

BOARD REPORT

NO. 17-215

DATE October 4, 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>EC</u>

Nail Williams

 General Manager

Approved _____ Disapproved _____ Withdrawn _____
Report to be continued

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 44th and 45th 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 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, 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 the fact that Contractor is the only vendor which has the necessary permits and whose boat

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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 Department of Recreation and Parks' 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 small motorized boats (skiffs) in San Ignacio Lagoon.

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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 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.

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

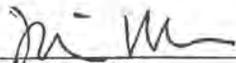
- City employees DO NOT have the expertise to perform the work
- City employees DO have the expertise to perform the work

[Please see summary below.]

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

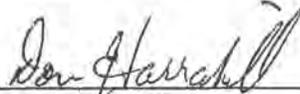
- Project of limited duration would have to layoff staff at end of project
- Time constraints require immediate staffing of project
- Work assignment exceeds staffing availability

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.



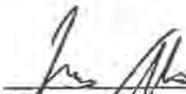
Mariel Wroe

Senior Personnel Analyst I



Don Haffrahill

Senior Personnel Analyst II



James Abalos

Chief Personnel Analyst

9-13-17

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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ATTACHMENTS

- Appendix A Standard Provisions for City Contracts (Rev. 3/09)
- Appendix B Royal Polaris Sportfishing, Inc. Acknowledgement of Risks Form

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

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

WITNESSETH

WHEREAS, for the past forty-three (43) years, the City has sponsored the annual "Meet the Friendly Whales of Baja" trip, whose 44th 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 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 Schaad
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 12:00 p.m. on March 14, 2018 for the whale watching and excursion tour to Baja California, Mexico. Contractor will provide services again on or about the same dates again on or about the same dates in March 2019.

- 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 three (3) 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-24 of the Standard Provisions for City Contracts (Rev. 3/09), attached hereto and incorporated herein by reference (Appendix A). 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 in March, 2018 and the same itinerary in March 2019:

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.
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 tour terms of this Agreement, inclusive of all expenses and costs for the 2018 tour; and Seventy-Four Thousand, Three Hundred Eighty-Two Dollars (\$74,382.00) for the 2019 tour with the same performance requirements as the 2018 tour. 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 the Department, 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 the Department, 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 tour, provided invoices from the Contractor have been received by the Department, 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. 3/09), attached hereto as Appendix A.

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

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

C. Compliance with Statutes and Regulations

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

**ARTICLE V.
MISCELLANEOUS**

A. Termination of Agreement

1. Termination for Convenience

The City may terminate this Agreement for City's convenience at any time by giving Contractor thirty (30) days written notice thereof. Upon receipt of said notice, Contractor shall immediately take action not to incur any additional obligations, cost or expenses, except as may be reasonably necessary to terminate its activities. The 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 such termination. Thereafter, Contractor shall have no further claims against the City under this Agreement. All finished or unfinished documents and materials procured for or produced under this Agreement shall become City property upon date of such termination.

2. Termination for Breach of Agreement

- a. If Contractor fails to perform any of the provisions of this Agreement or fails to make progress as to endanger timely performance of this Agreement, the City may give Contractor written notice of such default.

If Contractor does not cure such default or provide a plan to cure such default which is acceptable to the City within the time permitted by the City, then the City may terminate this Agreement due to Contractor's breach of this Agreement.

- b. 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 the City may immediately terminate this Agreement.
- c. If Contractor engages in any dishonest conduct related to the performance or administration of this Agreement or violates the City's lobbying policies, then the City may immediately terminate this Agreement
- d. In the event City terminates this Agreement as provided in this Article, the City may procure, upon such terms and in such manner as the City may deem appropriate, services similar in scope and level of effort to those so terminated, and Contractor shall be liable to the City for all of City's costs and damages, including, but not limited to, any excess costs for such services
- e. All finished or unfinished documents and materials produced or procured under this Agreement shall become City property upon date of such termination.
- f. If, after notice of termination of this Agreement under the provisions of this Article, it is determined for any reason that Contractor was not in default under the provisions of this Article, or that the default was excusable under the terms of this Agreement, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the preceding section in this Article, titled "Termination for Convenience."
- g. The rights and remedies of the City provided in this Article shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

C. 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.

D. 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.

E. Ambiguity

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

F. 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.

G. 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. 3/09)

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

PSC-2. NUMBER OF ORIGINALS

The number of original texts of this Contract shall be equal to the number of the parties hereto, one text being retained by each party. At the **CITY'S** option, one or more additional original texts of this Contract may also be retained by the City.

PSC-3. APPLICABLE LAW, INTERPRETATION AND ENFORCEMENT

Each party's performance hereunder shall comply with all applicable laws of the United States of America, the State of California, and the **CITY**, including but not limited to, laws regarding health and safety, labor and employment, wage and hours and licensing laws which affect employees. 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, and/or procedures that apply to the performance of this Contract.

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 law of a federal, state or local government having jurisdiction over this Contract, the validity of the remaining parts, terms or provisions of the Contract shall not be affected thereby.

PSC-4. 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** hereto;
- 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 the **CITY** by the person designated by the City Council, or by the board, officer or employee authorized to enter into this Contract.

PSC-5. INTEGRATED CONTRACT

This Contract sets forth all of the rights and duties of the parties with respect to the subject matter hereof, 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 paragraph PSC-6 hereof.

PSC-6. AMENDMENT

All amendments to this Contract shall be in writing and signed and approved pursuant to the provisions of PSC-4.

PSC-7. EXCUSABLE DELAYS

In the event that performance on the part of any party hereto is delayed or suspended as a result of circumstances beyond the reasonable control and without the fault and negligence of said party, none of the parties shall incur any liability to the other parties as a result of such delay or suspension. Circumstances deemed to be beyond the control of the parties hereunder include, but are not limited to, acts of God or of the public enemy; insurrection; acts of the Federal Government or any unit of State or Local Government in either sovereign or contractual capacity; fires; floods; earthquakes; epidemics; quarantine restrictions; strikes; freight embargoes or delays in transportation, to the extent that they are not caused by the party's willful or negligent acts or omissions, and to the extent that they are beyond the party's reasonable control.

PSC-8. BREACH

Except for excusable delays as described in PSC-7, if any party fails to perform, in whole or in part, any promise, covenant, or agreement set forth herein, or should any representation made by it be untrue, any aggrieved party may avail itself of all rights

and remedies, at law or equity, in the courts of law. Said rights and remedies are cumulative of those provided for herein except that in no event shall any party recover more than once, suffer a penalty or forfeiture, or be unjustly compensated.

PSC-9. 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-10. TERMINATION

A. TERMINATION FOR CONVENIENCE

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

B. TERMINATION FOR BREACH OF CONTRACT

1. Except for excusable delays as provided in PSC-7, 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, the **CITY** may give **CONTRACTOR** written notice of such default. If **CONTRACTOR** does not cure such default or provide a plan to cure such default which is acceptable to the **CITY** within the time permitted by the **CITY**, then the **CITY** may terminate this Contract due to **CONTRACTOR'S** breach of this Contract.
2. 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 the **CITY** may immediately terminate this Contract.
3. If **CONTRACTOR** engages in any dishonest conduct related to the performance or administration of this Contract or violates the

CITY'S lobbying policies, then the **CITY** may immediately terminate this Contract.

4. In the event the **CITY** terminates this Contract as provided in this section, the **CITY** may procure, upon such terms and in such manner as the **CITY** may deem appropriate, services similar in scope and level of effort to those so terminated, and **CONTRACTOR** shall be liable to the **CITY** for all of its costs and damages, including, but not limited, any excess costs for such services.
5. All finished or unfinished documents and materials produced or procured under this Contract, including all intellectual property rights thereto, shall become **CITY** property upon date of such termination. **CONTRACTOR** agrees to execute any documents necessary for the **CITY** to perfect, memorialize, or record the **CITY'S** ownership of rights provided herein.
6. 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-10(A) Termination for Convenience.
7. The rights and remedies of the **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.

PSC-11. INDEPENDENT CONTRACTOR

CONTRACTOR is acting hereunder as an independent contractor and not as an agent or employee of the **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 the **CITY**.

PSC-12. CONTRACTOR'S PERSONNEL

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

CONTRACTOR shall not use subcontractors to assist in performance of this Contract 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 Contract. The **CITY** has the right to approve **CONTRACTOR'S** subcontractors, and the **CITY** reserves the right to request replacement of subcontractors. The **CITY** does not have any obligation to pay **CONTRACTOR'S** subcontractors, and nothing herein creates any privity between the **CITY** and the subcontractors.

PSC-13. PROHIBITION AGAINST ASSIGNMENT OR DELEGATION

CONTRACTOR may not, unless it has first obtained the written permission of the **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-14. PERMITS

CONTRACTOR and its directors, officers, partners, agents, employees, and subcontractors, to the extent allowed hereunder, shall obtain and maintain all licenses, permits, certifications and other documents necessary for **CONTRACTOR'S** performance hereunder and shall pay any fees required therefor. **CONTRACTOR** certifies to immediately notify the **CITY** of any suspension, termination, lapses, non-renewals, or restrictions of licenses, permits, certificates, or other documents.

PSC-15. CLAIMS FOR LABOR AND MATERIALS

CONTRACTOR shall promptly pay when due all amounts payable 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), against **CONTRACTOR'S** rights to payments hereunder, or against the **CITY**, and shall pay all amounts due under the Unemployment Insurance Act with respect to such labor.

PSC-16. CURRENT LOS ANGELES CITY BUSINESS TAX REGISTRATION CERTIFICATE REQUIRED

If applicable, **CONTRACTOR** represents that it has obtained and presently holds the Business Tax Registration Certificate(s) required by the **CITY'S** Business Tax Ordinance, Section 21.00 *et seq.* of the Los Angeles Municipal Code. For the term covered by this Contract, **CONTRACTOR** shall maintain, or obtain as necessary, all such Certificates required of it under the Business Tax Ordinance, and shall not allow any such Certificate to be revoked or suspended.

PSC-17. 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, in accordance with

requirements prescribed by the **CITY**. These records shall be retained for a period of no less than three years following final payment made by the **CITY** hereunder or the expiration date of this Contract, whichever occurs last. Said records shall be subject to examination and audit by authorized **CITY** personnel or by the **CITY'S** representative at any time during the term of this Contract or within the three years following final payment made by the **CITY** hereunder or the expiration date of this Contract, whichever occurs last. **CONTRACTOR** shall provide any reports requested by the **CITY** regarding performance of this Contract. Any subcontract entered into by **CONTRACTOR**, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract.

PSC-18. FALSE CLAIMS ACT

CONTRACTOR acknowledges that it is aware of liabilities resulting from submitting a false claim for payment by the **CITY** under the False Claims Act (Cal. Gov. Code §§ 12650 *et seq.*), including treble damages, costs of legal actions to recover payments, and civil penalties of up to \$10,000 per false claim.

PSC-19. BONDS

All bonds which may be required hereunder shall conform to **CITY** requirements established by Charter, ordinance or policy, and shall be filed with the Office of the City Administrative Officer, Risk Management for its review and acceptance in accordance with Sections 11.47 through 11.56 of the Los Angeles Administrative Code.

PSC-20. INDEMNIFICATION

Except for the active negligence or willful misconduct of the **CITY**, or any of its Boards, Officers, Agents, Employees, Assigns and Successors in Interest, **CONTRACTOR** undertakes and agrees to defend, indemnify and hold harmless the **CITY** and any of its Boards, Officers, Agents, Employees, Assigns, and Successors in Interest from and against all suits 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 the **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 the negligent acts, errors, omissions or willful misconduct incident to the performance of this Contract by **CONTRACTOR** or its subcontractors of any tier. Rights and remedies available to the **CITY** under this provision are cumulative of those provided for elsewhere in this Contract and those allowed under the laws of the United States, the State of California, and the **CITY**. The provisions of PSC-20 shall survive expiration or termination of this Contract.

PSC-21. INTELLECTUAL PROPERTY INDEMNIFICATION

CONTRACTOR, at its own expense, undertakes and agrees to defend, indemnify, and hold harmless the **CITY**, and any of its Boards, Officers, Agents, Employees, Assigns,

and Successors in Interest from and against all suits 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 the **CITY**, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever 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 right (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 of any tier, in performing the work under this Contract; or (2) as a result of the **CITY'S** actual or intended use of any Work Product furnished by **CONTRACTOR**, or its subcontractors of any tier, under the Agreement. Rights and remedies available to the **CITY** under this provision are cumulative of those provided for elsewhere in this Contract and those allowed under the laws of the United States, the State of California, and the **CITY**. The provisions of PSC-21 shall survive expiration or termination of this Contract.

PSC-22. 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, patents, copyrights, trademarks, trade secrets, rights of publicity and proprietary information.

PSC-23. OWNERSHIP AND LICENSE

Unless otherwise provided for herein, all Work Products originated and prepared by **CONTRACTOR** or its subcontractors of any tier under this Contract shall be and remain the exclusive property of the **CITY** for its use in any manner it deems appropriate. Work Products are all works, tangible or not, created under this Contract including, without limitation, documents, material, data, reports, manuals, specifications, artwork, drawings, sketches, 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. **CONTRACTOR** hereby assigns, and agrees to assign, all goodwill, copyright, trademark, patent, trade secret and all other intellectual property rights worldwide in any Work Products originated and prepared by **CONTRACTOR** under this Contract. **CONTRACTOR** further agrees to execute any documents necessary for the **CITY** to perfect, memorialize, or record the **CITY'S** ownership of rights provided herein.

For all Work Products delivered to the **CITY** that are not originated or prepared by **CONTRACTOR** or its subcontractors of any tier under this Contract, **CONTRACTOR** hereby grants 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 the **CITY**.

Any subcontract entered into by **CONTRACTOR** relating to this Contract, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract to contractually bind or otherwise oblige its subcontractors performing work under this Contract such that the **CITY'S** ownership and license rights of all Work Products are preserved and protected as intended herein. Failure of **CONTRACTOR** to comply with this requirement or to obtain the compliance of its subcontractors with such obligations shall subject **CONTRACTOR** to the imposition of any and all sanctions allowed by law, including but not limited to termination of **CONTRACTOR'S** contract with the **CITY**.

PSC-24. INSURANCE

During the term of this Contract and without limiting **CONTRACTOR'S** indemnification of the **CITY**, **CONTRACTOR** shall provide and maintain at its own expense a program of insurance having the coverages and limits customarily carried and actually arranged by **CONTRACTOR**, but not less than the amounts and types listed on the Required Insurance and Minimum Limits sheet (Form General 146 in Exhibit 1 hereto), covering its operations hereunder. Such insurance shall conform to **CITY** requirements established by Charter, ordinance or policy, shall comply with the Insurance Contractual Requirements (Form General 133 in Exhibit 1 hereto) and shall 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-25. DISCOUNT TERMS

CONTRACTOR agrees to offer the **CITY** any discount terms that are offered to its best customers for the goods and services to be provided hereunder and apply such discount to payments made under this Contract which meet the discount terms.

PSC-26. 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-27. NON-DISCRIMINATION

Unless otherwise exempt, this Contract is subject to the non-discrimination provisions in Sections 10.8 through 10.8.2 of the Los Angeles Administrative Code, as amended from time to time. The **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 the **CITY**. In performing this Contract, **CONTRACTOR** shall not

discriminate in its employment practices against any employee or applicant for employment because of such person's race, religion, national origin, ancestry, sex, sexual orientation, age, disability, domestic partner status, marital status or medical condition. Any subcontract entered into by **CONTRACTOR**, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract.

Failure of **CONTRACTOR** to comply with this requirement or to obtain the compliance of its subcontractors with such obligations shall subject **CONTRACTOR** to the imposition of any and all sanctions allowed by law, including but not limited to termination of **CONTRACTOR'S** contract with the **CITY**.

PSC-28. EQUAL EMPLOYMENT PRACTICES

Unless otherwise exempt, this Contract is subject to the equal employment practices provisions in Section 10.8.3 of the Los Angeles Administrative Code, as amended from time to time.

- A. During the performance of this Contract, **CONTRACTOR** agrees and represents that it will provide equal employment practices and **CONTRACTOR** and each subcontractor hereunder will ensure that in his or her employment practices persons are employed and employees are treated equally and without regard to or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
 - 1. This provision applies to work or service performed or materials manufactured or assembled in the United States.
 - 2. Nothing in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.
 - 3. **CONTRACTOR** agrees to post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.
- B. **CONTRACTOR** will, in all solicitations or advertisements for employees placed by or on behalf of **CONTRACTOR**, state that all qualified applicants will receive consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
- C. As part of the **CITY'S** supplier registration process, and/or at the request of the awarding authority, or the Board of Public Works, Office of Contract Compliance, **CONTRACTOR** shall certify in the specified format that he or she has not discriminated in the performance of **CITY** contracts against any employee or applicant for employment on the basis or because of

race, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status or medical condition.

- D. **CONTRACTOR** shall permit access to and may be required to provide certified copies of all of his or her records pertaining to employment and to employment practices by the awarding authority or the Office of Contract Compliance for the purpose of investigation to ascertain compliance with the Equal Employment Practices provisions of **CITY** contracts. On their or either of their request **CONTRACTOR** shall provide evidence that he or she has or will comply therewith.
- E. The failure of any **CONTRACTOR** to comply with the Equal Employment Practices provisions of this Contract may be deemed to be a material breach of **CITY** contracts. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made or penalties assessed except upon a full and fair hearing after notice and an opportunity to be heard has been given to **CONTRACTOR**.
- F. Upon a finding duly made that **CONTRACTOR** has failed to comply with the Equal Employment Practices provisions of a **CITY** contract, the contract may be forthwith canceled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the **CITY**. In addition thereto, such failure to comply may be the basis for a determination by the awarding authority or the Board of Public Works that the **CONTRACTOR** is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Charter of the City of Los Angeles. In the event of such a determination, **CONTRACTOR** shall be disqualified from being awarded a contract with the **CITY** for a period of two years, or until **CONTRACTOR** shall establish and carry out a program in conformance with the provisions hereof.
- G. Notwithstanding any other provision of this Contract, the **CITY** shall have any and all other remedies at law or in equity for any breach hereof.
- H. Intentionally blank.
- I. Nothing contained in this Contract shall be construed in any manner so as to require or permit any act which is prohibited by law.
- J. At the time a supplier registers to do business with the **CITY**, or when an individual bid or proposal is submitted, **CONTRACTOR** shall agree to adhere to the Equal Employment Practices specified herein during the performance or conduct of **CITY** Contracts.

- K. Equal Employment Practices shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:
1. Hiring practices;
 2. Apprenticeships where such approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;
 3. Training and promotional opportunities; and
 4. Reasonable accommodations for persons with disabilities.
- L. Any subcontract entered into by **CONTRACTOR**, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract. Failure of **CONTRACTOR** to comply with this requirement or to obtain the compliance of its subcontractors with all such obligations shall subject **CONTRACTOR** to the imposition of any and all sanctions allowed by law, including but not limited to termination of the **CONTRACTOR'S** Contract with the **CITY**.

PSC-29. AFFIRMATIVE ACTION PROGRAM

Unless otherwise exempt, this Contract is subject to the affirmative action program provisions in Section 10.8.4 of the Los Angeles Administrative Code, as amended from time to time.

- A. During the performance of a **CITY** contract, **CONTRACTOR** certifies and represents that **CONTRACTOR** and each subcontractor hereunder will adhere to an affirmative action program to ensure that in its employment practices, persons are employed and employees are treated equally and without regard to or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
1. This provision applies to work or services performed or materials manufactured or assembled in the United States.
 2. Nothing in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.
 3. **CONTRACTOR** shall post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.
- B. **CONTRACTOR** will, in all solicitations or advertisements for employees placed by or on behalf of **CONTRACTOR**, state that all qualified applicants will receive consideration for employment without regard to

their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.

- C. As part of the **CITY'S** supplier registration process, and/or at the request of the awarding authority or the Office of Contract Compliance, **CONTRACTOR** shall certify on an electronic or hard copy form to be supplied, that **CONTRACTOR** has not discriminated in the performance of **CITY** contracts against any employee or applicant for employment on the basis or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
- D. **CONTRACTOR** shall permit access to and may be required to provide certified copies of all of its records pertaining to employment and to its employment practices by the awarding authority or the Office of Contract Compliance, for the purpose of investigation to ascertain compliance with the Affirmative Action Program provisions of **CITY** contracts, and on their or either of their request to provide evidence that it has or will comply therewith.
- E. The failure of any **CONTRACTOR** to comply with the Affirmative Action Program provisions of **CITY** contracts may be deemed to be a material breach of contract. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made except upon a full and fair hearing after notice and an opportunity to be heard has been given to **CONTRACTOR**.
- F. Upon a finding duly made that **CONTRACTOR** has breached the Affirmative Action Program provisions of a **CITY** contract, the contract may be forthwith cancelled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the **CITY**. In addition thereto, such breach may be the basis for a determination by the awarding authority or the Board of Public Works that the said **CONTRACTOR** is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Los Angeles City Charter. In the event of such determination, such **CONTRACTOR** shall be disqualified from being awarded a contract with the **CITY** for a period of two years, or until he or she shall establish and carry out a program in conformance with the provisions hereof.
- G. In the event of a finding by the Fair Employment and Housing Commission of the State of California, or the Board of Public Works of the City of Los Angeles, or any court of competent jurisdiction, that **CONTRACTOR** has been guilty of a willful violation of the California Fair Employment and Housing Act, or the Affirmative Action Program provisions of a **CITY** contract, there may be deducted from the amount payable to **CONTRACTOR** by the **CITY** under the contract, a penalty of ten dollars

(\$10.00) for each person for each calendar day on which such person was discriminated against in violation of the provisions of a **CITY** contract.

- H. Notwithstanding any other provisions of a **CITY** contract, the **CITY** shall have any and all other remedies at law or in equity for any breach hereof.
- I. Intentionally blank.
- J. Nothing contained in **CITY** contracts shall be construed in any manner so as to require or permit any act which is prohibited by law.
- K. **CONTRACTOR** shall submit an Affirmative Action Plan which shall meet the requirements of this chapter at the time it submits its bid or proposal or at the time it registers to do business with the **CITY**. The plan shall be subject to approval by the Office of Contract Compliance prior to award of the contract. The awarding authority may also require contractors and suppliers to take part in a pre-registration, pre-bid, pre-proposal, or pre-award conference in order to develop, improve or implement a qualifying Affirmative Action Plan. Affirmative Action Programs developed pursuant to this section shall be effective for a period of twelve months from the date of approval by the Office of Contract Compliance. In case of prior submission of a plan, **CONTRACTOR** may submit documentation that it has an Affirmative Action Plan approved by the Office of Contract Compliance within the previous twelve months. If the approval is 30 days or less from expiration, **CONTRACTOR** must submit a new Plan to the Office of Contract Compliance and that Plan must be approved before the contract is awarded.
 - 1. Every contract of \$5,000 or more which may provide construction, demolition, renovation, conservation or major maintenance of any kind shall in addition comply with the requirements of Section 10.13 of the Los Angeles Administrative Code.
 - 2. **CONTRACTOR** may establish and adopt as its own Affirmative Action Plan, by affixing his or her signature thereto, an Affirmative Action Plan prepared and furnished by the Office of Contract Compliance, or it may prepare and submit its own Plan for approval.
- L. The Office of Contract Compliance shall annually supply the awarding authorities of the **CITY** with a list of contractors and suppliers who have developed Affirmative Action Programs. For each contractor and supplier the Office of Contract Compliance shall state the date the approval expires. The Office of Contract Compliance shall not withdraw its approval for any Affirmative Action Plan or change the Affirmative Action Plan after the date of contract award for the entire contract term without the mutual agreement of the awarding authority and **CONTRACTOR**.

- M. The Affirmative Action Plan required to be submitted hereunder and the pre-registration, pre-bid, pre-proposal or pre-award conference which may be required by the Board of Public Works, Office of Contract Compliance or the awarding authority shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:
1. Apprenticeship where approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;
 2. Classroom preparation for the job when not apprenticeable;
 3. Pre-apprenticeship education and preparation;
 4. Upgrading training and opportunities;
 5. Encouraging the use of contractors, subcontractors and suppliers of all racial and ethnic groups, provided, however, that any contract subject to this ordinance shall require the contractor, subcontractor or supplier to provide not less than the prevailing wage, working conditions and practices generally observed in private industries in the contractor's, subcontractor's or supplier's geographical area for such work;
 6. The entry of qualified women, minority and all other journeymen into the industry; and
 7. The provision of needed supplies or job conditions to permit persons with disabilities to be employed, and minimize the impact of any disability.
- N. Any adjustments which may be made in the contractor's or supplier's workforce to achieve the requirements of the **CITY'S** Affirmative Action Contract Compliance Program in purchasing and construction shall be accomplished by either an increase in the size of the workforce or replacement of those employees who leave the workforce by reason of resignation, retirement or death and not by termination, layoff, demotion or change in grade.
- O. Affirmative Action Agreements resulting from the proposed Affirmative Action Plan or the pre-registration, pre-bid, pre-proposal or pre-award conferences shall not be confidential and may be publicized by the contractor at his or her discretion. Approved Affirmative Action Agreements become the property of the **CITY** and may be used at the discretion of the **CITY** in its Contract Compliance Affirmative Action Program.
- P. Intentionally blank.

- Q. All contractors subject to the provisions of this section shall include a like provision in all subcontracts awarded for work to be performed under the contract with the **CITY** and shall impose the same obligations, including but not limited to filing and reporting obligations, on the subcontractors as are applicable to the contractor. Failure of the contractor to comply with this requirement or to obtain the compliance of its subcontractors with all such obligations shall subject the contractor to the imposition of any and all sanctions allowed by law, including but not limited to termination of the contractor's contract with the **CITY**.

PSC-30. CHILD SUPPORT ASSIGNMENT ORDERS

This Contract is subject to the Child Support Assignment Orders Ordinance, Section 10.10 of the Los Angeles Administrative Code, as amended from time to time. Pursuant to the Child Support Assignment Orders Ordinance, **CONTRACTOR** will fully comply with all applicable State and Federal employment reporting requirements for **CONTRACTOR'S** employees. **CONTRACTOR** shall also certify (1) that the Principal Owner(s) of **CONTRACTOR** are in compliance with any Wage and Earnings Assignment Orders and Notices of Assignment applicable to them personally; (2) that **CONTRACTOR** will fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment in accordance with Section 5230, *et seq.* of the California Family Code; and (3) that **CONTRACTOR** will maintain such compliance throughout the term of this Contract.

Pursuant to Section 10.10(b) of the Los Angeles Administrative Code, the failure of **CONTRACTOR** to comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignment Orders or Notices of Assignment, or the failure of any Principal Owner(s) of **CONTRACTOR** to comply with any Wage and Earnings Assignment Orders or Notices of Assignment applicable to them personally, shall constitute a default by the **CONTRACTOR** under this Contract, subjecting this Contract to termination if such default shall continue for more than ninety (90) days after notice of such default to **CONTRACTOR** by the **CITY**.

Any subcontract entered into by **CONTRACTOR**, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract. Failure of **CONTRACTOR** to obtain compliance of its subcontractors shall constitute a default by **CONTRACTOR** under this Contract, subjecting this Contract to termination where such default shall continue for more than ninety (90) days after notice of such default to **CONTRACTOR** by the **CITY**.

CONTRACTOR certifies that, to the best of its knowledge, it is fully complying with the Earnings Assignment Orders of all employees, and is providing the names of all new employees to the New Hire Registry maintained by the Employment Development Department as set forth in Section 7110(b) of the California Public Contract Code.

PSC-31. LIVING WAGE ORDINANCE AND SERVICE CONTRACTOR WORKER RETENTION ORDINANCE

- A. Unless otherwise exempt, this Contract is subject to the applicable provisions of the Living Wage Ordinance (LWO), Section 10.37 *et seq.* of the Los Angeles Administrative Code, as amended from time to time, and the Service Contractor Worker Retention Ordinance (SCWRO), Section 10.36 *et seq.*, of the Los Angeles Administrative Code, as amended from time to time. These Ordinances require the following:
1. **CONTRACTOR** assures payment of a minimum initial wage rate to employees as defined in the LWO and as may be adjusted each July 1 and provision of compensated and uncompensated days off and health benefits, as defined in the LWO.
 2. **CONTRACTOR** further pledges that it will comply with federal law proscribing retaliation for union organizing and will not retaliate for activities related to the LWO. **CONTRACTOR** shall require each of its subcontractors within the meaning of the LWO to pledge to comply with the terms of federal law proscribing retaliation for union organizing. **CONTRACTOR** shall deliver the executed pledges from each such subcontractor to the **CITY** within ninety (90) days of the execution of the subcontract. **CONTRACTOR'S** delivery of executed pledges from each such subcontractor shall fully discharge the obligation of **CONTRACTOR** with respect to such pledges and fully discharge the obligation of **CONTRACTOR** to comply with the provision in the LWO contained in Section 10.37.6(c) concerning compliance with such federal law.
 3. **CONTRACTOR**, whether an employer, as defined in the LWO, or any other person employing individuals, shall not discharge, reduce in compensation, or otherwise discriminate against any employee for complaining to the **CITY** with regard to the employer's compliance or anticipated compliance with the LWO, for opposing any practice proscribed by the LWO, for participating in proceedings related to the LWO, for seeking to enforce his or her rights under the LWO by any lawful means, or otherwise asserting rights under the LWO. **CONTRACTOR** shall post the Notice of Prohibition Against Retaliation provided by the **CITY**.
 4. Any subcontract entered into by **CONTRACTOR** relating to this Contract, to the extent allowed hereunder, shall be subject to the provisions of PSC-31 and shall incorporate the provisions of the LWO and the SCWRO.

5. **CONTRACTOR** shall comply with all rules, regulations and policies promulgated by the **CITY'S** Designated Administrative Agency which may be amended from time to time.
- B. Under the provisions of Sections 10.36.3(c) and 10.37.6(c) of the Los Angeles Administrative Code, the **CITY** shall have the authority, under appropriate circumstances, to terminate this Contract and otherwise pursue legal remedies that may be available if the **CITY** determines that the subject **CONTRACTOR** has violated provisions of either the LWO or the SCWRO, or both.
- C. Where under the LWO Section 10.37.6(d), the **CITY'S** Designated Administrative Agency has determined (a) that **CONTRACTOR** is in violation of the LWO in having failed to pay some or all of the living wage, and (b) that such violation has gone uncured, the **CITY** in such circumstances may impound monies otherwise due **CONTRACTOR** in accordance with the following procedures. Impoundment shall mean that from monies due **CONTRACTOR**, **CITY** may deduct the amount determined to be due and owing by **CONTRACTOR** to its employees. Such monies shall be placed in the holding account referred to in LWO Section 10.37.6(d)(3) and disposed of under procedures described therein through final and binding arbitration. Whether **CONTRACTOR** is to continue work following an impoundment shall remain in the sole discretion of the **CITY**. **CONTRACTOR** may not elect to discontinue work either because there has been an impoundment or because of the ultimate disposition of the impoundment by the arbitrator.
- D. **CONTRACTOR** shall inform employees making less than Twelve Dollars (\$12.00) per hour of their possible right to the federal Earned Income Credit (EIC). **CONTRACTOR** shall also make available to employees the forms informing them about the EIC and forms required to secure advance EIC payments from **CONTRACTOR**.

PSC-32. AMERICANS WITH DISABILITIES ACT

CONTRACTOR hereby certifies that it will comply with the Americans with Disabilities Act, 42 U.S.C. §§ 12101 *et seq.*, and its implementing regulations. **CONTRACTOR** will provide reasonable accommodations to allow qualified individuals with disabilities to have access to and to participate in its programs, services and activities in accordance with the provisions of the Americans with Disabilities Act. **CONTRACTOR** will not discriminate against persons with disabilities nor against persons due to their relationship to or association with a person with a disability. Any subcontract entered into by **CONTRACTOR**, relating to this Contract, to the extent allowed hereunder, shall be subject to the provisions of this paragraph.

PSC-33. CONTRACTOR RESPONSIBILITY ORDINANCE

Unless otherwise exempt, this Contract is subject to the provisions of the Contractor Responsibility Ordinance, Section 10.40 *et seq.*, of the Los Angeles Administrative Code, as amended from time to time, which requires **CONTRACTOR** to update its responses to the responsibility questionnaire within thirty calendar days after any change to the responses previously provided if such change would affect **CONTRACTOR'S** fitness and ability to continue performing this Contract.

In accordance with the provisions of the Contractor Responsibility Ordinance, by signing this Contract, **CONTRACTOR** pledges, under penalty of perjury, to comply with all applicable federal, state and local laws in the performance of this Contract, including but not limited to, laws regarding health and safety, labor and employment, wages and hours, and licensing laws which affect employees. **CONTRACTOR** further agrees to: (1) notify the **CITY** within thirty calendar days after receiving notification that any government agency has initiated an investigation which may result in a finding that **CONTRACTOR** is not in compliance with all applicable federal, state and local laws in performance of this Contract; (2) notify the **CITY** within thirty calendar days of all findings by a government agency or court of competent jurisdiction that **CONTRACTOR** has violated the provisions of Section 10.40.3(a) of the Contractor Responsibility Ordinance; (3) unless exempt, ensure that its subcontractor(s), as defined in the Contractor Responsibility Ordinance, submit a Pledge of Compliance to the **CITY**; and (4) unless exempt, ensure that its subcontractor(s), as defined in the Contractor Responsibility Ordinance, comply with the requirements of the Pledge of Compliance and the requirement to notify the **CITY** within thirty calendar days after any government agency or court of competent jurisdiction has initiated an investigation or has found that the subcontractor has violated Section 10.40.3(a) of the Contractor Responsibility Ordinance in performance of the subcontract.

PSC-34. MINORITY, WOMEN, AND OTHER BUSINESS ENTERPRISE OUTREACH PROGRAM

CONTRACTOR agrees and obligates itself to utilize the services of Minority, Women and Other Business Enterprise firms on a level so designated in its proposal, if any. **CONTRACTOR** certifies that it has complied with Mayoral Directive 2001-26 regarding the Outreach Program for Personal Services Contracts Greater than \$100,000, if applicable. **CONTRACTOR** shall not change any of these designated subcontractors, nor shall **CONTRACTOR** reduce their level of effort, without prior written approval of the **CITY**, provided that such approval shall not be unreasonably withheld.

PSC-35. EQUAL BENEFITS ORDINANCE

Unless otherwise exempt, this Contract is subject to the provisions of the Equal Benefits Ordinance (EBO), Section 10.8.2.1 of the Los Angeles Administrative Code, as amended from time to time.

- A. During the performance of the Contract, **CONTRACTOR** certifies and represents that **CONTRACTOR** will comply with the EBO.
- B. The failure of **CONTRACTOR** to comply with the EBO will be deemed to be a material breach of this Contract by the **CITY**.
- C. If **CONTRACTOR** fails to comply with the EBO the **CITY** may cancel, terminate or suspend this Contract, in whole or in part, and all monies due or to become due under this Contract may be retained by the **CITY**. The **CITY** may also pursue any and all other remedies at law or in equity for any breach.
- D. Failure to comply with the EBO may be used as evidence against **CONTRACTOR** in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40 *et seq.*, Contractor Responsibility Ordinance.
- E. If the **CITY'S** Designated Administrative Agency determines that a **CONTRACTOR** has set up or used its contracting entity for the purpose of evading the intent of the EBO, the **CITY** may terminate the Contract. Violation of this provision may be used as evidence against **CONTRACTOR** in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40 *et seq.*, Contractor Responsibility Ordinance.

CONTRACTOR shall post the following statement in conspicuous places at its place of business available to employees and applicants for employment:

"During the performance of a Contract with the City of Los Angeles, the Contractor will provide equal benefits to its employees with spouses and its employees with domestic partners. Additional information about the City of Los Angeles' Equal Benefits Ordinance may be obtained from the Department of Public Works, Office of Contract Compliance at (213) 847-1922."

PSC-36. SLAVERY DISCLOSURE ORDINANCE

Unless otherwise exempt, this Contract is subject to the Slavery Disclosure Ordinance, Section 10.41 of the Los Angeles Administrative Code, as amended from time to time. **CONTRACTOR** certifies that it has complied with the applicable provisions of the Slavery Disclosure Ordinance. Failure to fully and accurately complete the affidavit may result in termination of this Contract.

CITY OF LOS ANGELES

**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 must 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) included in your CITY documents.

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.

3. Acceptable Evidence and Approval Electronic submission is the best method of 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 – the CITY is a licensed redistributor of ACORD forms. **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 that have been approved by the State of California may be accepted, however *submissions other than through Track4LA® will significantly delay the insurance approval process as documents will have to be manually processed.* All Certificates must provide a thirty (30) days' cancellation notice provision (ten (10) days for non-payment of premium) AND an Additional Insured Endorsement naming the CITY an additional insured completed by your insurance company or its designee. If the policy includes an automatic or blanket additional insured endorsement, the Certificate must state the CITY is an automatic or blanket additional insured. An endorsement naming the CITY an Additional Named Insured and Loss Payee as Its Interests May Appear is required on property policies. All evidence of insurance must be authorized by a person with authority to bind coverage, whether that is the authorized agent/broker or insurance underwriter. Completed **Insurance Industry Certificates other than ACORD 25 Certificates** are sent electronically to CAO.insurance.bonds@lacity.org.

Additional Insured Endorsements DO NOT apply to the following:

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

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

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

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

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

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

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

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

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

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

Required Insurance and Minimum Limits

Name: Royal Polaris Sportfishing, Inc.

Date: 09/15/2017

Agreement/Reference: Whale-Watching and Ecological Tour Excursion Services for Cabrillo Marine Aquarium (RAP)
 Evidence of coverages checked below, with the specified minimum limits, must be submitted and approved prior to occupancy/start of operations. Amounts shown are Combined Single Limits ("CSLs"). For Automobile Liability, split limits may be substituted for a CSL if the total per occurrence equals or exceeds the CSL amount.

Limits

Workers' Compensation - Workers' Compensation (WC) and Employer's Liability (EL)

WC Statutory
 EL \$1,000,000

Waiver of Subrogation in favor of City

Longshore & Harbor Workers
 Jones Act

General Liability

\$1,000,000

Products/Completed Operations

Sexual Misconduct

Fire Legal Liability

Marine Insurance with \$1,000,000 Hull & Passenger Liability

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

Professional Liability (Errors and Omissions)

Discovery Period 12 Months After Completion of Work or Date of Termination

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

All Risk Coverage

Boiler and Machinery

Flood

Builder's Risk

Earthquake

Pollution Liability

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

100% of the contract price

Crime Insurance

Other: Provided to Nancy Jeffers @ RAP

1) If a contractor has no employees and decides to not cover herself / himself for worker's compensation, please complete the form entitled "Release for Waiver of Workers' Compensation Insurance Requirement" located at <http://cao.lacity.org/risk/InsuranceForms.htm>

2) In the absence of imposed auto liability requirement, all contractors using vehicles during the course of their contract must adhere to the financial responsibility laws of the State of California.

TO OUR PASSENGERS

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

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

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

Trip Date: March 6, 2018 to March 14, 2018

ACKNOWLEDGEMENT OF RISKS

Please read the copy, of the following, that has been provided to you.

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

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

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

1 _____	13 _____	25 _____
2 _____	14 _____	26 _____
3 _____	15 _____	27 _____
4 _____	16 _____	28 _____
5 _____	17 _____	29 _____
6 _____	18 _____	30 _____
7 _____	19 _____	31 _____
8 _____	20 _____	32 _____
9 _____	21 _____	33 _____
10 _____	22 _____	34 _____
11 _____	23 _____	35 _____
12 _____	24 _____	36 _____
37 _____	38 _____	39 _____