

AGREEMENT
between
THE CITY OF LOS ANGELES
and
ESTATE RESEARCH ASSOCIATES, INC.
FOR INFORMATION AND RECOVERY OF AN UNCLAIMED CITY ASSET

This Agreement is made and entered into and between the City of Los Angeles (hereinafter referred to as the "City"), a municipal corporation, acting by and through its Office of Finance (hereinafter referred to as "Finance") and Estate Research Associates, Inc. (hereinafter referred to as the "Contractor").

WITNESSETH:

WHEREAS, the City does not have available in its employ personnel with sufficient expertise to conduct extensive research to identify unclaimed assets belonging to the City; and

WHEREAS, the Contractor represents that it has information regarding an unclaimed asset valued at approximately \$1,000,000 belonging to the City; and

WHEREAS, the Contractor will disclose the unclaimed asset upon execution of this Agreement and recover the asset; and

WHEREAS, the Contractor understands that this Agreement is for one-time services relative to the recovery of the specific asset; and

WHEREAS, the City finds, pursuant to Charter Section 371 (e) (10), that the use of competitive bidding would be undesirable, impractical or impossible, and services to be provided are of a temporary and occasional character such that competitive bidding is not practicable or advantageous; and

WHEREAS, the City and Contractor desire to enter into an Agreement to recover an unclaimed City asset.

NOW THEREFORE, in consideration of the above premises and the covenants, representations and agreements herein contained, the parties hereby covenant and agree as follows:

ARTICLE I – SCOPE OF SERVICES

The Contractor, upon execution of this Agreement, shall provide Finance in writing complete information on the unclaimed asset that belongs to the City. The Contractor shall initiate a claim with the entity holding the subject funds, notify the City in writing of any additional information which may be required during the claims process, and recover the asset on behalf of the City.

The Contractor is acting hereunder as an independent contractor and not as an agent or employee of the City. In performing asset recovery services for the City, the Contractor is prohibited from representing the City in any legal capacity or instituting any legal action on behalf of the City. The Contractor is also prohibited from using any threats of legal action. In addition, the Contractor shall not assign its rights or delegate its duties under this Agreement to any other person or entity, including any attorney, without the express written consent of the City.

The Contractor shall not pursue the recovery of any asset belonging to the City's proprietary or semi-proprietary departments, that includes the Department of Water and Power, Los Angeles World Airports, Harbor Department, Library Department, and Department of Recreation and Parks.

The City agrees, without charge, to provide reasonable and necessary assistance to the Contractor, such as executing relevant documents and providing information, to enable the Contractor to perform its services under this Agreement. The Contractor agrees to hold/maintain any such documents or information provided by City in confidence and to safeguard same from publication except as required to process City claim(s).

ARTICLE II – COMPENSATION

City agrees to pay the Contractor a contingency fee of twenty percent (20%) of the net amount (after deductions for taxes, payment of fees, and other expenses) recovered on the City's behalf. Other than said contingency fee, there is no expense incurred by City. It is understood and agreed that the City is not obligated to make any payment to the Contractor unless and until the specific asset of this Agreement is delivered to the City.

The Contractor agrees to remit the recovered funds within fifteen (15) calendar days of receipt. If the asset is financial, payment shall be made by electronic transfer or by a certified or cashier's check made payable to the City of Los Angeles and accompanied by a remittance statement on the Contractor's letterhead that shall include at a minimum, the following information:

- Name and address of Contractor
- Name and address of City department
- Reference of contract number assigned to this Agreement
- Proof of asset recovery and official documentation on the amount recovered
- Certification by a duly authorized representative

The Contractor will be paid by the City in accordance with this Article and within forty-five (45) calendar days after receipt and approval of the Contractor's invoice by the City. Additional time may be needed if asset is tangible and liquidation of the asset is needed to deposit recovered funds in the City's account.

The Contractor shall include the following information and provide any other documentation requested by the City, for each invoice:

- Date of invoice
- Invoice number
- Agreement number
- Description of services
- Amount of invoice

The Contractor shall not receive any compensation for the recovery of an asset that:

1. Belongs to the City's proprietary departments, that includes: Department of Water and Power, Los Angeles World Airport and Harbor Department;
2. Belongs to the City's semi-proprietary departments, that includes: Library Department and Department of Recreation and Parks;
3. Is the result of any outstanding debt for City services such as tax liability or consumer debt; or
4. Is unclaimed or abandoned property held by the State of California or any other state.

Should Finance receive funds after such disclosure of the unclaimed asset and initiation of the recovery process by the Contractor, the contingency fee will be payable regardless of whether the funds are delivered directly to Finance or are delivered through the Contractor, unless the City was already in the process of recovering said funds prior to disclosure of the unclaimed asset and initiation of the recovery process by the Contractor.

ARTICLE III – IDEMNIFICATION

Except for the active negligence or willful misconduct of City, or any of its Boards, Officers, Employees, Assigns and Successors in Interest, the Contractor undertakes and agrees to defend, indemnify and hold harmless City and any of its Boards, Officers, 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 and cost of litigation, damage or liability of any nature whatsoever, for death or injury to any person, including the 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 Agreement by the Contractor or its subcontractors of any tier.

ARTICLE IV – DEBT COLLECTION PRACTICES

The Contractor represents that the asset does not result from consumer debt. In its efforts to recover the asset, the Contractor asserts that it will fully comply with any and all applicable debt collection statutes, including, without limitation, the Federal Fair Debt Collection Practices Act 15 U.S.C §1692 *et seq.* ("FDCPA"), the California Fair Debt Collection Practices Act. Cal. Civil Code §*et seq.*, any other applicable state or federal laws. If the Contractor becomes aware that the asset is

in fact consumer debt, the Contractor will tender to the City the opportunity to recover the asset with City's own personnel, staff and attorneys as the City determines to be necessary. In such case, the Contractor is not entitled to any compensation.

ARTICLE V - TERM

The term of the Agreement shall commence on the date of execution and terminate in 365 days.

ARTICLE VI – REPRESENTATIVES AND SERVICE OF NOTICES

The representative parties who are authorized to administer this Agreement and to whom official notices, demands and communications shall be made in writing and may be given by personal delivery, sent by first class mail, electronic mail or fax are as follows:

The representative of the City shall be:

Monique Earl, Revenue Manager
Office of Finance
200 N. Spring Street, Room 1225
Los Angeles, California 90012

General communication regarding performance of service may be made by electronic mail to monique.earl@lacity.org

The representative of the Contractor shall be:

Paul F. Elissiry, Private Investigator
Estate Research Associates
111 Deerwood Road, Suite 230
San Ramon, CA 94583

Any change by either party with regard to notices and all other communications to the City or the Contractor shall be made through written notice to the respective other party in accordance with this Article, within ten (10) working days of said change.

ARTICLE VII - TERMINATION

The City may terminate the Agreement, or any part hereof, for its convenience, effective as of any date upon at least thirty (30) days written notification to the Contractor.

The provisions of this Agreement are severable and if any provision of this Agreement shall be held to be invalid or otherwise unenforceable, in whole or in part, the remainder of the provisions, or enforceable parts thereof, shall not be affected thereby.

No modification, termination or attempted waiver shall be valid unless in writing, and signed by the party against whom such modification, termination or waiver is sought to be enforced.

ARTICLE VIII - INCORPORATION BY REFERENCE

The Contractor agrees to comply with all terms and conditions set forth in the City's "Standard Provisions for City Contracts" (revised March 2009), a copy of which is attached hereto as Appendix A and incorporated herein by reference.

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

Approved Corporate Signature Methods:

- a) Two signatures: one by Chairman of Board of Directors, President, or Vice President; **and** one by Secretary, Assistant Secretary, Chief Financial Officer, or Assistant Treasurer; **or**
- b) One signature by corporate designated individual **together with** properly attested resolution of Board of Directors authorizing person to sign on the company's behalf.

THE CITY OF LOS ANGELES

ESTATE RESEARCH ASSOCIATES, INC.

By _____
 ANTOINETTE CHRISTOVALE
 Director of Finance / City Treasurer

By _____
 Name _____

Date _____

Title _____

Date _____

By _____

Name _____

Title _____

Date _____

APPROVED AS TO FORM:

ATTEST:

MICHAEL N. FEUER,
City Attorney

HOLLY L. WOLCOTT,
Interim City Clerk

By _____

By _____

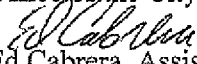
Date _____

Date _____

CITY OF LOS ANGELES
INTERDEPARTMENTAL CORRESPONDENCE

Date: September 13, 2013

To: Beverly Cook, Assistant City Attorney
Office of the City Attorney

From: 
Ed Cabrera, Assistant Director of Finance
Office of Finance

Subject: Estate Research Associates, Inc.- Finding of Necessity to Sole Source

The Office of Finance (Finance) finds that competitive bidding for the purpose of acquiring services from Estate Research Associates, Inc. (ERA) would be undesirable and impractical as allowed by Section 371(e) (10) of the City Charter. The ERA will be providing information regarding an unclaimed asset that belongs to the City of Los Angeles valued at approximately \$1,000,000. According to ERA, they are the only party that has the information. Under Charter Section 371, sole source contracting can be allowed if only one company or person has the specific skills or knowledge to perform the work, which in this case, is identification and recovery of the unclaimed asset. Compensation to ERA will be contingent on the recovery of the asset by ERA and limited to a percentage of the net value of the asset.

The ERA represents that the asset does not result from a tax liability or a consumer debt, is not being held by a state bureau of abandoned property, is not property that the City purchased and forgot about, and does not belong to a proprietary department. A search by Finance staff of the State of California website (<http://www.sco.ca.gov/>) and missingmoney.com (<http://www.missingmoney.com/>) has not revealed any assets totaling to this value. City departments have also notified Finance that they do not have knowledge of the asset.

For the reasons stated above, Finance finds that proceeding with a sole source contract with Estate Research Associates, Inc. without competitive bidding is justified.

If you have any questions, I may be reached at (213) 978-1516.

cc: Monique Earl, Revenue Manager