessity of such repairs occurs during the annual maintenance service, CONTRACTOR shall submit an estimate immediately.
7. Upon the failure of the equipment to perform in proper condition and functioning for safe operation as manufactured and tested according to the parameters of this agreement, CONTRACTOR will correct the equipment or software by adjustment or repair in place, or at CONTRACTOR's option, by replacement part(s) so that the PROJECTOR will be capable of meeting the performance specified in this agreement.
8. CONTRACTOR shall provide remote troubleshooting advice and counsel (primarily via email) regarding PROJECTOR issues that arise between annual maintenance services visits.

B. Parts and Materials:

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

C. DEPARTMENT shall:

1. Assist CONTRACTOR in performing the obligations of this agreement by providing, in advance of the annual service visit, a detailed written description of the defects found in the PROJECTOR,

damage to and/or problems with the PROJECTOR. In addition, DEPARTMENT shall also provide a logbook for the PROJECTOR listing all irregularities with the PROJECTOR.

2. Assist with the customs clearance of the service luggage and other relevant formalities if applicable.
3. Assist in facilitating CONTRACTOR's service engineer acquiring medical treatment in case of illness or accident.
4. DEPARTMENT and CONTRACTOR shall schedule the date for the annual maintenance service at least three months before the start of the planned service.

II. TERM OF PERFORMANCE

- A. The term of this Contract shall be for three (3) years, starting May 1, 2016 and expiring on April 30, 2019.
- B. Maintenance of the PROJECTOR shall not exceed fifty (50) working hours or five (5) working days in total per annual service visit (not including travelling hours). The PROJECTOR shall not be used by CITY during the time that the maintenance service is being done. All other Observatory activities within the Samuel Oschin Planetarium during the servicing should be coordinated with CONTRACTOR's service engineer.
- C. CONTRACTOR shall provide materials, equipment, and personnel necessary for performance of services as described under SCOPE OF SERVICES. CONTRACTOR shall bear all costs for necessary permits, insurance, taxes, and all matters required for compliance with this agreement.
- D. CONTRACTOR shall comply with the mandatory CITY terms and conditions in performing this contract with the DEPARTMENT, as described in the Standard Provisions for City Contracts (Rev. 3/09), attached hereto and incorporated herein by reference as Exhibit A.
- E. Representatives with formal notice address provided below are the parties authorized to administer this agreement, and with whom formal notices, demands, and communications shall be given:

The Representatives of the DEPARTMENT shall be:

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

with a courtesy copy to:

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

The Representatives of the CONTRACTOR shall be:

Ann Lakey, Project Manager, Planetarium Division
Carl Zeiss AG (Jena location)
Carl Zeiss Promenade 10
07745 Jena GERMANY

III. COMPENSATION

- A. The DEPARTMENT shall pay CONTRACTOR an amount not to exceed Twenty-Five Thousand Dollars (\$25,000.00) per year, for services provided from May 1, 2016 through April 30, 2019. Department shall pay CONTRACTOR for services rendered under this agreement in a single annual payment. The total contract amount for the three years of service will not exceed Seventy-Five Thousand Dollars (\$75,000.00).
- B. To receive payments, CONTRACTOR shall submit invoices to:

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

With a courtesy copy to:

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

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

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

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

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

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

IV. WARRANTY

- A. CONTRACTOR warrants that it will rectify, at no cost to the CITY, any defects in connection with service it supplies to City, whether performed

by itself or its subcontractor, if CITY provides evidence that the service has been performed inadequately or inexpertly.

- B. The limitation period for warranty claims in connection with the annual maintenance service is six months after the maintenance service is completed.
- C. Defects occurring on the repaired PROJECTOR that do not result from improper service but from normal wear and tear, improper treatment or other influence, shall not be covered by this warranty.

V. INSURANCE

CONTRACTOR is required to carry General Liability, Employer Liability, and Worker's Compensation insurance as specified in the Standard Provisions for City Contracts (Exhibit A to this document, PSC 24).

VI. INDEMNIFICATION

Specified in the Standard Provisions for City Contracts (Exhibit A to this document, PSC 20).

VII. RATIFICATION

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

VIII. 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. 3/09)
- Exhibit B. Annexure – Maintenance Service for UNIVERSARIUM MIX Model 555 Griffith Observatory

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 this CONTRACT as of the date first written above.

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

By _____ Date _____
President

By _____ Date _____
Secretary

CARL ZEISS AG

By _____ Date _____
Dr. Martin Wiechmann
Vice President/Planetariums

By _____ Date _____
Ann Lakey
Project Manager

APPROVED AS TO FORM:

MICHAEL N. FEUER, City Attorney

By: _____
Strefan Fauble
Deputy City Attorney III

Date: _____

EXHIBIT 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, rights 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 workforce 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 workforce or replacement of those employees who leave the workforce 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.

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 must 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 best method of submitting your documents. Track4LA[®] 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 – the CITY is a licensed redistributor of ACORD forms. Track4LA[®] 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 Track4LA[®] at <http://track4la.lacity.org> and follow the instructions to register and submit the appropriate proof of insurance on your behalf.

Insurance industry certificates other than the ACORD 25 that have been approved by the State of California may be accepted, however *submissions other than through Track4LA[®] will significantly delay the insurance approval process as documents will have to be manually processed.* All Certificates must provide a thirty (30) days' cancellation notice provision (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. Completed Insurance Industry Certificates other than ACORD 25 Certificates are sent electronically to CAO.insurance.bonds@lacity.org.

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 Track4LA[®], the CITY's online insurance compliance system, at <http://track4la.lacity.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 Track4LA[®] at <http://track4la.lacity.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 Bond Assistance Program website address at <http://cao.lacity.org/risk/BondAssistanceProgram.pdf> or call (213) 258-3000 for more information.

Required Insurance and Minimum Limits

Name: Carl Zeiss AG

Date: 04/18/2016

Agreement/Reference: Annual maintenance service of Universarium MIX Model 555 Star Projector at Griffith Observatory
 Evidence of coverages checked below, with the specified minimum limits, must be submitted and approved prior to occupancy/start of operations. Amounts shown are Combined Single Limits ("CSLs"). For Automobile Liability, split limits may be substituted for a CSL if the total per occurrence equals or exceeds the CSL amount.

	Limits
<hr/>	
<input checked="" type="checkbox"/> Workers' Compensation - Workers' Compensation (WC) and Employer's Liability (EL)	WC <u>Statutory</u>
<input type="checkbox"/> Waiver of Subrogation in favor of City	EL <u>\$1,000,000</u>
<input type="checkbox"/> Longshore & Harbor Workers <input type="checkbox"/> Jones Act	
<hr/>	
<input checked="" type="checkbox"/> General Liability	<u>\$3,000,000</u>
<input checked="" type="checkbox"/> Products/Completed Operations	
<input type="checkbox"/> Fire Legal Liability	<input type="checkbox"/> Sexual Misconduct
<input type="checkbox"/>	
<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 <u>12 Months After Completion of Work or Date of Termination</u>	
<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/>	
<input type="checkbox"/> Pollution Liability	
<hr/>	
<input type="checkbox"/> Surety Bonds - Performance and Payment (Labor and Materials) Bonds	100% of the contract price
<input type="checkbox"/> Crime Insurance	
<hr/>	

Other: General Notes:

1) In the absence of Imposed Auto Liability insurance requirements, all contractors using vehicles during the course of their contract must adhere to the financial responsibility laws of the State of California.

EXHIBIT B

ANNEXURE

Maintenance Services for UNIVERSARIUM MIX #555 Griffith Observatory

1) Mechanics/Optics

a) Starball

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

b) Projectors for Sun, Moon and Planets

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

c) Mirror attachments

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

2) Electrical/Electronics

a) Entire machine

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

b) Check of the modules

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

c) Control system

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