

APPROVED

FEB 03 2022

BOARD OF RECREATION AND PARK COMMISSIONERS

BOARD REPORT

NO. 22-022

DATE February 03, 2022

C.D. #

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: CABRILLO MARINE AQUARIUM PROFESSIONAL SERVICES AGREEMENT WITH ROYAL POLARIS SPORTFISHING, INC., TO RETAIN THE ROYAL POLARIS FISHING VESSEL FOR WHALE WATCHING AND ECOLOGICAL TOURS EXCURSIONS TO BAJA CALIFORNIA, MEXICO.

AP Diaz _____ * M. Rudnick MR
H. Fujita _____ C. Santo Domingo _____
J. Kim _____ N. Williams _____

M. Oller
General Manager

Approved X Disapproved _____ Withdrawn _____

RECOMMENDATIONS

- 1. Approve a proposed two (2) year Professional Services Agreement (Agreement), with Royal Polaris Sportfishing, Inc. (Contractor), substantially in the form attached to this Report as Attachment 1, allowing the City of Los Angeles, for the benefit of the Cabrillo Marine Aquarium, to charter the Royal Polaris vessel for two (2) annual whale-watching and ecological tour excursions to Baja California, Mexico, in the amounts of Seventy-Seven Thousand, Six Hundred Twenty-Five Dollars (\$77,625.00) for the tour scheduled in the year 2022 and Seventy-Eight Thousand, Six Hundred Twenty-Five Dollars (\$78,625.00) for the tour scheduled in the year 2023; subject to the approval of the City Attorney as to form;
2. Direct the Department of Recreation and Parks' (RAP) Chief Accounting Employee to appropriate Seventy-Seven Thousand, Six Hundred Twenty-Five Dollars (\$77,625.00) from Fund 301, Department 88, Account 035M, Municipal Recreation Program (MRP) MRPXX830 for chartering the Royal Polaris vessel from March 4 through March 12, 2022, and appropriate Seventy-Eight Thousand, Six Hundred Twenty-Five Dollars (\$78,625.00) for chartering the Royal Polaris Vessel from March 3 through March 11, 2023;
3. Find that, in accordance with Charter Section 1022, the City does not have available the vessel or in its employ personnel with the expertise to undertake these specialized professional tasks and that it is more feasible to secure the services by contract;
4. Find that, in accordance with Los Angeles Administrative Code Section 10.15(a)(2), the services obtained through the Agreement are for the performance of professional,

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technical, or other special services of a temporary and occasional character for which the RAP finds that competitive bidding is not practicable or advantageous.;

5. Find, in accordance with Charter Section 372, that obtaining competitive proposals or bids for the tour services is not reasonably practicable or compatible with RAP's interests due to the fact that Contractor is the only vendor which has the necessary permits and whose boat has the necessary passenger capacity to meet the City's requirements for the tours;
6. Direct the Board of Recreation and Park Commissioners (Board) Secretary to transmit the proposed Agreement to the City Attorney for approval as to form; and,
7. Authorize the Board President and Secretary to execute the proposed Agreement upon receipt of the necessary approvals.

SUMMARY

The Cabrillo Marine Aquarium (CMA) is a non-profit public aquarium that engages all visitors in education, recreation, and research of the marine life of Southern California, and has sponsored the annual whale-watching and ecological tour excursion, known as the "Meet the Friendly Whales of Baja" trip (Excursions) for the past forty-seven (47) years. The CMA Baja trip attracts passengers from across the country and furthers the Aquarium's international reputation as one of the finest teaching aquariums in the United States. The goal in sponsoring the trip is to further CMA's mission of promoting knowledge, appreciation, and conservation of the marine life of Southern California. RAP staff recommends continuing the Excursions for the year 2022 and 2023, currently scheduled for March 4 through March 12, 2022 and March 3 through March 11, 2023, by entering into a two-year professional services agreement with Royal Polaris Sportfishing, Inc. (Contractor) in substantially the form attached to this Report as Attachment 1.

RAP staff found that competitive bidding for this Agreement is not practical or advantageous to RAP because the agreement is for the performance of professional, technical, or other special services of a temporary or occasional nature, per Los Angeles Administrative Code Section 10.15(a)(2), and the Contractor is the sole source provider of the services CMA requires, as more fully described below. Further, RAP staff found, in accordance with Charter Section 372, that obtaining competitive proposals or bids for the tour services is not reasonably practicable or compatible with RAP's interests due to the fact that Contractor is the only vendor which has the necessary permits and whose boat has the necessary passenger capacity to meet the City's requirements for the tours. RAP staff researched other vendors that could provide similar services and had the necessary permits from the Mexican government to allow access to San Ignacio Lagoon; however, the vessels were smaller and had a limited passenger load that would have prevented the Cabrillo Marine Aquarium from conducting an adequate program. CMA requires that any potential vendor providing these tour services be US Coast Guard Safety of Life at Sea (SOLAS) approved. This SOLAS standard indicates that the vendor has the safety training and equipment, and authorization, to make a landing in Mexico. Many of the long-range fishing boats are not SOLAS, as they don't ever make land. A critical aspect of the CMA Baja trip is the ability to land. These landings allow for interactions with experts, hikes, and

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experiential education to see wildlife in person rather than in solely in pictures. This hands on interaction is in keeping with CMA's mission statement to inspire exploration.

Contractor's boat, the Royal Polaris, is the third largest vessel in all of Southern California's long-range fishing fleet. Of the three largest, it is the only one with SOLAS certification and can make landings. Larger vessels increase passenger safety and comfort and allow the full range of education that defines this program. A larger boat is significantly more stable with fewer incidents of sea sickness and increases general stability for passengers while walking around the vessel.

Smaller vessels cannot hold the passengers and leave room for the multiple experts that provide education which makes the CMA trip an unparalleled education experience. The smaller remaining US Coast Guard SOLAS boats which hold permits to enter San Ignacio Lagoon are:

- "Searcher," which has 14 cabins (28 maximum) and only offers an 11-day trip
- "Spirit of Adventure," which also sleeps no more than 28, also only offers an 11-day trip
- "Shogun," which sleeps no more than 26.

Royal Polaris is the only sports fishing boat of adequate size and quality to comfortably accommodate the thirty-six (36) passengers for the excursion and that has the necessary permits issued by the Mexican government to allow access to San Ignacio Lagoon. Thus, RAP staff recommends that the Board adopt these findings.

The excursion starts from the Cabrillo Marine Aquarium. For a fee of Three Thousand Dollars (\$3,000.00) per person plus One Hundred Fifty Dollars (\$150.00) gratuity per person, passengers will be transported to San Diego to board the Royal Polaris vessel and begin their nine (9) day whale watching and ecological tour. Passengers will explore the pristine coastal environments, diverse geological formations, and native vegetation of Baja. During the course of the trip passengers on board may catch a glimpse and be within camera range of elephant seals, sea lions, dolphins, marine birds, and whales in San Ignacio Lagoon.

Each excursion will include thirty-six (36) passengers, plus a crew of eight (8), which is a total of forty-four (44) persons making the trip. The 36 passengers will include 6 passengers made up of CMA staff and volunteers, who possess expertise in the fields of geology botany, ornithology, and marine biology. The Team Leader for this trip will be the CMA Program Director who will be assisted by the Aquarium's Education Curator. CMA employees will be paid their normal salary and will be provided with food and accommodations throughout the nine-day trip. The volunteer experts will not receive financial remuneration, but will be provided room and board. In the event of last-minute cancellations that cannot be filled from a waiting list of paying passengers, CMA will offer passage to CMA staff or volunteers who can contribute an in-kind service or can cover the cost of their food and permits. Selection will be made by the CMA Program Director and Aquarium Administrator.

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Both RAP and the Royal Polaris have instituted safety measures related to Covid-19 prevention. Passengers must provide proof of full vaccination at least two weeks prior to departure. All passengers and crew will take a polymerase chain reaction (PCR) test 72-hours prior to departure. A rapid test will be administered on departure day and mid-way through the voyage. Two rooms on the vessel will be kept empty as potential isolation rooms if a passenger starts experiencing symptoms. The entire crew of the Royal Polaris is vaccinated, a new filtration system for increased air circulation was installed on the vessel, and meal times have been subdivided into two groups to lessen the number of people eating together at any given time.

A request for a Charter Section 1022 determination was submitted to the Personnel Department and the review was completed on June 21, 2021. It was determined that although the City uses some classifications that perform some of the duties outlined in the contract, the employees do not have the skills, experience and necessary permits to perform the scope of work sought by the Department and that the City does not possess the necessary sea worthy vessel.

RAP will pay the Contractor Seventy-Seven Thousand, Six Hundred Twenty-Five Dollars (\$77,625.00) for the 2022 excursion and Seventy-Eight Thousand, Six Hundred Twenty-Five Dollars (\$78,625.00) for the 2023 excursion, not-to-exceed One Hundred Sixty-Two Thousand, Two Hundred Fifty Dollars (\$156,250.00) for two (2) nine (9) day tour excursions. This not-to-exceed contract amount for the two (2) years of excursions will be fully reimbursed to RAP by passenger fees which are collected in advance of the excursions and payment to Contractor.

Contractor currently employs staff with the experience and expertise to provide the equipment and perform necessary whale watching and ecological tour excursion related services. Therefore, it is more feasible to contract with this qualified vendor in order to ensure the needs of the public are met.

FISCAL IMPACT

Funds to pay for the charter are advances and reimbursed to Fund 301, Department 88, Municipal Recreation Program Account 035M/MRPXX830. This program is self-sustaining in that the fees from the passengers offset the expense of the program. CMA expects to recover all costs associated with this program. There is no impact on RAP's General Fund.

This Report was prepared by Crislyn McKerron, Chief Management Analyst, Cabrillo Marine Aquarium.

STRATEGIC PLAN INITIATIVES AND GOALS

Goal No. 5: Ensure an Environmentally Sustainable Park System

Outcome 4: Increased opportunity for environmental education

Result: Multi-faceted environmentally focused education covering mega fauna and local ecosystems

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LIST OF ATTACHMENTS/EXHIBITS

1) Attachment 1 - Proposed Two Year Professional Services Agreement with Royal Polaris Sportfishing, Inc.

PROFESSIONAL SERVICES AGREEMENT

Contractor: ROYAL POLARIS SPORTFISHING, INC.

**Regarding: Whale-Watching and Ecological Tour Excursion
Services to Baja California, Mexico for the Cabrillo
Marine Aquarium of the Department of Recreation and
Parks**

Said Agreement is Number _____

**Professional Services Agreement
WHALE-WATCHING AND ECOLOGICAL TOUR
EXCURSION SERVICES**

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ATTACHMENTS

Attachment A	Standard Provisions for City Contracts (Rev. 10.21) [ver. 4]
Attachment B	Royal Polaris Sportfishing, Inc. Acknowledgement of Risks Form
Attachment C	Form 146 – Insurance Requirements

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF LOS ANGELES
DEPARTMENT OF RECREATION AND PARKS
AND
ROYAL POLARIS SPORTFISHING INC.**

THIS AGREEMENT (“Agreement” or “Contract”) is made and entered into on _____, ____, 20__, by and between the City of Los Angeles, a municipal corporation, acting by and through its Department of Recreation and Parks (“Department” or “RAP”) and its Board of Recreation and Park Commissioners (hereinafter “City”), and Royal Polaris Sportfishing, Inc. (hereinafter “Contractor”).

WITNESSETH

WHEREAS, for the past forty-five (45) years, the City has sponsored the annual “Meet the Friendly Whales of Baja” trip, whose 47th year is planned for March 4 through March 12, 2022, by the Cabrillo Marine Aquarium, located at 3720 Stephen M. White Drive, San Pedro, CA 90731; and,

WHEREAS, RAP owns and operates the Cabrillo Marine Aquarium, which engages visitors in education, recreation, and research to promote knowledge, appreciation, and conservation of the marine life of Southern California; and,

WHEREAS, the Contractor is able to assist the mission of the Cabrillo Marine Aquarium with the provision of the vessel, personnel, permits and all support services for thirty-six (36) passengers to travel to Baja California, Mexico on the nine (9) day “Meet the Friendly Whales of Baja” trip, for the purpose of experiencing and learning about the wealth of Baja’s marine life, including the pacific gray whales, diverse geological formations, native vegetation; and,

WHEREAS, in accordance with Charter Section 1022, the Board of Recreation and Park Commissioners finds that the City does not have in its employ, personnel with sufficient expertise and experience to provide the aforementioned services; and,

WHEREAS, the City does not possess the necessary sea worthy vessel to perform the scope of work sought by the Department; and,

WHEREAS, the Contractor is the sole provider of services contemplated under this Agreement due to having the only vessel of the size required for the number of passengers while also possessing the requisite permits and certifications required for the trip contemplated under this Agreement, with staff possessing sufficient knowledge, expertise, and experience needed to perform the above-mentioned services, and is willing to provide the services for the next two years; and,

WHEREAS, in accordance with Los Angeles Administrative Code Section 10.15(a)(2), RAP finds that competitive bidding is not practicable or advantageous to secure the services because the Agreement is for the performance of professional, technical, or other special services of a temporary and occasional character;

WHEREAS, in accordance with Charter Section 372, RAP finds that obtaining competitive proposals or bids for these excursion services is not reasonably practicable or compatible with RAP's interests due to the fact that Contractor is the only vendor which has the necessary permits and whose boat has the necessary passenger capacity to meet RAP's requirements for the excursions.

NOW, THEREFORE, in consideration of the promises and of the covenants, representations, and agreements set forth herein, the parties hereby agree as follows:

ARTICLE I. INTRODUCTION

A. Representatives of the Parties and Service of Notices

1. The representatives of the respective parties authorized to administer this Agreement, and to whom formal notices, demands, and communications shall be given are as follows:

a. The representative of the City shall be, unless otherwise stated in the Agreement:

Department of Recreation and Parks
Attention: Anthony-Paul Diaz
221 N. Figueroa Street, Suite 350
Los Angeles, CA 90012

With copies to:

Cabrillo Marine Aquarium
Attention: Crislyn McKerron
3720 Stephen M. White Drive
San Pedro, CA 90731

b. The representative of the Contractor shall be:

Royal Polaris Sportfishing, Inc.
Attention: Frank LoPreste
2938 Garrison Street
San Diego, CA 92106

2. Formal notices, demands, and communications required hereunder by either party shall be made in writing and may be effected by personal delivery or by registered or certified mail, postage prepaid, return receipt requested and shall be deemed communicated as of the date of mailing or actual receipt, whichever first occurs.
3. If the name of the person designated to receive the notices, demands, or communications, or the address of such person is changed, written notice shall be given, in accordance with Article I, within five (5) working days of said change.

ARTICLE II.
TERM AND SERVICES TO BE PROVIDED

A. Term of Performance

1. The term of this Agreement shall be for two years commencing on March 1, 2022 and ending on July 31, 2023 Performance may not begin until the Contractor has obtained approval from the City for the insurance required herein.

B. Purpose of the Agreement and Services to be Provided

1. The purpose of Contractor's work under this Agreement is to provide two (2), nine (9) day Whale-Watching and Ecological Tour Excursions to Baja California, Mexico, on Royal Polaris, a vessel that will accommodate a maximum of thirty-six (36) participants and staff (hereinafter referred to as "Passengers") and a vessel crew of eight (8) (hereinafter referred to as "Crew").

2. Scope of Work

a. Contractor shall:

- i. Provide the Royal Polaris vessel (hereinafter referred to as Vessel), a 113-foot sport fishing boat with a 30-foot beam, from 5:00 p.m. on March 4, 2022, to 8:00 a.m. on March 12, 2022 (the 2022 Excursion) for the whale watching and excursion tour to Baja California, Mexico. Contractor will provide services again on or about the same dates in March 2023 (the 2023 Excursion).
 - The Vessel must accommodate a maximum of thirty-six (36) Passengers and eight (8) Crew members. The Vessel must have a minimum of eighteen (18) staterooms, consisting of fifteen (15) double-occupancy cabins and three (3) triple-occupancy cabins,

which will only be used as double occupancy for two adults with the third bunk available for a family with a child.

- Each cabin must be properly equipped with furnished beds and space to accommodate one (1) Passenger per bed.
- ii. Provide a qualified and experienced crew of eight (8) (“Crew”) to provide operation and maintenance of the Vessel.
- The Crew must consist of two (2) United States Coast Guard Certified Captains, four (4) Deckhands, and two (2) Chefs.
 - The Crew must be experienced in providing extra attention to senior Passengers, watching for balance issues and advising Crew availability to assist with access to and from skiffs and land.
 - The Crew must be subject to random drug testing, must be Cardio Pulmonary Resuscitation (CPR) certified, and must have United States Coast Guard Standards of Training Certification and Watchkeeping (STCW), covering survival at sea and emergency contingency training.
 - The Crew must possess valid passports and the knowledge and ability to communicate in English and Spanish with the local community.
 - The Crew must have local knowledge and expertise of the natural history of the areas that will be visited, including the islands of Todos Santos, San Benito, Cedros, and San Martin, to enhance the Passengers’ understanding; have navigational experience with the narrow and shallow mouth of the San Ignacio Lagoon; and have the ability to interface with the local small motorized boats (hereinafter referred to as Skiffs) drivers and cooperatives that operate the whale-watching activity in the lagoon.
- iii. Provide three (3) meals and one (1) snack per Passenger per day, including beverages.
- iv. Provide the Vessel’s operation and maintenance, docking and wharf charges, and all other expenses related to operation and maintenance. Contractor shall also provide as-needed radio communications and emergency support.
- v. Provide Skiffs for loading and unloading Passengers near or off-shore. Contractor shall provide a Crew that will accompany Passengers on the local Skiffs to assist the Passengers during excursions.

- vi. Acquire and possess Excursion Permits from the Mexican government to allow entrance to the protected lands and islands found in and around the Sea of Cortez and San Ignacio Lagoon designated as a biosphere.
- vii. Secure and keep in force during the entire term of this Agreement a standard marine insurance policy including Hull and Passenger Liability coverage with a minimum limit of One Million Dollars (\$1,000,000.00). In addition, Contractor shall maintain Employer's Liability coverage in an amount no less than One Million Dollars (\$1,000,000.00) per occurrence with a waiver of subrogation in favor of City. In addition, Contractor shall secure and maintain in force all insurance requirements listed on Form 146 (Attachment C to this Agreement). All insurance required hereunder shall conform to the City requirements established by City charter, ordinance, or policy as required by PSC-23 of the Standard Provisions for City Contracts (Rev. 10/21)[v.4], attached hereto and incorporated herein by reference (Attachment A) (Standard Provisions for City Contracts (Rev. 10/21)[v.4]). Evidence of insurance shall be submitted to the Office of the City Administrative Officer, Risk Management via posting by the Contractor's insurance agent to the KwikComply.org website, prior to the commencement of any work under this contract.
- viii. Retain full and final authority over the management and operation of the Vessel and any determination regarding conditions affecting the safety of its Crew and Passengers and the safe navigation of the Vessel itself.
- ix. Provide the following multiple whale-watching excursions, beach landings, and visits to the mangrove wetlands, adhering to the following itinerary in March 2022 and the same itinerary in March 2023:

Day	Activity and Location
1	On Day One, the thirty-six (36) Passengers, consisting of thirty (30) participants and six (6) persons, made up of Cabrillo Marine Aquarium staff and volunteers, will board a City-provided bus in Cabrillo Marine Aquarium's parking lot and depart for San Diego's Fisherman's Landing at 5:00 p.m. on March 4, 2022 to board the vessel. From San Diego, Passengers will embark upon a nine-day Whale-Watching and Ecological Tour Excursion in Baja California, Mexico.
2	On Day Two, the Vessel will moor and drop anchor at two (2) small rocky islands ten (10) miles off the coast of Ensenada, Mexico, named Islas Todos Santos. If conditions permit, Passengers land onshore and/or explore the islands on Skiffs before returning to the Vessel. The Crew must assist or aid get Passengers on and off Skiffs and safely transport them from the anchorage

	to the near shore, or a beach landing on the shore, to explore the coastline rock outcroppings, view birds and pinniped rookeries.
3	On Day Three, the Vessel will go to Islas San Benito, where Passengers will visit one of three (3) rocky islands sixty (60) miles west of the Baja Peninsula. These islands are inhabited by elephant seals and a wide variety of birds. Passengers will visit a historic lighthouse after they land on the shore and hike or explore the coves and the island's natural history.
4-6	On Day Four through Six, the Passengers will explore San Ignacio Lagoon, which is the highlight of the trip and is noted for the friendly whales that may often be touched from the Skiffs. Passengers will whale-watch at arm's length.
7	On Day Seven, Passengers will travel to Cedros Island, the largest island off the coast of Baja. Passengers will land at one of the island's many canyon areas that offer rocky shores, native plants, and unique geological features. Passengers can also be picked up by Skiffs and brought back to the boat throughout the day. Passengers will also Skiff-ride near a sea lion rockery.
8	On Day Eight, Passengers are taken by Skiffs to San Martin Island, a small volcanic peaked island one hundred fifty (150) miles south of San Diego. Passengers will be hiking around the cliff tops to view sunken lava rock grottos with abundant varieties of wildflowers, succulents, lichens, and marine life.
9	On Day Nine, Passengers will be returned to San Diego, disembark from the vessel to board a City-provided bus to travel back to Cabrillo Marine Aquarium, to arrive at approximately 12:00 p.m.

b. City shall:

- i. Provide 6 persons, made up of Cabrillo Marine Aquarium staff and volunteers, who possess expertise in the fields of Geology, Botany, Ornithology, and Marine Biology.
- ii. Ensure Passengers understand that moderate physical agility is required of all Passengers to board Skiffs for shore landings.
- iii. Distribute and collect completed Royal Polaris Sportfishing, Inc. Acknowledgement of Risks form (hereinafter referred to as Attachment B) from Passengers.
- iv. Provide bus transportation from Cabrillo Marine Aquarium to San Diego's Fisherman's Landing.
- v. Provide bus transportation from San Diego's Fisherman's Landing to the Cabrillo Marine Aquarium.
- vi. Ensure Passengers have valid passports prior to departing Cabrillo Marine Aquarium.

ARTICLE III.
GENERAL TERMS AND CONDITIONS

A. Deliverables, Payment Terms, and Invoicing

1. Milestone Deliverable Payments, Compensation, and Method of Payment

- a. Contractor shall provide the deliverables described in this Article.
- b. Contractor understands and agrees that it may not make any financial commitment on behalf of the City, incur any cost or expense on behalf of the City, or obligate the City to make payments for any costs or expenses, unless authorized in writing by the City representative.
- c. The City shall pay Contractor an amount not to exceed Seventy-Seven Thousand, Six Hundred Twenty-Five Dollars (\$77,625.00) for complete and satisfactory performance of the 2022 Excursion and Seventy-Eight Thousand, Six Hundred Twenty-Five Dollars (\$78,625.00) for the 2023 Excursion, all in accordance with the provisions set forth in this Agreement. It is understood by both Contractor and City that these amounts include the Vessel, qualified Crew, permits, accommodations, and all other services to perform excursions to Contractor for the provision of the two (2) (2022 Excursion and 2023 Excursion) tours, each being nine (9) day Whale-Watching and Ecological Tour Excursions, described in Article II.B.2.

2. Invoicing

- a. Invoices shall be submitted to:

Cabrillo Marine Aquarium
Attention: Jim De Pompei
3720 Stephen M. White Drive
San Pedro, CA 90731

- b. To ensure that services provided under personal services contracts are measured against services as detailed in the Agreement, the Controller of the City of Los Angeles has developed a policy requiring that specific supporting documentation be submitted with invoices.

- c. Contractor shall submit invoices that include, at a minimum, the following information:

- i. Name and address of Contractor
- ii. Name and address of City department being billed
- iii. Date of invoice and period covered
- iv. Agreement number
- v. Task Order or Notice to Proceed
- vi. Description of completed task/project and amount due for task/project, including:
 - A. Name of personnel working on task
 - B. Hours spent on task and timesheet supporting charges (if applicable).
 - C. Rate per hour and total due.
- vii. Original manufacturer's invoice for items where the cost or cost plus is supported by the contract
- viii. Certification by a duly authorized officer
- ix. Discount and terms (if applicable)
- x. Remittance Address (if different from company address)

- d. All invoices shall be submitted on Contractor's letterhead, contain Contractor's official logo, or other unique and identifying information such as the name and address of the Contractor. Evidence that tasks have been completed, in the form of a report, brochure, or photograph, shall be attached to all invoices. Invoices shall be submitted within thirty (30) days of service, or monthly, and shall be payable to the Contractor no later than thirty (30) days after acknowledged receipt of a complete invoice. Invoices are considered complete when appropriate documentation or services provided are signed off as satisfactory by the City representative.
- e. Invoices and supporting documentation shall be prepared at the sole expense and responsibility of the Contractor. The City will not compensate the Contractor for costs incurred in invoice preparation. The City may request, in writing, 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.
- f. Subcontractors' Requirements.

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

B. Contractor's Personnel

1. Contractor shall use its own employees to perform the services described in this Agreement. The City shall have the right to review and approve any personnel who are assigned to work under this Agreement. Contractor agrees to remove personnel from performing work under this Agreement if requested to do so by the City.
2. Contractor shall not use subcontractors to assist in performance of this Agreement without the prior written approval of the City. If the City permits the use of subcontractors, Contractor shall remain responsible for performing all aspects of this Agreement. The City has the right to approve Contractor's subcontractors and City reserves the right to request replacement of a

subcontractor. The City does not have any obligation to pay subcontractors and nothing herein creates any privity between the City and the subcontractors.

ARTICLE IV.
STANDARD PROVISIONS

A. Standard Provisions for City Contracts

Contractor agrees to comply with the Standard Provisions for City Contracts (Rev. 10/21)[v.4], attached hereto as Attachment A.

B. Responsibility to Provide Services in Accordance with Applicable Standards and Requirement to Possess All Valid Permits and Licenses.

Contractor warrants that the work performed hereunder shall be completed in a manner consistent with professional standards among those firms in the Contractor's profession, doing the same or similar work, under the same or similar circumstances. Contractor must possess and maintain valid licenses and permits required to perform the services described herein.

C. Compliance with Statutes and Regulations

Contractor, in the performance of this Agreement, shall comply with all applicable statutes, rules, regulations, and orders of the United States, the State of California, the County and City of Los Angeles. Contractor shall comply with new, amended, or revised laws, regulations, and procedures that apply to the performance of this Agreement.

ARTICLE V.
MISCELLANEOUS

A. Termination of Agreement

1. Termination for Convenience

In furtherance of the provisions set forth in Article V Section A.1. or PSC 9 of the Standard Provisions, the City and the Contractor agree that "reasonable and allowable costs" payable to the Contractor upon a termination for convenience by the City shall be as follows:

- a. In connection with the 2023 Excursion, should the City provide written notice terminating the Agreement for the City's convenience, and absent any breach of this Agreement by the Contractor as may be claimed by

the City, and provided such termination is effective on or before December 31, 2022, the City shall not be obligated to pay Contractor any amounts due or that may be due in connection with the 2023 Excursion. If termination is effective January 1, 2023 through January 31, 2023, the Contractor shall be paid, or retain from any deposits paid to it by the City, Thirty-Nine Thousand Three Hundred Thirteen Dollars (\$39,313). Any funds pre-paid or deposited with the Contractor for the 2023 Excursion in excess of such amount shall be returned to the City within ten (10) days of cancellation date, and the Agreement will be considered cancelled in full.

- b. In connection with the 2023 Excursion, should the City provide written notice terminating the Agreement for the City's convenience, and absent any breach of this Agreement by the Contractor as may be claimed by the City, and provided such termination is effective February 1, 2023 through February 28, 2023, the Contractor shall be paid, or retain from any deposits paid to it by the City, Fifty-Eight Thousand, Nine Hundred and Sixty-Nine Dollars (\$58,969.00). Any funds pre-paid or deposited with the Contractor for the 2023 Excursion in excess of such amount shall be returned to the City within ten (10) days of cancellation date, and the Agreement will be considered cancelled in full.
- c. Notwithstanding any of the foregoing, in the event of any termination for convenience by the City as set forth in this Article V Section A.1., Contractor shall promptly advertise the availability of its vessel for charter during the date of the 2023 Excursion so cancelled or terminated by the City and will use commercially reasonable efforts with diligence and good faith to book a replacement charter excursion or fishing trip at the same fee as the 2023 Excursion, or the best fee available. In the event Contractor books its vessel for any of the date of the 2023 Excursion pursuant to this Section ("Replacement Trip"), Contractor will promptly pay to the City any amounts received for such Replacement Trip up to the amount paid or due by the City to the Contractor for the City's termination under this Article V Section A.1.
- f. If the Contractor cancels any of the 2022 or 2023 Excursions or terminates this Agreement for any reason any time prior to leaving the Dock on the 2022 or 2023 Excursion, as the case may be, the Contractor will reimburse the City for all monies that the City has paid to the Contractor for the trip cancelled.
- g. The rights and remedies of the City provided in this Article shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

B. Ownership

1. Contractor acknowledges and agrees that all documents, publications, databases, videos, reports, analyses, studies, drawings, information, or data (hereinafter collectively referred to as "Materials"), originated and prepared by Contractor pursuant to the terms of this Agreement, are "Work Made for Hire" and shall become the property of the City for its use in any manner it deems appropriate. Contractor assigns any and all of its respective interests and rights in such property to the City.
2. All documents and records (hereinafter collectively referred to as "Documents") provided by the City to Contractor shall remain the property of the City and must be returned to the City upon termination of this Agreement or at the request of the City.
3. The provisions of this section survive termination of this Agreement.

C. Confidentiality

1. All Documents and information provided to Contractor by the City are confidential. All Materials are to be considered confidential. Contractor agrees not to provide Documents or Materials, nor disclose their content or any information therein, either orally or in writing, to any other person or entity, except as authorized by the City or as required by law. Contractor shall immediately notify City representative of any attempt by a third party to obtain access to Documents or Materials.
2. The provisions of this section survive termination of this Agreement.

D. Ambiguity

Any ambiguity in this Agreement shall not be interpreted against any one party by virtue of that party being drafter of the Agreement.

E. Ratification

At the request of the City, and because of the need therefor, Contractor began performance of the services required hereunder prior to the execution hereof. By its execution hereof, City hereby accepts such service subject to all the terms, covenants, and conditions of this agreement, and ratifies its agreement with Contractor for such services.

F. Incorporation of Documents

This contract and incorporated documents 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:

Attachment A	Standard Provisions for City Contracts (Rev. 10.21)[ver.4]
Attachment B	Royal Polaris Sportfishing, Inc. Acknowledgement of Risks Form
Attachment C	Form 146 – Insurance Requirements

The order of precedence in resolving conflicting language, if any, in the documents shall be: (1) This Agreement; (2) Attachment A; (3) Attachment C

(Signature Page to Follow)

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

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

ROYAL POLARIS SPORTFISHING, INC*;
A California Corporation

By: _____
President

By: _____
Frank Lo Preste
President

Date: _____

Date: _____

By: _____
Secretary

By: _____
Secretary

Date: _____

Date: _____

APPROVED AS TO FORM:
MICHAEL N. FEUER, City Attorney

By: _____
Steven Hong
Deputy City Attorney

Date: _____

* Approved Signature Methods:

- 1) Two signatures: One of the Chairman of the Board of Directors, President, or Vice-President, and one of the Secretary, Assistant Secretary, Chief Financial Officer, or Assistant Treasurer.
- 2) One signature of a Corporate-designated individual together with a properly attested resolution of the Board of Directors authorizing the individual to sign.

Agreement Number: _____

ATTACHMENT A

Standard Provisions for City Contracts (Rev. 10/21) [v.4]

TRIP DATE: _____

ACKNOWLEDGMENT OF RISKS

Please read the following carefully.

I, Passenger, hereby declare that, as a passenger aboard the vessel **Royal Polaris**, I am about to encounter certain known risks, hazards, perils, and dangers necessarily associated with being a passenger aboard a vessel. I understand and acknowledge that as a passenger, there are known and unanticipated risks which could result in injury, illness, disease, death, emotional distress and/or damages to myself, my property or to third parties. **The vessel owner does not want to frighten me or reduce my enthusiasm, but believes it is important for me to know in advance what to expect and be informed of inherent risks.** For that reason, I hereby expressly acknowledge the following

- 1. That while standing, sitting and/or walking about the vessel (including boarding and disembarking, climbing and descending steps, stairs, ladder, etc.) I will utilize all available handholds, grab holds, grab rails, tables, bulkheads, railing and benches, so I will not lose my balance, fall down and risk the possibility to of injury.
- 2. I will not be on deck alone unless there is another passenger or crewmember to accompany me. I will listen and obey the instructions of the captain and crew, as they are concerned for my safety.
- 3. That while walking about the vessel I will be on the lookout for any hatches that are open, as I acknowledge that I could fall into one and be injured.
- 4. That I will remain seated in the stern (rear of vessel) and/or inside the galley of the vessel while the vessel is entering and departing the harbor, as vessel can become slippery due to rough sea conditions.
- 5. That I am aware that the decks of the vessel can become slippery due to wave action, fish, fish scales, fish slime, blood, etc. and that I will be careful at all times so as not to slip and fall. Flip-flops, high heels, and leather sole shoes are not safe; I represent that I am wearing suitable shoes to safely walk about the vessel.
- 6. That I am aware that hoses, and other objects, necessary in the safe and normal operation of the vessel, will be laying on the deck and I will be careful at all times so as not to trip and fall and become injured.
- 7. That I am aware a vessel is subject to the rolling and pitching action of the wind and waves, which could cause me to lose my balance and/or fall and become injured.
- 8. That while fishing, I will always make an effort to be aware of where all other passengers are so I do not inadvertently injure them, and so they do not inadvertently hurt me. I acknowledge the vessel owner is not responsible for other passenger’s actions.
- 9. If I decide to consume alcohol, I will be extra careful while aboard the vessel, as I recognize that conditions aboard a vessel are different and possibly more dangerous than ashore. I acknowledge that I am aware of my tolerance to alcohol and limitations, and will not become inebriated.
- 10. I will not bring onboard illegal drugs/contraband. **ROYAL POLARIS** is a **ZERO TOLERANCE** vessel, and we will assist in the prosecution of violators.
- 11. I will not bring aboard or knowingly assist any person, or persons, to bring aboard firearms, ammunition, fireworks, explosives, and components to be assembled as explosives, or incendiary devices.
- 12. I certify that I am physically capable of participating as a passenger aboard the vessel for fishing and if I am elderly or overweight or otherwise have physical limitations, I will ask for assistance if needed. I expressly agree and promise to accept and assume on my behalf (or on behalf of all minor children who accompany me) all the risks inherent with being a passenger aboard the vessel. My participation as a passenger aboard the vessel is purely voluntary and I elect to participate in spite of the known and unknown risks.

Please sign below to acknowledge that you have read and accept the above statements, and have received a copy.

1. _____	13 _____	25 _____
2 _____	14 _____	26 _____
3 _____	15 _____	27 _____
4 _____	16 _____	28 _____
5 _____	17 _____	29 _____
6 _____	18 _____	30 _____
7 _____	19 _____	31 _____
8 _____	20 _____	32 _____
9 _____	21 _____	33 _____
10 _____	22 _____	34 _____
11 _____	23 _____	35 _____
12 _____	24 _____	36 _____

TO OUR PASSENGERS:

*Because of new Coast Guard Safety regulations, and insurance requirements, all passengers will be asked to sign an Acknowledgment of Risks. This will slow down the sign-in process somewhat, so you are being provided with this copy of the statement to read beforehand, and keep for your information. **The safety of our passengers remains our #1 priority!!***

I, passenger, hereby declare that, as a passenger aboard the vessel ROYAL POLARIS, I am about to encounter certain known risks, hazards, perils, and dangers necessarily associated with being a passenger aboard a vessel. I understand and acknowledge that as a passenger, there are known and unanticipated risks which could result in injury, illness, disease, death, emotional distress and/or damages to myself, my property or to third parties. **The vessel owner does not want to frighten me or reduce my enthusiasm, but believes it is important to me to know in advance what to expect and be informed of inherent risks.** For that reason, I hereby expressly acknowledge the following:

1. That while standing, sitting and/or walking about the vessel (including boarding and disembarking, climbing and descending steps, stairs, ladder, etc.) I will utilize all available handholds, grab holds, grab rails, tables, bulkheads, railing and benches, so I will not lose my balance, fall down and risk the possibility of injury.
2. I will not be on deck alone unless there is another passenger or crewmember to accompany me. I will listen and obey the instructions of the Captain and crew, as they are concerned for my safety.
3. That while walking about the vessel I will be on the lookout for any hatches that are open, as I acknowledge that I could fall into one and be injured.
4. That I will remain seated in the stern (rear of vessel) and/or inside the galley of the vessel while the vessel is entering and departing the harbor, as vessel can become slippery due to rough sea conditions.
5. That I am aware that the decks of the vessel can become slippery due to wave action, fish, fish scales, fish slime, blood, etc. and that I will be careful at all times so as not to slip and fall. Flip-flops, high heels, and leather sole shoes are not safe; I represent that I am wearing suitable shoes to safely walk about the vessel.
6. That I am aware that hoses and other objects, necessary in the safe and normal operation of the vessel, will be laying on the deck and I will be careful at all times so as not to trip and fall and become injured.
7. That I am aware a vessel is subject to the rolling and pitching actions of the wind and waves, which could cause me to lose my balance and/or fall and become injured.
8. That while fishing, I will always make an effort to be aware of where all other passengers are so I do not inadvertently injure them, and so they do not inadvertently hurt me. I acknowledge the vessel owner is not responsible for other passenger's actions.
9. If I decide to consume alcohol, I will be extra careful while aboard the vessel, as I recognize that conditions aboard a vessel are different and possibly more dangerous than ashore. I acknowledge that I am aware of my tolerance to alcohol and limitations, and will not become inebriated.
10. I will not bring onboard illegal drugs/contraband. ROYAL POLARIS is a **ZERO TOLERANCE** vessel, and we will assist in the prosecution of violators.
11. I will not bring aboard or knowingly assist any person, or persons, to bring aboard firearms, ammunition, fireworks, explosives, components to be assembled as explosives, or incendiary devices.
12. I certify that I am physically capable of participating as a passenger aboard the vessel for fishing and if I am elderly or overweight or otherwise have physical limitations, I will ask for assistance if needed. I expressly agree and promise to accept and assume on my behalf (or on behalf of all minor children who accompany me) all the risks inherent with being a passenger aboard the vessel. My participation as a passenger aboard the vessel is purely voluntary and I elect to participate in spite of the known and unknown risks.

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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.

PSC-44. COVID-19

Employees of Contractor and/or persons working on its behalf, including, but not limited to, subcontractors (collectively, “Contractor Personnel”), while performing services under this Agreement and prior to interacting in person with City employees, contractors, volunteers, or members of the public (collectively, “In-Person Services”) must be fully vaccinated against the novel coronavirus 2019 (“COVID-19”). “Fully vaccinated” means that 14 or more days have passed since Contractor Personnel have received the final dose of a two-dose COVID-19 vaccine series (Moderna or Pfizer-BioNTech) or a single dose of a one-dose COVID-19 vaccine (Johnson & Johnson/Janssen) and all booster doses recommended by the Centers for Disease Control and Prevention. Prior to assigning Contractor Personnel to perform In-Person Services, Contractor shall obtain proof that such Contractor Personnel have been fully vaccinated. Contractor shall retain such proof for the document retention period set forth in this Agreement. Contractor shall grant medical or religious exemptions (“Exemptions”) to Contractor Personnel as required by law. If Contractor wishes to assign Contractor Personnel with Exemptions to perform In-Person Services, Contractor shall require such Contractor Personnel to undergo weekly COVID-19 testing, with the full cost of testing to be borne by Contractor. If Contractor Personnel test positive, they shall not be assigned to perform In-Person Services or, to the extent they have already been performing In-Person Services, shall be immediately removed from those assignments. Furthermore, Contractor shall immediately notify City if Contractor Personnel performing In-Person Services (1) have tested positive for or have been diagnosed with COVID-19, (2) have been informed by a medical professional that they are likely to have COVID-19, or (3) meet the criteria for isolation under applicable government orders.

EXHIBIT 1

INSURANCE CONTRACTUAL REQUIREMENTS

CONTACT For additional information about compliance with City Insurance and Bond requirements, contact the Office of the City Administrative Officer, Risk Management at (213) 978-RISK (7475) or go online at www.lacity.org/cao/risk. The City approved Bond Assistance Program is available for those contractors who are unable to obtain the City-required performance bonds. A City approved insurance program may be available as a low cost alternative for contractors who are unable to obtain City-required insurance.

CONTRACTUAL REQUIREMENTS

CONTRACTOR AGREES THAT:

- 1. Additional Insured/Loss Payee.** The CITY must be included as an Additional Insured in applicable liability policies to cover the CITY'S liability arising out of the acts or omissions of the named insured. The CITY is to be named as an Additional Named Insured and a Loss Payee As Its Interests May Appear in property insurance in which the CITY has an interest, e.g., as a lien holder.
- 2. Notice of Cancellation.** All required insurance will be maintained in full force for the duration of its business with the CITY. By ordinance, all required insurance must provide at least thirty (30) days' prior written notice (ten (10) days for non-payment of premium) directly to the CITY if your insurance company elects to cancel or materially reduce coverage or limits prior to the policy expiration date, for any reason except impairment of an aggregate limit due to prior claims.
- 3. Primary Coverage.** CONTRACTOR will provide coverage that is primary with respect to any insurance or self-insurance of the CITY. The CITY'S program shall be excess of this insurance and non-contributing.
- 4. Modification of Coverage.** The CITY reserves the right at any time during the term of this Contract to change the amounts and types of insurance required hereunder by giving CONTRACTOR ninety (90) days' advance written notice of such change. If such change should result in substantial additional cost to CONTRACTOR, the CITY agrees to negotiate additional compensation proportional to the increased benefit to the CITY.
- 5. Failure to Procure Insurance.** All required insurance must be submitted and approved by the Office of the City Administrative Officer, Risk Management prior to the inception of any operations by CONTRACTOR.

CONTRACTOR'S failure to procure or maintain required insurance or a self-insurance program during the entire term of this Contract shall constitute a material breach of this Contract under which the CITY may immediately suspend or terminate this Contract or, at its discretion, procure or renew such insurance to protect the CITY'S interests and pay any and all premiums in connection therewith and recover all monies so paid from CONTRACTOR.

- 6. Workers' Compensation.** By signing this Contract, CONTRACTOR hereby certifies that it is aware of the provisions of Section 3700 *et seq.*, of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake

self-insurance in accordance with the provisions of that Code, and that it will comply with such provisions at all time during the performance of the work pursuant to this Contract.

7. California Licensee. All insurance must be provided by an insurer admitted to do business in California or written through a California-licensed surplus lines broker or through an insurer otherwise acceptable to the CITY. Non-admitted coverage must contain a **Service of Suit** clause in which the underwriters agree to submit as necessary to the jurisdiction of a California court in the event of a coverage dispute. Service of process for this purpose must be allowed upon an agent in California designated by the insurer or upon the California Insurance Commissioner.

8. Aggregate Limits/Impairment. If any of the required insurance coverages contain annual aggregate limits, CONTRACTOR must give the CITY written notice of any pending claim or lawsuit which will materially diminish the aggregate within thirty (30) days of knowledge of same. You must take appropriate steps to restore the impaired aggregates or provide replacement insurance protection within thirty (30) days of knowledge of same. The CITY has the option to specify the minimum acceptable aggregate limit for each line of coverage required. No substantial reductions in scope of coverage which may affect the CITY'S protection are allowed without the CITY'S prior written consent.

9. Commencement of Work. For purposes of insurance coverage only, this Contract will be deemed to have been executed immediately upon any party hereto taking any steps that can be considered to be in furtherance of or towards performance of this Contract. The requirements in this Section supersede all other sections and provisions of this Contract, including, but not limited to, PSC-3, to the extent that any other section or provision conflicts with or impairs the provisions of this Section.

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: _____

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

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___ **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 _____

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

___ **Crime Insurance**

Other:

