

LOS ANGELES FIRE DEPARTMENT



KRISTIN M. CROWLEY
FIRE CHIEF

August 8, 2024

BOARD OF FIRE COMMISSIONERS
FILE NO. 24-072

TO: Board of Fire Commissioners

FROM: *KC* Kristin M. Crowley, Fire Chief

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

FINAL ACTION:	<input 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 Withdrawn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., that 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 provided 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.

On May 21, 2019, the Board of Fire Commissioners approved a Third Amendment to the Agreement that exercised the option to extend the term for five (5) years through June 30, 2024, and increased the contract ceiling for a total cost of \$20,519,570.

On August 23, 2023, the LAFD released Request for Proposals (RFP) No. 2023-038-005 to solicit proposals for exclusive use helitanker firefighting services during the annual brush season. Two proposals were received, and an Evaluation Committee reviewed and scored the proposals. Based on the evaluation scores, the LAFD planned to recommend to the Board of Fire Commissioners that a contract be awarded to the proposer who was deemed to be the most qualified. The unsuccessful proposer, however, subsequently filed a protest that is currently under review by an independent panel. As a result, the City is left without the services of a helitanker during this fire season.

To ensure that the City has the continued availability of air resources to suppress large-scale wildfires, the Fourth Amendment extends the term of the Agreement while the resolution of the RFP protest is pending. The Fourth Amendment will extend the term for five (5) years through June 30, 2029, and increase the contract ceiling.

The contract ceiling for FY 2024-25 is estimated at \$4,404,900. It comprises the 150-day Option Stand-By Service for a Composite Main Rotor Blade Aircraft and as-needed Night Vision Goggle costs. The costs for the 150-day Option will be subject to a 2% increase for FY 2025-26 and each year after that. The total annual cost from FY 2024-25 through FY 2028-29 is estimated at \$22,899,600.

ESTIMATED 150-DAY STAND-BY SERVICE COSTS

Fiscal Year	150 – Day Option Daily Rate	150 – Day Option Annual Cost	As-Needed Night Vision Goggle Annual Cost (\$800/Day)	Total Projected Annual Cost
2024-25	\$ 28,566	\$ 4,284,900	\$ 120,000	\$ 4,404,900
2025-26	\$ 29,138	\$ 4,370,700	\$ 120,000	\$ 4,490,700
2026-27	\$ 29,721	\$ 4,458,150	\$ 120,000	\$ 4,578,150
2027-28	\$ 30,316	\$ 4,547,400	\$ 120,000	\$ 4,667,400
2028-29	\$ 30,923	\$ 4,638,450	\$ 120,000	\$ 4,758,450
Estimated 5-year Total:		\$ 22,299,600		\$ 22,899,600

The City Attorney has reviewed and approved the Fourth 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 Fourth Amendment with Erickson, Inc. to extend Agreement C-124273 for five (5) years, from July 1, 2014, through June 30, 2029, and annually increase the contract limit, to augment the LAFD's aerial firefighting resources to combat major brush fire incidents.
2. Transmit the Fourth Amendment to Agreement C-124273 to the Mayor, in accordance with Executive Directive No. 3.

FISCAL IMPACT

The Fourth Amendment, extending the term for five years, will result in annual increases to the cost of the agreement. Funding is available in the FY 2024-25 Contractual Services Account 3040 in the amount of \$4,271,955. Additional funding will be available from savings in the Department's Contractual Services Account and/or other savings addressed through a Financial Status Report. Funding for the annual contract increase will be requested in subsequent fiscal year budgets.

Board Report prepared by Brett R. Willis, Battalion Chief, Air Operations Section.

Attachment

**FOURTH AMENDMENT TO AGREEMENT NO. C-124273
BETWEEN
THE CITY OF LOS ANGELES
AND
ERICKSON, INCORPORATED**

THIS FOURTH AMENDMENT to Agreement No. 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 "Department" or "LAFD"), and Erickson, Incorporated (hereinafter referred to as "Contractor"), 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, on June 24, 2019, the parties entered into a Third Amendment to Agreement C-124273 to exercise the option to extend the term for an additional five (5) 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

WHEREAS, the City desires in this Fourth Amendment to extend the term of Agreement C-124273 for five (5) years, from July 1, 2014 through June 30, 2029, and to annually increase the contract limit to an amount agreed upon by the parties.

NOW, THEREFORE, in consideration of the premises, representations, covenants and agreements provided below, the City and Contractor agree as follows:

1. SECTION 1, PARTIES TO AGREEMENT, REPRESENTATIVES, AND NOTICES, Paragraph B, Subsection 1, is hereby amended in its entirety to read as follows:

The City's representative will be as follows, unless otherwise stated in this Agreement:

Kristin M. Crowley, Fire Chief
Los Angeles Fire Department
200 N. Main St., 18th Floor
Los Angeles, CA 90012

With copies to:
Jason Hing, Chief Deputy
Commander, Emergency Operations
200 N. Main St., 18th Floor
Los Angeles, CA 90012

2. 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, 2029, unless otherwise terminated by the City as provided for in 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.

3. SECTION 3, CONTRACTOR'S OBLIGATIONS, Paragraph A, Subsection 5, is hereby added in its entirety to read as follows:

An S-64F model aircraft shall be provided. If the S-64 F is not available, then an S-64E, or other similar type of aircraft approved by the LAFD's Air Operations Section Commander, shall be provided until an S-64F is available.

4. SECTION 6, COMPENSATION AND METHOD OF PAYMENT, is hereby amended in its entirety to read as follows:

A. Daily Stand-By Rate for Exclusive-Use Aircraft Equipped with the Standard Rotor Blade (S-64E Aircraft)

This amount is based on the daily rate, a calendar day, 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, attached hereto and incorporated by reference herein. These rates do not include flight hours or extensions to the base period.

The daily rate is subject to a 2% increase for FY 2025-26 and each year thereafter, as reflected in TABLE 1 below.

TABLE 1: ESTIMATED STAND-BY COSTS (S-64E AIRCRAFT)

Fiscal Year	150-Day Option Daily Rate	150-Day Option Annual Cost	180-Day Option Daily Rate	180-Day Option Annual Cost
2024-25	\$ 28,066	\$ 4,209,900	\$ 27,566	\$ 4,961,880
2025-26	\$ 29,628	\$ 4,294,200	\$ 28,118	\$ 5,061,240
2026-27	\$ 29,201	\$ 4,380,150	\$ 28,681	\$ 5,162,580
2027-28	\$ 29,786	\$ 4,467,900	\$ 29,255	\$ 5,265,900
2028-29	\$ 30,382	\$ 4,557,300	\$ 29,841	\$ 5,371,380
Estimated 5-year Total:		\$ 21,909,450		\$ 25,822,980

B. Daily Stand-By Rate for Exclusive-Use Aircraft Equipped with the Composite Main Rotor Blade (S-64F Aircraft)

This amount is based on the daily rate, a calendar day, 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, attached hereto and incorporated by reference herein. These rates do not include flight hours or extensions to the base period.

The daily rate is subject to a 2% increase for FY 2025-26 and each year thereafter, as reflected in TABLE 2 below.

TABLE 2: ESTIMATED STAND-BY COSTS (S-64F AIRCRAFT)

Fiscal Year	150-Day Option Daily Rate	150-Day Option Annual Cost	180-Day Option Daily Rate	180-Day Option Annual Cost
2024-25	\$ 28,566	\$ 4,284,900	\$ 28,066	\$ 5,051,880
2025-26	\$ 29,138	\$ 4,370,700	\$ 28,628	\$ 5,153,040
2026-27	\$ 29,721	\$ 4,458,150	\$ 29,201	\$ 5,256,180
2027-28	\$ 30,316	\$ 4,547,400	\$ 29,786	\$ 5,361,480
2028-29	\$ 30,923	\$ 4,638,450	\$ 30,382	\$ 5,468,760
Estimated 5-year Total:		\$ 22,299,500		\$ 26,291,340

C. Flight Hour Rate

The hourly flight rate shall be charged as a separate line item in each invoice. The billable hourly flight rate shall be calculated based on incident dispatched flight time, and shall not include pilot orientation, proficiency, maintenance flights, or training time. The flight hour rate is subject to a 2% increase for FY 2025-25, and each year thereafter Any flight hours shall be billed at the hourly rate reflected in TABLE 3 below.

TABLE 3: HOURLY FLIGHT RATE

Fiscal Year	Flight Hour Rate
2024-25	\$ 6,200
2025-26	\$ 6,324
2026-27	\$ 6,451
2027-28	\$ 6,581
2028-29	\$ 6,713

D. Normal Stand-By Hours

Under the daily rate price, the Contractor shall provide the aircraft, pilots, support personnel, and other support functions for a minimum of ten (10) hours per day. Emergency operations may be conducted from dawn to dusk. Extended-phase fires may require operations during daylight hours that extend beyond the ten (10) hour standby time.

E. Daily Extension Charge for Time Exceeding the Performance Period

In the event that the City requires services before or after the base performance period, the Daily Extension Charge shall be dependent on the performance period agreed to July 1 of each year of the Agreement. The Daily Extension Charge shall be provided at the same rates as each 150-day and 180-day periods.

The LAFD shall notify the Contractor when the City determines that the services are needed. The Contractor shall assess its schedule and confirm that aircraft is available. If the aircraft is available, the Contractor shall provide the services needed. If the call is before noon, a full day of daily rate shall be paid by the City. If the call is after noon, one (1) half day of the daily rate shall be paid by the City. All flight time shall be subject to the current flight time rate. In the event that the Contractor provides fuel from the Contractor's fuel inventory, the City shall be billed for fuel usage at the then current prevailing fuel rates plus 5%.

The request by the City shall be on a day-by-day basis, at the City's discretion, and shall not activate the base performance period.

Any request by the LAFD shall be subject to the Contractor's schedule and availability of an aircraft, and the Contractor reserves the right to decline any request.

In the event of a holdover after the base performance period, the LAFD shall notify the Contractor at least fourteen (14) days prior to departure, if the aircraft is needed to be held over. The Contractor shall assess its schedule and confirm the aircraft is available. Any holdover is subject to the availability of additional funds by the Mayor and City Council, and shall be subject to the Contractor's schedule and availability of an aircraft.

F. As-Needed Night Vision Goggle (NVG) Operations

In the event the City requires NVG Operations, the City shall provide the Contractor with 72 hours advance notice, for a minimum of three (3) nights of work, with the charges to begin on the first night. The cost for the NVG operations shall be \$120,000 annually, payable either in a lump sum at the beginning of the contract period or added to the daily rate starting at the beginning of the contract period (\$800 per day for the 150-day option or \$666.67 per day for the 180-day option), should the City opt to utilize the Contractor for NVG Operations. The NVG Crew Charge of \$1,663 per day shall be added upon request to activate the NVG option.

G. External Load Operations

The Contractor will provide the necessary gear and equipment to perform general long line vertical reference external load operations at no additional charge. The cost to the City for a mission requiring the precision setting loads where the Contractor mobilizes an available aft seat pilot shall be \$1,500 per day the aft seat pilot works, and the round trip travel expenses of the aft seat pilot. The costs of any as-needed External Load Operations is reflected in TABLE 4 below.

TABLE 4: EXTERNAL LOAD OPERATIONS

General Long Line Missions	No Additional Charge
Precision Long Line Missions	\$1,500 per Day
Aft Seat Pilot Travel Expenses	Billed at Cost

H. Operations Outside of the City

In the event that the City requests that the Contractor provide services outside of the City's boundaries pursuant to Section 3.3, the City shall compensate the Contractor for flight time at the hourly flight rate in one-tenth (0.10) increments.

I. Method of Payment

1. Invoices

The Contractor shall submit monthly invoices to:

Brett R. Willis, Battalion Chief
Air Operations
Los Angeles Fire Department
16617 Arminta St.
Van Nuys, CA 91406

The invoice shall contain the following:

- a. Name and address of the Contractor;
 - b. Name and address of the Fire Department;
 - c. Date of the invoice and period covered;
 - d. Reference to the contract number;
 - e. Description of the completed task and the number of hours used for each task;
 - f. Payment terms, total due, and due date;
 - g. Certification by the Contractor;
 - h. Discounts and terms (if applicable); and
 - i. Remittance address (if different from the billing address).
2. The City shall make payment to the Contractor for the services performed after receipt and approval of the invoices by the City's Representative. The City shall not unreasonably withhold approval of the invoices. In the event any invoice is not approved, the City's Representative shall immediately send a notice to the Contractor setting forth therein the reason(s) said invoice was not approved. Upon receipt of such notice, the Contractor may re-invoice the City for the accepted portion of the invoice or cure the defect identified in the City Representative's notice. The City shall pay the revised invoice as soon as practical after its submission. If the City's Representative contests all or a portion of the invoice, the City's Representative and the Contractor shall use their best efforts to resolve the disputed portion or portions of the invoice.
3. 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.

5. **ATTACHMENT A, STANDARD PROVISIONS FOR CITY CONTRACTS (Rev. 10/17)[v.3]** is hereby removed and replaced with a new Attachment A, the Standard Provisions for City Contracts (Rev. 6/24)[v.1], which document is attached to this Fourth Amendment as Exhibit A.

6. **SECTION 11, STANDARD PROVISIONS FOR CITY CONTRACT, Subsection A,** is hereby amended in its entirety to read as follows:

Contractor shall comply with the Standard Provisions for City Contracts (Rev. 6/24)[v.1], attached hereto as Attachment A and incorporated by reference as though fully set forth herein.

7. Each occurrence of the phrase "Standard Provisions for City Contracts (Rev. 10/17)[v.3]" in the Agreement is hereby deleted and replaced with "Standard Provisions for City Contracts (Rev. 6/24)[v.1]".

8. **ATTACHMENT B, PROJECTED ANNUAL COSTS,** is hereby removed and replaced with a new Attachment B, Projected Annual Costs, which document is attached to this Fourth Amendment as Exhibit B.

9. **SECTION 13, SUBCONTRACTORS,** is hereby added in its entirety to read as follows:

With prior written approval of the City, the Contractor may enter into subcontracts with other vendors for the performance of this Agreement. Contractor shall, at all times, be responsible for the acts and errors or omissions of its subcontractors in the performance of this Agreement. Nothing in this Agreement shall constitute any contractual relationship between any subcontractors and the City or any obligation on the part of the City to pay, or to be responsible for, the payment of sums to any subcontractors

10. ORDER OF PRECEDENCE

In the event of an inconsistency between any of the provisions of this First Amendment to Agreement No. C-124273 and/or all prior agreements or exhibits/attachments, the inconsistency shall be resolved by giving the previous agreements and/or exhibits/attachments precedence in the following order:

- 1) Fourth Amendment to Agreement No. C-124273;
- 2) Third Amendment to Agreement No. C-124273;
- 3) Second Amendment to Agreement No. C-124273;
- 4) First Amendment to Agreement No. C-124273;
- 5) Original Agreement No. C-124273; and
- 6) The Attachments and Exhibits to the Original Agreement and to all Amendments to Agreement No. C-124273 in ascending alphabetical order.

11. COUNTERPARTS/NUMBER OF PAGES

This Fourth Amendment may be executed in one or more counterparts, and by the parties in separate counterparts, each of which when executed shall be deemed to be an original, but all of which taken together shall constitute one and the same agreement. The parties further agree that facsimile signatures or signatures scanned into .pdf (or signatures in another electronic format designated by the City) and sent by e-mail shall be deemed original signatures. This Fourth Amendment includes nine (9) pages and two (2) Exhibits.

12. Except as amended by the First through Fourth Amendments, all terms and conditions of the Original Agreement shall remain unchanged and in full force and effect. The Original Agreement is hereby incorporated by reference in its entirety into this Fourth Amendment.

[SIGNATURE PAGE FOLLOWS]

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

THE CITY OF LOS ANGELES

By signing below, the signatory attests that they have no personal, financial, beneficial or familial interest in this contract.

By: _____
Kristin M. Crowley
Fire Chief

Date: _____

APPROVED AS TO FORM:
HYDEE FELDSTEIN SOTO, City Attorney

By: _____
Catherine Nguyen
Deputy City Attorney

Date: _____

ATTEST:
HOLLY L. WOLCOTT, City Clerk

By: _____
Deputy City Clerk

Date: _____

City Agreement Number: C-124273

ERICKSON, INCORPORATED,
a Delaware Company

By: _____
Barry Kohler
CEO/President

Date: _____

By: _____
David Merryman
Secretary

Date: _____

*Approved signature methods for California corporations:

- A. 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. The signature of a single individual holding offices in each category is also acceptable.

Or

- B. One signature of a corporate-designated individual together with a properly attested resolution of the Board of Directors or copy of the Bylaws authorizing the individual to sign.

EXHIBIT A

ATTACHMENT A

STANDARD PROVISIONS FOR CITY CONTRACTS (Rev. 6/24)[v.1]

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”)

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

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

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

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

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

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

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

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

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

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

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

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

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

PSC-42. Possessory Interests Tax

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

PSC-43. Confidentiality

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

PSC-44. Contractor Data Reporting

If Contractor is a for-profit, privately owned business, Contractor shall, within 30 days of the effective date of the Contract and on an annual basis thereafter (i.e., within 30 days of the annual anniversary of the effective date of the Contract), report the following information to City via the Regional Alliance Marketplace for Procurement (“RAMP”) or via another method specified by City: Contractor’s and any Subcontractor’s annual revenue, number of employees, location, industry, race/ethnicity and gender of majority owner (“Contractor/Subcontractor Information”). Contractor shall further request, on an annual basis, that any Subcontractor input or update its business profile, including the Contractor/Subcontractor Information, on RAMP or via another method prescribed by City.

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: Erickson, Inc.

Date: 07/10/2024

Agreement/Reference: Exclusive Use Helitaker Firefighting Services 2024-2029

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
<input checked="" type="checkbox"/> Workers' Compensation - Workers' Compensation (WC) and Employer's Liability (EL)	WC <u>Statutory</u> EL <u>\$1,000,000</u>
<input checked="" type="checkbox"/> Waiver of Subrogation in favor of City <input type="checkbox"/> Longshore & Harbor Workers <input type="checkbox"/> Jones Act	
<input checked="" type="checkbox"/> General Liability <u>City of Los Angeles must be named as an additional insured party.</u>	<u>\$50,000,000</u>
<input checked="" type="checkbox"/> Products/Completed Operations <input type="checkbox"/> Sexual Misconduct <input type="checkbox"/> Fire Legal Liability <input checked="" type="checkbox"/> Aircraft Hull & Liability Coverage Requirement - <u>\$50,000,000</u>	
<input checked="" type="checkbox"/> Automobile Liability (for any and all vehicles used for this contract, other than commuting to/from work)	<u>\$1,000,000</u>
<input type="checkbox"/> Professional Liability (Errors and Omissions) Discovery Period _____	
<input type="checkbox"/> Property Insurance (to cover replacement cost of building - as determined by insurance company)	
<input type="checkbox"/> All Risk Coverage <input type="checkbox"/> Boiler and Machinery <input type="checkbox"/> Flood <input type="checkbox"/> Builder's Risk <input type="checkbox"/> Earthquake <input type="checkbox"/>	
<input type="checkbox"/> Pollution Liability	
<input type="checkbox"/> Surety Bonds - Performance and Payment (Labor and Materials) Bonds	100% of the contract price
<input type="checkbox"/> Crime Insurance	

Other: The following provisions should be included under the Aircraft Hull & Liability and Aviation GL coverages:

- Waiver of Subrogation in favor of Additional Insureds
- Operators policy to be Primary without contribution from Additional Insureds
- Severability of Interests to apply in favor of Additional Insureds
- Breach of Warranty to apply in favor of Additional Insureds
- Additional Insureds would not be responsible for any premiums.

EXHIBIT B

ATTACHMENT B

PROJECTED ANNUAL COSTS

ATTACHMENT B

PROJECTED ANNUAL COSTS

**150-Day Stand-By Service Period Option for the Standard Rotor Blade Aircraft
(FY 2024-25 through FY 2028-29)**

Fiscal Year	150-Day Option Daily Rate*	150-Day Option Annual Cost	Night Vision Goggle Annual Cost (\$800/Day)	Total Projected Annual Cost**
2024-25	\$ 28,066	\$ 4,209,900	\$ 120,000	\$ 4,329,900
2025-26	\$ 28,628	\$ 4,294,200	\$ 120,000	\$ 4,414,200
2026-27	\$ 29,201	\$ 4,380,150	\$ 120,000	\$ 4,500,150
2027-28	\$ 29,786	\$ 4,467,900	\$ 120,000	\$ 4,587,900
2028-29	\$ 30,382	\$ 4,557,300	\$ 120,000	\$ 4,677,300
Estimated 5-Year Total:		\$ 21,909,450	\$ 600,000	\$ 22,509,450

**180-Day Stand-By Service Period Option for the Standard Rotor Blade Aircraft
(FY 2024-25 through FY 2028-29)**

Fiscal Year	180-Day Option Daily Rate*	180-Day Option Annual Cost	Night Vision Goggle Annual Cost (\$666.67/Day)	Total Projected Annual Cost**
2024-25	\$ 27,566	\$ 4,961,880	\$ 120,000	\$ 5,081,880
2025-26	\$ 28,118	\$ 5,061,240	\$ 120,000	\$ 5,181,240
2026-27	\$ 28,681	\$ 5,162,580	\$ 120,000	\$ 5,282,580
2027-28	\$ 29,255	\$ 5,265,900	\$ 120,000	\$ 5,385,900
2028-29	\$ 29,841	\$ 5,371,380	\$ 120,000	\$ 5,491,380
Estimated 5-Year Total:		\$ 25,822,980	\$ 600,000	\$ 26,422,980

* Rates are subject to a 2% increase for FY 2025-26, and each year thereafter.

** Projected Annual Costs do not reflect the External Load Operations and the time exceeding the performance period due to significant fire weather. The Daily Extension Charge will be provided at the same daily rate for the 150-day and 180-day periods.

ATTACHMENT B

**150-Day Stand-By Service Period Option for Composite Main Rotor Blade Aircraft
(FY 2024-25 through FY 2028-29)**

Fiscal Year	150-Day Option Daily Rate*	150-Day Option Annual Cost	Night Vision Goggle Annual Cost (\$800/Day)	Total Projected Annual Cost**
2024-25	\$ 28,566	\$ 4,284,900	\$ 120,000	\$ 4,404,900
2025-26	\$ 29,138	\$ 4,370,700	\$ 120,000	\$ 4,490,700
2026-27	\$ 29,721	\$ 4,458,150	\$ 120,000	\$ 4,578,150
2027-28	\$ 30,316	\$ 4,547,400	\$ 120,000	\$ 4,667,400
2028-29	\$ 30,923	\$ 4,638,450	\$ 120,000	\$ 4,758,450
Estimated 5-Year Total:		\$ 22,299,600	\$ 600,000	\$ 22,899,600

**180-Day Stand-By Service Period Option for Composite Main Rotor Blade Aircraft
(FY 2024-25 through FY 2028-29)**

Fiscal Year	180-Day Option Daily Rate*	180-Day Option Annual Cost	Night Vision Goggle Annual Cost (\$666.67/Day)	Total Projected Annual Cost**
2024-25	\$ 28,066	\$ 5,051,880	\$ 120,000	\$ 5,171,880
2025-26	\$ 28,628	\$ 5,153,040	\$ 120,000	\$ 5,273,040
2026-27	\$ 29,201	\$ 5,256,180	\$ 120,000	\$ 5,376,180
2027-28	\$ 29,786	\$ 5,361,480	\$ 120,000	\$ 5,481,480
2028-29	\$ 30,382	\$ 5,468,760	\$ 120,000	\$ 5,588,760
Estimated 5-Year Total:		\$ 26,291,340	\$ 600,000	\$ 26,891,340

* Rates are subject to a 2% increase for FY 2025-26, and each year thereafter.

** Projected Annual Costs do not reflect the External Load Operations and the time exceeding the performance period due to significant fire weather. The Daily Extension Charge will be provided at the same daily rate for the 150-day and 180-day periods.