

APPROVED
MAY 16 2018

BOARD REPORT

BOARD OF RECREATION
AND PARK COMMISSIONERS

NO. 18-088

DATE May 16, 2018

C.D. All

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: LANDSCAPE CONSTRUCTION, RETROFIT, MAINTENANCE, PRUNING,
CLEARANCE AND/OR REPAIRS — AWARD OF CONTRACTS

AP Diaz _____ V. Israel _____
R. Barajas _____ S. Piña-Cortez _____
H. Fujita _____ *N. Williams NDW



General Manager

Approved X Disapproved _____ Withdrawn _____

RECOMMENDATIONS:

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

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projects in a timely manner, and it is more feasible, economical and in RAP's best interest, to secure these services by contract with several contractors to perform this work on an as-needed and on an occasional, but frequent basis, without engaging in a new competitive bidding process for each individual project to be performed;

5. Approve the proposed sample contract attached to this report between RAP and the recommended contractors listed below for landscape construction, retrofit, maintenance, pruning, clearance and/or repairs, for a term of three (3) years in an amount not to exceed Seven Million Dollars (\$7,000,000.00) per year per contract awarded subject to the review and approval of the Mayor and the City Attorney as to form;

Recommended Contractors:

- a) American Heritage Landscape
7013 Owensmouth Ave., Canoga Park, CA 91303
 - b) American Landscape, Inc.
7013 Owensmouth Ave., Canoga Park, CA 91303
 - c) Evergreen Environment, Inc.
8609 Mission Blvd., Riverside, CA 92509
 - d) Mariposa Landscape, Inc.
6232 Santos Diaz St., Irwindale, CA 91702
 - e) Sani Group Inc DBA BMC Landscape Management
21004 Nordhoff St., Chatsworth, CA 91311
 - f) Waste Unlimited, Inc.
24872 Apple Street, Newhall, CA 91321
6. Direct the Board of Recreation and Park Commissioners' (Board) Secretary to transmit the proposed contracts to the Mayor in accordance with Executive Directive No. 3 (Villaraigosa Series) and, concurrently to the City Attorney for review and approval as to form;
 7. Authorize RAP's General Manager, or designee, to make technical corrections as necessary to carry out the intent of this Report; and,
 8. Authorize the Board of Recreation and Park Commissioners' President and Secretary to execute the contracts upon receipt of the necessary approvals.

SUMMARY:

The Department of Recreation and Parks (RAP) is responsible for maintaining the City of Los Angeles' (City) parks and green space for the enjoyment of residents and national and

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international visitors. RAP's in-house maintenance staff provides routine park landscape services for the City's more than four hundred forty-five (445) parks. In addition, RAP also supports landscape management of City-owned property under the jurisdiction of other City departments through as-needed contracts with six (6) landscape maintenance and construction vendors. These contracts are due to expire June 4, 2018; there are no extension options available in the contracts.

The use of as-needed contracts allows RAP to continue landscape maintenance of over sixty-five (65) facilities for other City departments, such as the Los Angeles Police Department, Los Angeles Fire Department, Department of Animal Services, Department of Transportation, and Bureau of Sanitation. The as-needed contracts will also be structured to allow other City departments to piggyback onto the contracts for their various landscaping needs that City forces may not be able to perform. Additionally, these contracts would be available to supplement RAP staff for construction, retrofit, maintenance and repair of existing and new RAP facilities and provide another mechanism for RAP to perform as-needed brush clearance and tree pruning/removal as may be necessary.

On February 21, 2018, the Board approved the release of a Request for Qualifications for Landscape Construction, Retrofit, Maintenance, Pruning, Clearance and/or Repairs (RFQ). The RFQ was released February 27, 2018. This opportunity was advertised in the Los Angeles Business Assistance Virtual Network (BAVN) and the Los Angeles Daily Journal. On March 13, 2018, a mandatory Pre-Qualification Conference was held in which eight (8) companies attended. On March 28, 2018, a non-mandatory technical review meeting was held to address potential respondents' questions and review compliance documents. Two (2) companies took advantage of this meeting.

By 1:00 p.m. on April 24, 2018, six (6) RFQ responses were received by the Board Office. The table below summarizes the responses:

Company Name	Qualification No. 1	Qualification No. 2
American Heritage Landscape		x
American Landscape, Inc.	x	
Evergreen Environment, Inc.	x	
Mariposa Landscape, Inc.		x
Sani Group Inc DBA BMC Landscape Management		x
Waste Unlimited, Inc.		x

Two (2) of the six (6) respondents were interested in Qualification No. 1, Landscape Construction and Retrofit, and the remaining four (4) were interested in Qualification No. 2, Landscape Maintenance, Pruning, Clearance and/or Repairs. No company requested pre-qualification to both scopes of work.

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It was found through review and verification by RAP staff that the above listed responders met the minimum qualifications as set forth in the RFQ. All responders who submitted and qualified, performed and passed the City's Business Inclusion Program (BIP) outreach. However, all six (6) responders have informalities that may be waived by the Board, such as incomplete Disposition of Proposals form, incomplete Los Angeles Residence Information form, a missing response on a question on the Responsibility Questionnaire form, and incomplete Contractor Responsibility Ordinance Statement.

RAP staff recommends that the Board waive the above-mentioned informalities. By waiving the informalities for these companies, it would increase competition among contractors and would benefit RAP with competitive bids for the much needed critical services. It is proposed that these responders have ten (10) business days to rectify these informalities once they have been informed by mail. The forms may be mailed or hand-delivered but they must be received before 3:00 p.m. on the tenth (10th) day.

FISCAL IMPACT STATEMENT:

Funding for specific projects will be provided from various funding sources.

This Report was prepared by Agnes Ko, Senior Management Analyst II, Finance Division.

Attachment List:

- 1) Sample Proposed Contract

CONTRACT BETWEEN
THE CITY OF LOS ANGELES
DEPARTMENT OF RECREATION AND PARKS
AND

XXXXXXXXXXXXXXXXXXXX

FOR LANDSCAPE CONSTRUCTION, RETROFIT, MAINTENANCE,
PRUNING, CLEARANCE AND/OR REPAIRS

This Contract (“CONTRACT” or “AGREEMENT”) is entered into this ____ day of _____, 20____, by and between the City of Los Angeles, (herein referred to as “CITY”) a municipal corporation, acting by and through its Department of Recreation and Parks (hereinafter referred to as “RAP”) and its Board of Recreation and Park Commissioners (hereinafter referred to as “BOARD”), and XXXXXXXXXXXXXXX (hereinafter referred to as “CONTRACTOR”). CITY and CONTRACTOR shall be referred to hereinafter each as a “PARTY” and collectively as “PARTIES.”

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

WHEREAS, RAP requires the services of an experienced and responsible contractor to perform landscape construction, retrofit, maintenance, pruning, clearance and/or repairs at various park facilities; and

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

WHEREAS, the BOARD, as the contract awarding authority finds pursuant to Charter Section 371(e)(10) that use of competitive bidding would be undesirable, impractical or impossible or is otherwise excused by the common law and the Charter because, unlike the purchase of a specified product, there is no single criterion, such as price comparison, that will determine which contractor can best provide the services required by RAP to provide as-needed landscape construction, retrofit, maintenance, pruning, clearance and/or repairs; and

WHEREAS, the BOARD, as the contract awarding authority finds pursuant to Charter Section 372 that obtaining competitive proposals or bids for each individual project for work which may be performed pursuant to this CONTRACT is not reasonably practicable or compatible with RAP's best interest of having available as-needed contractors who are assigned various projects on the basis of availability, price and expertise and that it is therefore necessary to have several as-needed contractors for this type of service available when called upon by RAP to perform services; and

WHEREAS, the BOARD, as the contract awarding authority finds pursuant to Charter Section 1022, that the work can be performed more economically or feasibly by independent contractors rather than by RAP employees because RAP does not have available in its employ, personnel with sufficient time or necessary expertise to undertake sewer tie repairs, retrofitting and/or new installations and related work projects in a timely manner, and therefore, it is more feasible and economical and in RAP's best interest to secure these services by contract with CONTRACTOR to perform this work on an as-needed and occasional, but frequent basis, without engaging in a new competitive bidding process for each individual project to be performed; and

WHEREAS, on February 21, 2018, the BOARD approved the release of a Request for Qualifications (RFQ) for as-needed landscape construction, retrofit, maintenance, pruning, clearance and/or repairs; and

WHEREAS, the RFQ was released on February 27, 2018, and six (6) responses to the RFQ were received by the April 24, 2018 deadline; and

WHEREAS, all six (6) contractor submittals, including CONTRACTOR's proposal, met the minimum requirements specified in the RFQ; and

WHEREAS, RAP requires the services of CONTRACTOR to provide as-needed landscape construction, retrofit, maintenance, pruning, clearance and/or repairs; and

WHEREAS, CONTRACTOR has the necessary equipment and staff, possesses sufficient knowledge, expertise, and experience and is willing and able to provide the services requested by RAP.

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

SECTION 1 – PARTIES TO THE AGREEMENT, REPRESENTATIVES AND NOTIFICATION.

1.1 Parties

The PARTIES to this CONTRACT are:

CITY – The City of Los Angeles Department of Recreation and Parks, a municipal corporation, acting by and through its BOARD OF RECREATION AND PARK COMMISSIONERS on behalf of RAP, having its principal office at 221 North Figueroa Street, Suite 350, Los Angeles, CA 90012.

CONTRACTOR – XXXXXXXXXXXXXXXXXXXXXXXXXX

1.2 Representatives

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

CITY's representative will be:

Jimmy Newsom
Department of Recreation and Parks
6335 Woodley Ave
Van Nuys, CA 91406

Email: jimmy.newsom@lacity.org
Telephone Number: (818) 756-9294
Fax Number: (818) 679-1453

With a Copy to:

Ramon Barajas, Assistant General Manager
Department of Recreation and Parks
221 N. Figueroa Street, Suite 350
Los Angeles, CA 90012

Email: ramon.barajas@lacity.org
Telephone Number: (213) 202 - 2633
FAX Number: (213) 202 - 2613

The CONTRACTOR'S representative will be:

XXXXXXXXXXXXXXXXXXXXXXXXXX

1.3 Notices

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

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

CONTRACTOR shall address all questions and correspondence concerning project scope to (or any other RAP Management designee) the representatives identified in Section 1.2 above.

SECTION 2 – TERMS OF THE CONTRACT

2.1 Term

The term of this CONTRACT shall be for three (3) years, commencing on the date of execution of this CONTRACT, subject to earlier termination by RAP as provided in Appendix A – The Standard Provisions for City Contracts (10/17) [v.3].

2.2 Contract Compliance

CONTRACTOR agrees to comply with the Standard Provisions for City Contracts (Rev. 10/17) [v.3] attached hereto and incorporated herein by reference as Appendix A.

SECTION 3 – SERVICES TO BE PERFORMED BY THE CONTRACTOR

3.1 Conduct of Operations

- A. At all times, work must conform to all current, relevant Federal, State and Local Municipal Building Codes which may include, but is not limited to, the California “Green Book” Building Codes, Universal Building and Plumbing Codes, and the Los Angeles City Building and Plumbing Codes.
- B. The CONTRACTOR shall endeavor to maintain good public relations at all times. The work shall be conducted in a manner that will cause the least possible interference with or annoyance to park patrons or CITY employees.
- C. A qualified supervisor shall be present and readily available to CITY personnel and the public during hours of operation at each work site. The site supervisor shall be available to RAP’s Contract Inspector at all times during normal working hours. Avoiding contact with RAP’s Contract Inspector may result in suspension of work without extension of the work under this Contract.

- D. CONTRACTOR'S working hours must coincide with those of RAP (Monday through Friday, 7:00 am – 3:30 pm, excluding City holidays). RAP must first approve any deviation from these hours and/or work on weekends and/or holidays.
- E. The CONTRACTOR shall carefully protect from damage all existing trees, shrubs, plants, fences, and other features, as well as structures, fixtures, equipment, signage and property. The CONTRACTOR shall be liable for any and all damage(s) caused by its work to such trees, shrubs, plants, other growth and features, structures, fixtures, equipment, signage or property. Any and all damaged items shall be replaced or restored to their original condition to the satisfaction of RAP's Contract Inspector at CONTRACTOR'S expense.
- F. At all times, traffic control measures should conform to the Work Area Traffic Control Handbook, latest edition, published by Building New, Inc. Pedestrian and vehicular traffic shall be allowed to pass through the work area only under conditions of safety and with as little inconvenience and delay as possible. CONTRACTOR shall provide and maintain adequate barricades and warning devices. Flag persons shall be stationed as reasonably necessary for the safety of persons and vehicles.
- G. The roads and pathways shall be left free of debris at the close of each day's operation.
- H. CONTRACTOR shall be responsible for all safety requirements and certifications in accordance with CAL-OSHA rules and regulations. It shall be the CONTRACTOR'S responsibility to assess the work location and implement safety controls and procedures that are compliant with Title 8 of the California Code of Regulations. All projects will be awarded to CONTRACTOR as a "Single Employer" in accordance with CAL-OSHA classifications. CONTRACTOR shall be responsible and have full control over all construction activities as well as safety requirements thereof, for each as-needed project awarded.
- I. CONTRACTOR shall notify RAP's Contract Inspector at least twenty-four (24) hours prior to starting any work under this CONTRACT.
- J. If CONTRACTOR, after having officially started any work under this CONTRACT, should discontinue work for any reason, CONTRACTOR shall first notify RAP's Contract Inspector in writing of CONTRACTOR'S intent to do so, and shall further notify RAP's Contract Inspector in writing of the date of re-starting operations.
- K. All work shall be completed to the satisfaction of RAP's Contract Inspector. Work will be considered complete only when signed off by RAP's Contract

Inspector. Work shall be performed to the specifications as determined by the CITY.

L. Failure to comply with any requirement contained herein may result in suspension of work without extension of the work under this CONTRACT.

M. RAP's Contract Inspector must approve any request for sub-contracting of work prior to such subcontracting.

N. CONTRACTOR shall provide equipment and personnel for all tasks.

3.2 SERVICES TO BE PROVIDED BY THE CONTRACTOR: (This section would be specific to the contractor's prequalification. No. 1 construction or No. 2 maintenance)

A. Provide design, engineering, construction of all landscape and irrigation for CITY parks and other CITY facilities.

OR

A. Provide all maintenance and/or repairs of landscape and irrigation of various CITY parks and building facilities.

B. Provide tree pruning, stump and tree removal services.

SECTION 4 – SERVICES TO BE PROVIDED BY THE CITY

4.1 CITY personnel will work cooperatively with the CONTRACTOR to ensure timely approvals of all items required under this CONTRACT.

4.2 CITY will promptly act, review, and make decisions as necessary to permit the orderly progress of CONTRACTOR's work under this CONTRACT.

SECTION 5 - INSPECTION

5.1 CONTRACTOR must request final inspection from CITY representative for work completed at each site.

5.2 CONTRACTOR will receive written notification for any services and/or delivery determined by the Project Manager (Construction and Maintenance Supervisor or his/her designee) to be below an unacceptable level. This notification shall be in the form of a "Notice to Correct Unacceptable Service."

5.3 CONTRACTOR shall respond in writing to the Project Manager indicating what steps are being taken to correct the unacceptable service. If unacceptable service is not corrected after the CONTRACTOR receives the "Notice to Correct

Unacceptable Service,” payment may be withheld by the CITY until corrections are made.

- 5.4 If unacceptable service continues, or if the supplier receives three (3) or more such notices, the CITY may terminate this CONTRACT as described in Appendix A, Standard Provisions for City Contracts (Rev. 10/17)[v.3].

SECTION 6 – COMPENSATION AND INVOICING

6.1 Compensation

CITY will pay CONTRACTOR an amount for services outlined in each individual Notice To Proceed issued under this CONTRACT. The total compensation under this CONTRACT shall not exceed Seven Million Dollars (\$7,000,000.00) annually. The CONTRACT amount is an estimate, and RAP does not guarantee that the CONTRACT maximum amount will be reached. The professional services that RAP is requesting shall be on an occasional and as-needed basis and the CITY, by entering into this CONTRACT, guarantees no minimum amount of business or compensation. RAP staff will monitor this not-to-exceed aggregate total.

- 6.2 CONTRACTOR shall inform CITY of any additional project costs due to unforeseen delays and unexpected changes to any scope of work under this CONTRACT. Additional project costs shall be itemized by CONTRACTOR and approved by CITY before payment is made to CONTRACTOR.

6.3 Invoicing

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

CONTRACTOR shall submit invoices to:

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

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

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

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

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

SECTION 7 – RATIFICATION

At the request of RAP, and because of the urgent need therefore, CONTRACTOR may have commenced performance of services required hereunder prior to the execution of this AGREEMENT. By its execution hereof, RAP hereby accepts such services from CONTRACTOR subject to all of the terms, covenants and conditions of this AGREEMENT, and CONTRACTOR's performance of such services.

SECTION 8 - INCORPORATION OF DOCUMENTS

This CONTRACT, appendices and incorporated documents represents the entire agreement of the PARTIES and supersedes all prior written or oral representations, discussions, and agreements. This CONTRACT may not be changed or modified in any manner except by formal, written amendment fully executed by both CITY and CONTRACTOR, The following documents are incorporated and made a part hereof by reference:

Appendix A. Standard Provisions for City Contracts (Rev. 10/17)[v.3].

Appendix B. CONTRACTOR'S Response to Request for Qualifications

The order of precedence in resolving conflicting language, if any, in the documents shall be: (1) This CONTRACT (2) Appendix A; and (3) Appendix B.

IN WITNESS THEREOF, the parties hereto have executed this CONTRACT to be executed by their duly authorized representative(s) on the dates indicated:

Executed this _____ day
of _____, 20__

THE CITY OF LOS ANGELES, a municipal corporation, acting by and through its Board of Recreation and Park Commissioners

By _____
PRESIDENT

By _____
SECRETARY

Executed this _____ day
of _____, 20__

CONTRACTOR NAME

By _____

By _____

Approved as to Form:

Date: _____

Michael N. Feuer
City Attorney

By _____
DEPUTY CITY ATTORNEY

CONTRACT NO.: _____

BUSINESS TAX REGISTRATION NO.: _____

**LANDSCAPE CONSTRUCTION, RETROFIT, MAINTENANCE,
PRUNING, CLEARANCE AND/OR REPAIRS CONTRACT**

EXHIBIT B

**CONTRACTOR'S RESPONSE TO THE REQUEST FOR
QUALIFICATIONS**

ON FILE IN THE BOARD OFFICE

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STANDARD PROVISIONS FOR CITY CONTRACTS

PSC-1. Construction of Provisions and Titles Herein

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

PSC-2. Applicable Law, Interpretation and Enforcement

Each party's performance shall comply with all applicable laws of the United States of America, the State of California, and **CITY**, including but not limited to, laws regarding health and safety, labor and employment, wage and hours and licensing. This Contract shall be enforced and interpreted under the laws of the State of California without regard to conflict of law principles. **CONTRACTOR** shall comply with new, amended, or revised laws, regulations, or procedures that apply to the performance of this Contract with no additional compensation paid to **CONTRACTOR**.

In any action arising out of this Contract, **CONTRACTOR** consents to personal jurisdiction, and agrees to bring all such actions, exclusively in state or federal courts located in Los Angeles County, California.

If any part, term or provision of this Contract is held void, illegal, unenforceable, or in conflict with any federal, state or local law or regulation, the validity of the remaining parts, terms or provisions of this Contract shall not be affected.

PSC-3. Time of Effectiveness

Unless otherwise provided, this Contract shall take effect when all of the following events have occurred:

- A. This Contract has been signed on behalf of **CONTRACTOR** by the person or persons authorized to bind **CONTRACTOR**;
- B. This Contract has been approved by the City Council or by the board, officer or employee authorized to give such approval;
- C. The Office of the City Attorney has indicated in writing its approval of this Contract as to form; and
- D. This Contract has been signed on behalf of **CITY** by the person designated by the City Council, or by the board, officer or employee authorized to enter into this Contract.

PSC-4. Integrated Contract

This Contract sets forth all of the rights and duties of the parties with respect to the subject matter of this Contract, and replaces any and all previous Contracts or understandings, whether written or oral, relating thereto. This Contract may be amended only as provided for in the provisions of PSC-5 hereof.

PSC-5. Amendment

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

PSC-6. Excusable Delays

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

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

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

PSC-7. Waiver

A waiver of a default of any part, term or provision of this Contract shall not be construed as a waiver of any succeeding default or as a waiver of the part, term or provision itself. A party's performance after the other party's default shall not be construed as a waiver of that default.

PSC-8. Suspension

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

PSC-9. Termination

A. Termination for Convenience

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

B. Termination for Breach of Contract

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

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

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

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

PSC-10. Independent Contractor

CONTRACTOR is an independent contractor and not an agent or employee of **CITY**. **CONTRACTOR** shall not represent or otherwise hold out itself or any of its directors, officers, partners, employees, or agents to be an agent or employee of **CITY**.

PSC-11. Contractor's Personnel

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

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

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

PSC-12. Assignment and Delegation

CONTRACTOR may not, unless it has first obtained the written permission of **CITY**:

- A. Assign or otherwise alienate any of its rights under this Contract, including the right to payment; or
- B. Delegate, subcontract, or otherwise transfer any of its duties under this Contract.

PSC-13. Permits

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

PSC-14. Claims for Labor and Materials

CONTRACTOR shall promptly pay when due all amounts owed for labor and materials furnished in the performance of this Contract so as to prevent any lien or other claim under any provision of law from arising against any **CITY** property (including reports, documents, and other tangible or intangible matter produced by **CONTRACTOR** hereunder), and shall pay all amounts due under the Unemployment Insurance Act or any other applicable law with respect to labor used to perform under this Contract.

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

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

PSC-16. Retention of Records, Audit and Reports

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

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

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

PSC-17. Bonds

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

PSC-18. Indemnification

Except for the active negligence or willful misconduct of **CITY**, or any of its boards, officers, agents, employees, assigns and successors in interest, **CONTRACTOR** shall defend, indemnify and hold harmless **CITY** and any of its boards, officers, agents, employees, assigns, and successors in interest from and against all lawsuits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by **CITY**, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever, for death or injury to any person, including **CONTRACTOR'S** employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of an act, error, or omission by **CONTRACTOR**, Subcontractors, or their boards, officers, agents, employees, assigns, and successors in interest. The rights and remedies of **CITY** provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract. This provision will survive expiration or termination of this Contract.

PSC-19. Intellectual Property Indemnification

CONTRACTOR, at its own expense, shall defend, indemnify, and hold harmless the **CITY**, and any of its boards, officers, agents, employees, assigns, and successors in interest from and against all lawsuits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by **CITY**, including but not limited to, costs of experts and consultants), damages or liability of any nature arising out of the infringement, actual or alleged, direct or contributory, of any intellectual property rights, including, without limitation, patent, copyright, trademark, trade secret, right of publicity, and proprietary information: (1) on or in any design, medium, matter, article, process, method, application, equipment, device, instrumentation, software, hardware, or firmware used by **CONTRACTOR**, or its Subcontractors, in performing the work under this Contract; or (2) as a result of **CITY'S** actual or intended use of any Work Product (as defined in PSC-21) furnished by **CONTRACTOR**, or its Subcontractors, under this Contract. The rights and remedies of **CITY** provided in this section shall not be exclusive

and are in addition to any other rights and remedies provided by law or under this Contract. This provision will survive expiration or termination of this Contract.

PSC-20. Intellectual Property Warranty

CONTRACTOR represents and warrants that its performance of all obligations under this Contract does not infringe in any way, directly or contributorily, upon any third party's intellectual property rights, including, without limitation, patent, copyright, trademark, trade secret, right of publicity and proprietary information.

PSC-21. Ownership and License

Unless otherwise provided for herein, all finished and unfinished works, tangible or not, created under this Contract including, without limitation, documents, materials, data, reports, manuals, specifications, artwork, drawings, sketches, blueprints, studies, memoranda, computation sheets, computer programs and databases, schematics, photographs, video and audiovisual recordings, sound recordings, marks, logos, graphic designs, notes, websites, domain names, inventions, processes, formulas, matters and combinations thereof, and all forms of intellectual property originated and prepared by **CONTRACTOR** or its Subcontractors under this Contract (each a "Work Product"; collectively "Work Products") shall be and remain the exclusive property of **CITY** for its use in any manner **CITY** deems appropriate. **CONTRACTOR** hereby assigns to **CITY** all goodwill, copyright, trademark, patent, trade secret and all other intellectual property rights worldwide in any Work Products originated and prepared under this Contract. **CONTRACTOR** further agrees to execute any documents necessary for **CITY** to perfect, memorialize, or record **CITY'S** ownership of rights provided herein.

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

For all Work Products delivered to **CITY** that are not originated or prepared by **CONTRACTOR** or its Subcontractors under this Contract, **CONTRACTOR** shall secure a grant, at no cost to **CITY**, for a non-exclusive perpetual license to use such Work Products for any **CITY** purposes.

CONTRACTOR shall not provide or disclose any Work Product to any third party without prior written consent of **CITY**.

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

PSC-22. Data Protection

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

PSC-23. Insurance

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

PSC-24. Best Terms

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

PSC-25. Warranty and Responsibility of Contractor

CONTRACTOR warrants that the work performed hereunder shall be completed in a manner consistent with professional standards practiced among those firms within **CONTRACTOR'S** profession, doing the same or similar work under the same or similar circumstances.

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

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

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

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

PSC-27. Child Support Assignment Orders

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

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

PSC-28. Living Wage Ordinance

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

PSC-29. Service Contractor Worker Retention Ordinance

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

PSC-30. Access and Accommodations

CONTRACTOR represents and certifies that:

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

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

PSC-31. Contractor Responsibility Ordinance

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

PSC-32. Business Inclusion Program

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

PSC-33. Slavery Disclosure Ordinance

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

PSC-34. First Source Hiring Ordinance

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

PSC-35. Local Business Preference Ordinance

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

PSC-36. Iran Contracting Act

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

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

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

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

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

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

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

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

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

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

provide any equipment or incur any expenses in excess of the appropriated amount(s) until **CITY** appropriates additional funds for this Contract.

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

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

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

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

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

PSC-42. Possessory Interests Tax

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

PSC-43. Confidentiality

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

EXHIBIT 1

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.

