

APPROVED

MAY 02 2018

BOARD OF RECREATION AND PARK COMMISSIONERS

BOARD REPORT

NO. 18-077

DATE May 02, 2018

C.D. ALL

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: AS NEEDED ELECTRICAL CONSTRUCTION, RETROFIT, MAINTENANCE
AND/OR REPAIR AWARD OF CONTRACTS

AP Diaz _____ V. Israel _____
R. Barajas _____ *N. Williams ADW
H. Fujita _____

M. Sluce
General Manager

Approved X Disapproved _____ Withdrawn _____

RECOMMENDATIONS

1. Find, in accordance with Charter Section 371(e)(2) and Los Angeles Administrative Code Section 10.15(a)(2), that competitive bidding is not practicable or advantageous as it is necessary for the Department of Recreation and Parks (RAP) to be able to call on contractors to perform this expert, technical work as-needed and on an occasional, but frequent, basis without engaging in a new competitive process for each individual project to be performed; however, from among as-needed contractors, each individual project is assigned on the basis of availability of an as-needed contractor to perform the work, the price to be charged and the unique expertise of the as-needed contractor;
2. Find, in accordance with Charter Section 371(e)(10), that use of competitive bidding would be undesirable, impractical or impossible or is otherwise excused by the common law and the Charter because, unlike the purchase of a specified product, there is no single criterion, such as price comparison, that will determine which proposer can best provide the services required by RAP to provide as-needed entertainment production services;
3. Find, in accordance with Charter Section 372, that obtaining competitive proposals or bids for each individual project for which work may be performed pursuant to this agreement is not reasonably practicable or compatible with RAP's interests of having available as-needed contractors who are assigned various projects on the basis of availability, price, and expertise, and that it is therefore necessary to have several as-needed contractors for this type of service available when called upon by RAP to perform services;
4. Find, in accordance with Charter Section 1022, that RAP does not have available in its employ personnel with sufficient time or necessary expertise to undertake electrical construction, retrofit, maintenance and/or repair services in a timely manner, and it is more feasible, economical and in RAP's best interest, to secure these services by contract with several contractors to perform this work as-needed and on an occasional, but frequent basis, without engaging in a new competitive bidding process for each individual project to be performed;

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5. **Approve the proposed Services Contracts (Contracts), substantially in the form on file in the Board Office, between the City of Los Angeles acting by and through RAP and the following firms for electrical construction, retrofit, maintenance and/or repair services, specifying the terms and conditions for a three (3) year contract, subject to approval of the Mayor and the City Attorney as to form;**

Recommended Contractors:

- a) **Electric Service & Supply Co
2668 E Foothill Blvd, Pasadena, CA 91107**
 - b) **Electro Construction Corp.
3021 Rowena Ave., Los Angeles, CA 90039**
 - c) **Los Angeles Electric Company
4673 Alger Street, Los Angeles, CA 90039**
 - d) **M. Wilson Co. Contractors, Inc.
2605 Sierra Way, La Verne, CA 91750**
6. **Direct the Board Secretary to transmit the Contracts to the Mayor in accordance with Executive Directive No. 3 (Villaraigosa Series), and concurrently to the City Attorney for review and approval as to form;**
 7. **Authorize RAP's General Manager to make technical corrections as necessary to carry out the intent of this Report;**
 8. **Authorize the Board President and Secretary to execute the Contracts upon receipt of the necessary approvals.**

SUMMARY

RAP requires as-needed electrical construction, retrofit, maintenance and/or repairs contracts. Currently, RAP is understaffed and is seeking to use as needed Contracts for electrical construction, retrofit, maintenance and/or repair services to supplement the RAP staff. The current as-needed Contracts are set to expire on May 19, 2018, making it urgent to execute the new contracts so there is no lapse in the work being done.

On February 21, 2018, the Board approved an issuance of Request for Qualifications (RFQ) for Electrical Construction, Retrofit, Maintenance and/or Repairs (Report No. 18-033), which was released March 8, 2018. A Mandatory Pre-Qualification Meeting took place on March 13, 2018. A Non-Mandatory Technical Review Meeting took place on March 21, 2017.

Responders were required to provide evidence of their qualifications, as indicated by their responses to the criteria/requests for information, listed immediately below and to meet or exceed

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the criteria listed:

1. Outdoor sports field lighting: All responders must meet the following qualifications:

Qualified responders must have a minimum of ten (10) years of installation experience for sports fields lighting. Responder must have performed lighting tower installations of at least seventy (70) feet high. All sports field lighting installation must have been performed one hundred percent (100%) by responder; use of subcontractors for actual pole and light fixtures does not qualify.

Responder must provide a list of ten (10) field lighting installations within the last ten (10) years (from January 2008 to current) in the state of California. All projects must have been completed to customer satisfaction.

2. Department's facilities: Responders must provide proof of work for the following qualifications:

- A. Provide two (2) commercial lighting installations that meet with a minimum of ten thousand (10,000) square feet (Jan 2013 to current). These installations must comply with California's energy code Title 24.
- B. Provide five (5) outdoor lighting projects over the last ten (10) years (January 2008 to current). All projects must include the installation of at least ten (10) concrete bases for each project, ten (10) lighting poles that are twenty-five (25) feet high or less and electrical power race ways.
- C. Responders must have performed one hundred percent (100%) of the commercial lighting and park lighting installations.

Results of the RFQ Process

Responses were evaluated in two (2) levels. Level I review was conducted by RAP staff for minimum qualifications as stated in the RFQ. The minimum qualifications determine the responder's knowledge and experience to perform terms and specifications in the contract. If RAP staff cannot verify a responder's minimum qualifications, it may result in the disqualification of a responder. Level II review consisted of evaluating all required compliance and submittal documents as required per City ordinance. The responder must successfully pass Level I review before staff will proceed to Level II review.

Five (5) Responders submitted packages in response to the RFQ.

Responders:

- a) Electric Service & Supply Co
2668 E Foothill Blvd.
Pasadena, CA 91107

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- b) Electro Construction Corp.
3021 Rowena Ave.
Los Angeles, CA 90039
- c) Los Angeles Electric Company
4673 Alger Street
Los Angeles, CA 90039
- d) M. Wilson Co. Contractors, Inc.
2605 Sierra Way
La Verne, CA 91750
- e) MZN Construction, Inc.
22287 W. Mulholland Way, #284
Calabasas, CA 91302

It was found through review and verification by RAP staff that of the five (5) above listed responders, four (4) had met and/or exceeded the minimum qualifications as set forth in the RFQ. MZN Construction, Inc. submitted a timely response; however, failed to submit a complete list meeting the qualified minimum requirements as stated in the RFQ.

Once it was determined that the four (4) recommended responders had met all of the minimum qualifications, RAP staff verified the responders' references. Questions were posed regarding both the responder's ability to produce a quality product that met all necessary standards in a timely manner, and if the responder was timely and effective in their correspondence with governing agencies.

All of the references for the responders who met our minimum qualifications responded favorably to these questions and were highly recommended. It is recommended that each of the following listed responders be selected and be eligible to bid on future RAP projects in the submitted classifications of electrical construction, retrofit, maintenance and/or repairs.

Recommended Contractors:

- a) Electric Service & Supply Co
2668 E Foothill Blvd, Pasadena, CA 91107
- b) Electro Construction Corp.
3021 Rowena Ave., Los Angeles, CA 90039
- c) Los Angeles Electric Company
4673 Alger Street, Los Angeles, CA 90039
- d) M. Wilson Co. Contractors, Inc.
2605 Sierra Way, La Verne, CA 91750

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Each of the above recommended contractors completed the minimum requirements in the Business Inclusion Program (BIP). BIP requires the responders to reach out to the subcontractors and to give the subcontractors opportunities to participate in the performance of the City contracts.

RAP staff is seeking Board authorization for the Board President and Secretary to execute contracts for each of the four (4) Recommended Contractors, subject to approval by the City Attorney and Mayor's Office. The selected pre-qualified Contractors are being recommended to the Board for a three (3) year contract, in an amount not to exceed an annual expenditure of Seven Million Dollars (\$7,000,000.00) per contract, per contractor, per year. The contract amount is an estimate, and RAP does not guarantee that the contract maximum amount will be reached. The electrical construction retrofit, maintenance, and/or repairs services that RAP is requesting shall be on an as-needed basis; RAP in entering into an agreement, guarantees no minimum amount of business or compensation. Contracts awarded through this RFQ shall be subject to funding availability and early termination by RAP, as provided in the Standard Provisions for City Contracts.

Funding for projects will be provided from various funding sources including, but not limited to Proposition A, Quimby, Community Development Block Grant (CDBG), and Proposition 84.

FISCAL IMPACT STATEMENT

Executing these as-needed contracts has no impact on the RAP's General Fund as funding will be identified on a per project basis.

This Report was prepared by Aaron Arevalo, Management Assistant, reviewed by Robert Feld, Sr. Management Analyst, and Matthew Rudnick, Chief Management Analyst.

LIST OF ATTACHMENTS/EXHIBITS

Exhibit A - Generic Contract

CONTRACT

Exhibit A

BETWEEN

THE CITY OF LOS ANGELES

DEPARTMENT OF RECREATION AND PARKS

AND

NAME OF COMPANY

FOR ELECTRICAL CONSTRUCTION, RETROFIT, MAINTENANCE AND/OR REPAIR SERVICES

This CONTRACT ("Contract" or "Agreement") is made and entered into this ____ day of _____ 2018, by and between the City of Los Angeles, (herein referred to as "CITY"), a municipal corporation acting by and through its Department of Recreation and Parks (hereinafter referred to as "RAP"), acting by and through its Board of Recreation and Park Commissioners (hereinafter referred to as "BOARD"), and **NAME OF COMPANY**, hereinafter referred to as CONTRACTOR. CITY and CONTRACTOR shall be referred to hereinafter as the "Parties".

RECITALS

WHEREAS, RAP owns various facilities and infrastructure throughout the City of Los Angeles and is responsible for the maintenance and improvements for such facilities and infrastructure; and

WHEREAS, RAP requires the services of an experienced and responsible CONTRACTOR to perform the electrical construction, retrofit, maintenance and/or repairs of outdoor field lighting, facilities and related electrical lighting and power infrastructures in the CITY; and

WHEREAS, a Request for Qualification (RFQ) was released on March 8, 2018, and five responses to the RFQ were received on April 10, 2018; and

WHEREAS, the CONTRACTOR'S response met the minimum requirements for the electrical construction, retrofit, maintenance and/or repairs of RAP's facility as specified in the RFQ; and

WHEREAS, CONTRACTOR has the necessary equipment and staff possessing sufficient knowledge, expertise, and experience required to provide the necessary services and has indicated its willingness to perform such services; and

WHEREAS, RAP, pursuant to Charter Section 371(e)(2), finds that competitive bidding is not practicable or advantageous as it is necessary for RAP to be able to call on contractors to perform this work as-needed and on an occasional, but frequent, basis without engaging in a new competitive process for each individual project to be performed; however, from among as needed contractors each individual project is assigned on the basis of availability of an as-needed contractor to perform the work, the price to be charged and the unique expertise of the as-needed contractor; and,

WHEREAS, the RAP, pursuant to Charter Section 371(e)(10), finds that use of competitive bidding would be undesirable, impractical or impossible or is otherwise excused by the common law and the City Charter because, unlike the purchase of a specified product, there is no single criterion, such as price comparison, that will determine which proposer can best provide the services required by RAP to provide as-needed entertainment production services; and

WHEREAS, RAP, pursuant to Charter Section 372 and Los Angeles Administrative Code Section 10.15(a)(2), finds that obtaining competitive proposals or bids for each individual project for which work may be performed pursuant to this Agreement is not reasonably practicable or compatible with RAP's interests of having available as-needed contractors who are assigned various projects on the basis of availability, price and expertise and that it is therefore necessary to have several as-needed contractors for this type of service available when called upon by the RAP to perform services; and,

WHEREAS, RAP, pursuant to Charter Section 1022, does not have sufficient or adequate personnel in its employ to undertake this task on an emergency basis and it is more feasible and economical to secure said services by contract.

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

SECTION 1 - PARTIES TO CONTRACT, REPRESENTATIVES AND NOTICE

1.1 Parties

The parties to this Contract are:

CITY - The City of Los Angeles Department of Recreation and Parks, a municipal corporation, having its principal office at 221 North Figueroa Street, Suite 300, Los Angeles, California 90012.

CONTRACTOR – **NAME AND ADDRESS OF COMPANY.**

1.2 Representatives

The representatives of the parties who are authorized to administer this Contract and to whom formal notices, demands and communications will be given for as follows:

CITY's representative will be:

Michael A. Shull, General Manager
Department of Recreation and Parks
221 North Figueroa Street, Suite 350
Los Angeles, California 90012

With copies to:

Ramon Barajas, Assistant General Manager
Planning and Construction Branch
221 North Figueroa Street, Suite 350
Los Angeles, California 90012

Telephone Number: (213) 202-2661
Fax Number: (213) 202-2611

CONTRACTOR'S representative will be:

NAME OF COMPANY REPRESENTATIVE
NAME OF COMPANY
ADDRESS OF COMPANY
ADDRESS OF COMPANY

Telephone Number: **To Be Determined**
Fax Number: **To Be Determined**

1.3 Notices

Formal notices, demands and communications to be given hereunder by either party will be made in writing and may be effected by personal delivery or certified mail, return receipt requested and will be deemed communicated as of the date of receipt.

If the person designated to receive the notices, demands or communications or the address of such person is changed, written notice shall be given, in accord with this ARTICLE, within five (5) working days of the change.

SECTION 2 - TERM OF CONTRACT

The term of this Contract shall be for no more than three (3) years from the date of execution, with the term expiring no later than May 19, 2021,, subject however to earlier termination by RAP as provided in Appendix A – The Standard Provisions for City Contracts (10/17) [v.2] (or most recent).

SECTION 3 - SERVICES TO BE PERFORMED BY THE CONTRACTOR

3.1 Conduct of Operations

- A. At all times, work must conform to all current, relevant Federal, State and Local Municipal Building Codes which may include but not limited to the California “Green Book” Building Codes, Universal Building and Electrical Codes, Los Angeles City Building and Electrical Codes.
- B. The Contractor shall endeavor to maintain good public relations at all times. The work shall be conducted in a manner that will cause the least possible interference with or annoyance to the park patrons or park employees.
- C. A qualified supervisor shall be present and readily available to City personnel and the public during hours of operation at each work site. The site supervisor shall be available to the Contract Inspector at all times during normal working hours. Avoiding contact with the Contract Inspector may result in suspension of work without extension.
- D. Contractor's working hours must coincide with those of the Department of Recreation and Parks (Monday through Friday, 7:00 a.m. – 3:30 p.m., excluding City holidays). The Department of Recreation and Parks must first approve any deviation from these hours and/or work on weekends and/or holidays.
- E. The Contractor shall carefully protect from damage all existing trees, shrubs, plants, fences, and other features. The Contractor shall be liable for any and all damage(s) caused by contract operations to such trees, shrubs, plants, other growth and features or property. All damaged trees, shrubs, plants, other growth and features, and property shall be replaced or restored to their original condition to the satisfaction of the Contract Inspector at contractor's expense.
- F. At all times, traffic control measures should conform to the Work Area Traffic Control Handbook, latest edition, published by Building New, Inc. Pedestrian and vehicular traffic shall be allowed to pass through the work area only under conditions of safety and with as little inconvenience and delay as possible. The Contractor shall provide and maintain adequate

barricades and warning devices. Flag persons shall be stationed as reasonably necessary for the safety of persons and vehicles.

- G. The roads and pathways shall be left free of debris at the close of each day's operation.
- H. Contractor will be responsible for all safety requirements and certifications in accordance with CAL-OSHA rules and regulations. It will be the Contractor's responsibility to assess the work location and implement safety controls and procedures that are compliant with Title 8 of the California Code of Regulations. All projects will be awarded to Contractor as a "Single Employer" in accordance with CAL OSHA classifications. Contractor will be responsible and have full control over all construction activities as well as safety requirements thereof, for each as-need project awarded.
- I. The Contractor shall notify the Contract Inspector at least twenty-four (24) hours prior to starting the work required by the contract.
- J. If the Contractor, after having officially started any project under this Contract, should discontinue work for any cause, the Contractor shall notify the Contract Inspector of intent to do so, and shall further notify the Contract Inspector of the date of re-starting operations.
- K. All work shall be completed to the satisfaction of the RAP Contract Inspector. Work will be considered complete only when signed off by the RAP's Contract Inspector. Work shall be performed to the specifications as determined by the CITY.
- L. Failure to comply with any requirement contained herein may result in suspension of work without extension.
- M. The RAP Contract Inspector must approve any request for sub-contracting of work prior to such subcontracting.
- N. Contractor shall provide equipment and personnel for all tasks.

3.2 SERVICES TO BE PROVIDED BY THE CONTRACTOR:

- A. Contractor shall perform electrical construction, retrofit, maintenance and/or repairs, which will include but will not be limited to electrical design, engineering, demolition, retrofit, maintenance and repairs of all City facility's (Power and lighting), park lighting, park pathway lighting, parking lot lighting, indoor/outdoor basketball lighting and tennis court lighting.
- B. Contractor must perform all construction work according to all current, relevant Federal, State and Local Municipal Building Codes which may

include but not limited to the California "Green Book" Building Codes, Universal Building and Codes, Los Angeles City Building and Safety Codes. Where applicable all work performed must comply with California's energy code Title 24.

SECTION 4 - SERVICES TO BE PROVIDED BY THE CITY

- 4.1 CITY personnel will work cooperatively with the CONTRACTOR to ensure timely approvals of all items required under this Contract.
- 4.2 CITY will promptly act, review, and make decisions as necessary to permit the orderly progress of Contractor's work under this Contract.

SECTION 5 - INSPECTION

- 5.1 CONTRACTOR must request final inspection from CITY representative for work completed at each site.
- 5.2 CONTRACTOR will receive written notification for any services and/or delivery determined by the Project Manager (Construction and Maintenance Supervisor or his/her designee) to be below an acceptable level. This notification shall be in the form of a "Notice to Correct Unacceptable Service."
- 5.3 CONTRACTOR shall respond in writing to the Project Manager indicating what steps are being taken to correct the unacceptable service. If unacceptable service is not corrected after the CONTRACTOR receives the "Notice to Correct Unacceptable Service," payment may be withheld by the CITY until corrections are made.
- 5.4 If unacceptable service continues, or if the supplier receives three or more such notices, the CITY may terminate this Contract as described in PSC-9 Termination, of the Standard Provisions for City Contracts (10/17) [v.2] (or most recent), attached hereto and incorporated herein by reference as Appendix A.

SECTION 6 - COMPENSATION AND INVOICING

6.1 Compensation

CITY will pay CONTRACTOR an amount for service outlined in the "Notice to Proceed" for each individual project. The total for this Contract will not exceed Seven Million Dollars (\$7,000,000.00) annually. CITY staff will monitor this not-to-exceed aggregate total.

- 6.2 CONTRACTOR shall inform CITY of any additional project costs due to unforeseen delays and unexpected changes to the scope of work. Additional project costs shall be itemized by CONTRACTOR and approved by CITY before

payment is made to CONTRACTOR.

6.3 Invoicing

CONTRACTOR shall invoice upon completion of a project by submitting two (2) copies of the invoice which details the work performed in accordance to the original scope of work and any approved change orders within thirty (30) days of completion of service.

CONTRACTOR shall submit invoices to:

Department of Recreation and Parks
Attention: Jim Newsom
Finance Division
6335 Woodley Ave
Van Nuys, CA 91406

All invoices shall be submitted on CONTRACTOR'S letterhead, containing CONTRACTOR'S official logo, or other unique and identifying information such as the name and address of CONTRACTOR. Staff may request evidence that the task has been completed, in the form of a report, brochure or photographs, shall be attached to all invoices.

Invoices and supporting documentation shall be prepared at the sole expense and responsibility of CONTRACTOR. The City will not compensate CONTRACTOR for costs incurred in invoice preparation. The City may request changes to the content and format of the invoice and supporting documentation at any time. The City reserves the right to request additional supporting documentation to substantiate costs at any time.

Tasks that are completed by subcontractors shall be supported by subcontractor invoices, copies of pages from reports, brochures, photographs, or other unique documentation that substantiates their charges.

Failure to adhere to these policies may result in nonpayment pursuant to Charter Section 262(a), which requires the City Controller to inspect the quality, quantity, and condition of services, labor, materials, supplies, or equipment received by any City office or department, and to approve demands before they are drawn on the Treasury.

SECTION 7 - INCORPORATION OF DOCUMENTS

This Contract and exhibits represent the entire integrated agreement of the Parties and supersedes all prior written or oral representations, discussions, and agreements. The following documents are incorporated and made a part hereof by reference:

Appendix A. Standard Provisions for City Contracts (10/17) [v.2] (or most recent)

(Signature Page to Follow)

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

Executed this _____ day
of _____, 20__

THE CITY OF LOS ANGELES, a municipal corporation, acting by and through its BOARD OF RECREATION AND PARK COMMISSIONERS

By _____
PRESIDENT

By _____
SECRETARY

Executed this _____ day
of _____, 20__

NAME OF COMPANY

By _____
PRESIDENT

By _____
SECRETARY

Approved as to Form:

Date: _____

Michael N. Feuer, City Attorney

By _____

STANDARD PROVISIONS FOR CITY CONTRACTS

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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 of this Contract. The language of this Contract shall be construed according to its fair meaning and not strictly for or against **CITY** or **CONTRACTOR**. The word "**CONTRACTOR**" includes the party or parties identified in this Contract. The singular shall include the plural and if there is more than one **CONTRACTOR**, unless expressly stated otherwise, their obligations and liabilities shall be joint and several. Use of the feminine, masculine, or neuter genders shall be deemed to include the genders not used.

PSC-2. Applicable Law, Interpretation and Enforcement

Each party's performance shall comply with all applicable laws of the United States of America, the State of California, and **CITY**, including but not limited to, laws regarding health and safety, labor and employment, wage and hours and licensing. 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, or procedures that apply to the performance of this Contract with no additional compensation paid to **CONTRACTOR**.

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 federal, state or local law or regulation, the validity of the remaining parts, terms or provisions of this Contract shall not be affected.

PSC-3. 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**;
- 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 **CITY** by the person designated by the City Council, or by the board, officer or employee authorized to enter into this Contract.

PSC-4. Integrated Contract

This Contract sets forth all of the rights and duties of the parties with respect to the subject matter of this Contract, 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 the provisions of PSC-5 hereof.

PSC-5. Amendment

All amendments to this Contract shall be in writing and signed and approved pursuant to the provisions of PSC-3.

PSC-6. Excusable Delays

Neither party shall be liable for its delay or failure to perform any obligation under and in accordance with this Contract, if the delay or failure arises out of fires, floods, earthquakes, epidemics, quarantine restrictions, other natural occurrences, strikes, lockouts (other than a lockout by the party or any of the party's Subcontractors), freight embargoes, terrorist acts, insurrections or other civil disturbances, or other similar events to those described above, but in each case the delay or failure to perform must be beyond the control and without any fault or negligence of the party delayed or failing to perform (these events are referred to in this provision as "Force Majeure Events").

Notwithstanding the foregoing, a delay or failure to perform by a Subcontractor of **CONTRACTOR** shall not constitute a Force Majeure Event, unless the delay or failure arises out of causes beyond the control of both **CONTRACTOR** and Subcontractor, and without any fault or negligence of either of them. In such case, **CONTRACTOR** shall not be liable for the delay or failure to perform, unless the goods or services to be furnished by the Subcontractor were obtainable from other sources in sufficient time to permit **CONTRACTOR** to perform timely. As used in this Contract, the term "Subcontractor" means a subcontractor at any tier.

In the event **CONTRACTOR'S** delay or failure to perform arises out of a Force Majeure Event, **CONTRACTOR** agrees to use commercially reasonable best efforts to obtain the goods or services from other sources, and to otherwise mitigate the damages and reduce the delay caused by the Force Majeure Event.

PSC-7. 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-8. Suspension

At CITY'S sole discretion, CITY may suspend any or all services provided under this Contract by providing CONTRACTOR with written notice of suspension. Upon receipt of the notice of suspension, CONTRACTOR shall immediately cease the services suspended and shall not incur any additional obligations, costs or expenses to CITY until CITY gives written notice to recommence the services.

PSC-9. Termination

A. Termination for Convenience

CITY may terminate this Contract for CITY'S convenience at any time by providing CONTRACTOR thirty days written notice. Upon receipt of the notice of termination, CONTRACTOR shall immediately take action not to incur any additional obligations, costs or expenses, except as may be necessary to terminate its activities. 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 effect the termination. Thereafter, CONTRACTOR shall have no further claims against CITY under this Contract. All finished and unfinished documents and materials procured for or produced under this Contract, including all intellectual property rights CITY is entitled to, shall become CITY property upon the date of the termination. CONTRACTOR agrees to execute any documents necessary for CITY to perfect, memorialize, or record CITY'S ownership of rights provided herein.

B. Termination for Breach of Contract

1. Except as provided in PSC-6, 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, CITY may give CONTRACTOR written notice of the default. CITY'S default notice will indicate whether the default may be cured and the time period to cure the default to the sole satisfaction of CITY. Additionally, CITY'S default notice may offer CONTRACTOR an opportunity to provide CITY with a plan to cure the default, which shall be submitted to CITY within the time period allowed by CITY. At CITY'S sole discretion, CITY may accept or reject CONTRACTOR'S plan. If the default cannot be cured or if CONTRACTOR fails to cure within the period allowed by CITY, then CITY may terminate this Contract due to CONTRACTOR'S breach of this Contract.
2. If the default under this Contract is due to CONTRACTOR'S failure to maintain the insurance required under this Contract, CONTRACTOR shall immediately: (1) suspend performance of any services under this Contract for which insurance was required; and (2) notify its employees and Subcontractors of the loss of insurance coverage and Contractor's obligation to suspend performance of

services. **CONTRACTOR** shall not recommence performance until **CONTRACTOR** is fully insured and in compliance with **CITY'S** requirements.

3. 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 **CITY** may immediately terminate this Contract.
4. If **CONTRACTOR** engages in any dishonest conduct related to the performance or administration of this Contract or violates **CITY'S** laws, regulations or policies relating to lobbying, then **CITY** may immediately terminate this Contract.
5. Acts of Moral Turpitude
 - a. **CONTRACTOR** shall immediately notify **CITY** if **CONTRACTOR** or any Key Person, as defined below, is charged with, indicted for, convicted of, pleads nolo contendere to, or forfeits bail or fails to appear in court for a hearing related to, any act which constitutes an offense involving moral turpitude under federal, state, or local laws ("Act of Moral Turpitude").
 - b. If **CONTRACTOR** or a Key Person is convicted of, pleads nolo contendere to, or forfeits bail or fails to appear in court for a hearing related to, an Act of Moral Turpitude, **CITY** may immediately terminate this Contract.
 - c. If **CONTRACTOR** or a Key Person is charged with or indicted for an Act of Moral Turpitude, **CITY** may terminate this Contract after providing **CONTRACTOR** an opportunity to present evidence of **CONTRACTOR'S** ability to perform under the terms of this Contract.
 - d. Acts of Moral Turpitude include, but are not limited to: violent felonies as defined by Penal Code Section 667.5, crimes involving weapons, crimes resulting in serious bodily injury or death, serious felonies as defined by Penal Code Section 1192.7, and those crimes referenced in the Penal Code and articulated in California Public Resources Code Section 5164(a)(2); in addition to and including acts of murder, rape, sexual assault, robbery, kidnapping, human trafficking, pimping, voluntary manslaughter, aggravated assault, assault on a peace officer, mayhem, fraud, domestic abuse, elderly abuse, and child abuse, regardless of whether such acts are punishable by felony or misdemeanor conviction.

- e. For the purposes of this provision, a Key Person is a principal, officer, or employee assigned to this Contract, or owner (directly or indirectly, through one or more intermediaries) of ten percent or more of the voting power or equity interests of **CONTRACTOR**.
- 6. In the event **CITY** terminates this Contract as provided in this section, **CITY** may procure, upon such terms and in the manner as **CITY** may deem appropriate, services similar in scope and level of effort to those so terminated, and **CONTRACTOR** shall be liable to **CITY** for all of its costs and damages, including, but not limited to, any excess costs for such services.
- 7. 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-9(A) Termination for Convenience.
- 8. The rights and remedies of **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.
- C. In the event that this Contract is terminated, **CONTRACTOR** shall immediately notify all employees and Subcontractors, and shall notify in writing all other parties contracted with under the terms of this Contract within five working days of the termination.

PSC-10. Independent Contractor

CONTRACTOR is an independent contractor and not an agent or employee of **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 **CITY**.

PSC-11. Contractor's Personnel

Unless otherwise approved by **CITY**, **CONTRACTOR** shall use its own employees to perform the services described in this Contract. **CITY** has the right to review and approve any personnel who are assigned to work under this Contract. **CONTRACTOR** shall remove personnel from performing work under this Contract if requested to do so by **CITY**.

CONTRACTOR shall not use Subcontractors to assist in performance of this Contract without the prior written approval of **CITY**. If **CITY** permits the use of Subcontractors, **CONTRACTOR** shall remain responsible for performing all aspects of this Contract and paying all Subcontractors. **CITY** has the right to approve **CONTRACTOR'S** Subcontractors, and **CITY** reserves the right to request replacement of any

Subcontractor. **CITY** does not have any obligation to pay **CONTRACTOR'S** Subcontractors, and nothing herein creates any privity of contract between **CITY** and any Subcontractor.

PSC-12. Assignment and Delegation

CONTRACTOR may not, unless it has first obtained the written permission of **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-13. Permits

CONTRACTOR and its directors, officers, partners, agents, employees, and Subcontractors, shall obtain and maintain all licenses, permits, certifications and other documents necessary for **CONTRACTOR'S** performance of this Contract. **CONTRACTOR** shall immediately notify **CITY** of any suspension, termination, lapses, non-renewals, or restrictions of licenses, permits, certificates, or other documents that relate to **CONTRACTOR'S** performance of this Contract.

PSC-14. Claims for Labor and Materials

CONTRACTOR shall promptly pay when due all amounts owed 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), and shall pay all amounts due under the Unemployment Insurance Act or any other applicable law with respect to labor used to perform under this Contract.

PSC-15. Current Los Angeles City Business Tax Registration Certificate Required

For the duration of this Contract, **CONTRACTOR** shall maintain valid Business Tax Registration Certificate(s) as required by **CITY'S** Business Tax Ordinance, Section 21.00 *et seq.* of the Los Angeles Municipal Code ("LAMC"), and shall not allow the Certificate to lapse or be revoked or suspended.

PSC-16. 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 or as otherwise approved by **CITY**. These records shall be retained for a period of no less than three years from the later of the following: (1) final payment made by **CITY**, (2) the expiration of this Contract or (3) termination of this Contract. The records will be subject to examination and audit by authorized **CITY** personnel or **CITY'S** representatives at any time. **CONTRACTOR** shall provide any reports requested by **CITY** regarding

performance of this Contract. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

In lieu of retaining the records for the term as prescribed in this provision, **CONTRACTOR** may, upon **CITY'S** written approval, submit the required information to **CITY** in an electronic format, e.g. USB flash drive, at the expiration or termination of this Contract.

PSC-17. Bonds

All bonds required by **CITY** shall be filed with the Office of the City Administrative Officer, Risk Management for its review and acceptance in accordance with Los Angeles Administrative Code ("LAAC") Sections 11.47 *et seq.*, as amended from time to time.

PSC-18. Indemnification

Except for the active negligence or willful misconduct of **CITY**, or any of its boards, officers, agents, employees, assigns and successors in interest, **CONTRACTOR** shall defend, indemnify and hold harmless **CITY** and any of its boards, officers, agents, employees, assigns, and successors in interest from and against all lawsuits 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 **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 an act, error, or omission by **CONTRACTOR**, Subcontractors, or their boards, officers, agents, employees, assigns, and successors in interest. The rights and remedies of **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. This provision will survive expiration or termination of this Contract.

PSC-19. Intellectual Property Indemnification

CONTRACTOR, at its own expense, shall defend, indemnify, and hold harmless the **CITY**, and any of its boards, officers, agents, employees, assigns, and successors in interest from and against all lawsuits 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 **CITY**, including but not limited to, costs of experts and consultants), damages or liability of any nature 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: (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, in performing the work under this Contract; or (2) as a result of **CITY'S** actual or intended use of any Work Product (as defined in PSC-21) furnished by **CONTRACTOR**, or its Subcontractors, under this Contract. The rights and remedies of **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. This provision will survive expiration or termination of this Contract.

PSC-20. 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, patent, copyright, trademark, trade secret, right of publicity and proprietary information.

PSC-21. Ownership and License

Unless otherwise provided for herein, all finished and unfinished works, tangible or not, created under this Contract including, without limitation, documents, materials, data, reports, manuals, specifications, artwork, drawings, sketches, blueprints, studies, memoranda, computation sheets, 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 originated and prepared by **CONTRACTOR** or its Subcontractors under this Contract (each a "Work Product"; collectively "Work Products") shall be and remain the exclusive property of **CITY** for its use in any manner **CITY** deems appropriate. **CONTRACTOR** hereby assigns to **CITY** all goodwill, copyright, trademark, patent, trade secret and all other intellectual property rights worldwide in any Work Products originated and prepared under this Contract. **CONTRACTOR** further agrees to execute any documents necessary for **CITY** to perfect, memorialize, or record **CITY'S** ownership of rights provided herein.

CONTRACTOR agrees that a monetary remedy for breach of this Contract may be inadequate, impracticable, or difficult to prove and that a breach may cause **CITY** irreparable harm. **CITY** may therefore enforce this requirement by seeking injunctive relief and specific performance, without any necessity of showing actual damage or irreparable harm. Seeking injunctive relief or specific performance does not preclude **CITY** from seeking or obtaining any other relief to which **CITY** may be entitled.

For all Work Products delivered to **CITY** that are not originated or prepared by **CONTRACTOR** or its Subcontractors under this Contract, **CONTRACTOR** shall secure a grant, at no cost to **CITY**, for 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 **CITY**.

Any subcontract entered into by **CONTRACTOR** relating to this Contract shall include this provision to contractually bind its Subcontractors performing work under this Contract such that **CITY'S** ownership and license rights of all Work Products are preserved and protected as intended herein.

PSC-22. Data Protection

- A. **CONTRACTOR** shall protect, using the most secure means and technology that is commercially available, **CITY**-provided data or consumer-provided data acquired in the course and scope of this Contract, including but not limited to customer lists and customer credit card or consumer data, (collectively, the “City Data”). **CONTRACTOR** shall notify **CITY** in writing as soon as reasonably feasible, and in any event within twenty-four hours, of **CONTRACTOR’S** discovery or reasonable belief of any unauthorized access of City Data (a “Data Breach”), or of any incident affecting, or potentially affecting City Data related to cyber security (a “Security Incident”), including, but not limited to, denial of service attack, and system outage, instability or degradation due to computer malware or virus. **CONTRACTOR** shall begin remediation immediately. **CONTRACTOR** shall provide daily updates, or more frequently if required by **CITY**, regarding findings and actions performed by **CONTRACTOR** until the Data Breach or Security Incident has been effectively resolved to **CITY’S** satisfaction. **CONTRACTOR** shall conduct an investigation of the Data Breach or Security Incident and shall share the report of the investigation with **CITY**. At **CITY’S** sole discretion, **CITY** and its authorized agents shall have the right to lead or participate in the investigation. **CONTRACTOR** shall cooperate fully with **CITY**, its agents and law enforcement.
- B. If **CITY** is subject to liability for any Data Breach or Security Incident, then **CONTRACTOR** shall fully indemnify and hold harmless **CITY** and defend against any resulting actions.

PSC-23. Insurance

During the term of this Contract and without limiting **CONTRACTOR’S** obligation to indemnify, hold harmless and defend **CITY**, **CONTRACTOR** shall provide and maintain at its own expense a program of insurance having the coverages and limits not less than the required amounts and types as determined by the Office of the City Administrative Officer of Los Angeles, Risk Management (template Form General 146 in Exhibit 1 hereto). The insurance must: (1) conform to **CITY’S** requirements; (2) comply with the Insurance Contractual Requirements (Form General 133 in Exhibit 1 hereto); and (3) 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-24. Best Terms

Throughout the term of this Contract, **CONTRACTOR**, shall offer **CITY** the best terms, prices, and discounts that are offered to any of **CONTRACTOR’S** customers for similar goods and services provided under this Contract.

PSC-25. 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-26. Mandatory Provisions Pertaining to Non-Discrimination in Employment

Unless otherwise exempt, this Contract is subject to the applicable non-discrimination, equal benefits, equal employment practices, and affirmative action program provisions in LAAC Section 10.8 et seq., as amended from time to time.

- A. **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 **CITY**. In performing this Contract, **CONTRACTOR** shall not discriminate in any of its hiring or employment practices against any employee or applicant for employment because of such person's race, color, religion, national origin, ancestry, sex, sexual orientation, gender, gender identity, age, disability, domestic partner status, marital status or medical condition.
- B. The requirements of Section 10.8.2.1 of the LAAC, the Equal Benefits Ordinance, and the provisions of Section 10.8.2.1(f) are incorporated and made a part of this Contract by reference.
- C. The provisions of Section 10.8.3 of the LAAC are incorporated and made a part of this Contract by reference and will be known as the "Equal Employment Practices" provisions of this Contract.
- D. The provisions of Section 10.8.4 of the LAAC are incorporated and made a part of this Contract by reference and will be known as the "Affirmative Action Program" provisions of this Contract.

Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-27. Child Support Assignment Orders

CONTRACTOR shall comply with the Child Support Assignment Orders Ordinance, Section 10.10 of the LAAC, as amended from time to time. Pursuant to Section 10.10(b) of the LAAC, **CONTRACTOR** shall fully comply with all applicable State and Federal employment reporting requirements. Failure of **CONTRACTOR** to comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignment or Notices of Assignment, or the failure of any principal owner(s) of **CONTRACTOR** to comply with any Wage and Earnings Assignment or Notices of Assignment applicable to them personally, shall constitute a default by the **CONTRACTOR** under this Contract. Failure of **CONTRACTOR** or principal owner to cure

the default within 90 days of the notice of default will subject this Contract to termination for breach. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-28. Living Wage Ordinance

CONTRACTOR shall comply with the Living Wage Ordinance, LAAC Section 10.37 *et seq.*, as amended from time to time. **CONTRACTOR** further agrees that it shall comply with federal law proscribing retaliation for union organizing. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-29. Service Contractor Worker Retention Ordinance

CONTRACTOR shall comply with the Service Contractor Worker Retention Ordinance, LAAC Section 10.36 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-30. Access and Accommodations

CONTRACTOR represents and certifies that:

- A. **CONTRACTOR** shall comply with the Americans with Disabilities Act, as amended, 42 U.S.C. Section 12101 *et seq.*, the Rehabilitation Act of 1973, as amended, 29 U.S.C. Section 701 *et seq.*, the Fair Housing Act, and its implementing regulations and any subsequent amendments, and California Government Code Section 11135;
- B. **CONTRACTOR** shall not discriminate on the basis of disability or on the basis of a person's relationship to, or association with, a person who has a disability;
- C. **CONTRACTOR** shall provide reasonable accommodation upon request to ensure equal access to **CITY**-funded programs, services and activities;
- D. Construction will be performed in accordance with the Uniform Federal Accessibility Standards (UFAS), 24 C.F.R. Part 40; and
- E. The buildings and facilities used to provide services under this Contract are in compliance with the federal and state standards for accessibility as set forth in the 2010 ADA Standards, California Title 24, Chapter 11, or other applicable federal and state law.

CONTRACTOR understands that **CITY** is relying upon these certifications and representations as a condition to funding this Contract. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-31. Contractor Responsibility Ordinance

CONTRACTOR shall comply with the Contractor Responsibility Ordinance, LAAC Section 10.40 *et seq.*, as amended from time to time.

PSC-32. Business Inclusion Program

Unless otherwise exempted prior to bid submission, **CONTRACTOR** shall comply with all aspects of the Business Inclusion Program as described in the Request for Proposal/Qualification process, throughout the duration of this Contract. **CONTRACTOR** shall utilize the Business Assistance Virtual Network ("BAVN") at <https://www.labavn.org/>, to perform and document outreach to Minority, Women, and Other Business Enterprises. **CONTRACTOR** shall perform subcontractor outreach activities through BAVN. **CONTRACTOR** shall not change any of its designated Subcontractors or pledged specific items of work to be performed by these Subcontractors, nor shall **CONTRACTOR** reduce their level of effort, without prior written approval of **CITY**.

PSC-33. Slavery Disclosure Ordinance

CONTRACTOR shall comply with the Slavery Disclosure Ordinance, LAAC Section 10.41 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-34. First Source Hiring Ordinance

CONTRACTOR shall comply with the First Source Hiring Ordinance, LAAC Section 10.44 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-35. Local Business Preference Ordinance

CONTRACTOR shall comply with the Local Business Preference Ordinance, LAAC Section 10.47 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-36. Iran Contracting Act

In accordance with California Public Contract Code Sections 2200-2208, all contractors entering into, or renewing contracts with **CITY** for goods and services estimated at \$1,000,000 or more are required to complete, sign, and submit the "Iran Contracting Act of 2010 Compliance Affidavit."

PSC-37. Restrictions on Campaign Contributions and Fundraising in City Elections

Unless otherwise exempt, if this Contract is valued at \$100,000 or more and requires approval by an elected **CITY** office, **CONTRACTOR**, **CONTRACTOR'S** principals, and **CONTRACTOR'S** Subcontractors expected to receive at least \$100,000 for performance under the Contract, and the principals of those Subcontractors (the "Restricted Persons")

shall comply with Charter Section 470(c)(12) and LAMC Section 49.7.35. Failure to comply entitles **CITY** to terminate this Contract and to pursue all available legal remedies. Charter Section 470(c)(12) and LAMC Section 49.7.35 limit the ability of the Restricted Persons to make campaign contributions to and engage in fundraising for certain elected **CITY** officials or candidates for elected **CITY** office for twelve months after this Contract is signed. Additionally, a **CONTRACTOR** subject to Charter Section 470(c)(12) is required to comply with disclosure requirements by submitting a completed and signed Ethics Commission Form 55 and to amend the information in that form as specified by law. Any **CONTRACTOR** subject to Charter Section 470(c)(12) shall include the following notice in any contract with any Subcontractor expected to receive at least \$100,000 for performance under this Contract:

“Notice Regarding Restrictions on Campaign Contributions and Fundraising
in City Elections

You are a subcontractor on City of Los Angeles Contract #_____. Pursuant to the City of Los Angeles Charter Section 470(c)(12) and related ordinances, you and your principals are prohibited from making campaign contributions to and fundraising for certain elected City of Los Angeles (“**CITY**”) officials and candidates for elected **CITY** office for twelve months after the **CITY** contract is signed. You are required to provide the names and contact information of your principals to the **CONTRACTOR** and to amend that information within ten business days if it changes during the twelve month time period. Failure to comply may result in termination of this Contract and any other available legal remedies. Information about the restrictions may be found online at ethics.lacity.org or by calling the Los Angeles City Ethics Commission at (213) 978-1960.”

PSC-38. Contractors’ Use of Criminal History for Consideration of Employment Applications

CONTRACTOR shall comply with the City Contractors’ Use of Criminal History for Consideration of Employment Applications Ordinance, LAAC Section 10.48 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-39. Limitation of City’s Obligation to Make Payment to Contractor

Notwithstanding any other provision of this Contract, including any exhibits or attachments incorporated therein, and in order for **CITY** to comply with its governing legal requirements, **CITY** shall have no obligation to make any payments to **CONTRACTOR** unless **CITY** shall have first made an appropriation of funds equal to or in excess of its obligation to make any payments as provided in this Contract. **CONTRACTOR** agrees that any services provided by **CONTRACTOR**, purchases made by **CONTRACTOR** or expenses incurred by **CONTRACTOR** in excess of the appropriation(s) shall be free and without charge to **CITY** and **CITY** shall have no obligation to pay for the 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 **CITY** appropriates additional funds for this Contract.

PSC-40. Compliance with Identity Theft Laws and Payment Card Data Security Standards

CONTRACTOR shall comply with all identity theft laws including without limitation, laws related to: (1) payment devices; (2) credit and debit card fraud; and (3) the Fair and Accurate Credit Transactions Act (“FACTA”), including its requirement relating to the content of transaction receipts provided to Customers. **CONTRACTOR** also shall comply with all requirements related to maintaining compliance with Payment Card Industry Data Security Standards (“PCI DSS”). During the performance of any service to install, program or update payment devices equipped to conduct credit or debit card transactions, including PCI DSS services, **CONTRACTOR** shall verify proper truncation of receipts in compliance with FACTA.

PSC-41. Compliance with California Public Resources Code Section 5164

California Public Resources Code Section 5164 prohibits a public agency from hiring a person for employment or as a volunteer to perform services at any park, playground, or community center used for recreational purposes in a position that has supervisory or disciplinary authority over any minor, if the person has been convicted of certain crimes as referenced in the Penal Code, and articulated in California Public Resources Code Section 5164(a)(2).

If applicable, **CONTRACTOR** shall comply with California Public Resources Code Section 5164, and shall additionally adhere to all rules and regulations that have been adopted or that may be adopted by **CITY**. **CONTRACTOR** is required to have all employees, volunteers and Subcontractors (including all employees and volunteers of any Subcontractor) of **CONTRACTOR** working on premises to pass a fingerprint and background check through the California Department of Justice at **CONTRACTOR'S** sole expense, indicating that such individuals have never been convicted of certain crimes as referenced in the Penal Code and articulated in California Public Resources Code Section 5164(a)(2), if the individual will have supervisory or disciplinary authority over any minor.

PSC-42. Possessory Interests Tax

Rights granted to **CONTRACTOR** by **CITY** may create a possessory interest. **CONTRACTOR** agrees that any possessory interest created may be subject to California Revenue and Taxation Code Section 107.6 and a property tax may be levied on that possessory interest. If applicable, **CONTRACTOR** shall pay the property tax. **CONTRACTOR** acknowledges that the notice required under California Revenue and Taxation Code Section 107.6 has been provided.

PSC-43. Confidentiality

All documents, information and materials provided to **CONTRACTOR** by **CITY** or developed by **CONTRACTOR** pursuant to this Contract (collectively "Confidential Information") are confidential. **CONTRACTOR** shall not provide or disclose any Confidential Information or their contents or any information therein, either orally or in writing, to any person or entity, except as authorized by **CITY** or as required by law. **CONTRACTOR** shall immediately notify **CITY** of any attempt by a third party to obtain access to any Confidential Information. This provision will survive expiration or termination of this Contract.

EXHIBIT 1

INSTRUCTIONS AND INFORMATION ON COMPLYING WITH CITY INSURANCE REQUIREMENTS

(Share this information with your insurance agent or broker)

1. **Agreement/Reference** All evidence of insurance should identify the nature of your business with the **CITY**. Clearly show any assigned number of a bid, contract, lease, permit, etc. or give the project name and the job site or street address to ensure that your submission will be properly credited. Provide the **types of coverage and minimum dollar amounts** specified on the Required Insurance and Minimum Limits sheet (Form Gen. 146) as determined in writing by the CAO-RM.

2. **When to submit** Normally, no work may begin until a **CITY** insurance certificate approval number ("CA number") has been obtained, so insurance documents should be submitted as early as practicable. For **As-needed Contracts**, insurance need not be submitted until a specific job has been awarded. **Design Professionals** coverage for new construction work may be submitted simultaneously with final plans and drawings, but before construction commences.

Submitting your documents. **Track4LA®** is the **CITY'S** online insurance compliance system and is designed to make the experience of submitting and retrieving insurance information quick and easy. The system is designed to be used by insurance brokers and agents as they submit client insurance certificates directly to the **CITY**. It uses the standard insurance industry form known as the **ACORD 25 Certificate of Liability Insurance** in electronic format. Track4LA® advantages include standardized, universally accepted forms, paperless approval transactions (24 hours, 7 days per week), and security checks and balances. The easiest and quickest way to obtain approval of your insurance is to have your insurance broker or agent access **Track4LA®** at <http://track4la.lacity.org> and follow the instructions to register and submit the appropriate proof of insurance on your behalf.

Insurance industry certificates other than the ACORD 25 may be accepted, however ***submissions other than through Track4LA® will significantly delay the insurance approval process as documents will have to be manually processed.*** **CONTRACTOR must provide CITY** a thirty day notice of cancellation (ten days for non-payment of premium) AND an Additional Insured Endorsement naming the **CITY** an additional insured completed by your insurance company or its designee. If the policy includes an automatic or blanket additional insured endorsement, the Certificate must state the **CITY** is an automatic or blanket additional insured. An endorsement naming the **CITY** an Additional Named Insured and Loss Payee as Its Interests May Appear is required on property policies. All evidence of insurance must be authorized by a person with authority to bind coverage, whether that is the authorized agent/broker or insurance underwriter. Completed **Insurance Industry Certificates other than ACORD 25 Certificates** are sent electronically to CAO.insurance.bonds@lacity.org.

Additional Insured Endorsements DO NOT apply to the following:

- Indication of compliance with statute, such as Workers' Compensation Law.
- Professional Liability insurance.

Verification of approved insurance and bonds may be obtained by checking **Track4LA®**, the **CITY'S** online insurance compliance system, at <http://track4la.lacity.org>.

4. **Renewal** When an existing policy is renewed, have your insurance broker or agent submit a new Acord 25 Certificate or edit the existing Acord 25 Certificate through **Track4LA®** at <http://track4la.lacity.org>.

5. **Alternative Programs/Self-Insurance** Risk financing mechanisms such as Risk Retention Groups, Risk Purchasing Groups, off-shore carriers, captive insurance programs and self-insurance programs are subject to separate approval after the **CITY** has reviewed the relevant audited financial statements. To initiate a review of your program, you should complete the Applicant's Declaration of Self Insurance form (<http://cao.lacity.org/risk/InsuranceForms.htm>) to the CAO-RM for consideration.

6. **General Liability** insurance covering your operations (and products, where applicable) is required whenever the **CITY** is at risk of third-party claims which may arise out of your work or your presence or special event on City premises. **Sexual Misconduct** coverage is a required coverage when the work performed involves minors. **Fire Legal Liability** is required for persons occupying a portion of **CITY** premises. Information on two **CITY** insurance programs, the SPARTA program, an optional source of low-cost insurance which meets the most minimum requirements, and the Special Events Liability Insurance Program, which provides liability coverage for short-term special events on **CITY** premises or streets, is available at (www.2sparta.com), or by calling (800) 420-0555.

7. **Automobile Liability** insurance is required only when vehicles are used in performing the work of your Contract or when they are driven off-road on **CITY** premises; it is not required for simple commuting unless **CITY** is paying mileage. However, compliance with California law requiring auto liability insurance is a contractual requirement.

8. **Errors and Omissions** coverage will be specified on a project-by-project basis if you are working as a licensed or other professional. The length of the claims discovery period required will vary with the circumstances of the individual job.

9. **Workers' Compensation and Employer's Liability** insurance are not required for single-person contractors. However, under state law these coverages (or a copy of the state's Consent To Self Insure) must be provided if you have any employees at any time during the period of this contract. Contractors with no employees must complete a Request for Waiver of Workers' Compensation Insurance Requirement (<http://cao.lacity.org/risk/InsuranceForms.htm>). A Waiver of Subrogation on the coverage is required only for jobs where your employees are working on **CITY** premises under hazardous conditions, e.g., uneven terrain, scaffolding, caustic chemicals, toxic materials, power tools, etc. The Waiver of Subrogation waives the insurer's right to recover (from the **CITY**) any workers' compensation paid to an injured employee of the contractor.

10. **Property** insurance is required for persons having exclusive use of premises or equipment owned or controlled by the **CITY**. **Builder's Risk/Course of Construction** is required during construction projects and should include building materials in transit and stored at the project site.

11. **Surety** coverage may be required to guarantee performance of work and payment to vendors and suppliers. A **Crime Policy** may be required to handle **CITY** funds or securities, and under certain other conditions. **Specialty coverages** may be needed for certain operations. For assistance in obtaining the **CITY** required bid, performance and payment surety bonds, please see the City of Los Angeles Bond Assistance Program website address at <http://cao.lacity.org/risk/BondAssistanceProgram.pdf> or call (213) 258-3000 for more information.

12. **Cyber Liability & Privacy** coverage may be required to cover technology services or products for both liability and property losses that may result when a **CITY** contractor engages in various electronic activities, such as selling on the Internet or collecting data within its internal electronic network. **CONTRACTOR'S** policies shall cover liability for a data breach in which the **CITY** employees' and/or **CITY** customers' confidential or personal information, such as but not limited to, Social Security or credit card information are exposed or stolen by a hacker or other criminal who has gained access to the **CITY'S** or **CONTRACTOR'S** electronic network. The policies shall cover a variety of expenses associated with data breaches, including: notification costs, credit monitoring, costs to defend claims by state regulators, fines and penalties, and loss resulting from identity theft. The policies are required to cover liability arising from website media content, as well as property exposures from: (a) business interruption, (b) data loss/destruction, (c) computer fraud, (d) funds transfer loss, and (e) cyber extortion.

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.

Limits

___ **Workers' Compensation (WC) and Employer's Liability (EL)**

WC Statutory

EL _____

Waiver of Subrogation in favor of City

Longshore & Harbor Workers

Jones Act

___ **General Liability**

Products/Completed Operations

Sexual Misconduct

Fire Legal Liability

___ **Automobile Liability** (for any and all vehicles used for this contract, other than commuting to/from work)

___ **Professional Liability** (Errors and Omissions)

Discovery Period _____

___ **Property Insurance** (to cover replacement cost of building - as determined by insurance company)

All Risk Coverage

Boiler and Machinery

Flood

Builder's Risk

Earthquake

___ **Pollution Liability**

___ **Surety Bonds - Performance and Payment (Labor and Materials) Bonds**

___ **Crime Insurance**

Other: _____