

REPORT OF THE CHIEF LEGISLATIVE ANALYST

DATE: May 4, 2016

TO: Honorable Members of the Entertainment and Facilities Committee

FROM: Sharon M. Tso *SMT*
Chief Legislative Analyst

Council File No: 07-1586-S2
Assignment No: 16-05-0384

SUBJECT: Proposed Contract with FilmL.A., Inc.

BACKGROUND

On April 21, 2009, Council approved a Request for Proposal (RFP) for the provision of film permitting coordination services in the City. FilmL.A. was the only respondent to the RFP. FilmL.A. is a private 501(c)(4) not-for-profit community benefit organization, charged with coordinating permits for on-location motion picture, television and commercial production. They are located in Hollywood. The City of Los Angeles executed a contract with FilmL.A., Inc. (FilmL.A.) for film permitting coordination services in the City on March 23, 2010 for a five-year term with three options to extend the contract for five years each.

The initial five-year term expired on June 30, 2015, but the option to extend was not exercised because the City and FilmL.A. identified issues with certain provisions in the existing contract that needed to be resolved, in addition to some technical amendments. FilmL.A. and the Economic Workforce Development Department (EWDD or Contract Administrator), which is the Contract Administrator, agreed to extend the existing contract to September 29, 2015 via a letter of agreement. Due to ongoing negotiations, EWDD and FilmL.A. signed a second letter of agreement to extend the contract to October 30, 2015. On October 30, 2015, the City and FilmL.A. needed additional time to discuss provisions within the contract; therefore, on November 18, 2015, Council approved Motion (Martinez-Krekorian) (C.F. 07-1586-S2) to extend the existing contract for an additional six months to April 30, 2016 to provide City staff and FilmL.A. with additional time to discuss proposed revisions to the contract. The Motion instructed the Chief Legislative Analyst (CLA), City Administrative Officer (CAO), City Attorney, and EWDD to negotiate and execute a contract renewal with FilmL.A. for a five-year term.

Subsequently, on April 22, 2016, the Council approved a CLA report (C.F. 07-1586-S2) that recommended that the existing contract be extended until June 30, 2016 in order to finalize the terms and conditions of the contract with FilmL.A. Negotiations with FilmL.A. have concluded and Council action is needed to approve the five-year contract with FilmL.A. (Attachment A). The FilmL.A. Board of Directors approved the contract on May 5, 2016.

EWDD reports that FilmL.A. issued 52,469 film permits from 2010 through May 31, 2015. EWDD also reports that FilmL.A. provided satisfactory service to the Entertainment Industry Customers¹ (Customers) and the Customers are pleased with the services provided by FilmL.A. during the term of the contract.

DISCUSSION

After several months of negotiations, the City and FilmL.A. have agreed to the terms and conditions of the contract (Attachment A). City staff and FilmL.A. negotiated technical amendments to the contract in addition to several new provisions. The following is a summary of the new provisions that have been added to the contract:

¹ Entertainment Industry Customer refers to all who apply for City film permits through FilmL.A. including, but not limited to, companies, corporations, schools and individuals.

- **Student Film Permit Fee Waiver** - Section 16 states that FilmL.A. will comply with the City's policy regarding the City student film permit fee waiver, as determined by the Permit Authority and other applicable City departments, and may advise on procedures as needed regarding this policy.

Currently, the Los Angeles Police Department (LAPD) is the City's Permit Authority responsible for approving all permits requested for filming in the City. LAPD has an existing agreement with FilmL.A. to waive the permit fee for certain student film productions. In order to qualify for the fee waiver, the students must: (1) present letters and/or certification from their place of certified education; (2) limit their productions to six or less people on set, including actors, cameraman and all assistants and personnel; (3) refrain from using simulated gunfire or explosions, pose a risk to the safety of person and/or property, or block or impede pedestrian and/or vehicular travel. The City considered including these criteria in the contract, but determined that it would unnecessarily restrict the City's ability to change the agreement in the future and would require a contract amendment. This provision was added to the contract to ensure that FilmL.A.'s permitting operations are consistent with the City's existing policy on the student film permit fee waiver, while retaining the flexibility to adjust the policy as needed.

- **Budget and Audit** - Section 22 requires FilmL.A. to submit its Annual Operating Budget to EWDD in accordance with Section 3 of Exhibit B. The draft Annual Operating Budget should include information on FilmL.A.'s projected revenues and expenditures for services provided to the City, as well as projected refunds to be issued, any potential unclaimed refund accumulation and expenditures of unclaimed refunds. As proposed, FilmL.A. is required to submit the Budget at least 60 calendar days in advance of the beginning of their fiscal year and the final budget within five (5) business days of adoption by the Board of Directors. This provision was included in the contract to ensure that the City receives information on filming activities within the City on an annual basis. Currently, the information is provided to the City on an ad-hoc basis when the information is requested.
- **Contractor Fees** - Section 23 allows FilmL.A. to offer a discount to its customers for payment by cash, check, or other means and also allows FilmL.A. to charge a surcharge to customers who elect to pay by credit card. This provision was added to the contract in response to the Entertainment Industry's desire to pay, and also FilmL.A.'s wish to accept payment of, the applicable fees with a credit card. Currently, FilmL.A. can only accept payment via cash, cashier's check, money order or company check.
- **Refund of Fees** - Section 24 was added to the contract and establishes procedures to notify and refund monies to Customers for the overpayment of City fees. This section ensures that Customers are affirmatively notified when a refund is owed to them and have up to 120 days to claim a refund. Most Customers pay the fees in advance of the City invoicing the actual amount due for City services provided during a production. The fee schedules were established by the City and used by FilmL.A. to estimate the fees that may be due for the production requested. The notification and refund procedure are as follows:
 - The film permit application and permit must include language that the Customer has 90 calendar days following the completion of the permitted activity to request any refunds of fees for services not provided by a City department in connection with the filming activity.
 - At the conclusion of the 90 calendar day period, if no request has been made and FilmL.A. has determined that a refund is owed, FilmL.A. is required to affirmatively

notify the Entertainment Industry Customer in writing (electronic and/or US Mail) at either the contact information contained within the permit application or at the last known address that a refund is due. The notification will include information on the permit number, amount of the refund owed, the refund request form, and instructions on how to claim the refund.

- The Customer will have 30 calendar days from the date of the notification to request the refund.
- The notification will also inform the Entertainment Industry Customer that any and all unclaimed refunds shall be used to support FilmL.A.'s 501(c)(4) public benefit purpose, including but not limited to, areas such as enhancing the film permitting process, marketing and promoting filming in the City, student film projects, research and education about filming, and any other uses that promote film production in the City.
- **Training** – Section 9 of Exhibit A requires FilmL.A. to provide two training sessions for Industry accounting and financial staff regarding FilmL.A.'s billing and fiscal policies within the first year after execution of the Contract. Thereafter, FilmL.A. can provide similar trainings annually or as often as needed. The trainings will ensure that Customers are aware of the new policies and procedures related to payments and refunds as set forth in the proposed contract. These may be done in-person or online. This section was added to inform Entertainment Industry Customers of the changes in FilmL.A.'s procedures particularly its procedures on refunds.
- **Automation and Linking to City Departments** - Section 10 of Exhibit A requires FilmL.A. to use its best efforts subject to available funding to upgrade their Online Permitting System to interface with systems being developed for the Recreation and Parks Reservation system, the Fire Department, and the LADOT Traffic Event Asset Management System (TEAMS). This section also requires FilmL.A. to report annually on the progress made toward using technology interface with City departments. This section was added to emphasize the need for upgrades to FilmL.A.'s Online Permitting System to interface smoothly with the City's systems.
- **Definition of "Commercial Filming"** – Section 1 of Exhibit A provides a clearer definition of "commercial filming" and photography activities that require a permit. The contract states that commercial filming and photography activities include all film, television, still and commercial filming and/or activity, no matter the method of distribution for commercial purposes. The definition was amended to account for new forms of distribution (i.e., YouTube) that were not previously contemplated in the existing contract.

Other Committee Requests and Contract Provisions

At the Entertainment and Facilities Committee meeting on April 12, 2016, the Committee requested the CLA to consider including several provisions within the Contract. These additional requests and provisions are discussed further below.

- **Notification to Customers that Refund is Owed and Utilizing Unclaimed Refunds**
The Committee instructed the CLA to consider a resolution of how to utilize unclaimed refunds and a method to notify Customers that a refund is owed. Section 24 of the Contract, as described above, establishes the notification and refund procedures.

In addition, Section 24 states any and all unclaimed refunds are to be used to support FilmL.A.'s 501(c)(4) public benefit purpose, including but not limited to, areas such as enhancing the film permitting process, marketing and promoting filming in the City, student film projects, research and education about filming, and any other uses that promote film production in the City.

Further, Section 22 and Section 3 of Exhibit B requires FilmL.A. to submit its Annual Operating Budget that will include information on projected refunds to be issued and the projected unclaimed refund accumulation and expenditures of the refunds.

The addition of the refund and notification provisions within the proposed contract provides Customers with several notices that a refund may be due and a longer period to claim a refund. The number of notices provided in the proposed contract were not previously included in the existing contract. First, Customers will be provided advanced notice on the permit application and the permit that a refund may be due and how to claim it. Customers then have 90 days from the date the permitted activity is completed to claim a refund. If a Customer does not claim the refund by the end of that period, then FilmL.A. is required to affirmatively notify the Customer in writing that a refund is due and how it can be claimed. Under this new process, Customers will have up to 120 days to claim a refund. In addition, this section requires FilmL.A. to offer Customers trainings on how to claim a refund.

- **Accurate Recording of Complaints**

The Committee also instructed our office to include a provision regarding the accurate recording of complaints. The existing contract and Section 15 of Exhibit B of the proposed contract require FilmL.A. to maintain a record of all complaints lodged by the City, on behalf of the City or a City resident or business concerning on-location filming events in the City. A report on complaints is provided on a monthly basis as determined by the Contract Administrator and the Permit Authority and data related to complaints will be compiled annually. The contract also requires that the complaint data, records and background information be clear and complete. This provision is in the existing contract and will remain in the proposed contract.

FilmL.A. receives and responds to a majority of the complaints, but EWDD may also receive complaints via the EWDD website or when a call is received on 3-1-1. Our office recommends that EWDD be instructed to report annually on the complaints received by the Department utilizing the same complaint reporting format used by FilmL.A. By instructing EWDD to report on this data, it will ensure that the City has an accurate record of the complaints received by both FilmL.A. and EWDD annually.

- **Alternatives to FilmL.A. Services**

The Committee also requested our office to report on the steps the City would need to take in order to replace FilmL.A. services in the event that a contract is not approved. In order to identify a new contractor, the City would need to engage in a request for proposal process to select a new service provider. When FilmL.A. was selected in 2009, it took approximately one year to complete the RFP process and execute a contract with FilmL.A. Alternatively, the City may also develop a plan to move the film permitting coordination services function within the City. Funding would need to be identified to start and staff a “film office” to provide film permitting coordination services and community outreach. If the City selects either of the alternatives, then the City would likely need to extend the existing contract with FilmL.A. to ensure a smooth transition into the alternative system.

Reports Related to Administering the FilmL.A. Contract

Section 14 of the proposed contract currently states that the Contract Administrator will conduct a performance review of the Contractor annually or as needed. The performance reviews will focus on compliance with contract terms, including issues such as customer and public satisfaction with FilmL.A.’s performance of their duties, including: impact of outreach efforts; effectiveness of marketing programs; and implementation of their administrative and financial policies. Our office also recommends instructing the Contract Administrator, currently EWDD, to report within 60 days of executing the contract with a plan to monitor and administer the contract. The requested report should include specific

information on how the performance reviews will be conducted. In addition, various sections and exhibits of the contract require FilmL.A. to meet certain milestones and provide specified reports. A plan should be in place to evaluate and report on these matters to Council.

Lastly, our office recommends that the Contract Administrator submit quarterly updates on the administration of the contract. Quarterly updates will help the City to better understand the services provided by FilmL.A. throughout the year as well as any challenges faced by the City and FilmL.A. in administering the Contract. Moreover, the City and FilmL.A. will have time during the year to rectify any issues and ensure that the contract performance metrics are met by the end of the year.

RECOMMENDATIONS

That the Council:

1. APPROVE the proposed contract with FilmL.A. for a second term of five years from date of execution to June 30, 2020, with the option to extend the contract for two additional terms of five years each, for a total contract term of 20 years, subject to the terms and conditions found in Attachment A;
2. AUTHORIZE the General Manager, Economic Workforce Development Department, or designee to execute the contract with FilmL.A. on behalf of the City;
3. AUTHORIZE the Chief Legislative Analyst and City Attorney to make technical corrections, as necessary, to implement the proposed contract;
4. INSTRUCT the Contract Administrator to report with a plan to administer and monitor the FilmL.A. contract, including a standardized reporting tool, metrics and other relevant factors within 60 days of executing the contract;
5. INSTRUCT the Contract Administrator to report quarterly on the performance metrics set forth in the contract and the Contract Administrator's reporting tool; and
6. INSTRUCT the Contract Administrator to report annually on the complaints received by the Department utilizing the same complaint reporting format used by FilmL.A.

FISCAL IMPACT

The recommendations have no impact on the General Fund.

CONTRACT NO. C-117026
BY AND BETWEEN,
THE CITY OF LOS ANGELES, a municipal corporation (City), and
FILML.A., INCORPORATED (Contractor)

WHEREAS, there is a need for efficient film permit coordination services to provide a more favorable environment within the City to encourage filming and still ensure that filming activities outside of a studio are conducted in a manner that protects the public interest, including public safety, and balances the needs of the general public with the needs of the filmmaker;

WHEREAS, the City is authorized to Contract with private agencies including non-profit corporations for the operation of City programs;

WHEREAS, the City Council has determined that public purposes will be served by entering into this Contract with the Contractor for the coordination of film permits;

WHEREAS, the Contractor is duly incorporated pursuant to the California Non-Profit Public Benefit Corporation Law and is authorized by law to provide services and collect fees contemplated by this Contract;

WHEREAS, the Contractor is qualified by reason of experience, preparation and organization to provide the services contained within this Contract;

WHEREAS, the City conducted a competitive selection process and the Contractor was deemed the most qualified and the Contractor's proposal was deemed the best for the City;

WHEREAS, the City Council and Mayor originally approved the Contract on March 19, 2010 (CF 07-1586);

WHEREAS, the first five year term of the Contract ended on June 30, 2015. The City and Contractor executed an extension letter on June 29, 2015 extending the term from June 30, 2015 until September 29, 2015.

WHEREAS, the Contractor and City by mutual agreement executed a second extension letter on September 21, 2015 extending the term of the first five year Contract from September 29, 2015 until October 30, 2015.

WHEREAS, the Los Angeles City Council voted to extend the first term of this Contract to April 30, 2016.

WHEREAS, the Los Angeles City Council voted to extend the first term of this Contract to June 30, 2016.

NOW, THEREFORE, in consideration of the mutual covenants, representations, and agreements herein set forth and mutual benefits to be derived therefrom, the Parties agree as follows:

Section 1. Contractor

FilmL.A., Inc. operates as a non-profit public benefit corporation under Section 501(c)4 of the Internal Revenue Code. FilmL.A.'s public benefit purpose is to improve the economy of the greater Los Angeles region and thus promote the social welfare of the people, by ensuring film activities in the greater Los Angeles area are conducted in a manner the results in a minimum of interference, and are consistent with public health, safety, and general welfare. Specifically, FilmL.A. will work to centralize the issuance of film permits and will coordinate and improve actions for commercial filming and photography activities. The Contractor is headquartered in the City of Los Angeles at 6255 W. Sunset Boulevard, 12th Floor Hollywood, CA 90028.

Section 2. Term of the Contract

The term of this Contract shall be from the date of execution to and including June 30, 2020, unless terminated earlier in accordance with Section 7. Upon completion of a performance evaluation and approval of the Mayor, the City Contract Administrator is authorized to extend the term of this Contract for two (2) additional periods of five years each under the same terms and conditions contained herein.

Section 3. Activities to be Performed

The Contractor shall perform all the services set forth in the Scope of Work, **Exhibit A**, to this Contract, a copy of which is attached hereto and incorporated herein by this reference.

Section 4. Contract Administration

City Council shall have full authority to appoint a City department to administer this contract. At the time of execution, the Economic Workforce Development Department (EWDD) is the designated City Contract Administrator (CCA).

Section 5. Permit Authority

City Council has designated the Los Angeles Police Department as the City Permit Authority (CPA) for all City film permits.

Section 6. Entertainment Industry Customer

Entertainment Industry Customer (Customer) refers to all who apply for City film permits through FilmL.A., including, but not limited to, companies, corporations, schools, and individuals.

Section 7. Reporting Requirements

The Contractor shall provide information to the City as required in **Exhibit B** to this Contract, a copy of which is attached hereto and incorporated herein by this reference. The CCA, or City Council designee, and Contractor shall mutually agree on the acceptable format and methodology for submission of this information. The CCA, and/or City Council designee, shall also have the authority to make minor adjustments to reporting timeframes, provided that all required reports are still provided in a timely manner and reflecting the information originally intended.

Section 8. Contract Notices

Unless otherwise notified in writing, written notices pertaining to this Contract shall be directed to:

Paul Audley, President
FilmL.A., Inc.
6255 W. Sunset Boulevard, 12th Floor
Hollywood, CA 90028

Jan Perry, General Manager
City of Los Angeles
Economic Workforce Development Department
1200 W. 7th Street, 6th Floor
Los Angeles, CA 90017

Section 9. Incorporation of Exhibits, Precedence of Documents

Hereby incorporated by reference into this Contract are Exhibits A through E, which are attached hereto. Unless otherwise stated, the Standard Provisions for City Contracts (**Exhibit C**) are hereby incorporated by reference. In the event of any inconsistency between the provisions of this Contract and the Exhibits, the inconsistency shall be resolved by giving precedence in the following order:

- The Body of this Contract (Through and Inclusive of Section 25)
- Exhibit A – Scope of Work
- Exhibit B – Reporting and Performance Requirements
- Exhibit C – Standard Provisions for City Contracts
- Exhibit D – Insurance Requirements
- Exhibit E – FilmL.A. Primary Fee Schedule

Section 10. Termination

Either party may terminate this Contract by giving 270 calendar days written notice to the other party. The termination will be effective 270 calendar days after the receipt of

the written notice. Contract provisions for indemnity, statements, audits, payments, and refunds survive termination. This Section shall take precedence over the Standard Provisions for City Contracts (PSC-10). The City may immediately terminate this Contract for cause. Cause shall be defined as:

- The lapse of insurance as required herein after a reasonable period for cure by the Contractor;
- Violation of the Municipal Lobbying Ordinance (LAMC 48.01) or any other City or State ethics or lobbying laws;
- The criminal indictment of one or more officers, employees and/or Board Members of the Contractor for activity relating to the duties performed under this Contract whereby the indictment has a significant detrimental impact on the ability of the Contractor to perform under the terms of this Contract. The detrimental impact may, among other things, be in the reputation of the Contractor and the associated reputation of the City. Activities not related to the duties performed under this Contract are specifically excluded;
- The discovery of organized, sustained activity that the Contractor is unwilling to cease that is contrary to the City's attempt to maximize local film production;
- The initiation of bankruptcy proceedings or the loss of managerial control of the Contractor to another party, including regulatory entities;
- Gross negligence in the performance of the duties under this Contract;
- Without the express written consent of the City as determined by action of the City Council and Mayor:
 - the Contractor's acquisition of, or merger or consolidation with, any other entity; or
 - the occurrence of any business decision that significantly alters the composition of its Board (if such a Board exists) or reduces service levels in a manner such that it becomes a disincentive to filming locally.

Should the Contract be terminated for cause or by election of either party, the Contractor shall:

- Provide to the City and its agents, and grant a perpetual, royalty free license to use, all information collected, created and used under the performance of this Contract ("data") in a form facilitating the immediate use of the information within 24 hours (48 hours of information stored off-site). This will include, but not be limited to, statistical, informational, operational, financial, legal and relevant personnel information;
- Provide a period of continued access to the City, free of charge, for the use of any and all software and computer systems which the Contractor own(s)(ed) and utilize(s)(ed) in providing services under this Contract not to exceed 270 calendar days, during which time the City and Contractor may enter in to a license agreement for ongoing use by the City of the Contractor's software system. The terms of such license agreement shall be reasonable as compared to similar software license agreements.

- In the alternative, if both parties agree, the City may negotiate to acquire the source code for, and other rights to, the software owned by the Contractor.

Section 11. Compensation to Contractor

The Contractor shall develop and maintain fee structures which eliminate the costs to City taxpayers. Contractor will receive no compensation from the City for the activities performed in connection with this Contract.

The Contractor may charge its Entertainment Industry Customers a fee for each and any service Contractor provided under this Contract as provided in Section 21.

Section 12. Environmental Impact

The Contractor shall take all reasonable steps to minimize impact on the environment and cooperate with City efforts to protect the environment.

Section 13. City Access to Contractor

The Contractor shall provide priority handling of all phone calls, emails and all other communications from City staff to Contractor management.

Section 14. Monitoring and Evaluation

The Contractor shall ensure the following:

- that authorized representatives of the City have the right of access to activities, records, and facilities operated by Contractor under this Contract without prior or advance notice being given to the Contractor. Activities include attendance at meetings of the Contractor's Board of Directors, observation of on-going Contractor outreach efforts, compliance with audits and provision of any/all on-site records (including electronic) within 24 hours of the request of the City. Exceptions shall include confidential employee matters and litigation. If records are stored off-site, they shall be kept in a manner that allows for the provision of the records within 48 hours. Approval of the City Contract Administrator must be obtained for a method of storage that will result in more than 48 hours to access records.
- the cooperation of its staff and Contractor's board members, in their official capacities.
- the CCA, or City Council designee, shall conduct a performance review of the Contractor annually or as needed. Performance reviews shall focus on compliance with contract terms, including issues such as customer and public satisfaction with Contractor performance of duties, including but not limited to:

management, implementation, and effectiveness of policies and procedures; impact of outreach efforts; management, implementation, and effectiveness of marketing programs; and implementation of administrative and financial policies, including policies related to the administration of customer refunds.

Section 15. Non-Discrimination and Equal Treatment of Customers

No person shall, on the grounds of race, sex, creed, color, religion, handicap, political affiliation or belief, national origin, sexual orientation, marital status, medical condition or age be excluded from participating in, be refused the benefits of, or otherwise be subjected to discrimination in any activities, programs or employment supported by this Contract.

The Contractor shall provide equal treatment to all similarly situated customers seeking a permit to film motion pictures, television, web shows, music videos, still photos or other purposes; seeking notification services; seeking to make comments or complaints about filming matters; and any other customers seeking services provided by Contractor to the City. Contractor will indemnify the City from the impact of not providing equal treatment. Permit and other requests will be judged solely upon the merits of the request.

Section 16. Student Films Permits – Exception

Contractor agrees to comply with the City's policy regarding the student film fee waiver, as determined by the CPA and other applicable City departments, and will advise on procedures as they relate to this policy on an as needed basis.

Section 17. Public Records Act

The Contractor shall familiarize themselves with the California Public Records Act and must supply all information to persons or members of the public requesting information as may be required under such act.

If a dispute arises among the City, the Contractor and a person requesting information, the City will notify the Contractor so that Contractor has the opportunity to seek a court order precluding the disclosure of such information. In the absence of the Contractor obtaining such an order, the Contractor must release the information.

Contractor acknowledges that all information generated as a result of this Contract is part of the public domain and subject to the California Public Records act. This includes permit data, location information, permittee data, revenue, costs, notification data and complaints. Contractor should take care to separate data that is proprietary so that public domain data can be accessed easily and in a timely manner.

Section 18. Insurance

Contractor agrees to maintain the insurance coverages and limits listed on the Insurance Requirements Sheet, **Exhibit D**, and comply with the applicable insurance conditions set forth in **Exhibit C**, Standard Provisions for City Contracts.

Section 19. Lobbying

The Contractor will comply with all rules, regulations and restrictions relating to lobbying activities, including, but not limited to, the City Municipal Lobbying Ordinance (LAMC 48.01) and any other City or State ethics or lobbying laws.

Section 20. Policies and Procedures

The Contractor shall develop and maintain clear, written policies and procedures of their operations and processes they use. It is further expected that these policies and procedures be shared and made available for review by the CCA, CPA, or City Council designee. To the extent that the policies and procedures impact City operations, approval of the Contract Administrator must be obtained prior to implementation.

Section 21. Technology Utilization

The Contractor shall utilize technology to the fullest extent possible in order to provide convenience to customers, the public and any other stakeholders. This includes the efficient use of fax, email, and other devices. The Contractor shall use best efforts to cooperate fully with the City in the efficient use of technology.

Section 22. Budget and Audit

In accordance with Section 3 of **Exhibit B**, Reporting and Performance Requirements, attached hereto and incorporated herein, Contractor shall provide its Annual Operating Budget to the Contract Administrator, or City Council designee.

Section 23. Contractor Fees

The Contractor may charge its Customers a fee for each and any service Contractor provided under this Contract ("Contractor Fees"). These Contractor fees may be identified as an "application fee," "service fee," "transaction charge," or any other reasonable description. Prior to any change to the fee, the Contractor is required to notice CCA. Notice must be served in written form with details on revised fee structure. Notice must be received at least 30 calendar days prior to implementing any fee changes. The City has the right to review the fees that the Contractor charges its Customers. The City may require that the fees be changed if the fee increase exceeds the change in the Consumer Price Index for all goods and services for the Los Angeles Metropolitan area for the preceding period. The preceding period shall begin with the effective date of this

Contract or the effective date of the most recent change in fees, whichever is later. The preceding period shall end with the proposed effective date of the proposed fee increase.

The Contractor may offer its customers a discount for the purpose of inducing payment by cash, check, or other means not involving the use of a credit card, provided the Contractor does not deduct the discount from any City Fees required to be remitted to the City. In the alternative, if permitted by law, the Contractor may charge a surcharge to those customers who elect to pay by credit card.

Section 24. Client Refund of Fees

The film permit application and permit shall include language that the Customer has 90 calendar days following the completion of the permitted activity to request any refunds of fees for services not provided by a City department in connection with the permitted activity. At the conclusion of the 90 calendar day period, if no request has been made and the Contractor has determined that a refund is owed, the Contractor shall affirmatively notify the Entertainment Industry Customer in writing (electronic and/or US Mail) at either the contact information contained within the permit application or at the last known address. Such notice shall allow the Customer 30 calendar days from the date of notification (or mailing if by U.S. mail) in which to request the refund and include the applicable permit number, amount of the refund owed, the refund request form, and instructions how to claim. Said notice shall also inform the Entertainment Industry Customer that any and all unclaimed refunds shall be used to support FilmL.A.'s 501(c)(4) public benefit purpose, including but not limited to, areas such as enhancing the film permitting process, marketing and promoting filming in the City, student film projects, research and education about filming, and any other uses that promote film production in the City.

Section 25. Reserve for City Fees

The Contractor shall, at all times, maintain a cash balance equal to at least twice the average monthly amount of City Fees paid by Contractor to the City during the prior fiscal year (i.e., from July 1 through June 30), which will not be used to pay operating expenses. Maintain as part of its accounting system a separate account showing the amount of City Fees that the Contractor estimates it may become obligated to pay as a result of on-location filming by its Entertainment Industry Customers.

Section 26. Branding

The Contractor shall acknowledge the City on its website and make clear that the Contractor is not a City department nor the permit authority. The CCA's contact information, any appropriate City department's (as determined by the City) website address, and any City-sponsored survey instruments related to filming, including complaints, shall be included on the Contractor's website.

IN WITNESS WHEREOF, the parties have caused this Contract to be executed by their duly authorized representatives.

THE CITY OF LOS ANGELES

FILML.A., INC.

By: _____
JAN PERRY
EWDD General Manager

By: _____
PAUL AUDLEY
President

Date: _____

Date: _____

APPROVED AS TO FORM:

ATTEST:

MICHAEL N. FEUER, City Attorney

HOLLY L. WOLCOTT, City Clerk

By: _____
KIMBERLY MIERA
Deputy City Attorney

By: _____
Deputy City Clerk

Date: _____

Date: _____

City Business License Number:

243982-89

Internal Revenue Service ID Number:

95-4531774

EXHIBIT A

SCOPE OF WORK

The Contractor shall provide services to the City as described below:

1. Film Permit Coordination Services

The Contractor will assist Customers with timely and efficient film permitting within the City of Los Angeles. The Contractor will operate with the following purposes:

- Coordinate the film permit process in a centralized manner within the parameters established by the City; and/or Permit Authority consistent with the existing Memorandum of Agreement (MOA) between Contractor and Permit Authority.
- Coordinate the film permit process in order to assure that filming will be conducted in compliance with all City ordinances at such times and in such a manner as to cause a minimum of interference with neighborhood and merchant districts;
- In coordination with the City, develop and implement community outreach programs for residential and commercial/industrial districts on a proactive basis;
- In coordination with the City, improve conditions relating to "Commercial Filming" and photography activities for the Los Angeles City area, which includes all film, television, still and commercial filming and other related activities, no matter the method of distribution for commercial purposes;
- If requested by the City, attend meetings with stakeholders to mediate disputes, determine impacts of filming and other permit related activities on specific neighborhoods, participate in neighborhood council and other group meetings, answer questions of stakeholders, or discuss the economic impact of filming.

The Contractor shall perform the following tasks:

- Coordinate processing of film permit applications from Customers;
- Interface with City departments with respect to permit applications to obtain input in developing permit terms and conditions (including any general terms, conditions and restrictions applicable to all permits), coordinate logistics relating to filming activities and perform other functions needed to assist in permit evaluation and processing. Contractor shall inform the CCA of any

issues raised or process changes implemented as a result of this activity.

- Ensure that the description of activity as provided by the Customer on permits provided to the City is accurate and detailed, especially high impact activity that is likely to generate public concern, as determined by the Permit Authority, including but not limited to simulated crimes in progress, screams for help, screeching tires, excessive lighting, noise, and restrictions on parking exceeding one week;
- Provide guidance and advice on the permit process to Customers;
- Coordinate with the City on the dissemination of filming related information on the internet;
- Make recommendations that reflect the needs of the community, the City and the production company to City departments with respect to the handling and processing of individual permit applications and the development of permit terms and conditions;
- Provide pre-production walk-throughs to assess and mitigate impacts of proposed film activities when requested by the Industry, the City or when the Contractor's experience and judgment dictate. Ensure the Permit Authority and the CCA are notified of walk-throughs or pre-planning meetings if the walk-throughs are proposed for City properties/facilities that are not currently in use or otherwise open to the public;
- Upon Contractor's receipt of approval by the Permit Authority, Contractor will release film permits issued by the Permit Authority to Customers;
- The Contractor will coordinate and release permit revisions and/or extensions subsequent to the release of an original permit. However, concurrence must be obtained from the Uniformed Fire Safety Officer, active LAPD officer and/or designated City personnel and in a manner that is consistent with the direction of the Permit Authority;
- Respond to complaints (**See Section 3**);
- Collect funds (including estimated City fees), process refunds (if warranted), and make monthly remittances of amounts due to the City;
- Provide filming data, records, reports and background information (**See Exhibit B**);
- If requested, provide advice to the City regarding filming policy and the permit process; and

- If requested by Customers, the Permit Authority or by requirement of Special Filming conditions, provide monitor services at specified locations permitted for filming. Approval of the Permit Authority shall be obtained prior to implementation of any policies or procedures which identify a protocol of when, where, at what time and under what circumstances and conditions Contractor monitors will be required for permitted activity.

Targeted service levels are as follows:

- A mutual goal of the City and Contractor is to achieve a satisfaction rating of 90% when citizen complaints are compared with total number of permitted production days for the tasks listed above. The CCA is provided the authority to make reasonable adjustments to this statistic based upon the pattern of actual complaints. Should the satisfaction rating fall below 90 percent, the Contractor shall investigate the causes and provide a report to the CCA and the Permit Authority that provides recommendations on how to improve the satisfaction rating. The Contractor shall cooperate with the City in efforts to achieve a minimum satisfaction rating of 90 percent.
- Permits shall be coordinated in a time frame which allows proper review and approval by City personnel, including but not limited to: the posting of lane, street and road closure requests, and assignment of required City personnel. All permit requests made to the Contractor and transmitted to City Departments for review must be made in advance of the requested activity and in accordance with the existing City departmental policy. The City will seek to minimize required turnaround times to the extent possible.
- All requests provided to the Permit Authority for review and approval must contain all reviews and recommendations already obtained from other City departments. The comments and recommendations from various departments may be sought simultaneously. However, when department reviews are sought from departments other than the Permit Authority, the Contractor shall include the reviews and recommendations already obtained. If any City department modifies a permit application after release, a special notification shall be made to the Permit Authority. A verbal agreement will fulfill all necessary approvals. Contractor shall provide the Permit Authority and approving department contacts with full Online Permit System (OPS) access to view verification from all involved City departments, and their status on approval.
- The release of approved permits to Customers shall be accomplished in a manner that allows the Customer to understand the limitations placed upon the requested activity and allows for sufficient community notification.
- In all instances where neighborhood filming guidelines or other City policies exist that require a community survey, the community survey must be conducted in advance of the beginning of the permitted activity, unless stated

otherwise in a separate guideline or policy adopted by the City Council. The community survey may be conducted by the production company, the Contractor or a Sub-Contractor.

- Maintain standard office hours a minimum of 8 a.m. to 6 p.m., Monday through Friday, with the exception of major holidays.
- Collect estimated City fees from Entertainment Industry Customers in advance of releasing a film permit and pay the City within 30 calendar days of receiving an invoice for City Fees.
- Process request for refunds from Entertainment Industry Customers pursuant to Section 22 of the Contract.
- For specified locations, including, but not limited to, all locations which require a Contractor monitor as well as any location in which Contractor staff reasonably expects to be on location at the completion of permitted activity, monitors or other designated Contractor staff will collect and account for all signs DOT reports as being posted immediately following the conclusion of permitted activity. All signs collected will be returned to DOT following the conclusion of the permitted activity.

2. Notification Services

The Contractor will provide notification services. The Contractor will operate with the following purpose:

- Provide services to notify all affected persons and organizations within the City, including nearby residents and businesses and City entities, of upcoming filming. Permit Authority has the right to waive notification requests as necessary. Contractor shall document accordingly.

The Contractor shall perform the following tasks:

- Provide notification services, including the creation and posting of notices (giving special attention to the language needs of the community);
- Ensure that the description of activity on notifications is accurate and detailed, in particular, activity that is likely to generate public concern such as simulated crimes in progress, loud explosions, screams for help, screeching tires, etc.;
- Maintain detailed, accurate records related to all services provided under this contract and made available for review by the City, including, but not limited to: sample notice, a map of area where the notice was distributed, and any issues encountered in conducting the notice and the resolution of those issues;

- Provide notification data, records and background information;
- Provide advice to City officials and departments regarding the notification process;
- Respond to inquiries regarding the notification process from City officials; and
- If requested by the City, attend meetings with stakeholders regarding the notification process to discuss the impacts of filming and other permit-related activities on specific neighborhoods, participate in neighborhood council and other group meetings, or answer questions of stakeholders.

Targeted service levels are as follows:

- A mutual goal of the City and Contractor is to achieve excellent performance of the above tasks:
 - A 100% success rate in regards to the timeliness of notifications, completeness and accuracy of the activities described on the notification, and courteousness of employees.
 - A 95% success rate for posting of notices for the geographical area designated to be notified.
 - Provisions of notification services at least 24-hours in advance of the beginning low impact activity as defined by the Permit Authority.
 - Provisions of notification services not less than 48 hours in advance of the beginning high impact activity as defined by the Permit Authority.
 - When provision of notification services is not feasible under the time restrictions enumerated above, the Contractor shall request approval from the Permit Authority for variation from the minimum notice periods. Proof notifications were performed to Entertainment Industry Customers and the City. Notification must be completed in sufficient time to allow for the release of Film Permits in advance of the beginning of the permitted activity. Proof that notifications were performed is to be provided to Entertainment Industry Customers and the City.
- In the report provided by the Contractor under **Exhibit B**, Item 13, the Contractor shall report on the success of achieving each of these goals and shall provide a report to the City Contract Administrator and the Permit Authority that provides recommendations on how to improve performance.

The Contractor shall cooperate in efforts to achieve the expected success rate.

3. Complaint Referral Services

The Contractor will provide complaint referral services to assist with the timely resolution of community and Entertainment Industry complaints.

The Contractor shall perform the following tasks:

- Receive complaints on a 24-hour/7day a week basis and address them in a timely manner, including the appropriate referral of complaints to appropriate City personnel and Contractors;
- Keep accurate records on complaints and provide complaint data, records and background information on a monthly basis to the City Contract Administrator;
- Provide advice to City officials and departments regarding filming policy and complaints received;
- Receive and respond to complaints regarding filming from City officials and departments, including the appropriate referral of complaints to appropriate City personnel and Contractors;
- Coordinate with the City Council, field offices, and the community in advance of, during, and after exceptional filming activities in any district (i.e. simulated crimes in progress, screams for help, screeching tires, excessive lighting, noise, and restrictions on parking (exceeding one week), etc.); and,
- Review written stakeholder comments and complaints and, in consultation with the City, prepare written responses to the comments or complaints.

Targeted service levels are as follow:

- Provide clear and complete complaint data, records and background information. All reports will be in a format approved by the City Contract Administrator. With advance notice, the City may alter the frequency, format or nature of reports.
- Refer complaints to appropriate City personnel and Contractors within 15 minutes if the activity is currently in progress. If there is no after-hours contact provided by the City departments then the call shall be referred to the Permit Authority.
- If a complaint is received and the activity is no longer in progress, respond to the complaint on an initial basis within one (1) calendar day and

finalize/complete any responses including written, if necessary, within seven (7) calendar days.

- Provide response services to complaints on 365 days-a-year, 24 hours-a-day, 7 days-a-week basis.

4. Maintenance of Records

The Contractor is expected to maintain up-to-date and accurate records as required by **Exhibit B** to this Contract. Record keeping details should also separately account for the different types of permitted activities (exclusive of financial report which is required by other sections within the Contract) provided under this Contract, including those services specific to the City of Los Angeles and excluding other Contractor clients.

5. City Fees

The Contractor shall remit all City Fees monthly.

- The Contractor shall not deduct from any remittance to the City any transaction fees or other costs incurred as a result of accepting payment from its Entertainment Industry Customers in the form of credit card, debit, wire transfer, check, or other forms of payment.
- The Contractor shall remit City Fees to the City with U.S. currency and may not reduce payment to the City by costs associated with the conversion of foreign currency to U.S. currency.
- For film permits coordinated through Contractor, Contractor not the Entertainment Industry Customers, is obligated to pay to the City all City Fees other than those customarily collected by the City directly from the Entertainment Industry Customers. If the Contractor desires to adopt a regular business practice allowing Entertainment Industry Customers to obtain permits on credit, it may do so. However, the Contractor would still be required to remit all City Fees within 30 calendar days of receiving an invoice for City fees regardless of their ability to collect from individual Entertainment Industry Customers.
- The Contractor may collect deposits from its Entertainment Industry Customers so if violations occur deposits can be used to pay for fees/fines/financial penalties.
- The Contractor shall, after receiving from the City a final invoice for City Fees, pay to the City, in United States currency, all City Fees invoiced with the next monthly scheduled payment.

- The Contractor shall act in good faith in disputing any City Fees billed (either timely or late) by the City, and Contractor and the City will act in good faith to resolve any such dispute within a reasonable time. Once the dispute as to any City Fees is finally resolved, either by agreement between Contractor and the City or by legal action or some other agreed-upon dispute resolution method, Contractor will pay such City Fees at the same time as the next normal payment is due to the City. However, payment of disputed fees shall be separated out from the normal payment.
- If Contractor fails to pay all or any portion of City Fees within the time payment of such fees is due as set forth in this section, the payment of the unpaid portion will be considered late.
 - If a payment remains unpaid for more than 30 calendar days after it is considered late, such unpaid amount of City Fees will be considered delinquent and subject to a penalty of 1% of the delinquent amount.
 - If a payment is delinquent for more than 30 calendar days, delinquent amounts (including the 1% penalty) will also be subject to interest charges. Interest on such delinquent amounts will be calculated at a rate equal to the prime rate at the time such unpaid City Fees become delinquent plus five percent, and interest will accrue at that rate from the date the unpaid City Fees became late until payment is issued made by Contractor.

6. Emergency Response and Coordination

The Contractor shall assist the City in responding to unusual occurrences and large scale emergencies when a State of Emergency is declared by the City, including canceling, revoking or not processing permit requests and communicating with the Entertainment Industry Customers.

The Contractor shall direct its staff to cooperate fully with the City and follow the direction of the Contract Administrator, the Mayor, the Emergency Operations Board and the Emergency Operations Organization for the duration of the local emergency.

The Contractor shall, as requested, cooperate with the City efforts to recover costs associated with the emergency from the federal and state governments.

The Contractor shall, as requested, coordinate the dissemination of emergency related information to the Entertainment Industry and assist the City in canceling, delaying, rescheduling and relocating filming and managing the related public relations.

7. Management of City Facilities for Filming

The Contractor may manage vacant City facilities in order to maximize the potential availability of those facilities for the Entertainment Industry. The Contractor must have a management agreement in place with the City department/agency with oversight responsibility for the facility and must be in full compliance with all insurance requirements, indemnifications and liability agreements required by the City Risk Manager and the City Attorney. The term of facility management agreements must not exceed the term of this Contract.

8. Marketing Program

The City of Los Angeles desires the assistance of Contractor in promoting the City as a location for Commercial Production and still photography. Therefore, subject to available funding, the Contractor shall:

- Assist the City in developing a strategic approach to marketing, in consultation with the CCA, the Chief Legislative Analyst, and the City Council Committee of appropriate jurisdiction, and the Office of the Mayor, as available. The program goals will include, but are not limited to:
 - Raising civic pride in the history and legacy of filmmaking in Los Angeles;
 - Educating residents, businesses and governmental organizations about the economic and employment benefits of the film industry;
 - Educating film companies on how to be better stewards of the neighborhoods and addressing community relation issues;
 - Working with the appropriate City Departments to establish protocols encouraging student films, small budget films, and commercial productions;
 - Advertising and marketing Los Angeles to the Entertainment Industry and its clients;
 - Trade show representation;
 - Technology improvements and web-brand information services.
- Work with the City to develop a sustainable source of funding, other than the City General Fund, to support the marketing program;
- Implement a marketing campaign;
- Maintain a web site providing information about City facilities available for filming. Such site shall include photographs along with contact information

for the City department that schedules filming activity at the facility. If for any reason Contractor is unable to continue providing a location library web site, it shall make available to the City of Los Angeles, free of charge, any photographs, documents, or systems owned by Contractor, which comprised the location library; and

- If requested by the City, cooperate with City efforts to enhance and retain jobs (within the City) in all segments of the Entertainment Industry including multimedia and other new emerging technologies.

The parties agree that the Contractor shall not be required to “brand” or identify any marketing materials created under this provision with FilmL.A.’s logo. Contractor shall not be required to provide favorable treatment in comparison to the Contractor’s other contractual clients as to the display or distribution of any such material in Contractor’s place of business or on its proprietary website. The City’s promotional material shall be treated at least equally in comparison to the material of other contractual clients of the Contractor. The City understands this may result in more than one jurisdiction being promoted as the best, most convenient, etc., location to film. Contractor is required to provide an active link(s) from its website to a City site where marketing materials are available to the public.

Nothing in this section (**8. Marketing Program**) shall require Contractor to expend its own financial resources to accomplish such marketing efforts. Implementation shall be limited based upon available funding.

9. Training

Within the first year after execution of the contract, FilmL.A. shall provide two training sessions for Entertainment Industry professionals concerning FilmL.A.’s billing and fiscal policies, including refund policies and procedures. After the first year of this Contract, FilmL.A. shall provide similar training sessions annually, or on an as needed basis.

10. Automation and Linking to City Departments

Contractor shall use best efforts, subject to available funding, to upgrade their on-line permitting system to interface with City film related information systems, such as the Recreation and Parks reservation system, the Fire Department and LADOT Traffic Event Assets Management System (TEAMS). The CCA and affected City departments and Contractor shall prepare an annual plan to prioritize projects. Contractor shall provide the CCA with an annual report of all progress made toward using technology to interface with City departments.

EXHIBIT B

REPORTING AND PERFORMANCE REQUIREMENTS

General Reporting Requirements

1. The Contractor shall prepare and submit regular reports on permits, system management including integration of automated systems, complaints, and client feedback on a quarterly basis to the City. All reports will be in a format approved by the CCA. Upon notice, the City may alter the frequency, format or nature of reports. The City may also direct Contractor to provide the City with ad hoc reports on issues of interest to the City relating to the Contract, provided that the cost of the request is not prohibitive.
2. The Contractor shall ensure that all financial data, including record keeping of assets and liabilities and accounting for services provided by contract to the City, be maintained by the Contractor separately from all other corporate activities and separate from all other clients. Record keeping details must also separately account for the different types of services provided under this Contract. A review of this data and accounting will be conducted by the CCA on a quarterly basis. Upon notice, the City may direct the Contractor to make changes to the maintenance of this data to more clearly separate it from other corporate activities provided that the cost of the request is not prohibitive and the request does not violate Generally Accepted Accounting Principles (GAAP).
3. The Contractor shall submit to the CCA each year a draft of its Annual Operating Budget addressing revenues and expenditures for service provided to the City, as well as refunds issued, unclaimed refund accumulation, and expenditures hereto for related, at least 60 calendar days in advance of the beginning of the Contractor's fiscal year and the final budget within five (5) business days of adoption by the Board of Directors.
4. The Contractor shall submit a certified annual audited financial statement to the CCA, within 180 calendar days following the end of each fiscal year. Should an exception to this timeframe be required, the Contractor must notify the CCA within 150 calendar days following the end of each fiscal year. The CCA will have the authority to approve an extension in writing.
5. The Contractor shall submit to the CCA, within 30 calendar days after the end of each quarter, a quarterly profit-and-loss statement.
6. The Contractor shall submit to the CCA any changes to its decision-making body or written rules, such as, but not limited to, its bylaws or composition of its Board of Directors within 15 calendar days of the change.

7. The Contractor shall pay the City \$100 each working day any report is late. The City may choose to waive this fine if it is in the best interest of the City, if the City is the cause, or if the City believes there is a reasonable basis for doing so.

8. The Contractor will annually report to the City regarding the use of technology in administrating the City permit process.

Permit Coordination – Reporting Requirements

9. The Contractor shall submit to the CCA, within 30 calendar days after the end of each quarter, quarterly summaries of permit volume, amounts collected from Customers and amounts paid to the City in City Fees. These reports should indicate any significant changes when comparing the current quarter with previous quarters, or when appropriate, the same quarter from previous years. Reports shall include accounting of refund claims paid and retained uncollected amounts for approved Budget expenditures.

10. The Contractor shall submit to the CCA, on a monthly basis, in a format approved by the CCA, a list of all of its Customers, including: the Production Company's name; any known contact personnel as applicable; address; telephone number; contact person; type of production; production title; requested filming location(s) and date(s).

11. The Contractor shall submit to the CCA an annual report addressing the impact of City policies, rules and regulations on filming in the City and recommendations to improve the environment for on-location filming in the City.

12. The Contractor shall submit to the CCA a written copy of all non-proprietary policies and procedures for all aspects of the process of obtaining a film permit (financial, procedural and otherwise) and submit subsequent changes to those policies and procedures within 15 calendar days of the change. Proprietary policies and procedures shall be provided for inspection but will not be provided in a manner that creates a public record absent a court order.

13. The Contractor shall submit a reconciliation statement and aging report with each payment of City fees. The reconciliation report shall detail the fees being submitted and related permit information. The aging report shall show the amount of City fees for which FilmL.A. has not received a final invoice after completion of the filming activity. Should the aging report show that a city department has not submitted final invoices for at least 60 calendar days after completion of the filming activity, the CCA will notify the City department and request submission of final invoices to FilmL.A. within 30 calendar days. Should the aging report show that a City department has not submitted final invoices for at least 60 calendar days after completion of the filming activity, the CCA will forward the Aging report, along with details provided by FilmL.A., to the Mayor and City Council.

Notification Services – Reporting Requirements

14. The Contractor shall submit to the CCA, within 30 calendar days after the end of each quarter, quarterly summaries of notification volume and amounts collected from Entertainment Industry Customers specific to the City of Los Angeles and excluding other Contractor clients.

Complaint Referral – Reporting Requirements

15. The Contractor shall maintain a record of all complaints lodged by the City, on behalf of the City or a City resident or business concerning on-location filming events in the City. A report on complaints will be provided on a monthly basis as determined by the CCA and the Permit Authority as well as a compilation of data provided annually. Complaint data, records and background information provided must be clear and complete.

City– Reporting Requirements

16. The Contractor shall provide a report on an annual basis to the CCA with data on the amount of fees waived by City departments, what type of film productions are associated with fee waivers, and fees separated out by property and address.

Filming Surveys – Reporting Requirements

17. The Contractor shall notify all City customers of a link to the City Filming Survey on the FilmL.A website; and add a link and language describing the City Filming Survey to all new film permits issued. The Contractor shall provide semi-annual summary reports from any surveys that may be conducted by the Contractor with its Customers.

EXHIBIT C

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.

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-4, to the extent that any other section or provision conflicts with or impairs the provisions of this Section.



EXHIBIT E

FilmL.A. PRIMARY FEE SCHEDULE*

| FEE DESCRIPTION | RATE | TYPE | 2010-15 CPI INCREASE/ | NEW AMOUNT |
|--|-------|--------|-----------------------|------------|
| FILMLA FILM APPLICATION FEE | \$625 | Permit | 685.46 | 685.00 |
| FILMLA FILM PERMIT RIDER FEE | \$100 | Permit | 109.67 | 110.00 |
| FILMLA MODIFIED PERMIT APPLICATION FEE | \$50 | Permit | 54.84 | 55.00 |
| FILMLA MODIFIED PERMIT RIDER FEE | \$25 | Permit | 27.42 | 28.00 |
| FILMLA MONITOR FEES | \$30 | Hour | 32.90 | 33.00 |
| FILMLA MONITOR FEES OVERTIME | \$45 | Hour | 49.35 | 50.00 |
| FILMLA MONITOR FEES - DOUBLE TIME | \$60 | Hour | 65.80 | 65.00 |
| FILMLA STILL APPLICATION FEE | \$60 | Permit | 65.80 | 65.00 |
| FILMLA STILL RIDER FEE | \$20 | Permit | 21.93 | 22.00 |
| FILMLA STUDENT PERMIT FEE COMPLEX | \$90 | Permit | 98.71 | 98.00 |
| FILMLA STUDENT PERMIT FEE SIMPLE | \$25 | Permit | 27.42 | 27.00 |
| FILMLA NOTIFICATION FEE | \$155 | Radius | 169.99 | 170.00 |
| PERMIT DELIVERY FEE | \$55 | Day | 60.32 | 60.00 |

*FilmL.A. fees not listed on this primary fee schedule will have their maximum rate raise according to the CPI as above.