



July 19, 2010

BOARD OF FIRE COMMISSIONERS  
FILE NO. 10-070

TO: Board of Fire Commissioners

FROM: Millage Peaks, Fire Chief *millage*

SUBJECT: APPROVAL OF THE RECOMMENDATION FOR A PERSONAL SERVICES  
CONTRACT FOR INTEGRATION OF HARDWARE AND SOFTWARE FOR AN  
AUTOMATIC VEHICLE LOCATION SYSTEM

|               |                                   |   |                                    |
|---------------|-----------------------------------|---|------------------------------------|
| FINAL ACTION: | <input type="checkbox"/> Approved | <input type="checkbox"/> Approved w/Corrections | <input type="checkbox"/> Withdrawn |
|               | <input type="checkbox"/> Denied   | <input type="checkbox"/> Received & Filed       | <input type="checkbox"/> Other     |

**Recommendations:** That the Board:

- 1) Approve the recommendation of staff.
- 2) Instruct the Board Executive Assistant to forward this contract to the Mayor in accordance with ED-3.
- 3) Authorize the Fire Chief, subject to funding and the approval of the Mayor, to execute the attached sole-source contract with OptiMetrics, Inc. to provide software integration of the Automatic Vehicle Location (AVL) hardware and software with the computer aided dispatch system.

**Summary:**

**Background**

In December 2006, \$642,000 was provided to the LAFD from both the 2003 Urban Area Security Initiative (UASI) and the 2005 State Homeland Security Grant (SHSGP) for a project that incorporated AVL and tactical planning and improved incident command capabilities based on Department of Homeland Security software standards. Those funds were used to produce a working pilot for AVL and helped to establish a foundation for AVL in the LAFD.

In FY2009-10, the Mayor and City Council provided \$400,000 for the procurement and installation of AVL hardware and software to achieve 3 primary goals: 1.) enable the LAFD further to develop its existing AVL platform to better track field resources using a global positioning system (GPS); 2.) enable the Department to better deploy resources; and, 3.) reduce the response time of Department resources.

The Fire Department received a quote from Optimetrics, Inc. in FY2009-10 indicating that the complete package desired by the City would cost \$400,000. Of the original budget allocation, \$194,681.12 has been expended to procure the hardware and software for 500 emergency vehicles through the City's Supply Management System (SMS) managed by the General Services Department.

At the time of acquisition of the AVL hardware and software, the Department was informed that the integration services could not be obtained through the General Services Department procurement process, and that a personal services agreement would be required to complete the installation and integration of the AVL components.

In discussions with the vendor, the Department expects to apply the balance, \$204, 812.77, towards a personal services contract with this same vendor to complete the integration of the AVL hardware with the Department's dispatch and AVL system.

The recent acquisition of hardware and software for AVL dovetails into the previous AVL effort and affords the LAFD with a consistent direction that will aid in providing improved response to incidents and firefighter safety. The hardware and software are products of Optimetrics, Inc. The LAFD desires to execute a sole source personal services contract with Optimetrics, Inc. because they are the only vendor that can ensure seamless systems integration of their product with the LAFD's dispatch and AVL system. The contract term will not exceed 90 days.

OptiMetrics is uniquely qualified to perform this effort in that the product source code is proprietary and not available to third parties. OptiMetrics is also the sole source provider of all First Response software products.

The integration of the hardware and software is expected to take less than 90 days to complete.

The attached contract has been reviewed and approved as to form and legality by the Office of the City Attorney.

Department staff has reviewed the requirements by which sole-source contracts are authorized. This contract is authorized under City Charter Section 371 (e) (2) which allows for an exception to competitive bidding when: *"Contracts, as determined by the contracting authority, for the performance of professional, scientific, expert, technical, or other special services of a temporary and occasional character for which the contracting authority finds that competitive bidding is not practicable or advantageous."*

Funding was allocated in the FY2009-10 budget for this project. Because the contract will not be available prior to June 30, 2010 to encumber against, the Department will seek the re-appropriation of funds in the amount of \$204,812.77 in FY2010-11. Execution of this contract is subject to funding in FY2010-11.

**Conclusion:**

By approving the Personal Services Contract with OptiMetrics to implement the proposed software integration, the LAFD will be provided:

- AVL in emergency vehicles
- Mapping and incident routing for emergency resources
- Incident resource status for dispatch and incident commanders
- Standardized mapping system for Geographic Information Systems (GIS)

Board report prepared by Oscar Barrera, Senior Systems Analyst II, Management Information Systems Division.

Attachments

**AGREEMENT NO. \_\_\_\_\_**

**AGREEMENT  
BETWEEN THE CITY OF LOS ANGELES AND OPTIMETRICS, INC.**

This Agreement (hereinafter referred to as "Agreement") is made and entered into by and between the City of Los Angeles, a municipal corporation (hereinafter referred to as "City"), acting by and through the Los Angeles Fire Department (hereinafter referred to as "LAFD"), and OptiMetrics, Inc., a Michigan corporation (hereinafter referred to as "CONTRACTOR") with reference to the following:

**WHEREAS**, the City previously purchased hardware and ADASHI First Response software (hereinafter referred to as Software) from CONTRACTOR for first responders; and

**WHEREAS**, the Software is proprietary to the CONTRACTOR and LAFD currently licenses CONTRACTOR's software for use by its command personnel;

**WHEREAS**, CONTRACTOR is the author and sole source provider of all ADASHI First Response software products.

**WHEREAS**, CONTRACTOR software product source code is proprietary and is not available to any third parties. CONTRACTOR is therefore uniquely qualified to perform this effort; CONTRACTOR is the only source capable of providing ADASHI software integration and customization services.

**WHEREAS**, the LAFD requires the assistance from CONTRACTOR to provide such services as software integration and to optimize the operational utility and effectiveness of the software; and

**WHEREAS**, the CONTRACTOR possesses the unique skills and proficiencies in these areas, and has agreed to provide such services to the LAFD; and

**WHEREAS**, funding for this activity was approved in the LAFD FY2009-10 budget;

**WHEREAS**, the consulting services to be provided are temporary and occasional in nature; and

**WHEREAS**, the City does not employ personnel with the required expertise and it is more economical to have the work performed by a contractor on an as needed basis.

**NOW, THEREFORE**, in consideration of the premises, representations, covenants and agreements set forth herein, the Parties represent, covenant and agree as follows:

## **1. PARTIES TO THE AGREEMENT AND REPRESENTATIVES**

### **1.1. Parties to the Agreement**

The Parties to this Agreement are:

- a. The CITY, by and through the LAFD, having its principal office at 200 North Main Street, 18<sup>th</sup> Floor, Los Angeles California 90012
- b. CONTRACTOR, having its principal address at 3115 Professional Drive, Ann Arbor, Michigan 48104.

### **1.2. Representatives of the Parties**

The representatives of the Parties who are authorized to administer this Agreement and to whom formal notices, demands and communications shall be given are as follows:

- a. The CITY's representative is, unless otherwise stated in the Agreement:

Millage Peaks, Fire Chief  
Los Angeles Fire Department  
200 N. Main Street, Room 1800  
Los Angeles, California 90012  
(213) 978-3838  
(213) 978-3814 (Fax)

And:

Georgia Mattera  
Los Angeles Fire Department  
200 N. Main Street, Room 1630  
Los Angeles, California 90012  
(213) 978-3731  
(213) 978-3414 (Fax)

- b. The CONTRACTOR's representative is, unless otherwise stated in the Agreement:

Alex Menkes, Director  
OptiMetrics, Inc.  
2107 Laurel Bush Road, Suite 209  
Bel Air, Maryland 21015  
(410) 569-6081 Ext:111  
(443) 836-0229 Fax

### **1.3. Notices**

- a. Formal Notices, demands and communications to be given hereunder by either party must be made in writing and may be effected by personal delivery or by registered or certified mail, postage prepaid, return receipt requested and shall be deemed communicated as of the date received.
- b. If the name of the person designated to receive the notices, demands, or communications, or the address of such person is changed, written notice shall be given in accordance with this section, within five (5) working days of said change.
- c. Informal communications regarding daily business matters shall be made via email or telephone.

## **2. TERM OF AGREEMENT**

The term of this Agreement shall be for a period not to exceed 90-days from the date of execution, unless earlier terminated or extended by the parties.

## **3. SERVICES TO BE PROVIDED**

To optimize the operational utility and effectiveness of the Software, CONTRACTOR shall provide all labor necessary to customize the Software and its software components to more tightly integrate with the internal process utilized by the LAFD. The software customization tasks to be performed are outlined in Exhibit B, Statement of Work

## **4. PROJECT MANAGEMENT**

The Fire Chief or his designee shall be the CONTRACTOR's main City contact and shall be responsible for management of projects assigned under this Agreement, including approval of all projects, time schedules and work completion requirements.

## **5. COMPENSATION AND METHOD OF PAYMENT**

The maximum payable under this Agreement will not exceed Two Hundred four thousand, eight hundred twelve dollars and 77 cents (\$204,812.77) for complete and satisfactory performance of the terms of this Agreement. CONTRACTOR understands that funds for work performed during fiscal year 2009 - 2010 have been appropriated for expenditure under this Agreement. Invoices must include specific detail of all services invoiced. All invoices will be submitted to Los Angeles LAFD, Administrative Services Bureau, Attn: Katrina Reyes, 200 North Main Street, City Hall East, Room 1680, Los Angeles, California 90012. CONTRACTOR will not be compensated for non-delivery of services. The Fire

Chief, or his designee, will make a final determination of approving the scope of work and completion of the project. This Agreement will be completed at the time the scope of work is approved by the LAFD.

## **5.1 Compensation**

- a. For satisfactory services rendered under this Agreement, the CITY shall pay the CONTRACTOR in accordance with Exhibit C. The City shall issue a check for the amount invoiced, less any disputed amounts within 30 days of approval of a complete invoice. CONTRACTOR shall resolve any disputed amounts within 60 days from the date the CITY gives notification of a dispute.

## **5.2 Method of Payment**

- a. The CONTRACTOR must include the following information, and any other documentation requested by the LAFD, in each invoice:
  - i. Date of invoice
  - ii. Invoice Number
  - iii. Agreement Number
  - iv. Description of services
  - v. Amount of Invoice and the supporting documentation
- b. Except as otherwise expressly provided for in this Agreement, all other costs incurred by CONTRACTOR in the performance of the CONTRACTOR services (including, but not limited to postage, materials, communications and phone costs and other operating costs) shall be CONTRACTOR's sole responsibility.
- c. Interests and Costs. Undisputed amounts not paid when due will bear interest at the rate of 1.5% per annum on the unpaid balance each month, or such lesser rate of interest as shall be the maximum amount chargeable with respect to this account under the law in effect in the State of California.
- d. Taxes. CONTRACTOR is required to collect sales taxes on products and services provided to customers under the laws and tax code governing the State of California and any local tax authorities. The services described in Exhibit B are not subject to sales tax.

## **6. LIMITATION OF CITY'S OBLIGATION TO MAKE PAYMENTS TO CONTRACTOR**

Notwithstanding any other provision of this Agreement, including any exhibits or attachments incorporated therein, and in order for the CITY to comply with its governing legal requirements, the CITY shall have no obligation to make any

payments to CONTRACTOR unless the CITY shall have first made an appropriation of funds equal to or in excess of its obligation to make any payments as provided in said Agreement. Contractor agrees that any services provided by Contractor, purchases made by Contractor or expenses incurred by Contractor in excess of said appropriation(s) shall be free and without charge to the City and the City shall have no obligation to pay for said services, purchases or expenses. Contractor shall have no obligation to provide any services, provide any equipment or incur any expenses in excess of the appropriated amount(s) until the CITY appropriates additional funds for this Agreement.

## **7. CONFIDENTIALITY**

The CONTRACTOR understands and agrees that some documents, materials, records, and the contents thereof, provided by the LAFD may be confidential. CONTRACTOR agrees not to retain any copies of the documents, materials, records provided by the LAFD, nor to disclose the contents thereof, which are of a confidential nature. CONTRACTOR shall ensure that each of its employees, or agents, who have access to such documents, materials, records, provided by the LAFD, comply with the confidentiality provisions of this Agreement. All notes, documents and/or products resulting from this agreement will become the sole property of the LAFD and the City of Los Angeles, and may not be used by the Contractor at any time, present or future, without the expressed written permission of the LAFD.

## **8. EXCLUSIVE AGREEMENT**

The LAFD and the CONTRACTOR understand and agree that this is an exclusive Agreement to provide services to the LAFD and that the LAFD will not contract with other contractors to provide similar services during the term of this Agreement.

## **9. STANDARD PROVISIONS**

CONTRACTOR, by entering into this agreement with the City agrees to abide by the City Standard Provisions (Rev. 3/09). (Attached hereto and incorporated herein as Exhibit A.)

## **10. TABLE OF EXHIBITS**

The Exhibits listed below are incorporated into this Agreement by this reference.

| <b>Documents</b>                                   |
|--|
| Exhibit A – Standard Provisions for City Contracts |
| Exhibit B – Statement of Work                      |
| Exhibit C – Pricing Proposal                       |



The above referenced Exhibits are incorporated herein by reference and incorporated as though fully stated.

**11. ENTIRE AGREEMENT**

This Agreement contains the complete Agreement between the parties. No verbal agreement(s) or conversation(s) with any officer or employee of either party will affect or modify the terms and conditions of this Agreement.

(Signature Page to Follow)

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

Dated: \_\_\_\_\_

For: THE CITY OF LOS ANGELES

By: \_\_\_\_\_  
Millage Peaks  
Fire Chief  
Los Angeles LAFD

Dated: \_\_\_\_\_

For: OPTIMETRICS, INC

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

Approved as to Form:  
CARMEN A. TRUTANICH, City Attorney

ATTEST:  
JUNE LAGMAY, City Clerk

By: \_\_\_\_\_  
Laurel L. Lightner  
Assistant City Attorney

By: \_\_\_\_\_  
Deputy City Clerk

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

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

Agreement Number: \_\_\_\_\_

# Exhibit A

## STANDARD PROVISIONS FOR CITY CONTRACTS

### TABLE OF CONTENTS

|        |  |   |
|--------|--|---|
| PSC-1  | <u>CONSTRUCTION OF PROVISIONS AND TITLES HEREIN</u> .....                                | 1 |
| PSC-2  | <u>NUMBER OF ORIGINALS</u> .....   | 1 |
| PSC-3  | <u>APPLICABLE LAW, INTERPRETATION AND ENFORCEMENT</u> .....                              | 1 |
| PSC-4  | <u>TIME OF EFFECTIVENESS</u> .....   | 2 |
| PSC-5  | <u>INTEGRATED CONTRACT</u> .....   | 2 |
| PSC-6  | <u>AMENDMENT</u> .....   | 2 |
| PSC-7  | <u>EXCUSABLE DELAYS</u> .....  | 2 |
| PSC-8  | <u>BREACH</u> .....  | 2 |
| PSC-9  | <u>WAIVER</u> .....  | 3 |
| PSC-10 | <u>TERMINATION</u> .....   | 3 |
| PSC-11 | <u>INDEPENDENT CONTRACTOR</u> .....  | 4 |
| PSC-12 | <u>CONTRACTOR'S PERSONNEL</u> .....  | 4 |
| PSC-13 | <u>PROHIBITION AGAINST ASSIGNMENT OR DELEGATION</u> .....                                | 5 |
| PSC-14 | <u>PERMITS</u> .....   | 5 |
| PSC-15 | <u>CLAIMS FOR LABOR AND MATERIALS</u> .....  | 5 |
| PSC-16 | <u>CURRENT LOS ANGELES CITY BUSINESS TAX REGISTRATION<br/>CERTIFICATE REQUIRED</u> ..... | 5 |
| PSC-17 | <u>RETENTION OF RECORDS, AUDIT AND REPORTS</u> .....                                     | 5 |
| PSC-18 | <u>FALSE CLAIMS ACT</u> .....  | 6 |
| PSC-19 | <u>BONDS</u> .....   | 6 |
| PSC-20 | <u>INDEMNIFICATION</u> .....   | 6 |
| PSC-21 | <u>INTELLECTUAL PROPERTY INDEMNIFICATION</u> .....                                       | 6 |

## TABLE OF CONTENTS (Continued)

|           |  |    |
|-----------|--|----|
| PSC-22    | <u>INTELLECTUAL PROPERTY WARRANTY</u> .....  | 7  |
| PSC-23    | <u>OWNERSHIP AND LICENSE</u> .....   | 7  |
| PSC-24    | <u>INSURANCE</u> .....   | 8  |
| PSC-25    | <u>DISCOUNT TERMS</u> .....  | 8  |
| PSC-26    | <u>WARRANTY AND RESPONSIBILITY OF CONTRACTOR</u> .....                                   | 8  |
| PSC-27    | <u>NON-DISCRIMINATION</u> .....  | 8  |
| PSC-28    | <u>EQUAL EMPLOYMENT PRACTICES</u> .....  | 9  |
| PSC-29    | <u>AFFIRMATIVE ACTION PROGRAM</u> .....  | 11 |
| PSC-30    | <u>CHILD SUPPORT ASSIGNMENT ORDERS</u> .....   | 15 |
| PSC-31    | <u>LIVING WAGE ORDINANCE AND SERVICE CONTRACTOR<br/>WORKER RETENTION ORDINANCE</u> ..... | 16 |
| PSC-32    | <u>AMERICANS WITH DISABILITIES ACT</u> .....   | 17 |
| PSC-33    | <u>CONTRACTOR RESPONSIBILITY ORDINANCE</u> .....   | 18 |
| PSC-34    | <u>MINORITY, WOMEN, AND OTHER BUSINESS ENTERPRISE<br/>OUTREACH PROGRAM</u> .....         | 18 |
| PSC-35    | <u>EQUAL BENEFITS ORDINANCE</u> .....  | 18 |
| PSC-36    | <u>SLAVERY DISCLOSURE ORDINANCE</u> .....  | 19 |
| EXHIBIT 1 | <u>INSURANCE CONTRACTUAL REQUIREMENTS</u> .....  | 20 |

## 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](http://www.lacity.org/cao/risk). The City approved Bond Assistance Program is available for those contractors who are unable to obtain the City-required performance bonds. A City approved insurance program may be available as a low cost alternative for contractors who are unable to obtain City-required insurance.

### **CONTRACTUAL REQUIREMENTS**

#### **CONTRACTOR AGREES THAT:**

**1. Additional Insured/Loss Payee.** The CITY must be included as an Additional Insured in applicable liability policies to cover the CITY'S liability arising out of the acts or omissions of the named insured. The CITY is to be named as an Additional Named Insured and a Loss Payee As Its Interests May Appear in property insurance in which the CITY has an interest, e.g., as a lien holder.

**2. Notice of Cancellation.** All required insurance will be maintained in full force for the duration of its business with the CITY. By ordinance, all required insurance must provide at least thirty (30) days' prior written notice (ten (10) days for non-payment of premium) directly to the CITY if your insurance company elects to cancel or materially reduce coverage or limits prior to the policy expiration date, for any reason except impairment of an aggregate limit due to prior claims.

**3. Primary Coverage.** CONTRACTOR will provide coverage that is primary with respect to any insurance or self-insurance of the CITY. The CITY'S program shall be excess of this insurance and non-contributing.

**4. Modification of Coverage.** The CITY reserves the right at any time during the term of this Contract to change the amounts and types of insurance required hereunder by giving CONTRACTOR ninety (90) days' advance written notice of such change. If such change should result in substantial additional cost to CONTRACTOR, the CITY agrees to negotiate additional compensation proportional to the increased benefit to the CITY.

**5. Failure to Procure Insurance.** All required insurance must be submitted and approved by the Office of the City Administrative Officer, Risk Management prior to the inception of any operations by CONTRACTOR.

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

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



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

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

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

**9. Commencement of Work.** For purposes of insurance coverage only, this Contract will be deemed to have been executed immediately upon any party hereto taking any steps that can be considered to be in furtherance of or towards performance of this Contract. The requirements in this Section supersede all other sections and provisions of this Contract, including, but not limited to, PSC-4, to the extent that any other section or provision conflicts with or impairs the provisions of this Section.

## Exhibit 1 (Continued)

### Required Insurance and Minimum Limits

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

Agreement/Reference: \_\_\_\_\_

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

|   |                     |
|---|---------------------|
|   | <u>Limits</u>       |
| <u>Workers' Compensation – Workers' Compensation (WC) and Employer's Liability (EL)</u> | WC <u>Statutory</u> |
|   | EL _____            |
| <input type="checkbox"/> Waiver of Subrogation in favor of City                         |                     |
| <input type="checkbox"/> Longshore & Harbor Workers                                     |                     |
| <input type="checkbox"/> Jones Act  |                     |

|  |  |
|--|--|
| <u>General Liability</u>                               |  |
| <input type="checkbox"/> Products/Completed Operations | <input type="checkbox"/> Sexual Misconduct _____ |
| <input type="checkbox"/> Fire Legal Liability _____    |  |
| <input type="checkbox"/> _____                         |  |

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

Professional Liability (Errors and Omissions) \_\_\_\_\_

|  |   |
|--|---|
| <u>Property Insurance</u> (to cover replacement cost of building – as determined by insurance company) |   |
| <input type="checkbox"/> All Risk Coverage   | <input type="checkbox"/> Boiler and Machinery |
| <input type="checkbox"/> Flood _____   | <input type="checkbox"/> Builder's Risk       |
| <input type="checkbox"/> Earthquake _____  | <input type="checkbox"/> _____                |

|                                |  |
|--------------------------------|--|
| <u>Pollution Liability</u>     |  |
| <input type="checkbox"/> _____ |  |

|   |                         |
|---|-------------------------|
| <u>Surety Bonds – Performance and Payment (Labor and Materials) Bonds</u> | 100 % of Contract Price |
| <u>Crime Insurance</u>  | _____                   |

Other: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Statement of Work  
ADASHI Configuration and Setup Services  
March 22, 2010**

**General**

LAFD currently licenses OptiMetrics' ADASHI Command Post software for use by its command personnel. To optimize the operational utility and effectiveness of Command Post, OptiMetrics shall provide all labor necessary to customize ADASHI Command Post and its software components to more tightly integrate with the internal process utilized by the LAFD Department of Fire Command And Control. The software customization tasks to be performed are outlined below:

**Task 1. In-vehicle software setup**

- 1) Tasks:
  - a) Install and configure master copy of ADASHI Lite
  - b) Communicate with TxMessenger concerning unit status
- 2) Deliverables:
  - a) Latest version (as of purchase order date) of ADASHI Lite installed on one of LAFD's Panasonic Toughbook CF30s that has been properly configured for communication with LAFD CAD test-bed through Motorola TxMessenger. Note that LAFD will be responsible for replicating (ghosting) the resulting installation onto the additional 499 units.
  - b) OptiMetrics will validate ADASHI Lite fielded functionality on the provided CF30:
    - i) The program receives dispatches and automatically provides a navigation route to the incident site.
    - ii) Selecting a status button sends a status request to LAFD test-bed CAD.
    - iii) When LAFD test-bed CAD changes the units status the change is reflected in ADASHI Lite's interface.

**Task 2. Automatic Vehicle Location (AVL) system extensions**

- 1) Tasks:
  - a) Display map position, status, heading, and speed for all vehicles or subset (based on incident, type, or geographic area)
  - b) Selecting a vehicle from list or map permits both "Follow-me" mode and manual polling
  - c) Play-back history of one or more vehicles
  - d) Allow users to set geo-fences on the map display
  - e) For each incident, displays a sorted list of units in order of distance from incident site
- 2) Deliverables:
  - a) Latest update (as of purchase order date) of ADASHI Command Post software installed on one of LAFD's dispatch center desktop computers.
  - b) Latest update (as of purchase order date) of ADASHI Server software installed on existing HP server hardware designated as 'C23' that currently resides on the dispatch center internal test-bed network.
  - c) Simulator within ADASHI Command Post to emulate 500 vehicles of various types. The emulator will set a route and random status for each vehicle and 'drive' the vehicle back and forth along the route. Each emulated vehicle will transmit its location and status information to the server using the same method as actual deployed vehicles.
- 3) Demonstration of ADASHI Command Post linked to the ADASHI server receiving simulated data to show:
  - i) Map position, status, heading, and speed for all vehicles
  - ii) Map position, status, heading, and speed for a subset:
    - (1) Incident
    - (2) Type of vehicle
    - (3) Geographic area
  - iii) Selection of a vehicle on the map to show "Follow-me" mode
  - iv) Selection of a vehicle on the map to manually poll vehicle data
  - v) Record and playback vehicle history

**Statement of Work  
ADASHI Configuration and Setup Services  
March 22, 2010**

- vi) Set up a geo-fence (designated polygon annotation) for a vehicle and receive an alert when vehicle crosses boundary.
- vii) Simulate a dispatched incident on LAFD's CAD test-bed and display a resulting list of units, sorted in order of distance from incident site.

**Task 3. Manual Mode**

- 1) Tasks:
  - a) Provide a 'Manual Mode' button
  - b) Current incidents and unit status are replicated within ADASHI
  - c) Command line user interface allows changes to unit status from each ADASHI client
  - d) Changes to unit status are one-way - synchronization with CAD after it recovers is a manual process
- 2) Deliverables:
  - a) Latest update (as of purchase order date) of ADASHI Command Post software installed on one of LAFD's dispatch center desktop computers.
  - b) Latest update (as of purchase order date) of ADASHI Server software installed on existing HP server hardware designated as 'C23' that currently resides on the dispatch center internal test-bed network.
- 3) Demonstrate 'Manual Mode' capability using LAFD CAD test-bed:
  - i) Validate the operation of a Manual Mode button within ADASHI Command Post that will enable a command line user interface. The command line user interface will permit modification of unit status.
  - ii) Operation of Manual Mode button with an operational test-bed CAD will be shown to be identical to a disabled test-bed CAD.

**Task 4. Other Automation**

- 1) Tasks:
  - a) Display appropriate imagery for each incident site (Pictometry)
  - b) Display cell tower position on the map associated with 911 cell calls
  - c) Display caller position on the map associated with 911 cell calls
  - d) Display geo-query results, guidance and checklists (such as mutual aid, automatic aid, and LAFD policies) based on geo-location, operational role, and incident type.
- 2) Deliverables:
  - a) Latest update (as of purchase order date) of ADASHI Command Post software installed on one of LAFD's dispatch center desktop computers.
- 3) b) Demonstrations of automation capabilities using simulated incidents on the LAFD CAD testbed:
  - i) Pictometry imagery
  - ii) Cell tower position on Navteq mapset (for 911 cell calls only)
  - iii) Caller position on Navteq mapset (for 911 cell calls only)
  - iv) Present geo-query results (map based information), guidance and checklists based on the incident location, a user's selected operational role, and incident type.

**Reporting**

OptiMetrics will provide monthly progress reports to the LAFD technical representative that summarizes the work completed as described by the deliverables listed in Tasks 1 through 4.

**Meetings**

OptiMetrics personnel will travel to LAFD as needed for coordination, installation, and testing. Two trips have been proposed in accordance with the attached travel breakdown.

**OptiMetrics, Inc. Pricing Proposal**  
**ADASHI Configuration and Setup Services**  
**3/22/2010**

| <b>Labor Category</b>                  | <b>Hours</b> | <b>Hrly Rate</b> | <b>Price</b>        |
|--|--------------|------------------|---------------------|
| Program Manager                        | 48           | \$239.56         | \$ 11,498.88        |
| Sr. Software Developer                 | 488          | 193.06           | 94,213.28           |
| Software Developer                     | 488          | 136.18           | 66,455.84           |
| Software Tester                        | 480          | 111.41           | 53,476.80           |
| Sub Total                              | 1,504        |                  | \$225,644.80        |
| <b>Other Direct Cost (ODC) Expense</b> |              | <b>Overhead</b>  | <b>Price</b>        |
| Travel                                 | 1,654        | \$274.23         | \$1928.23           |
| <b>Summary</b>                         | <b>Hours</b> |                  | <b>Price</b>        |
| Total Program Labor                    | 1,504        |                  | 225,644.80          |
| Total Program ODC                      |              |                  | 1,928.23            |
| Discount 10%                           |              |                  | (22,760.26)         |
| <b>Total Program</b>                   |              |                  | <b>\$204,812.77</b> |

**Travel Breakdown**

| <b>From</b>      | <b>To</b> | <b>Purpose</b> | <b>Trp</b> | <b>Pr<br/>s</b> | <b>Da</b> | <b>Nt</b> | <b>Air</b> | <b>Lg</b> | <b>MI</b> | <b>Ca<br/>r</b> | <b>Mi</b> | <b>Total</b> |
|------------------|-----------|----------------|------------|-----------------|-----------|-----------|------------|-----------|-----------|-----------------|-----------|--------------|
| Baltimore,<br>MD | LA,<br>CA | Coordination   | 1          | 1               | 2         | 1         | 450        | 135       | 71        | 50              | 0         | \$827.00     |
| Ann Arbor,<br>MI | LA,<br>CA | Testing        | 1          | 1               | 2         | 1         | 450        | 135       | 71        | 50              | 0         | \$827.00     |

**Travel Costs: \$1654.00**

**OptiMetrics, Inc. Pricing Proposal**  
**ADASHI Configuration and Setup Services**  
**3/22/2010**

**Meetings**

OptiMetrics personnel will travel to LAFD as needed for coordination, installation, and testing. Two trips have been proposed in accordance with the attached travel breakdown.

**Period of Performance and Schedule:**

The project will be completed 3 months after award of contract to OptiMetrics. It is expected that Task 1 will be completed 1 month after award. Tasks 2 through 4 will be worked in parallel following completion of Task 1; those tasks will be completed 3 months after award.

| Milestone | Completion Date      | Payment      |
|-----------|----------------------|--------------|
| Task 1    | 1 Month after Award  | \$ 68,200.00 |
| Task 2    | 3 Months after Award | \$136,612.77 |

**Note on Deliverables**

Customized executable software shall be delivered to the LAFD at the conclusion of Task 1 of this program.