

# APPROVED

NOV 01 2017

## BOARD OF RECREATION AND PARK COMMISSIONERS

BOARD REPORT

NO. 17-230

DATE November 1, 2017

C.D. 15

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 A WHALE WATCHING AND ECOLOGICAL TOURS EXCURSION TO BAJA CALIFORNIA, MEXICO.

* AP Diaz	_____	V. Israel	_____
R. Barajas	_____	S. Piña-Cortez	_____
H. Fujita	_____	*N. Williams	<u>NW</u>

  
\_\_\_\_\_  
General Manager

Approved

Disapproved \_\_\_\_\_

Withdrawn \_\_\_\_\_

### RECOMMENDATIONS

1. Approve a proposed two (2) year Professional Services Agreement, with Royal Polaris Sportfishing, Inc. (Contractor), substantially in the form attached, allowing the City, for the benefit of the Cabrillo Marine Aquarium, to charter the Royal Polaris vessel for the 44<sup>th</sup> and 45<sup>th</sup> annual whale-watching and ecological tour excursions to Baja California, Mexico, in the amounts of Seventy-Two Thousand Nine Hundred Twenty-Four Dollars (\$72,924.00) for the tour scheduled in the year 2018 and Seventy-Four Thousand Three Hundred Eighty Two Dollars (\$74,382.00) for the tour scheduled in the year 2019; subject to the approval of the Mayor and of the City Attorney as to form;
2. Direct the Department of Recreation and Parks (RAP) Chief Accounting Employee to appropriate Seventy-Two Thousand Nine Hundred Twenty-Four Dollars (\$72,924.00) from Fund 301, Department 88, Account 035M, Municipal Recreation Program (MRP) MRPXX830 for chartering the Royal Polaris vessel from March 6, 2018 through March 14, 2018, and appropriate Seventy Four Thousand Three Hundred Eighty-Two Dollars (\$74,382.00) in October 2018, for the 2019 trip;
3. Find that, in accordance with Charter Section 1022 (Attachment A), 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), competitive bidding is not practicable or advantageous to secure these services because the agreement is for the performance of professional, technical, or other special services of a temporary and occasional character;
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

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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 Secretary to transmit the proposed Professional Service Agreement, concurrently, to the Mayor's Office in accordance with Executive Directive No. 3 (Villaraigosa Series), and the City Attorney for approval as to form; and,
7. Authorize the Board President and Secretary to execute the Agreement, upon receipt of the necessary approvals.

SUMMARY:

The Cabrillo Marine Aquarium 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 for the past forty-three (43) years. The Cabrillo Marine Aquarium 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 Cabrillo Marine Aquarium's mission of promoting knowledge, appreciation, and conservation of the marine life of Southern California. Staff recommends continuing the sponsorship of these next two trips, the first of which is scheduled for March 6, 2018 through March 14, 2018, 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 B.

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). 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. 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. The 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 Two Thousand, Eight Hundred Ninety Dollars (\$2,890.00) 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 may catch a glimpse of elephant seals, sea lions, dolphins, marine birds, and whales within camera range on board

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of elephant seals, sea lions, dolphins, marine birds, and whales within camera range on board small motorized boats (skiffs) in San Ignacio Lagoon.

The 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 passengers include three (3) Cabrillo Marine Aquarium staff, and three (3) volunteers who possess expertise in the fields of geology botany, ornithology, and marine biology. The Team Leader for this trip will be the Cabrillo Marine Aquarium Program Director who will be assisted by the Aquarium's Education Curator. Cabrillo Marine Aquarium 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, Cabrillo Marine Aquarium will offer passage to Cabrillo Marine Aquarium 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 Program Director and Aquarium Administrator.

A request for a Charter Section 1022 determination was submitted to the Personnel Department on September 11, 2017, the review was completed on September 13, 2017. 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. (See Attachment A)

RAP will pay Royal Polaris Sportfishing, Inc., Seventy-Two Thousand Nine Hundred Twenty-Four Dollars (\$72,924.00) for the 2018 excursion, and Seventy-Four Thousand, Three Hundred Eighty-Two Dollars (\$74,382.00) for the 2019 excursion, not-to-exceed One Hundred Forty-Seven Three Hundred Six Dollars (\$147,306.00) 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 Royal Polaris Sportfishing, Inc.

Royal Polaris Sportfishing, Inc. currently employs staff with the experience and expertise to provide the equipment and perform the necessary services. Therefore, it is more feasible to contract out the services in order to ensure the needs of the public are met.

FISCAL IMPACT STATEMENT:

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. Cabrillo Marine Aquarium expects to recover all costs associated with this program. There is no impact on the RAP's General Fund.

Report was prepared by Nancy Jeffers, Management Analyst II, Grants Administration, Finance Division.

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LIST OF ATTACHMENTS

- A) Charter Section 1022 Review
- B) Contract

## PERSONNEL DEPARTMENT CONTRACT REVIEW REPORT

1. Requesting Department: Department of Recreation and Parks  
[Annual Nine-Day Whale Watching and Ecological Tour Excursion to San Ignacio Lagoon in Baja, Mexico]
2. Contacts:  
Department: Nancy Jeffers Phone No. (213) 202-5628 Fax No. (213) 202-4379  
CAO: Jay Shin Phone No. (213) 473-7559 Fax No. (213) 473-7514
3. Work to be performed: The Department of Recreation and Parks (RAP) is seeking a contractor to provide services to perform an annual nine-day Whale Watching and Ecological Tour Excursion to San Ignacio Lagoon in Baja, Mexico for the Cabrillo Marine Aquarium. The contractor will be responsible for the transport and safety of thirty-six (36) passengers, consisting of thirty (30) participants, three (3) Cabrillo Marine Aquarium employees, and three (3) volunteers who possess expertise in the fields of Geology, Botany, Ornithology, and Marine Biology, in addition to a vessel crew of eight (8). Passengers and crew will depart from 2838 Garrison Street in San Diego Harbor March 6, 2018 and will return to this destination nine days later on March 14, 2018. Contractor will provide an experienced vessel crew of eight (8) consisting of two (2) United States Coastguard Certified Captains, four (4) Deckhands, and two (2) Chefs. Contractor will provide a crew that possess current United States passports; has the knowledge and ability to communicate in English and Spanish with the local community; has 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; and has navigational experience in the San Ignacio Lagoon. Contractor shall provide materials, equipment, and personnel necessary for performance of services including, but not limited to, all room and accommodations, life jackets, life rafts, meals, snacks, and beverages to trip participants. The Contractor must also possess the excursion permit issued by the Mexican Government to be allowed entrance to the protected islands found in and around the Sea of Cortez and San Ignacio Lagoon.
4. Is this a contract renewal? No. This a new contract.
5. Length of Contract: Two (2) years with two (2) one-year renewal options  
Proposed Start date: December 9, 2017
6. Proposed cost of contract (if known): \$147,306 for two years  
(Year 1: \$72,924 and Year 2: \$74,382)
7. Name of proposed contractor(s): To be determined
8. Unique or special qualifications required to perform the work: The contractor must provide one 113-foot sea-worthy vessel with a qualified crew to transport thirty-six (36) passengers. The crew must possess current U.S. passports; has the knowledge and ability to communicate in English and Spanish; must be subject to random drug testing, 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; has local knowledge and expertise of the natural history of the areas that will be visited; and has navigational experience in the San Ignacio Lagoon. The contractor must possess the excursion permit issued by the Mexican Government for entrance to the protected islands found in and around the Sea of Cortez and San Ignacio Lagoon.

9. Are there City employees that can perform the work being proposed for contracting?

Yes  No  If yes, which class(es) and Department(s):

- a. Is there sufficient Department staff available to perform the work? Yes  No
- b. Estimated time to fill position(s) through CSC process?
- c. Can the requesting department continue to employ staff hired for the project after project completion? Yes  No
- d. Are there City employees currently performing the work? Yes  No

10. Findings

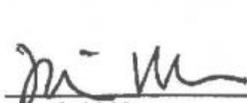
- City employees DO NOT have the expertise to perform the work
- City employees DO have the expertise to perform the work

[Please see summary below.]

Check if applicable (explanation attached) and send to CAO for further analysis

- Project of limited duration would have to layoff staff at end of project
- Time constraints require immediate staffing of project
- Work assignment exceeds staffing availability

SUMMARY: The Department of Recreation and Parks (RAP) is seeking a contractor to provide services to perform a nine-day Whale Watching and Ecological Tour Excursion to San Ignacio Lagoon in Baja, Mexico as part of the Cabrillo Marine Aquarium's annual event. While the City uses classes of Aquarium Educator (Class Code 2493), Boat Captain (Class Code 5113), Cook (Class Code 3364), Deck Hand (5131), and Port Pilot (Class Code 5151), the City does not require incumbents to possess a United States passport, or be bilingual or CPR/STCW certified. Based on the qualifications RAP is requesting of the crew, City employees do not have the skills, training, experience, and necessary permits to perform the entire duties outlined in the contract.



Mariel Wroe  
Senior Personnel Analyst I



Don Harrahill  
Senior Personnel Analyst II



James Abalos  
Chief Personnel Analyst

5-13-17  
Date

**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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**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 (RAP) and its Board of Recreation and Park Commissioners (hereinafter "City"), and Royal Polaris Sportfishing, Inc. (hereinafter "Contractor").

**WITNESSETH**

WHEREAS, for the past forty-three (43) years, the City has sponsored the annual "Meet the Friendly Whales of Baja" trip, whose 44<sup>th</sup> year is planned for March 6, 2018 through March 14, 2018 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 assists 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 a nine (9) day 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 for this expedition due to having a vessel of the size required for the number of passengers, and possessing the requisite permits for San Ignacio Lagoon 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 (2) 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: Mike Schaadt  
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 November 29, 2017 and ending on November 28, 2019. 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 6, 2018 to 8:00 a.m. on March 14, 2018 for the whale watching and excursion tour to Baja California, Mexico (the "2018 Excursion"). Contractor will provide services again on or about the same dates again on or about the same dates in March 2019 (the "2019 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) 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 two (2) snacks 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 Charter 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. 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. 10/17), attached hereto and incorporated herein by reference (Appendix A) ("Standard Provisions"). Evidence of insurance shall be submitted to Cabrillo Marine Aquarium's Executive Director and approved by the Office of the City Administrative Officer, Risk Management via posting by the Contractor's insurance agent to the Track4LA 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 for the 2018 Excursion and the 2019 Excursion:

Day	Activity and Location
1	On Day One, the thirty-six (36) Passengers, consisting of thirty (30) participants, three (3) Cabrillo Marine Aquarium staff and three (3) 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 6, 2018 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.

Day	Activity and Location
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 three (3) Cabrillo Marine Aquarium staff and three (3) 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 Appendix 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-Two Thousand Nine Hundred Twenty-Four Dollars (\$72,924.00) for complete and satisfactory performance of the 2018 Excursion terms of this Agreement, inclusive of all expenses and costs for the 2018 Excursion; and Seventy-Four Thousand, Three Hundred Eighty-Two Dollars (\$74,382.00) for the 2019 Excursion with the same performance requirements as the 2018 Excursion. It is understood by both Contractor and City that these amounts include the Vessel, qualified Crew, accommodations, services to perform excursions, permits, and the sum of all guarantees of income to Contractor for the duration of the two (2) each, nine (9) day Whale-Watching and Ecological Tour Excursions, described in Article II.B.2. The following are the milestone payments:
  - i. On December 29, 2017, and provided that an invoice as required herein from the Contractor has been received by RAP, the City shall pay Thirty-Six Thousand Four Hundred Sixty-Two dollars (\$36,462.00) to the Contractor.
  - ii. On January 18, 2018, and provided an invoice from the Contractor has been received by RAP, the City shall pay Thirty-Six Thousand Four Hundred Sixty-Two dollars (\$36,462.00) to the Contractor.
  - iii. The milestone payments for the 2019 Excursion, provided invoices from the Contractor have been received by RAP, will be Thirty-Seven Thousand One Hundred Ninety-One Dollars (\$37,191.00) each, payable on or before December 28, 2018 and January 18, 2019.

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.
  - i. 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. 10/17), attached hereto as Appendix A ("Standard Provisions").

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. 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 2018 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 January 1, 2018 through January 31, 2018, the Contractor shall be paid, or retain from any deposits paid to it by the City, Twenty-Five Thousand

Dollars (\$25,000.00) Any funds pre-paid or deposited with the Contractor for the 2018 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 2018 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, 2018 through March 5, 2018, the Contractor shall be paid, or retain from any deposits paid to it by the City, Fifty-Four Thousand, Two Hundred and Ninety-Four Dollars (\$54,294.00). Any funds pre-paid or deposited with the Contractor for the 2018 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. In connection with the 2019 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 January 1, 2019 through January 31, 2019, the Contractor shall be paid, or retain from any deposits paid to it by the City, Twenty-Five Thousand Dollars (\$25,000.00). Any funds pre-paid or deposited with the Contractor for the 2019 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.
- d. In connection with the 2019 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, 2019 through March 5, 2019, the Contractor shall be paid, or retain from any deposits paid to it by the City, Fifty-Five Thousand Three Hundred Seventy-Nine Dollars (\$55,379.00). Any funds pre-paid or deposited with the Contractor for the 2019 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.
- e. 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 dates of the 2018 or 2019 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 2018 or 2019 Excursion, or the best fee available. In the event Contractor books its vessel for any of the dates of the 2018 or 2019 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 2018 or 2019 Excursions or terminates this Agreement for any reason any time prior to leaving the Dock on the 2018 or 2019 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.
- d.. 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:

Appendix A Standard Provisions for City Contracts (Rev. 10/17)

Appendix B Royal Polaris Sportfishing, Inc. Acknowledgement of Risks Form

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

*(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: \_\_\_\_\_

**STANDARD PROVISIONS FOR CITY CONTRACTS**

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## STANDARD PROVISIONS FOR CITY CONTRACTS

### **PSC-1. Construction of Provisions and Titles Herein**

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

### **PSC-2. Applicable Law, Interpretation and Enforcement**

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

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

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

### **PSC-3. Time of Effectiveness**

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

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

- D. This Contract has been signed on behalf of **CITY** by the person designated by the City Council, or by the board, officer or employee authorized to enter into this Contract.

**PSC-4. Integrated Contract**

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

**PSC-5. Amendment**

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

**PSC-6. Excusable Delays**

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

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

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

**PSC-7. Waiver**

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

**PSC-8. Suspension**

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

**PSC-9. Termination**

**A. Termination for Convenience**

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

**B. Termination for Breach of Contract**

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

coverage and Contractor's obligation to suspend performance of services. **CONTRACTOR** shall not recommence performance until **CONTRACTOR** is fully insured and in compliance with **CITY'S** requirements.

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

abuse, and child abuse, regardless of whether such acts are punishable by felony or misdemeanor conviction.

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

**PSC-10. Independent Contractor**

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

**PSC-11. Contractor's Personnel**

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

**CONTRACTOR** shall not use Subcontractors to assist in performance of this Contract without the prior written approval of **CITY**. If **CITY** permits the use of Subcontractors,

**CONTRACTOR** shall remain responsible for performing all aspects of this Contract and paying all Subcontractors. **CITY** has the right to approve **CONTRACTOR'S** Subcontractors, and **CITY** reserves the right to request replacement of any Subcontractor. **CITY** does not have any obligation to pay **CONTRACTOR'S** Subcontractors, and nothing herein creates any privity of contract between **CITY** and any Subcontractor.

**PSC-12. Assignment and Delegation**

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

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

**PSC-13. Permits**

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

**PSC-14. Claims for Labor and Materials**

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

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

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

**PSC-16. Retention of Records, Audit and Reports**

**CONTRACTOR** shall maintain all records, including records of financial transactions, pertaining to the performance of this Contract, in their original form or as otherwise approved by **CITY**. These records shall be retained for a period of no less than three years from the later of the following: (1) final payment made by **CITY**, (2) the expiration

of this Contract or (3) termination of this Contract. The records will be subject to examination and audit by authorized CITY personnel or CITY'S representatives at any time. **CONTRACTOR** shall provide any reports requested by CITY regarding performance of this Contract. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

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

**PSC-17. Bonds**

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

**PSC-18. Indemnification**

Except for the gross 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. Americans with Disabilities Act**

**CONTRACTOR** shall comply with the Americans with Disabilities Act, 42 U.S.C. Section 12101 *et seq.*, and its implementing regulations.

**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](http://ethics.lacity.org) or by calling the Los Angeles City Ethics Commission at (213) 978-1960."

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

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

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

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

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

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

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

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

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

**PSC-42. Possessory Interests Tax**

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

**PSC-43. Confidentiality**

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

## EXHIBIT 1

### **INSTRUCTIONS AND INFORMATION ON COMPLYING WITH CITY INSURANCE REQUIREMENTS**

(Share this information with your insurance agent or broker)

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

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

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

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

Additional Insured Endorsements **DO NOT** apply to the following:

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

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

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

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

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

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

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

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

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

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

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

