

TRANSMITTAL

0150-08597-0010

TO
The City Council

DATE

06/05/19

COUNCIL FILE NO.

FROM
The Mayor

COUNCIL DISTRICT

**Proposed Third Amendment to Contract No. C-124273 between Erickson, Inc.
and the Fire Department for aerial firefighting helitanker services**

Transmitted for your consideration. After receipt, the Council has 60 days to act, otherwise the matter will be deemed approved, pursuant to Los Angeles Administrative Code Section 10.5(a).
See attached City Administrative Officer report.



MAYOR

(Ana Guerrero) for

RHL:SJ:04190180

Report From
OFFICE OF THE CITY ADMINISTRATIVE OFFICER
Analysis of Proposed Contract
(\$25,000 or Greater and Longer than Three Months)

To: The Mayor	Date: 06-05-19	C.D. No. --	CAO File No.: 0150-08597-0010
Contracting Department/Bureau: Fire Department		Contact: Muriel Gee (213) 978-3461	
Reference: Transmittal from the Board of Fire Commissioners dated May 21, 2019; referred for report May 21, 2019			
Purpose of Contract: To lease a Helitanker aircraft to assist in suppressing large-scale wildfires.			
Type of Contract: () New contract (x) Amendment, Contract No. C-124273		Contract Term Dates: July 1, 2014 through June 30, 2024 (five-year extension)	
Contract/Amendment Amount: \$20,519,570			
Proposed amount \$ 20,519,570 + Prior award(s) \$ 19,951,738 = Total \$ 40,471,308			
Source of funds: Fire Department Contractual Services Account			
Name of Contractor: Erickson, Inc.			
Address: 5550 SW Macadam Ave, Suite 200, Portland, OR, 97239			
	Yes	No	N/A
1. Council has approved the purpose	X		
2. Appropriated funds are available	X		
3. Charter Section 1022 findings completed			X
4. Proposals have been requested	X		
5. Risk Management review completed	X		
6. Standard Provisions for City Contracts included	X		
7. Workforce that resides in the City: 0%			
8. Business Inclusion Program			X
9. Equal Benefits & First Source Hiring Ordinances	X		
10. Contractor Responsibility Ordinance	X		
11. Disclosure Ordinances	X		
12. Bidder Certification CEC Form 50	X		
13. Prohibited Contributors (Bidders) CEC Form 55	X		
14. California Iran Contracting Act of 2010	X		

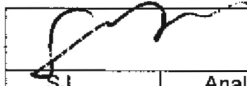
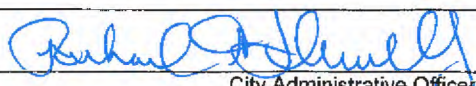
RECOMMENDATION

That the City Council, subject to the approval of the Mayor, authorize the Fire Chief, or designee, to execute the proposed third amendment and final option to extend Contract No. C-124273 between the Los Angeles Fire Department and Erickson, Inc. for aerial firefighting helitanker services. The proposed amendment will extend the contractual term by five years from June 30, 2019 through June 30, 2024 and increase the total maximum compensation amount by \$20,519,570 from \$19,951,738 to \$40,471,308, subject to the review and approval of the City Attorney as to form.

SUMMARY

The Los Angeles Fire Department (LAFD) requests authority to execute the third amendment and final option to extend (Amendment) Contract No. C-124273 (Agreement) with Erickson, Inc. (Contractor) for helitanker services to provide additional support to the LAFD during large wildfires. The Amendment will extend the Agreement by five years from June 30, 2019 through June 30, 2024. Additionally, the Amendment will increase the maximum allowable compensation by \$20,519,570 from \$19,951,738 to \$40,471,308.

On October 31, 2013, the LAFD released a Request for Proposals for dedicated aerial firefighting services for the brush fire season and selected the Contractor upon evaluation of the proposal. The

 SJ	Analyst	04190180	 City Administrative Officer
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LAFD subsequently entered into an agreement with the Contractor for a five-year agreement from July 1, 2014 through June 30, 2019, with an option to extend the term for an additional five years, and a total maximum compensation amount of \$18,973,790. Pursuant to the Agreement, the Contractor will provide the LAFD a helitanker for a minimum annual standby performance period of 150 days and a maximum of 180 days. The cost of services is determined through an established daily rate, subject to a yearly incremental percentage increase. There is an additional cost measured through flight hours to operate the aircraft. The LAFD must pay for a minimum of 10 flight hours every year and may elect to purchase additional flight hours at a set hourly rate, which is also subject to a yearly increase.

On September 28, 2016, Council approved the First Amendment to the Agreement to incorporate specific language on the terms and costs of any additional services provided outside of the base performance period. On January 23, 2018, Council approved the Second Amendment to increase the Fiscal Year 2017-18 contractual ceiling amount by \$977,948 from \$3,905,188 to \$4,883,136 to reflect increased flight hours and an extended performance period of 180 days as a result of greater fire activity. Accordingly, this increased the Agreement's total maximum compensation amount by \$977,948 from \$18,973,790 to \$19,951,738.

This Amendment will continue the helitanker service provided by the Contractor for another five years and increase the contractual expenditure authority by \$20,519,570 based on a 150-day performance period and 10 flight hours for every year of the extension. The LAFD will retain the option to increase the annual performance period to a maximum of 180 days and increase flight hours as necessary. The following table breaks down the contractual cost for the extension by year and reflects anticipated annual increases as agreed upon between the LAFD and the Contractor. Additional information on daily rates and the cost to increase services are available in the Attachment.

Fiscal Year	150-Day Annual Cost	Flight Hour (10 Hours) Annual Cost	Total Estimated Cost
2019-20	\$3,967,500	\$54,900	\$4,022,400
2020-21	\$3,967,500	\$54,900	\$4,022,400
2021-22	\$4,007,250	\$55,450	\$4,062,700
2022-23	\$4,087,350	\$56,560	\$4,143,910
2023-24	\$4,209,900	\$58,260	\$4,268,160
Total	\$20,239,500	\$280,070	\$20,519,570

In accordance with Charter Section 1022, this Office determined that the labor component consisting of U.S. Forest Service-certified helicopter pilots as employed by the Contractor, and included within the terms of the Agreement, precludes a 1022 Determination, since City employees are not utilized in the provision of these services. The LAFD submitted a Notice of Intent to Contract to the Employee Relations Division on January 30, 2019.

In accordance with the Los Angeles Administrative Code Section 10.5(b)(2), Council approval of the proposed amendment is required, as the proposed contract term exceeds three years and the total compensation amount exceeds \$154,925. To the best of our knowledge, the Contractor has complied with all standard provisions for City contracts, as well as City contracting requirements.

FISCAL IMPACT STATEMENT

The 2019-20 Los Angeles Fire Department (LAFD) Adopted Budget includes funding in the amount of \$4,022,163 in the Contractual Services Account. There is no additional impact to the General Fund. The estimated cost for the five-year extension is \$20,519,570. For Fiscal Year 2019-20, the anticipated cost for helitanker services is \$4,022,400 for the minimum 150-day stand-by service rate and standard 10 flight hours. Costs in excess of the budgeted amount will be supported through savings. Funding for subsequent years is contingent upon available funding through the annual budget process. This agreement is consistent with the City's Financial Policies in that ongoing revenues will be used to support these services.

RHL:SJ:04190180

Attachment

LOS ANGELES FIRE COMMISSION

Attachment

**BOARD OF
FIRE COMMISSIONERS**

DELIA IBARRA
PRESIDENT

ANDREW GLAZIER
VICE PRESIDENT

JIMMY H. HARA, M.D.
REBECCA NINBURG
JIMMIE WOODS-GRAY

LETICIA GOMEZ
COMMISSION EXECUTIVE ASSISTANT II



ERIC GARCETTI
Mayor

SUE STENGEL
INDEPENDENT ASSESSOR

EXECUTIVE OFFICE
200 NORTH MAIN STREET, SUITE 1840
LOS ANGELES, CA 90012

(213) 978-3838 PHONE
(213) 978-3814 FAX

May 21, 2019

Honorable Eric Garcetti
Mayor, City of Los Angeles
Room 303, City Hall
Attn: Legislative Coordinator

**[BFC 19-046] –THIRD AMENDMENT TO AGREEMENT C-124273 WITH ERICKSON, INC.
FOR AERIAL FIREFIGHTING HELITANKER SERVICES**

At its meeting of May 21, 2019, the Board of Fire Commissioners approved the report and its recommendations. The report is hereby transmitted to the Mayor for consideration and approval.

Should you need additional information, please contact the Board of Fire Commissioners' office at 213-978-3838.

Sincerely,

Isela Iñiguez
Acting Commission Executive Assistant

Attachment

cc: Board of Fire Commissioners (without attachments)
Fire Chief Ralph M. Terrazas (without attachments)

LOS ANGELES FIRE DEPARTMENT



RALPH M. TERRAZAS
FIRE CHIEF

APPROVED: 5/21/2019
BOARD OF FIRE COMMISSIONERS
BY: [Signature]
COMMISSION EXECUTIVE ASSISTANT

March 15, 2019

BOARD OF FIRE COMMISSIONERS
FILE NO. 19-046

TO: Board of Fire Commissioners

FROM: [Signature] Ralph M. Terrazas, Fire Chief

SUBJECT: THIRD AMENDMENT TO AGREEMENT C-124273 WITH ERICKSON,
INC. FOR AERIAL FIREFIGHTING HELITANKER SERVICES

FINAL ACTION: <input checked="" type="checkbox"/> Approved	<input type="checkbox"/> Approved w/Corrections	<input type="checkbox"/> Withdrawn
<input type="checkbox"/> Denied	<input type="checkbox"/> Received & Filed	<input type="checkbox"/> Other

SUMMARY

On May 6, 2014, the Board of Fire Commissioners approved the contract award for aerial firefighting helitanker services to Erickson, Inc., who was selected through a Request for Proposal. The Los Angeles Fire Department (LAFD) subsequently entered into Agreement C-124273 with Erickson for a five-year term, beginning on July 1, 2014 through June 30, 2019, with an option to extend the term for an additional five (5) years. The contract ceiling for the FY 2014-15 period was \$3,573,800.

The Agreement provides the LAFD with an aircraft capable of carrying 2,000 gallons of water or fire retardant material, which augments the LAFD's available air resources for suppressing large scale, high intensity wildfires in densely covered mountainous terrain. The annual performance period begins on August 1st of each year, and provides the LAFD with a minimum of a 150-day stand-by service rate, which may increase up to 180 days, subject to additional funding approved by the Mayor and City Council, and availability of the Erickson aircraft.

On August 2, 2016, the Board of Fire Commissioners approved a First Amendment to the Agreement to clarify the daily rate for service activated before or after the annual base performance period.

On December 19, 2017, the Board of Fire Commissioners approved a Second Amendment to the Agreement that increased the contract ceiling for FY 2017-18 by \$977,948 (from \$3,905,188 to \$4,883,136) to reflect the additional flight hours incurred

as a result of the extensive deployment of the Erickson helitanker to combat the wildfires during FY 2017-18.

The current Agreement will expire on June 30, 2019. This Third Amendment exercises the five (5) year option to extend the term through June 30, 2024.

The contract ceiling for FY 2019-20 is \$4,022,400, comprised of the 150-day stand-by service costs (Table 1) and the annual ten (10) hour flight hours (Table 2). The costs will be subject to a 0% increase for FY 2019-20 and FY 2020-21, 1% increase for FY 2021-22, 2% increase for FY 2022-23, and 3% increase for FY 2023-24. The total annual cost from FY 2019-20 through FY 2023-24 is estimated at \$20,519,570.

TABLE 1: ESTIMATED STAND-BY SERVICE COSTS

Fiscal Year	150 – day Option Daily Rate	150-day Option Annual Cost	180 – day Option Daily Rate	180-day Option Annual Cost
2019-20	\$ 26,450	\$ 3,967,500	\$ 25,880	\$ 4,658,400
2020-21	\$ 26,450	\$ 3,967,500	\$ 25,880	\$ 4,658,400
2021-22	\$ 26,715	\$ 4,007,250	\$ 26,139	\$ 4,705,020
2022-23	\$ 27,249	\$ 4,087,350	\$ 26,662	\$ 4,799,160
2023-24	\$ 28,066	\$ 4,209,900	\$ 27,462	\$ 4,943,160
Estimated 5-year Total:		\$ 20,239,500		\$ 23,764,140

Flight hours are billed as a separate line item in one-tenth hour increments. These hours are the actual flight hours operating the aircraft in an aerial firefighting capacity. The cost of ten (10) flight hours are in addition to the stand-by service rates. Any hours over the ten (10) flight hours will be billed at the hourly rate.

TABLE 2: ESTIMATED FLIGHT HOUR COSTS

Fiscal Year	Flight Hour Rate	Flight Hour (10) Annual Cost
2019-20	\$ 5,490	\$ 54,900
2020-21	\$ 5,490	\$ 54,900
2021-22	\$ 5,545	\$ 55,450
2022-23	\$ 5,656	\$ 56,560
2023-24	\$ 5,826	\$ 58,260
Estimated 5-year Total:		\$ 280,070

The City Attorney has reviewed and approved the Third Amendment as to legal form. Pursuant to Los Angeles City Charter Section 373, approval by the City Council is required.

RECOMMENDATIONS

That the Board:

1. Approve and authorize the Fire Chief to execute the Third Amendment with Erickson, Inc. to extend Agreement C-124273 for five (5) years, from July 1, 2014 through June 30, 2024, in order to augment the LAFD's aerial firefighting resources to combat major brush fire incidents.
2. Authorize the Fire Chief to amend the agreement for future years, if needed, in order to reflect ceiling adjustments resulting from increases in flight hours or stand-by days, subject to the availability of funding in the Adopted City Budget and approved by the Board of Fire Commissioners.
3. Transmit the Third Amendment to Agreement C-124273 to the Mayor, in accordance with Executive Directive No. 3.

FISCAL IMPACT

The Third Amendment extending the term for five years will result in annual increases to the cost of the agreement. Funding is available in the FY 2018-19 Contractual Services Account in the amount of \$3,905,163. Funding for the annual contract increase has been requested in the Proposed Budget for FY 2019-20, and will be similarly requested in subsequent fiscal year budgets.

Board Report prepared by Charles R. Combs, Battalion Chief, Air Operations Section.

Attachment

**THIRD AMENDMENT TO AGREEMENT C-124273
BETWEEN
THE CITY OF LOS ANGELES
AND
ERICKSON INCORPORATED**

THIS THIRD AMENDMENT to Agreement C-124273 (hereinafter referred to as "Agreement") between the City of Los Angeles (hereinafter referred to as "City"), a municipal corporation, acting by and through the Los Angeles Fire Department (hereinafter referred to as "LAFD" or "Fire Department"), and Erickson Incorporated (hereinafter referred to as "Contractor"), a Delaware corporation, is entered into with reference to the following:

WHEREAS, in 2013, the LAFD issued a Request for Proposal (RFP No. 2013-38-001) for qualified contractors that could provide dedicated aerial firefighting (hereinafter referred to as "helitanker") services during the City's annual brush fire season to augment the LAFD's aerial firefighting assets to combat major brush fire incidents; and

WHEREAS, the City evaluated the Contractor's proposal and selected the Contractor because they provided the best-value and availability of the desired helitanker services; and

WHEREAS, upon approval by the City Council (C.F. 14-0750), the City entered into Agreement C-124273, on July 24, 2014 wherein the Contractor agreed to provide aerial helitanker services for a five (5) year term covering the 2014-15 through 2018-19 fiscal years and corresponding fire seasons; and

WHEREAS, on November 9, 2016, the parties entered into a First Amendment to Agreement C-124273 to update LAFD representatives listed in the Agreement and to clarify the daily rate for service activated before or after the annual base performance period; and

WHEREAS, on January 25, 2018, the parties entered into a Second Amendment to Agreement C-124273 to adjust the Fiscal Year 2017-18 grand total payable under this Agreement from \$3,905,188 to \$4,883,136, in order to reflect the costs to cover the forty-two (42) additional flight hours and the 30-day contract extension through January 27, 2018; and

WHEREAS, the CITY desires in this Third Amendment to exercise the option to extend the term of Agreement C-124273 for five (5) additional years, from July 1, 2014 through June 30, 2024, and to annually increase the contract limit to an amount agreed upon by the parties; and

NOW, THEREFORE, in consideration of the above premises and of the covenants and representations set forth below, the parties agree as follows:

1. **Section 2, TERMS OF THE AGREEMENT**, Paragraph A is hereby amended in its entirety to read as follows:

The term of this Agreement will commence on July 1, 2014 and will terminate on June 30, 2024, subject to funding provided in the City's FY 2019-20 Adopted Budget and in subsequent fiscal years, unless otherwise terminated by the Fire Department as provided for in Section 10 of this Agreement.

To the extent that the Contractor may have provided services prior to the execution of this Agreement at the City's request and due to immediate needs, the City hereby ratifies and accepts those services performed in accordance with the terms and conditions of this Agreement.

2. **Section 6, COMPENSATION AND METHOD OF PAYMENT**, Paragraphs A and B are hereby amended in their entirety to read as follows:

A. Daily Stand-by Rate for Aircraft Only

This amount is based on a stand-by rate per fiscal year for a specific performance period of a minimum of one hundred fifty (150) days per year, and a maximum of one hundred eighty (180) days per year as outlined in Attachment B. These stand-by rates do not include flight hours or extensions to the base period.

The daily stand-by rate is subject to a 0% increase for FY 2019-20 and FY 2020-21, 1% increase for FY 2021-22, 2% increase for FY 2022-23, and 3% increase for FY 2023-24, as reflected in TABLE 1 below.

TABLE 1: ESTIMATED STAND-BY COSTS

Fiscal Year	150 – day Option Daily Rate	150–day Option Annual Cost	180 – day Option Daily Rate	180–day Option Annual Cost
2019-20	\$ 26,450	\$ 3,967,500	\$ 25,880	\$ 4,658,400
2020-21	\$ 26,450	\$ 3,967,500	\$ 25,880	\$ 4,658,400
2021-22	\$ 26,715	\$ 4,007,250	\$ 26,139	\$ 4,705,020
2022-23	\$ 27,249	\$ 4,087,350	\$ 26,662	\$ 4,799,160
2023-24	\$ 28,066	\$ 4,209,900	\$ 27,462	\$ 4,943,160
Estimated 5-year Total:		\$ 20,239,500		\$ 23,764,140

B. Flight Hour Rate

Flight hours will be billed as a separate line item per flight hour, in one-tenth hour increments per fiscal year. Flight hours are actual flight hours operating the aircraft in an aerial firefighting capacity. The City will pay up to ten (10) flight hours annually

as indicated in Attachment B. Any additional flight hours will be billed at the hourly rate reflected as per the fiscal year in Attachment B.

Flight hours do not include pilot orientation, proficiency, or training flight time. Additional flight hours may be authorized subject to the availability of funding in the Adopted City Budget.

The flight-hour rate is subject to a 0% increase for FY 2019-20 and FY 2020-21, 1% increase for FY 2021-22, 2% increase for FY 2022-23, and 3% increase for FY 2023-24, as reflected in TABLE 2 below.

TABLE 2: ESTIMATED FLIGHT HOUR COSTS

Fiscal Year	Flight Hour Rate	Flight Hour (10) Annual Cost
2019-20	\$ 5,490	\$ 54,900
2020-21	\$ 5,490	\$ 54,900
2021-22	\$ 5,545	\$ 55,450
2022-23	\$ 5,656	\$ 56,560
2023-24	\$ 5,826	\$ 58,260
Estimated 5-year Total:		\$ 280,070

3. Section 11, STANDARD PROVISIONS FOR CITY CONTRACTS, is hereby amended in its entirety to read as follows:

- A. The Contractor will comply with the Standard Provisions for City Contracts (Rev. 10/17)[v.3], attached hereto as Attachment A, and hereby incorporated into and made a part of this Agreement.
- B. Disclosure of Border Wall Ordinance

Unless otherwise exempt in accordance with the provisions of this Ordinance, this Agreement is subject to the Disclosure of Border Wall Contracting Ordinance, Section 10.50 of the Los Angeles Administrative Code, as may be amended from time to time. Contractor certifies that it has complied with the applicable provisions of this Ordinance. Failure to fully and accurately complete the affidavit may result in termination of this Contract.

Except as amended by this Third Amendment, all other provisions of Agreement C-124273 shall remain unchanged and in full force and effect.

(Signature Page to Follow)

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

THE CITY OF LOS ANGELES

ERICKSON INCORPORATED, a
Delaware Company

By: _____
Ralph M. Terrazas
Fire Chief
Los Angeles Fire Department

By*: _____

Name: _____

Title: _____

DATE: _____

DATE: _____

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

By**: _____

Name: _____

Title: _____

By: _____
Kimberly D. Miera
Deputy City Attorney

DATE: _____

DATE: _____

NOTE: If Contractor is a corporation, two signatures are required.

ATTEST:
HOLLY L. WOLCOTT, City Clerk

* The signature of President, Chairman of the Board, or Vice President is required here; and

** an additional signature of Secretary, Assistant Secretary, Chief Financial Officer, or Assistant Treasurer is also required for the Corporation.

By: _____

DATE: _____

City Agreement Number: C-124273-3

ATTACHMENT A

STANDARD PROVISIONS FOR CITY CONTRACTS (10/17)[v.3]

STANDARD PROVISIONS FOR CITY CONTRACTS

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STANDARD PROVISIONS FOR CITY CONTRACTS

PSC-1. Construction of Provisions and Titles Herein

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

PSC-2. Applicable Law, Interpretation and Enforcement

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

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

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

PSC-3. Time of Effectiveness

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

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

PSC-4. Integrated Contract

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

PSC-5. Amendment

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

PSC-6. Excusable Delays

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

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

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

PSC-7. Waiver

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

PSC-8. Suspension

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

PSC-9. Termination

A. Termination for Convenience

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

B. Termination for Breach of Contract

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

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

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

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

PSC-10. Independent Contractor

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

PSC-11. Contractor's Personnel

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

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

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

PSC-12. Assignment and Delegation

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

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

PSC-13. Permits

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

PSC-14. Claims for Labor and Materials

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

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

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

PSC-16. Retention of Records, Audit and Reports

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

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

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

PSC-17. Bonds

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

PSC-18. Indemnification

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

PSC-19. Intellectual Property Indemnification

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

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

PSC-20. Intellectual Property Warranty

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

PSC-21. Ownership and License

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

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

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

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

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

PSC-22. Data Protection

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

PSC-23. Insurance

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

PSC-24. Best Terms

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

PSC-25. Warranty and Responsibility of Contractor

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

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

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

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

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

PSC-27. Child Support Assignment Orders

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

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

PSC-28. Living Wage Ordinance

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

PSC-29. Service Contractor Worker Retention Ordinance

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

PSC-30. Access and Accommodations

CONTRACTOR represents and certifies that:

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

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

PSC-31. Contractor Responsibility Ordinance

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

PSC-32. Business Inclusion Program

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

PSC-33. Slavery Disclosure Ordinance

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

PSC-34. First Source Hiring Ordinance

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

PSC-35. Local Business Preference Ordinance

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

PSC-36. Iran Contracting Act

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

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

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

STANDARD PROVISIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

PSC-42. Possessory Interests Tax

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

PSC-43. Confidentiality

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

EXHIBIT 1

INSURANCE CONTRACTUAL REQUIREMENTS

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

CONTRACTUAL REQUIREMENTS

CONTRACTOR AGREES THAT:

1. Additional Insured/Loss Payee. The CITY must be included as an Additional Insured in applicable liability policies to cover the CITY'S liability arising out of the acts or omissions of the named insured. The CITY is to be named as an Additional Named Insured and a Loss Payee As Its Interests May Appear in property insurance in which the CITY has an interest, e.g., as a lien holder.

2. Notice of Cancellation. All required insurance will be maintained in full force for the duration of its business with the CITY. By ordinance, all required insurance must provide at least thirty (30) days' prior written notice (ten (10) days for non-payment of premium) directly to the CITY if your insurance company elects to cancel or materially reduce coverage or limits prior to the policy expiration date, for any reason except impairment of an aggregate limit due to prior claims.

3. Primary Coverage. CONTRACTOR will provide coverage that is primary with respect to any insurance or self-insurance of the CITY. The CITY'S program shall be excess of this insurance and non-contributing.

4. Modification of Coverage. The CITY reserves the right at any time during the term of this Contract to change the amounts and types of insurance required hereunder by giving CONTRACTOR ninety (90) days' advance written notice of such change. If such change should result in substantial additional cost to CONTRACTOR, the CITY agrees to negotiate additional compensation proportional to the increased benefit to the CITY.

5. Failure to Procure Insurance. All required insurance must be submitted and approved by the Office of the City Administrative Officer, Risk Management prior to the inception of any operations by CONTRACTOR.

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

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

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

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

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

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

Required Insurance and Minimum Limits

Name: Los Angeles Fire DepartmentDate: 2/1/2019Agreement/Reference: Erickson Incorporated - Dedicated Aircraft Services to Perform Aerial Firefighting

Evidence of coverages checked below, with the specified minimum limits, must be submitted and approved prior to occupancy/start of operations. Amounts shown are Combined Single Limits ("CSLs"). For Automobile Liability, split limits may be substituted for a CSL if the total per occurrence equals or exceeds the CSL amount.

Limits

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

 WC Statutory
 EL 1,000,000
☐ Waiver of Subrogation in favor of City

☐ Longshore & Harbor Workers

☐ Jones Act

☒ **General Liability** \$1,000,000 per occurrence/\$2,000,000 aggregate

1,000,000

☒ Products/Completed Operations

☐ Sexual Misconduct

☐ Fire Legal Liability

☒ Aircraft Hull & Liability Coverage Requirement \$25,000,000

☐ **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 month extended reporting period
☐ **Property Insurance** (to cover replacement cost of building - as determined by insurance company)

☐ All Risk Coverage

☐ Boiler and Machinery

☐ Flood

☐ Builder's Risk

☐ Earthquake

☐ **Pollution Liability**
☒ Automobile Liability must provide coverage for any occurrence arising from the transport of hazardous waste.

☐ **Surety Bonds - Performance and Payment (Labor and Materials) Bonds**
☐ **Crime Insurance**
Other: General Notes:

1. If a contractor has no employees and decides to not cover herself/himself for workers' compensation, please complete the form entitled "Request For Waiver Of Workers' Compensation Insurance Requirement" located at: <http://cac.lacity.org/risk/InsuranceForms.htm>

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

ATTACHMENT B

PROJECTED ANNUAL COSTS

150-day Stand-by Service Period Option (FY 2019-20 through FY 2023-24)

Fiscal Year	150-day Option Daily Rate*	150-day Option Annual Cost†	Flight Hour Rate*	Flight Hour (10) Annual Cost	Total Estimated Annual Cost**
2019-20	\$ 26,450	\$ 3,967,500	\$ 5,490	\$ 54,900	\$ 4,022,400
2020-21	\$ 26,450	\$ 3,967,500	\$ 5,490	\$ 54,900	\$ 4,022,400
2021-22	\$ 26,715	\$ 4,007,250	\$ 5,545	\$ 55,450	\$ 4,062,700
2022-23	\$ 27,249	\$ 4,087,350	\$ 5,656	\$ 56,560	\$ 4,143,910
2023-24	\$ 28,066	\$ 4,209,900	\$ 5,826	\$ 58,260	\$ 4,268,160
5-year Estimated Totals:		\$ 20,239,500		\$ 280,070	\$ 20,519,570

180-day Stand-by Service Period Option (FY 2019-20 through FY 23-24)

Fiscal Year	180-day Option Daily Rate*	180-day Option Annual Cost	Flight Hour Rate*	Flight Hour (10) Annual Cost	Total Estimated Annual Cost**
2019-20	\$ 25,880	\$ 4,658,400	\$ 5,490	\$ 54,900	\$ 4,713,300
2020-21	\$ 25,880	\$ 4,658,400	\$ 5,490	\$ 54,900	\$ 4,713,300
2021-22	\$ 26,139	\$ 4,705,020	\$ 5,545	\$ 55,450	\$ 4,760,470
2022-23	\$ 26,662	\$ 4,799,160	\$ 5,656	\$ 56,560	\$ 4,855,720
2023-24	\$ 27,462	\$ 4,943,160	\$ 5,826	\$ 58,260	\$ 5,001,420
5-year Estimated Totals:		\$ 23,764,140		\$ 280,070	\$ 24,044,210

* Rates subject to a 0% increase for FY 2019-20 and FY 2020-21, 1% increase for FY 2021-22; 2% increase for FY 2022-23; and 3% increase for FY 2023-24.

** Projected Annual Totals do not reflect additional stand-by days or flight hours added during the performance period.