

TRANSMITTAL

To:

THE COUNCIL

Date:

OCT 26 2015

From:

THE MAYOR

TRANSMITTED FOR YOUR CONSIDERATION. PLEASE SEE ATTACHED.



ERIC GARCETTI
Mayor

Ana Guerrero

CITY OF LOS ANGELES

CALIFORNIA

JAN PERRY
GENERAL MANAGER

ECONOMIC AND WORKFORCE
DEVELOPMENT DEPARTMENT



ERIC GARCETTI
MAYOR

1200 W. 7TH STREET
LOS ANGELES, CA 90017

October 26, 2015

Council File: 07-1586
Council District Nos.: Citywide
Eva Bitar (213) 744-9049

Honorable Mayor Eric Garcetti
Mayor, City of Los Angeles
Room 300, City Hall

Attention: Mandy Morales, Legislative Coordinator

TRANSMITTAL: REPORT REGARDING EXECUTION OF THE 2ND TERM CONTRACT WITH FILML.A.

The General Manager of the Economic and Workforce Development Department (EWDD), or designee, respectfully requests that your office review this transmittal and forward to the City Council for further consideration.

RECOMMENDATION

The General Manager of EWDD or designee, respectfully requests that the Mayor and City Council:

1. APPROVE the proposed contract with FilmL.A. for a second term of five years from July 1, 2015 – June 30, 2020, with discretion to extend for two additional extensions of five years each, for a total contract term of 20 years; and
2. AUTHORIZE the General Manager, EWDD, or designee to execute said Contract C-117026 with FilmL.A..

FISCAL IMPACT STATEMENT

The agreement requires no compensation by the City to FilmL.A. and has no impact on the General Fund

SUMMARY

On March 23, 2010, the Council approved a contract with FilmL.A., Inc. for a term of five years, with three additional extensions of five years each, for a total term of 20 years. The existing contract representing the first five year term expired on June 30, 2015, and was extended with two contract extensions dated June 29, 2015 and September 21, 2015, to

October 30, 2015 while the proposed contract was being finalized. The proposed contract is for the second five year term from July 1, 2015 through June 30, 2020. In accordance with CF 07-1586, and Executive Directive #3, the Economic and Workforce Development Department (EWDD) is transmitting the attached proposed contract with FilmL.A. for a second 5 year term.

BACKGROUND

On April 21, 2009, the Council approved a Request For Proposals (RFP) for the provision of film permitting coordination services and authorized the Office of the City Administrative Officer (CAO) to release the RFP. FilmL.A. was the only respondent to the request for proposals and was selected as a qualified respondent. The CAO negotiated terms and returned to the Council for approval of a Twenty-Year contract with FilmL.A. on March 23, 2010. On April 12, 2013, the Contract Administration function for Contract No. C-117026 was transferred from the CAO to EWDD in CF 08-3050.

CONTRACTOR REVIEW

FilmL.A. issued 52,469 filming permits in the past five years (up to May 31, 2015). Based on film industry feedback, FilmL.A. has provided satisfactory service to the Film Industry for the past five years, and the industry has been pleased with the services provided by FilmL.A..

INDUSTRY INPUT

The industry has requested an easing of fees and a consideration of a tier system to accommodate different levels of productions (i.e. Feature Films and Television shows vs. commercials and small independents).

PROPOSED CONTRACT COMPONENTS

FilmL.A. has requested to add to the contract the ability to allow film industry customers to utilize credit cards to pay for filming fees, and authorization to pass the costs of utilizing credit cards onto the customer. The areas of improvement for the City are streamlining and accelerating the refund process and payments to the City, providing technology upgrades to link City departments with the Online Permitting System (OPS), creating additional fields in the OPS database that allow for segregation of data from other clients, and providing additional filming related reports. Except for the tier fee process, which is still under discussion with Industry representatives, and Section 20 of the contract, "Budget and Audit", which is still under discussion with FilmL.A., language addressing the above areas of improvements have been added to this contract.



JAN PERRY
General Manager

JP:EB

Attachment: Contract C-117026 and Exhibits A-D

CONTRACT NO. C-117026

**BY AND BETWEEN, THE CITY OF LOS ANGELES, a municipal corporation (City), and
FILMLA., INCORPORATED (Contractor)**

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

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

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

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

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

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

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

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

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

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

Section 1. Contractor

FilmL.A., Inc. is a private 501(c)4 not-for-profit community benefit organization, charged with coordinating permits for on-location motion picture, television and commercial production. The Contractor is headquartered in the City of Los Angeles at 6255 W. Sunset Boulevard, 12th Floor, Hollywood, CA 90028.

Section 2. Term of the Contract

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

Section 3. Activities to be Performed

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

Section 4. Contract Administration

The Economic Workforce Development Department (EWDD) of the City of Los Angeles, herein referred to as the "City Contract Administrator", or designee, shall have full authority to act for the City in the administration of this Contract, consistent with the provisions contained herein.

Section 5. Reporting Requirements

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

Section 6. Contract Notices

Written notices pertaining to this Contract shall be directed to:

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

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

Section 7. Incorporation of Exhibits, Precedence of Documents

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

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

Section 8. Termination

Either party may terminate this Contract by giving 270 days written notice to the other party. The termination will be effective 270 days after the receipt of the written notice. Contract provisions for indemnity, statements, audits, payments, and refunds survive termination. This Section shall take precedence over the Standard Provisions for City Contracts (PSC-10). The City may immediately terminate this Contract for cause. Cause shall be defined as:

- The lapse of insurance as required herein after a reasonable period for cure by the Contractor;
- Violation of the Municipal Lobbying Ordinance (LAMC 48.01) or any other City or State ethics or lobbying laws;
- The criminal indictment of one or more officers, employees and/or Board Members of the Contractor for activity relating to the duties performed under this Contract whereby the indictment has a significant detrimental impact on the ability of the Contractor to perform under the terms of this Contract. The detrimental impact may, among other things, be in the reputation of the Contractor and the associated reputation of the City. Activities not related to the duties performed under this Contract are specifically excluded;
- The discovery of organized, sustained activity that the Contractor is unwilling to cease that is contrary to the City's attempt to maximize local film production;
- The initiation of bankruptcy proceedings or the loss of managerial control of the Contractor to another party, including regulatory entities;
- Gross negligence in the performance of the duties under this Contract;

- Without the express written consent of the City as determined by action of the City Council and Mayor:
 - The Contractor's acquisition of, or merger or consolidation with, any other entity; or,
 - The occurrence of any business decision that significantly alters the composition of its Board (if such a Board exists) or reduces service levels in a manner such that it becomes a disincentive to filming locally.

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

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

Section 9. Compensation to Contractor

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

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

Section 10. Environmental Impact

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

Section 11. City Access to Contractor

The Contractor shall provide priority handling of all phone calls, emails and all other communications from City staff to Contractor management. Response to inquiries made by the Contract Administrator or other City Departments shall be responded to in one business day.

Section 12. Monitoring and Evaluation

The Contractor shall ensure:

- That authorized representatives of the City have the right of access to activities, records, including financial records as they relate to the City and FilmL.A., and facilities operated by Contractor under this Contract without prior or advance notice being given to the Contractor. Activities include attendance at meetings or presentations at the Contractor's Board of Directors, Contractor outreach efforts, and compliance with audits and provision of any/all on-site records (including electronic) within 24 hours of the request of the City. Exceptions shall include confidential employee matters and litigation. If records are stored off-site, they shall be kept in a manner that allows for the provision of the records within 48 hours. Approval of the City Contract Administrator must be obtained for a method of storage that will result in more than 48 hours to access records.
- The cooperation of its staff and Contractor's Board Members, in their official capacities. The City Contract Administrator, or designee, at its discretion, may periodically conduct performance or financial reviews of Contractor. These reviews may focus on any topic including, but not limited to, the extent to which the terms of the contract are being fulfilled, customer and public satisfaction with the duties Contractor performs, the outreach efforts that have been implemented, the measurable goals achieved, the effectiveness of outreach management, and the impact of the outreach.

Section 13. Non-Discrimination and Equal Treatment of Customers

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

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

Section 14. Student Films Permits – Exception

Subject to being consistent with the Permit Authority existing policy, students who present letters and/or certification from their place of education may be exempt from the City's film permit requirements if said productions require six (6) or less people on set – including actors, cameramen and all assistants and personnel. If it is determined that a student film related project qualifies for an exemption, the student film production shall be issued a Student Exemption Letter. Said productions that include simulated gunfire, pose a risk to the safety of person and/or property, or block or impede pedestrian and/or vehicular travel shall not qualify for an exemption.

Section 15. Public Records Act

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

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

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

Section 16. Insurance

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

Section 17. Lobbying

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

Section 18. Policies and Procedures

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

Section 19. Technology Utilization

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

Section 20. Budget and Audit

In accordance with Section 3 of Exhibit B, Reporting Requirements, Contractor shall provide its Annual Operating Budget. Contractor will also submit a proposed budget for Unclaimed Refund Expenditures that aligns with City priorities established in Section 8 of Exhibit A.

Prior to the development of Contractor's proposed budget for Unclaimed Refund Expenditure, Contractor shall seek advice and counsel of the City Contract Administrator, in consultation with the Mayor and City Council Committee of appropriate jurisdiction as available in insuring that the proposed budget of Unclaimed Refund Expenditure aligns with City priorities established in Section 8 of Exhibit A. Contractor and the City agree to negotiate in good faith to resolve within a reasonable time any disputes that may arise regarding the proposed expenditure of Unclaimed Refunds.

In concert with the Contractor's submittal of an annual plan of expending Unclaimed Refunds, the Contractor shall submit an accounting of expenditures for the prior year.

The accounting shall demonstrate how the funds were spent and provide narrative on the resulting projects and outcomes. Any balance of funds remaining at the end of the Contractor's fiscal year shall roll over to the next fiscal year and be expended consistent with the approved line items and priorities.

Section 21. Contractor Fees

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

Section 22. Refunds

Within 30 days of receipt of final City charges pertaining to permit activity, it is determined that excess funds will remain on deposit after full payment to the City for final City charges, and the Entertainment Industry Customer has not previously requested a refund in writing within 90 days of the completion of all filming activities associated with the respective permit, Contractor shall notify the Entertainment Industry Customer electronically/and or in writing that a refund is due (the "Refund Notice"). The Refund Notice shall include the amount of the refund, directions on how to claim the refund, and inform the Entertainment Industry Customer that it has 30 business days from the date the Refund Notice was sent by email, mail or fax (the "Refund Notice Date") to claim a refund. Contractor shall pay to the Entertainment Industry Customer the refund only if Contractor receives a written refund

request from the Entertainment Industry Customer within 30 days of the Refund Notice Date in this Section 20.

The Refund Notices will only be required if the City's estimated charges and other fees paid in connection with the permit exceed the actual charges and other fees for the permit by more than \$100.

All fees collected at less than \$100 and all unclaimed Refunds remaining in accounts shall be utilized by the Contractor to serve the Entertainment Industry and its clients per the approved Budget in Section 20 of this Contract.

Section 23. Customer Invoicing and Discounts

The Contractor may invoice Contractor Fees to its Entertainment Industry Customers as one or more separate charges. These Contractor Fees may be identified as an "application fee," "service charge," "transaction fee," or any other reasonable description.

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

Section 24. Reserve for City Fees

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

Section 25. Branding

The City of Los Angeles must be acknowledged on the FilmL.A. website. The website must state that FilmL.A. is a City Contractor, is not a City Department, and is not the City permitting authority. The Contractor must provide a reference to the City Contract Administrator's name and phone number as well as a link to the City Economic Workforce Development Department website and any City sponsored survey instrument(s) so the City can be informed of complaints.

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

THE CITY OF LOS ANGELES

FILMLA., INC.

By: _____
Jan Perry
EWDD General Manager

By: _____
Paul Audley
President

Date: _____

Date: _____

Approved as to Form:

ATTEST:

Mike Feuer, City Attorney

Holly L. Wolcott, City Clerk

By: _____
Deputy City Attorney

By: _____
Deputy City Clerk

Date: _____

Date: _____

City Business License Number:

243982-89

Internal Revenue Service ID Number:

95-4531774