

**FIRST AMENDMENT
TO
CONTRACT NO. 831 (C-134675)
BETWEEN
THE LOS ANGELES PUBLIC LIBRARY
AND
WICKED BIONIC, LLC**

THIS FIRST AMENDMENT to Contract No. 831 (C-134675) is made and entered into by and between the City of Los Angeles (hereinafter referred to as “City”), a municipal corporation, acting by and through its Board of Library Commissioners, (hereinafter referred to as “Board” or “Library”), and Wicked Bionic, LLC, (hereinafter referred to as “Contractor”) to provide marketing and public relations consultant services on an as-needed and as-requested basis. Library and Contractor may also be referred to herein individually as a “Party” or collectively as the “Parties”.

WHEREAS, On January 12, 2017, the Board approved the issuance of a Request for Qualifications (RFQ) for Marketing and Public Relations Consultant Services to establish a pre-qualified list of on-call marketing and public relations consultants (Board Resolution No. 2017-3 [C-3]); and,

WHEREAS, On June 8, 2017, the Board approved the pre-qualified list of sixteen (16) consultants, which included Contractor, to provide as-needed and as-requested marketing and public relations consultant services to the Library (Board Resolution No. 2017-11 [C-21]); and,

WHEREAS, On December 16, 2019, Contract No. 831 (C-134675) was executed between the Library and Contractor and is set to expire on December 16, 2022; and,

WHEREAS, The Library requires the uninterrupted services of Contractor to provide as-needed and as-requested marketing and public relations consultant services to the Library; and,

WHEREAS, On **DATE**, 2022, staff of the Library recommended the approval of the First Amendment to extend Contract No. 831 (C-134675) for an additional one-year, with one (1) one-year option to extend, at the discretion of the City Librarian, or designee, and continue a maximum contract compensation amount of three-million dollars (\$3,000,000) per calendar year, to ensure the uninterrupted marketing and public relations consultant services; and,

WHEREAS, On **DATE**, 2022, the Board approved the execution of the First Amendment to Contract No. 831 (C-134675) (Board Resolution No. **2022-XXX**); and,

WHEREAS, On **DATE**, 2022, the Board found in accordance with Charter Sections 371(e)(10) and 1022, and Los Angeles Administrative Code Section 10.15(a)(10), that it is more feasible to have the work performed by independent contractors than by City employees and that it would be impractical and impossible to perform a successful competitive bid process in a timely and effective manner because of the COVID-19 pandemic and lack of staff to draft, release and process a Request for Proposals before the contracts expire; and,

WHEREAS, Funds are available in Library Fund 300 to compensate Contractor for marketing and public relations consultant services.

NOW, THEREFORE, in consideration of the promises, and of the mutual covenants and agreements herein contained, the Parties agree as follows:

A. DOCUMENTS

Section 1.0 (“Documents”) of Contract No. 831 (C-134675) shall be replaced in its entirety as follows:

This Agreement shall be composed of the following documents which shall be made a part hereof as though fully set forth herein:

- 1.1 This First Amendment to Contract No. 831 (C-134675).
- 1.2 Standard Provisions for City Contracts (Rev. 10/21 [V.4]) attached hereto and incorporated by reference as Exhibit A.
- 1.3 Contract No. 831 (C-134675) attached hereto and incorporated by reference as Exhibit E.
- 1.4 Section A.2 (“Scope of Work”) of the Request for Qualifications (RFQ) No. 44-015 released by the Library on January 13, 2017, for Marketing and Public Relations Consultant Services attached hereto and incorporated by reference as Exhibit B.
- 1.5 Sample Documents
 - C.1 Notice of Available Work
 - C.2 Notice to Proceed
 - C.3 Supplemental Notice to Proceed

The abovementioned documents are attached hereto and incorporated by reference as Exhibits C.1, C.2, and C.3. The process to select Contractor for specific marketing and public relations consultant services is detailed in Section 6 (“Notice of Available Work”) of this Agreement.

- 1.6 Proof of Insurance to provide marketing and public relations consultant services for the Library are attached hereto and incorporated by reference as Exhibit D.
- 1.7 Confidentiality Agreement which is attached hereto and incorporated herein by reference as Exhibit F.

All of the above Exhibits are on file in the Office of the Board of Library Commissioners, and each of the Parties hereto agree to carry out and fully perform each and all of the provisions of said Exhibits which are required of it to be performed.

No verbal agreement or conversation with any officer or employee of either Party shall affect or modify any of the terms and conditions of this Agreement.

This Agreement is executed in three (3) duplicate originals, each of which is deemed to be an original.

B. ORDER OF PRECEDENCE

Section 2.0 (“Order of Precedence”) of Contract No. 831 (C-134675) shall be replaced in its entirety as follows:

In the event of any conflict or inconsistency between Resolution of any conflicting provisions in the documents constituting this First Amendment to Contract No. 831 (C-134675) shall be resolved by considering the documents according to the following order of precedence:

- 2.1 This First Amendment to Contract No. 831 (C-134675).
- 2.2 Standard Provisions for City Contracts (Rev. 10/21 [V.4]) (Exhibit A).
- 2.3 Contract No. 831 (C-134675) (Exhibit E).
- 2.4 Section A.2 (“Scope of Work”) of the Request for Qualifications (RFQ) No. 44-015 released by the Library on January 13, 2017, for Marketing and Public Relations Consultant Services (Exhibit B).
- 2.5 Sample Documents
 - C.1 Notice of Available Work
 - C.2 Notice to Proceed
 - C.3 Supplemental Notice to Proceed

The abovementioned documents are attached hereto and incorporated by reference as Exhibits C.1, C.2, and C.3.

2.6 Proof of Insurance to provide marketing and public relations consultant services for the Library (Exhibit D).

2.7 Confidentiality Agreement (Exhibit F).

C. TERM OF AGREEMENT

Section 3.0 (“Term of Agreement”) shall be replaced in its entirety with the following:

The term of this Agreement will begin on December 16, 2019, and will terminate on December 15, 2023, unless extended by one (1) one (1) year option to be exercised at the sole discretion of the City Librarian, or designee, or unless terminated earlier as provided herein.

D. INDEMNIFICATION AND INSURANCE REQUIREMENTS

Section 4.0 (“Indemnification and Insurance Requirements”) shall be replaced in its entirety with the following:

The insurance and indemnification requirements of this Agreement are as provided in the Standard Provisions for City Contracts (Rev. 10/21 [V.4]) (Exhibit A). Contractor shall provide and maintain proof of insurance applicable and required by the Standard Provisions for City Contracts (Rev. 10/21 [V.4]) (Exhibit A).

E. INDEPENDENT CONTACTOR

Add Section 15.0 (“Independent Contractor”) to read as follows:

Contractor’s relationship to Library in the performance of this Agreement is that of an independent Contractor and not as an agent or employee of City. Therefore, neither Contractor, nor any of its subcontractors, are entitled to any vacation, sick leave, Workers’ Compensation, pension, or any other City benefits. Contractor’s personnel performing services under this Agreement shall at all times be under Contractor’s exclusive direction and control and shall be employees or subcontractors of Contractor and not of City. Further, Contractor shall pay all wages, salaries, and other amounts due its employees in connections with this Agreement and shall be responsible for all related reports and obligations including but not limited to social security, income tax withholding, unemployment compensation, and workers’ compensation.

F. RETENTION OF RECORDS

Add Section 16.0 (“Retention of Records”) to read as follows:

Except as otherwise expressly directed by City, Contractor shall maintain records, including records of financial transactions, pertaining to the performance of the Agreement, in their original form, in accordance with requirements prescribed by City. These records must be retained for a period of no less than forty-eight (48) months following final payment made by City hereunder, the expiration date of this Agreement, or the termination date of this Agreement, whichever occurs last. Records will be subject to examination and audit by authorized City personnel or by the City's representative at any time during the term of this Agreement or within the forty-eight (48) months following the final payment made by City hereunder, the expiration of this Agreement, or the termination date of this Agreement, whichever occurs last. Contractor shall provide any reports requested by City regarding performance of the Agreement.

G. NO THIRD-PARTY BENEFICIARIES

Add Section 17.0 ("No Third-Party Beneficiaries") to read as follows:

Nothing herein is intended to create a third-party beneficiary in any subcontractor. The City has no obligation to any subcontractor. No privity is created with any subcontractor by this Agreement. Even if the Contractor uses subcontractors, Contractor remains responsible for complete and satisfactory performance of the terms of this Agreement.

H. CONFIDENTIALITY

Add Section 18.0 ("Confidentiality") to read as follows:

All data, documents, records, recorded testimony, audiotapes, videotapes, materials, products, technology, computer programs, specifications, manuals, business plans, software, marketing plans, financial information, and other information disclosed or submitted orally, in writing, or by any other media, to Contractor by the City, and other documents to which the Contractor has access during the term of this Agreement are confidential information ("Confidential Information").

The Contractor agrees that both during and after the term of this Agreement, City's Confidential information shall be considered and kept as the private and privileged records of City and will not be divulged to any person, firm, corporation, or other entity except on the prior direct written authorization of City or as required by law.

The Contractor shall ensure that each worker sent on an assignment under this Agreement has executed a Confidentiality Agreement prior to commencing any such assignment. Contractor agrees to provide the signed Confidentiality Agreement to the City prior to all workers commencing any assignment. The Confidentiality Agreement to be used is

attached hereto as Exhibit F. The Contractor is responsible for ensuring compliance of all workers with the Confidentiality Agreement.

I. CONTRACTOR'S INTERACTION WITH THE MEDIA

Add Section 19.0 ("Contractor's Interaction With The Media") to read as follows:

Contractor shall refer all inquiries from the news media to Library, shall immediately contact Library to inform Library of the inquiry, and shall comply with the procedures of City's Public Affairs staff regarding statements to the media relating to this Agreement or Contractor's services hereunder.

J. REQUIREMENTS APPLY TO ALL SUBCONTRACTORS

Add Section 20.0 ("Requirements Apply To All Subcontractors") to read as follows:

The Contractor will ensure that the requirements of Sections 18.0 ("Confidentiality") and 19.0 ("Contractor's Interaction with the Media") are provided to and apply to all subcontractors of this Agreement

K. CONTINUED REQUIREMENTS

Add Section 21.0 ("Continued Requirements") to read as follows:

The requirements of this Sections 18.0 ("Confidentiality"), 19.0 ("Contractor's Interaction with the Media"), and 20.0 ("Requirements Apply to all Subcontractors") survive termination of the Agreement.

L. BORDER WALL BID DISCLOSURE

Add Section 22.0 ("Border Wall Bid Disclosure") to read as follows:

Contractor shall comply with Los Angeles Administrative Code ("LAAC") Section 10.50 et seq., "Disclosure of Border Wall Contracting." City may terminate this Agreement at any time if City determines that Contractor failed to fully and accurately complete the required affidavit and disclose all Border Wall Bids and Border Wall Contracts, as defined in LAAC Section 10.15.1. The required affidavit must be submitted online at www.rampla.org.

(SIGNATURE PAGE TO FOLLOW)

IN WITNESS THEREOF, the Parties hereto have caused this First Amendment to Contract No. 831 (C-134675) to be executed by their respective duly authorized representatives.

By _____
BÍCH NGỌC CAO
President
Board of Library Commissioners

By _____
DANA ARNETT
President, CEO
Wicked Bionic, LLC

Date _____

Date _____

APPROVED AS TO FORM:

ATTEST:

MICHAEL N. FEUER, City Attorney

By _____
BASIA JANKOWSKI
Deputy City Attorney

By _____
RAQUEL BORDEN
Executive Assistant

Date _____

Date _____

ATTEST:

HOLLY L. WOLCOTT, City Clerk

By: _____

Date: _____