

SECOND AMENDMENT TO PERSONAL SERVICE AGREEMENT NO. 36029

36029

THIS SECOND AMENDMENT TO PERSONAL SERVICE AGREEMENT NO. 36029 is made and entered, in duplicate, as of September 14, 2023 for reference purposes only, pursuant to a minute order adopted by the Parks and Recreation Commission of the City of Long Beach at its meeting on July 15, 2021, by and between by and between The Hmong Association of Long Beach, Incorporated, a California corporation, ("Contractor"), and the CITY OF LONG BEACH, a municipal corporation ("City").

WHEREAS, City requires specialized services requiring unique skills to be performed in connection with instruction or services related to Hmong Traditional Arts (Programs); and

WHEREAS, City and Contractor (the "Parties") entered into Personal Service Agreement No. 36029 (the "Agreement") whereby Contractor agreed to provide these services; and

WHEREAS, the Parties entered into a First Amendment to extend the term for one (1) additional one-year period until August 31, 2023;

WHEREAS, the Parties desire to extend the term for one (1) additional one-year period, amend the indemnity section and add insurance requirements to the agreement;

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

1. Section 3 of the Agreement is hereby amended to read as follows.

"3. TERM. The term of this Agreement shall begin on September 1, 2021 and end at 11:59 p.m. on August 31, 2024, unless terminated earlier in accordance with Section 13."

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2. Section 12 of the Agreement is hereby amended to read as follows:

12. INDEMNITY.

A. Contractor shall indemnify, protect and hold harmless City of Long Beach, its Boards, Commissions, and their officials, employees and agents ("Indemnified Parties"), from and against any and all liability, claims, demands, damage, loss, obligations, causes of action, proceedings, awards, fines, judgments, penalties, costs and expenses, including attorneys' fees, court costs, expert and witness fees, and other costs and fees of litigation, arising or alleged to have arisen, in whole or in part, out of or in connection with (1) Contractor's breach or failure to comply with any of its obligations contained in this Agreement, including all applicable federal and state labor requirements including, without limitation, the requirements of California Labor Code section 1770 et seq. or (2) negligent or willful acts, errors, omissions, or misrepresentations committed by Contractor, its officers, employees, agents, subcontractors, or anyone under Contractor's control, in the performance of work or services under this Agreement (collectively "Claims" or individually "Claim").

B. In addition to Contractor's duty to indemnify, Contractor shall have a separate and wholly independent duty to defend Indemnified Parties at Contractor's expense by legal counsel approved by City, from and against all Claims, and shall continue this defense until the Claims are resolved, whether by settlement, judgment or otherwise. No finding or judgment of negligence, fault, breach, or the like on the part of Contractor shall be required for the duty to defend to arise. City shall notify Contractor of any Claim, shall tender the defense of the Claim to Contractor, and shall assist Contractor, as may be reasonably requested, in the defense.

C. If a court of competent jurisdiction determines that a Claim was caused by the sole negligence or willful misconduct of Indemnified

Parties, Contractor's costs of defense and indemnity shall be (1) reimbursed in full if the court determines sole negligence by the Indemnified Parties, or (2) reduced by the percentage of willful misconduct attributed by the court to the Indemnified Parties.

D. The provisions of this Section shall survive the expiration or termination of this Agreement.

3. Section 13 of the Agreement is hereby added to read as follows, and all sections of the Agreement thereafter shall be renumbered in consecutive order:

13. INSURANCE.

A. As a condition precedent to the effectiveness of this Agreement, Contractor shall procure and maintain at Contractor's expense for the duration of this Agreement from an insurance company that is admitted to write insurance in the State of California or that has a rating of or equivalent to an A:VIII by A.M. Best and Company the following insurance:

i. Commercial general liability insurance equivalent in coverage scope to ISO CG 00 01 10 93 naming the City of Long Beach and its officials, employees, and agents as additional insureds on a form equivalent in coverage scope to ISO CG 20 26 11 85 from and against claims, demands, causes of action, expenses, costs, or liability for injury to or death of persons, or damage to or loss of property arising out of activities or work performed by or on behalf of the Contractor in an amount not less than One Million Dollars (US \$1,000,000) per occurrence and Two Million Dollars (US \$2,000,000) in general aggregate.

ii. If Contractor shall or may work alone with minors as part of this Agreement, the insurance provided under Section 13.A.i. shall not exclude coverage for liability resulting from allegations

1 of abuse and molestation.

2 iii. As required by the Labor Code of the State of
3 California, workers' compensation and employer's liability insurance
4 with minimum limits of One Million Dollars (US \$1,000,000) per
5 accident or occupational illness. The policy shall be endorsed with a
6 waiver of the insurer's right of subrogation against the City of Long
7 Beach and its insurers, officials, employees, and agents.

8 iv. If use of a vehicle is part of the Contractor's scope
9 of services, commercial automobile liability insurance equivalent in
10 coverage scope to ISO CA 00 01 06 92 in an amount not less than
11 Five Hundred Thousand Dollars (US \$500,000) combined single limit
12 (CSL) covering Symbol 1 ("any auto").

13 B. Any self-insurance program or self-insurance
14 retention must be approved separately in writing by City and shall
15 protect the City of Long Beach and its officials, employees, and agents
16 in the same manner and to the same extent as they would have been
17 protected had the policy or policies not contained retention provisions.
18 Each insurance policy shall be endorsed to state that coverage shall
19 not be suspended, voided, or canceled by either party except after
20 thirty (30) days prior written notice to City, and shall be primary and
21 not contributing to any other insurance or self-insurance maintained
22 by City.

23 C. Any subcontractors which Contractor may use in
24 the performance of this Agreement shall be required to indemnify the
25 City to the same extent as the Contractor and to maintain insurance in
26 compliance with the provisions of this section.

27 D. If Contractor desires a waiver of any insurance
28 requirement, the following applies:

1 i. General liability: Contractor must explain why
2 there is no general liability exposure to the City resulting from its
3 performance to the sole satisfaction of the Risk Manager.

4 ii. Automobile liability: Contractor must state in
5 writing to the City of Long Beach that automobiles will not be used,
6 directly or indirectly, in performance of their services and that the
7 Contractor or its agents or employees will not drive on City property in
8 connection with its performance.

9 iii. Workers' compensation: Worker's compensation
10 insurance is not required by the Labor Code for Contractors who are
11 sole proprietors or legal entities or other organizations with no
12 employees. A signed, written statement stating the reason why
13 workers' compensation is not applicable must be filed by Contractor.
14 If worker's compensation insurance is not applicable, then employer's
15 liability is also not applicable.

16 E. Contractor shall deliver to City certificates of
17 insurance and original endorsements for approval as to sufficiency
18 and form prior to the start of performance hereunder. The certificates
19 and endorsements for each insurance policy shall contain the original
20 signature of a person authorized by that insurer to bind coverage on
21 its behalf. "Claims-made" policies are not acceptable unless City Risk
22 Manager determines that "Occurrence" policies are not available in the
23 market for the risk being insured. In a "Claims-made" policy is
24 accepted, it must provide for an extended reporting period of not less
25 than three (3) years. Such insurance as required herein shall not be
26 deemed to limit Contractor's liability relating to performance under this
27 Agreement. City reserves the right to require complete certified copies
28 of all said policies at any time. Any modification or waiver of the

OFFICE OF THE CITY ATTORNEY
DAWN MCINTOSH, City Attorney
411 West Ocean Boulevard, 9th Floor
Long Beach, CA 90802-4664

insurance requirements herein shall be made only with the approval of City Risk Manager. The procuring of insurance shall not be construed as a limitation on liability or as full performance of the indemnification provisions of this Agreement.

4. Except as expressly modified herein, all of the terms and conditions contained in Personal Service Agreement No. 36029 are ratified and confirmed and shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Agreement with all formalities required by law as of the date first stated above.

Sept. 27, 2023

THE HMONG ASSOCIATION OF LONG BEACH, INCORPORATED, a California corporation

By

[Signature]
Title: TREASURER

By

Wang Leng Xiong
Title: President

"Contractor"

PARKS AND RECREATION
COMMISSION OF THE CITY OF LONG BEACH, CALIFORNIA

Oct 03, 2023

By

[Signature]
Director

"City"

This Second Amendment to Personal Service Agreement No. 36029 is approved as to form on September 28th, 2023.

DAWN MCINTOSH, City Attorney

By

[Signature]
Deputy