LOS ANGELES FIRE DEPARTMENT

RALPH M. TERRAZAS
FIRE CHIEF

September 19, 2019

TO: Board of Fire Commissioners

FROM: Ralph M. Terrazas, Fire Chief

SUBJECT: AGREEMENT WITH NETKINETIX, INC. FOR SOFTWARE
           DEVELOPMENT SERVICES PURSUANT TO THE REQUEST FOR
           PROPOSALS NO. 2018-038-004

FINAL ACTION:	_____ Approved	_____ Approved w/Corrections	_____ Withdrawn
	_____ Denied	_____ Received & Filed	_____ Other

SUMMARY

The Los Angeles Fire Department (LAFD) uses computer software to manage the day-to-day scheduling, staffing, hiring, and timekeeping activities of its sworn members. The current software system is known as Network Staffing System, or NSS, and was first developed in the mid-1990s by an LAFD employee. While this software has served the Department for nearly 30 years, it has, over time, become increasingly difficult to use and maintain.

Having identified the critical need to replace the existing system, the Department issued Request for Proposals (RFP) No. 2018-038-004 in order to hire a contractor to develop a modern custom software system to replace the current NSS. The selected contractor is required to work closely with LAFD staff members during the course of the project so that the LAFD can eventually support the new system with existing resources.

Eleven responses were received by the October 29, 2018 deadline and one was withdrawn after submittal. An evaluation team made up of members from the Administration Bureau Planning Section and Information Technology Bureau evaluated the ten remaining proposals. After evaluating the written proposals and conducting reference checks, the evaluation committee selected two companies for on-site interviews, and finally one company was selected to conduct a limited proof-of-concept project. After the final phase of evaluations, the evaluation committee unanimously selected Netkinetix, a professional services company with experience developing software of similar complexity for other public and private organizations located throughout the U.S. A summary of the final scoring is attached.

The proposed term is for two years, commencing upon the date of execution by the City Clerk, and terminating two years from that date, with the option for one one-year extension. The maximum compensation is not to exceed $600,500. The attached Agreement has been reviewed and approved by the City Attorney as to legal form.

RECOMMENDATIONS

That the Board:

1. Approve and authorize the Fire Chief to execute the Agreement with Netkinetix, Inc. to provide software development services for a two-year term, commencing upon the date of execution by the City Clerk, and terminating two years from that date, with authority for the Fire Chief to exercise the option to execute an amendment to extend the term of the Agreement for up to one additional year, contingent on the contractor having provided satisfactory services under the Agreement, and subject to review and approval by the City Attorney.

2. Transmit the Agreement to the Mayor for review and approval, in accordance with Executive Directive No. 3.

FISCAL IMPACT

Funding for this Agreement to professional software development services related to the replacement of the Network Staffing System (NSS) is available in the Department's FY 2019-20 Contractual Services Account 3040.

Board Report prepared by Scott B. Porter, Chief Information Officer (CIO), Information Technology Bureau.

Attachments

Attachment: Final Scoring Summary

An Evaluation Committee, comprised of personnel from the Department's Administration Bureau Planning Section and Information Technology Bureau, reviewed and scored the eligible proposals based on the following criteria:

- **Company Qualifications & Experience**
- **Approach and Methodology**
- **Fit to Requirements**
- **Cost**

The evaluation scores of the eleven (11) eligible proposers are listed below.

Scoring Rank	
Vendor	**Score**
Netkinetix	73
Kagesoft	70
IntelliTime	69
3DI	68
Care Systems	67
Chetu	64
Click Chain	63
Carbon5	61
Kronos	59
Envisage	52

Inelligible or Withdrawn
StatusNotQuo

Of the ten eligible proposers, Netkinetix, Inc. received the top score of 73 points.

AGREEMENT NO. _____

AGREEMENT BETWEEN

THE CITY OF LOS ANGELES

AND

NETKINETIX, INCORPORATED

FOR

SOFTWARE DESIGN AND DEVELOPMENT

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AGREEMENT NO. _____

AGREEMENT
BETWEEN THE CITY OF LOS ANGELES
AND
NETKINETIX, INCORPORATED

This Agreement (hereinafter referred to as "Agreement") is made and entered into by and between the City of Los Angeles, a municipal corporation (hereinafter referred to as "City"), acting by and through its Los Angeles Fire Department (hereinafter referred to as "Fire Department" or "LAFD" or "Department"), and Netkinetix, Incorporated, a Wisconsin corporation (hereinafter referred to as "Contractor"), with reference to the following:

WHEREAS, the LAFD uses computer software to manage the day-to-day scheduling, staffing and timekeeping activities for sworn members; and

WHEREAS, the current software system known as Network Staffing System, or NSS, was first developed in the mid-1990's by an LAFD employee and has, over time, become increasingly difficult to use and maintain; and

WHEREAS, the LAFD depends on the continued availability and ongoing support of this highly specialized, software in order to maintain constant staffing, manage day-to-day staffing of LAFD resources and assignments, and to ensure compliance with various labor contracts and agreements; and

WHEREAS, the LAFD identified the need to replace the existing system with a more modern software system that is better suited to meet the current and future needs of the Department and is easier for the Department to modify and maintain; and

WHEREAS, the Contractor is a professional services and software development company with experience developing software of similar complexity for other public and private organizations located throughout the U.S.; and

WHEREAS, pursuant to Charter Section 1022, the City has found that this service can be performed more economically or feasibly by an independent Contractor than by City employees; and

WHEREAS, on August 30, 2018, the LAFD issued a Request for Proposals (RFP) for custom software development services; and

WHEREAS, the Contractor submitted a proposal in response to the RFP, and the LAFD has determined that the Contractor possesses the qualifications and experience necessary to provide the services requested in that it received the highest score out of the eleven proposals that were evaluated; and

WHEREAS, the City and Contractor desire to enter into this Agreement for a two (2) year term not to exceed $600,500, with one (1) one-year option to extend the term, subject to the availability of funds.

NOW, THEREFORE, the City and the Contractor agree as follows:

1.0   SECTION 1: GENERAL INFORMATION

1.1   Project Overview
Netkinetix shall work with the LAFD to design, develop, and deliver a custom, modern, software system that will replace the existing LAFD Network Staffing System (NSS) and be used to manage the day-to-day scheduling, staffing, hiring and timekeeping activities for LAFD sworn members.

1.2   Project Objectives

- To manage the day-to-day scheduling, staffing, hiring and timekeeping of LAFD's sworn members in an efficient, effective and accurate manner;

- To maintain compliance with frequent changes to labor agreements, memorandums of understanding (MOU); letters of agreement (LOA); and other business practices related to work rules through automation;

- To enhance data accuracy and quality by improving the user experience, making the system intuitive and easy to use, reducing or eliminating erroneous and duplicative data entry and improving quality controls;

- To enhance the operational value of information by improving the timeliness and availability of relevant and actionable information for all stakeholders as a result of better data collection, access and controls;

- To advance the LAFD's software development capabilities by working collaboratively with an application development platform, solution architecture and development process that is sustainable and can be leveraged for this and other future projects.

1.3   In Scope Services
In-scope services are described in Section 4.0, Software Development Services.

1.4   Out of Scope Services
Unless mutually agreed to by both parties by way of an amendment to this Agreement, any other services not specifically listed in this Agreement are considered out of scope. The City shall not be responsible to pay Contractor for any out of scope work not described in this Agreement, and not agreed to by the parties in writing via an amendment to this Agreement. Contractor shall immediately notify the City Attorney in writing of any work that is requested to be performed that is outside of the original scope

of work covered by this Agreement, and Contractor's Statement of Work, specified in Section 4. If it is determined that the request is outside of the scope of work, Contractor shall not perform the requested work unless and until (i) the City's designated contract administrator approves the request in writing and authorizes the use of any contingency funds for the work, and (ii) an amendment providing for an adjustment in Contractor's compensation and the scope of work is approved and executed by both parties.

1.5   Work Location
Contractor's Key Personnel, including the Project Manager and Solution Architect, shall be available to meet on-site at LAFD facilities as needed in order to attend key meetings and or participate in scheduled project events and/or milestones. Contractor's development and support personnel will work off-site at Contractor's office locations.

2.0   SECTION 2: REPRESENTATIVES OF THE PARTIES AND SERVICE OF NOTICE

2.1   Parties to the Agreement

A. City – The City of Los Angeles, a municipal corporation, charted by the State of California, acting by and through the Los Angeles Fire Department, having its principal office at:

200 North Main Street
18th Floor
Los Angeles, CA, 90012

B. Contractor – Netkinetix, Inc. a Wisconsin corporation, having its principal office at:

601 Saint Andrew Street
Suite 203
La Crosse, WI 54603

2.2   Representatives of the Parties

The representatives of the respective parties authorized to administer this Agreement, and to whom formal notices, demands, and communications shall be given are as follows:

A. The representative of the City shall be, unless otherwise stated in this Agreement:

Ralph M. Terrazas, Fire Chief
Los Angeles Fire Department
200 N. Main St., Room 1800
Los Angeles, CA 90012

With copies to:

Scott Porter, Chief Information Officer

Los Angeles Fire Department
200 N. Main St., Room 1660
Los Angeles, CA 90012

B. The Contractor's representative is, unless otherwise stated in the Agreement:

Andrew Meyer, President
Netkinetix, Inc.
601 Saint Andrew St.
Suite 203
La Crosse, WI 54603

C. Communication Between Parties: Formal notices, demands, and communication required hereunder by either party shall be made in writing and may be affected by personal delivery or by registered or certified mail, postage prepaid, return receipt requested and shall be deemed communicated as of the date of mailing.

3.0   SECTION 3: TERM OF AGREEMENT

3.1   Term

The term of this Agreement shall commence upon the date of attestation by the Los Angeles City Clerk, and will terminate two (2) years from that date, unless otherwise terminated by the City as provided for in this Agreement.

3.2   Amendments

The Board of Fire Commissioners has authorized the Fire Chief to extend the Agreement for one (1) additional year, utilizing the amendment process described in Section PSC-5, Amendment, of Attachment A – Standard Provisions for City Contracts (Rev. 10/17)[v.3]. Any amendment to extend the term of this Agreement is contingent on the availability of funds and the Contractor having provided satisfactory services under this Agreement.

3.3   Ratification of Agreement

To the extent that the Contractor may have begun performance of the services before the date of execution at the City's request and due to the immediate needs of the LAFD, the City hereby ratifies and accepts those services performed in accordance with this Agreement and authorizes payment as provided by the terms of this Agreement. Notwithstanding this Section, the term of this Agreement will remain as stated above.

4.0   SECTION 4: SOFTWARE DEVELOPMENT SERVICES

4.1   Software Development Services

The Contractor shall work with the LAFD to develop a custom software system used to manage the day-to-day scheduling, staffing, hiring, and timekeeping of LAFD's sworn members in order to replace the current system. At a minimum, the Contractor shall develop the following system functionality:

4.1.1   Business Rules Management – the Contractor shall develop an interface that supports the integration with a commercial, third-party software system, selected by the City and approved by the Contractor, that will be used by the LAFD to define and manage the various business rules associated with the hiring and scheduling of LAFD members;

4.1.2   Schedule Management – the Contractor shall develop all system functions required to, at a minimum, achieve functional parity with the LAFD's current system so that the LAFD's day-to-day scheduling, hiring, timekeeping, and historical recordkeeping continues uninterrupted. The new system may include new features, currently not available in NSS and may not include some features that are currently in NSS, but that will be replaced by other systems, as determined by the LAFD and approved by the Contractor;

4.1.3   Reporting and Analytics – the Contractor shall develop an interface that supports the integration with a commercial, third-party software system, selected by the City and approved by the Contractor, that will be used by the LAFD for enterprise historical reporting and data analytics;

4.1.4   General Application Programming Interface – the Contractor shall develop a general application programming interface (API) that supports the integration between the new NSS and other external systems that may require the exchange of scheduling and hiring information;

4.1.5   Payroll System Interface – the Contractor shall develop an integration that supports the integration between the new NSS and the City's payroll system, PaySR, in order to maintain functional parity with the current integration between PaySR and the current NSS so that the LAFD's payroll processing continues uninterrupted;

4.1.6   The Contractor shall use modern software development tools, technology, techniques and coding standards and will work with the LAFD in order to establish a repository of software source code and process by which the source code is maintained and available to the LAFD for inspection at any time. (see Section 4.7 below)

4.1.7   The Contractor shall work with the LAFD using an iterative and incremental approach to design and develop the new system. The Contractor shall work with the LAFD to create and manage an ongoing backlog of system requirements using the LAFD's project management software, Jira. The Contractor shall work with the LAFD to establish a regular, recurring review of the backlog in order to prioritize and plan software development activities.

4.1.8   The Contractor shall deliver production-ready software within pre-set limited periods of time, known as development cycles, usually between three and six weeks. At the end of each development cycle, the Contractor shall deliver software to be tested and accepted by the LAFD project team before continuing on to the next development cycle.

4.2   Project Management
The Contractor shall provide a dedicated project manager who will act as the Contractor's single point of contact for all communications related to the day-to-day delivery of services.

4.3   Development Team
The Contractor shall provide a team of software development professionals that possess the required skills and experience necessary to perform the required development tasks. The Contractor's capacity for completing new development tasks will be determined by the Contractor's team size. The team size may vary from time to time based on the needs and priorities of the Department. Where practical, the Contractor may utilize LAFD technical team members to perform certain technical development tasks as part of the required knowledge transfer.

4.4   Testing

4.4.1   The Contractor shall conduct adequate testing of all developed software including integration, regression, readiness, and performance prior to delivery to the City for acceptance testing.

4.4.2   The Contractor shall plan, schedule and oversee user acceptance testing (UAT). As features are made available to the City for testing (component testing), the Contractor shall notify the City that the system is ready for testing. The City will perform tests in a non-production environment using the testing procedures, timeframes and standards provided by the Contractor.

4.4.3   The Contractor shall plan, schedule and oversee final user acceptance testing (Final UAT). Prior to go-live, to production, the Contractor shall notify the City that the full production system is ready for testing (Final User Acceptance Testing). The City will perform all tests (full regression) in a non-production environment using the testing procedures, timeframes and standards provided by the Contractor.

4.4.4   At the completion of any testing, the City will notify the Contractor in writing of either its acceptance of the system software as tested (pass) or of outstanding deficiencies (fail). The Contractor shall correct such deficiencies within the next development cycle or sooner, but in no case more than 30 days from notice, unless mutually agreed to and documented in a written plan for correction provided by the Contractor.

4.4.5   If, after retesting the City makes a good faith determination that the system or system component fails to pass, the City will notify the Contractor, specifying with as much detail as possible the manner in which the system failed to pass the retesting. Such procedure shall continue for a reasonable period of time, subject to the City's rights under PSC-9, Termination, of Attachment A – Standard Provisions for City Contracts (Rev. 10/17)[v.3], until such time as the City notifies the Contractor in writing either: (i) of the successful completion of such testing; or (ii) that the City has concluded in its sole and reasonable judgment that satisfactory progress toward correction and outstanding deficiencies in the system is not being made, in which latter event the City

shall have the right to make a determination that a material default has occurred and to terminate this contract in accordance with PSC-9, Termination, of Attachment A – Standard Provisions for City Contracts (Rev. 10/17)[v.3)], on the basis of such default. Such a termination by the City may be, in the City's sole judgement, either: (i) a termination with respect to one or more system components or (ii) if the City believes that the failure to pass the applicable testing affects the functionality, performance, or desirability to the City of the system as a whole, the entire contract.

4.5 Training

The Contractor shall work with the LAFD to develop an end-user training plan. The Contractor shall provide training to LAFD staff members using a train-the-trainer approach that is sufficient for those staff members to perform the required system functions and for those staff members to deliver end-user training.

The Contractor shall work with the LAFD to develop a system administration training plan. The Contractor shall provide training to LAFD staff members using a train-the-trainer approach that is sufficient for those staff members to perform the required system administration functions and for those staff members to deliver system administrator training.

4.6 Documentation

The Contractor shall create and deliver all required system documentation including, but not limited to: feature descriptions and wireframes as part of each user story; required system administration documentation, such as system diagrams, data dictionaries and system administration guides.

4.7 Source Code Management

The Contractor shall use a source code version control system to manage all system source code. The Department will work with the Contractor to establish a source code repository and provide the Contractor with access to the repository. The City will have full access and administrative rights to the source code repository, including the ability to review and audit any of the source code at any time.

4.8 Technical Knowledge Transfer

The Contractor shall provide in-depth solution architecture and technical reviews at the end of each development sprint to review the system as-built to-date. The review will provide a detailed technical description and discussion of the overall solution architecture, including, but not limited to: solution diagrams that depict the overall solution architecture and environments; description and discussion of the system source code, including development environment, tools and source code structure; description and discussion of the database tools, data structure and environments; description and discussion of third-party tools and integrations; and description and discussion of the infrastructure environment(s).

4.9 Licensing

The Department will be responsible for ensuring that all system software and any third-party software is properly licensed. The Contractor shall notify the City of any proposed software or software component that would require the City to purchase and/or maintain a license outside of the scope of this project. The use of any required third-party licenses must first be approved by the City before being incorporated and/or used in the solution.

4.10 Minor Versions and Updates

The Contractor shall perform all required minor system software updates as-needed for the duration of this contract. Minor versions and updates include, but are not limited to, minor changes to the user interface (UI) or minor feature changes. Minor changes will be made at any time they are required and any service outages and/or disruptions to service will be coordinated with and approved by the City in advance and, whenever possible, performed during non-business hours to ensure minimal disruption to the LAFD operations.

4.11 Major Versions and Releases

The Contractor shall perform all required major version upgrades as-needed for the duration of this contract. Major version updates include, but are not limited to, major changes to the underlying operating system(s), database or other infrastructure; user interface (UI); or major feature releases. Major changes will be made at any time they are required and/or on a regularly scheduled interval. Any service outages and/or disruptions to service related to a major change will be coordinated with and approved by the City in advance and, whenever possible, performed during non-business hours to ensure minimal disruption to the LAFD operations.

4.12 System Environments and Infrastructure

The Department will work with the Contractor to determine the most appropriate hosting and infrastructure environment. The Department will provision all required hardware, software, and other required networking systems required to support the agreed upon environments using minimum system specifications and technical requirements provided by the Contractor to the Department for each specific environment.

The Department will be responsible for all fees related to the purchase of equipment, and/or hosting of the system in a cloud environment, including managing the required hosting agreements with third-party providers, outside of this agreement. Any changes to the hosting environment must be approved by the Department. The Department will provide network access to/from LAFD networks and systems as needed.

At a minimum, the Contractor shall assist the Department in the setup, configuration and management of the following separate environments:

- Development – An environment for Contractor and/or Department software developers to exercise new and changed software without disruption or dependency to any other environment;

- Testing – An environment for the Department to conduct testing without disruption or dependency to any other environment;
- Training – An environment for Department to conduct training without disruption or dependency to any other environment;
- Production – The live environment used by all users of the system.

4.13 Routine Operations

The Contractor shall ensure that the proper tools are in place and LAFD staff is trained on all required day-to-day system operations necessary to ensure that the system continues to operate and perform as expected, including, but not limited to performing the following functions on an ongoing and regular basis:

- System monitoring and notification of the Department of errors, disruptions or downtime;
- System monitoring and notification of unauthorized use, intrusion or data compromise;
- System backup and assurance of full recovery of system and system data in the event of a system failure;
- System tuning to ensure optimal system performance;
- System recovery from errors and/or downtime.

The Department is responsible for end-user device access to the Internet.

5.0 SECTION 5: OPTIONAL SERVICES

From time to time, additional services may be required that are not included within the scope of this Agreement. Any such services that may be needed in the future will be addressed with a separate scope of work, cost and schedule, and may be included in this Agreement by amendment.

6.0   SECTION 6: DELIVERABLES, PAYMENT, AND INVOICING

6.1   Deliverables

6.1.1   The Contractor shall deliver working, production-ready, software at the end of each development sprint.

6.1.2   In addition to delivering working software at the end of each sprint, the Contractor shall also deliver all source code, design documents and diagrams produced during the development process.

6.2   Payment

6.2.1   The total, not to exceed amount of this Contract is $600,500.

6.2.2   Each development cycle (see Section 4.1 above) will be invoiced at a rate of $30,200 upon the Contractor's satisfactory completion of the required software development tasks within the development cycle and acceptance by the Department.

6.3   Travel Expenses

6.3.1   The Contractor shall provide staff to meet on-site with the LAFD as-needed to participate in scheduled project events such as milestones or important presentations. The Contractor shall provide up to two staff members on up to five separate visits, each visit being up to three working days in duration at the Contractor's expense. Any additional travel costs, beyond those included within the five on-site visits must be pre-approved by the City, and, if approved, will be reimbursed separately, as-incurred, in accordance with the terms of the City's Travel Policy.

6.4   Invoicing

6.4.1   The Contractor shall submit their invoices to:

Scott Porter, Chief Information Officer
Los Angeles Fire Department
200 North Main Street, Room 1660
Los Angeles, CA 90012

The invoice must contain the following:

   a.   Name and address of company or firm;
   b.   Name and address of the contracting department;
   c.   Date of the invoice and period covered;
   d.   Reference to contract number;
   e.   Description of the completed task and amount due for the task;
   f.   Copy of the invoices and payments to third parties, if any;
   g.   Payment terms, total due, and due date;

     h. Certification by a duly authorized officer of the Contractor;
     i. Discounts and terms (if applicable);
     j. Remittance address (if different from company address); and
     k. Percentage of maximum allowable compensation against which services have been billed to date, and percentage of maximum allowable compensation remaining.

7.0 SECTION 7: DATA, MANAGEMENT, SECURITY, AND PRIVACY

7.1 Data Ownership

City is the sole and exclusive owner of all data and information provided to Contractor by or on behalf of City pursuant to this Agreement and any and all updates or modifications thereto or derivatives thereof made by Contractor ("City Data"), and all intellectual property rights in the foregoing, whether or not provided to any other party under this Agreement.

City Data is Confidential Information for the purposes of this Agreement. Contractor shall not use City Data for any purpose other than that of rendering the services under this Agreement, nor sell, assign, lease, dispose of or otherwise exploit City Data. Contractor shall not possess or assert any lien or other right against or to City Data. City may request an export of City Data stored within the systems or held by Contractor in any form or format at no charge to City.

Subject to the restrictions articulated elsewhere in this Agreement, City grants Contractor a non-transferable, non-exclusive, terminable at-will license, solely for the term of this Agreement, to use City Data solely for purposes of performing the services pursuant to this Agreement for City's benefit.

7.2 Data Protection in General

The protection of personal privacy and personally identifiable data shall be an integral part of the business activities of Contractor, and Contractor shall use all reasonable efforts to prevent inappropriate or unauthorized use of City Data at any time and safeguard the confidentiality, integrity, and availability of City Data and comply with the following conditions:

7.2.1   Contractor shall implement and maintain appropriate administrative, technical and organizational security measures in order to safeguard against unauthorized access, disclosure, or theft of City Data. Contractor shall protect City Data using no less than the security means and technology necessary to meet the standard of care relevant to the data at issue, in any event, security measures no less stringent than the measures Contractor applies to its own personal or confidential data.

7.2.2   Unless otherwise stipulated in writing, Contractor shall encrypt all City Data at rest and in transit with controlled access. The Contractor shall apply and support encryption solutions that are certified against U.S. Federal Information and Processing Standard 140-2, Level 2, or equivalent industry standard, and verify that the encryption keys and

keying material are not stored with any associated data. Whenever and wherever applicable, Contractor shall apply and support industry standards or better for tokenization, fraud-use protection, format-preserving encryption, and data encryption technology.

7.2.3   At no time shall any City Data be copied, disclosed, or retained by Contractor or any party related to Contractor, including its subcontractors, for use in any process, publication, or transaction that is not specifically authorized by Section 3 of this Agreement or by the City in writing.

7.2.4   Contractor shall secure and protect all City Data from hacking, viruses, ransomware, and denial of service and related attacks.

7.3   Development and Access
Contractor shall provide its services to the City and its end users solely from data centers in the continental United States of America. Storage of City Data at rest shall be located in the continental United States of America. Contractor shall not allow its personnel or subcontractors to store City Data on portable devices, including personal computers, except for devices that are used and kept only at Contractor's continental United States of America headquarters or data centers. Contractor may permit its personnel and subcontractors to access City Data remotely only as required to provide Contracted Services. Contractor shall neither access nor allow a third-party access to City Data from any location outside of the continental United States of America. Contractor shall not provide any services under this Agreement from a location outside of the continental United States of America, absent receipt of City's express approval.

7.3.1   Access Limitations
Contractor shall use precautions, including, but not limited to, physical software and network security measures, personnel screening, training and supervision, and appropriate agreements to:

7.3.1.1   Prevent anyone other than City, Personnel, and subcontractors with a specific need to know, for a purpose authorized under this Agreement, from monitoring, using, gaining access to City Data;

7.3.1.2   Protect appropriate copies of City Data from loss, corruption, or unauthorized alteration; and

7.3.1.3   Prevent the disclosure of City and Contractor usernames, passwords, API keys, and other access control information to anyone other than authorized City personnel.

7.3.2   Security Best Practices
Contractor shall implement the following security best practices with respect to City Data and to any service provided:

7.3.2.1 Least Privilege
Contractor shall authorize access only to the minimum amount of resources required for a function.

7.3.2.2 Separation of Duties
The Contractor shall divide functions among its staff members to reduce the risk of one person committing fraud undetected.

7.3.2.3 Role-Based Security
The Contractor shall restrict access to authorized users and base access control on the role a user plays in the Contractor's organization.

7.3.3 Credential Restrictions
Contractor shall restrict the use of, and access to, administrative credentials for accounts and system services accessing City Data, to only those of Contractor's personnel and subcontractors whose access is essential for the purpose of providing the Contracted Services or performing obligations under this Agreement. Contractor shall require personnel and subcontractors to log on using an assigned user-name and password when administering City accounts or accessing City Data. These controls must enable Contractor to promptly revoke or change access in response to terminations or changes in job functions, as applicable. Contractor shall encrypt all passwords, passphrases, and PINs, using solutions that are certified against U.S. Federal Information and Processing Standard 140-2, Level 2, or equivalent industry standard, and verify that the encryption keys and keying material are not stored with any associated data. Contractor shall implement any City request to revoke or modify user access within twenty-four hours or the next business day of receipt of City's request. Contractor shall disable user accounts after at most 10 consecutive invalid authentication attempts.

7.3.4 Physical and Environmental Security
Contractor facilities that process City Data must provide a physically secure environment from unauthorized access, damage, and interference.

7.4 System Administration and Network Security

7.4.1 Operational Controls
Contractor shall implement operational procedures and controls designed to ensure that technology and information systems are configured and maintained according to prescribed internal standards and consistent with applicable Industry Standard Safeguards. Examples of Industry Standard Safeguards are ISO/IEC 27002:2005, NIST 800-44, Microsoft Security Hardening Guidelines, OWASP Guide to Building Secure Web Applications, SOC 2 Type 2, and the various Center for Internet Security Standards. Moreover, Contractor shall use application security and software development controls designed to eliminate and minimize the introduction of security vulnerabilities.

7.4.2   Antivirus
Contractor shall have and maintain antivirus protection configured to automatically search for and download updates (daily, at a minimum) and perform continuous virus scans. Malware and threat detection must be updated continuously, and software patches provided by vendors must be downloaded and implemented in a timely manner. If Contractor is unable to implement these controls in a timely manner, Contractor shall notify City in writing.

7.4.3   Vulnerability Management and Patching
Contractor shall employ vulnerability management and regular application, operating system, and other infrastructure patching procedures and technologies designed to identify, assess, mitigate, and protect against new and existing security vulnerabilities and threats, including viruses, bots, and other malicious code.

7.4.4   Network Controls
Contractor shall have, shall implement, and shall maintain network security controls, including the use of firewalls, layered DMZs and updated intrusion detection and prevention systems, reasonably designed to protect systems from intrusion or limit the scope or success of any attack or attempt at unauthorized access to City Data.

7.4.5   Logging and Monitoring
Unless prohibited by applicable law, Contractor shall, and shall require subcontractors to, continuously monitor its networks and personnel for malicious activity and other activity that may cause damage or vulnerability to City Data. Contractor shall maintain logs of administrator and operator activity and data recovery events related to City Data.

7.4.6   Changes in Service.
Contractor shall notify the City of any changes, enhancement, and upgrades to the System Administration and Network Security, or changes in other related services, policies, and procedures, as applicable, which can adversely impact the security of City Data.

7.5   Policies, Assessments, and Audits

7.5.1   Policies
Contractor shall, and shall require subcontractors to, establish and maintain a formal, documented, mandated, company-wide information security program, including security policies, standards, and procedures (collectively "Information Security Policy"), and communicate the Information Security Policy to all of its respective personnel in a relevant, accessible, and understandable form. Contractor shall regularly review and evaluate the Information Security Policy to ensure its operational effectiveness, compliance with all applicable laws and regulations, and to address new threats and risks. Upon execution of this Agreement and thereafter within three (3) days of City's request, Contractor shall make available for review by the City Contractor's Information Security Policy and any related SOC audits or other evidence that

Contractor has in place appropriate policies and procedures regarding information protection and security.

7.5.2   Vulnerability and Risk Assessments
At least annually, Contractor shall perform vulnerability tests and assessments of all systems that contain City Data. For any of Contractor's applications that process City Data, such testing must also include penetration tests using intercept proxies to identify security vulnerabilities that cannot be discovered using automated tools, and code review or other manual verifications to occur at least annually.

7.5.3   Right of Audits by City/Security Review Rights
City and its agents, auditors (internal and external), regulators, and other representatives as City may designate, may inspect, examine, and review the facilities, books, systems, records, data, practices, and procedures of Contractor (and any personnel and subcontractors that Contractor may use) that are used in rendering services to City to verify the integrity of City Confidential Information and to monitor compliance with the confidentiality and security requirements for City Confidential Information. In lieu of an on-site audit, at City's discretion and upon request by the City, the Contractor agrees to complete, within fourteen (14 days) of receipt, an audit questionnaire provided by the City regarding the Contractor's data privacy and information security program. Contractor shall comply with all recommendations that result from such inspections, tests, and audits within reasonable timeframes.

7.6   Data Backup and Emergency Recovery
Contractor shall employ a multilayered approach to backups and disaster recovery, including the use of a primary data center and a backup data center. Contractor shall perform both local and remote backups of the complete server infrastructure, including server operating systems, applications, and data. Contractor shall perform Disaster Recovery Tests no less than semi-annually. Contractor shall maintain and comply with a reasonable written plan (the "DR Plan") setting forth procedures for (a) mitigating disruption to systems during and after an earthquake, hurricane, other natural disaster, war, act of terrorism, act of cyberterrorism, and other natural or man-made disaster, including without limitation Force Majeure Events (as that term is used in PSC-6, Excusable Delays, of the Standard Provisions for City Contracts (Rev. 10/17)[v.3] (collectively, a "Disaster"); and (b) restoring Service functionality promptly after a Disaster. The DR Plan will include procedures no less protective than industry standard, and Contractor shall update the DR Plan as the industry standard changes.

7.7   Data Return and Destruction

7.7.1   At the conclusion of the Agreement and as instructed by City, Contractor shall (at its sole cost) return, delete, or destroy City Data then in its possession or under its control including, without limitation, originals, and copies of such City data. The following types of information are excluded from this requirement: (i) City Data that becomes a part of the public domain, including through court filings; and (ii) City Data that Contractor is required to maintain, by law, regulations, or by the terms of this

Agreement, but only for the time period required. For the avoidance of doubt, anything that is stored on routine backup media solely for the purpose of disaster recovery will be subject to destruction in due course rather than immediate return or destruction pursuant to this paragraph, provided that Personnel are precluded from accessing such information in the ordinary course of business prior to destruction.

7.7.2 Contractor shall implement and utilize appropriate methods to ensure the destruction of City Data. Such methods shall be in accordance with recognized industry best practices and shall leave no data recoverable on Contractor's computers or other media.

7.7.3 Contractor agrees to certify that City Data has been returned, deleted, or destroyed from its systems, servers, off-site storage facilities, office locations, and any other location where Contractor maintains City Data within 45 days of receiving City's request that the information be returned, deleted, or destroyed. Contractor shall document its verification of data removal, including tracking of all media requiring cleaning, purging or destruction.

7.8 **Data Breach**

Contractor shall notify City in writing as soon as reasonably feasible, but in any event within forty-eight hours, or if later, the next business day after Contractor's discovery of any unauthorized access of City Data or Contractor becoming reasonably certain that such unauthorized access has occurred (a "Data Breach"), or of any event that compromises the integrity, confidentiality or availability of City Data (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 if requested by City, and, in any event, reasonably frequent updates, regarding findings and actions performed by Contractor until the Data Breach or Security Incident has been resolved to City's satisfaction. Contractor shall conduct an investigation of the Data Breach or Security Incident and shall share a report of the investigation findings with City. At City's sole discretion, City and/or its authorized agents shall have the right to conduct an independent investigation of a Data Breach. Contractor shall cooperate fully with City and its agents in that investigation. If the City is subject to liability for any Data Breach or Security Incident, the Contractor shall fully indemnify and hold harmless the City and defend against any resulting actions.

7.9 **Confidentiality**

7.9.1 City's Confidential Information

For purposes of this Section 6.9, "Confidential Information" means any nonpublic information whether disclosed orally or in written or digital media, received by Contractor that is either marked as "Confidential" or "Proprietary" or which the Contractor knows or should have known is confidential or proprietary information. City Data shall be treated as Confidential Information by Contractor under this Agreement, even if such data is not marked "Confidential" or "Proprietary"

or was obtained by or transferred to Contractor prior to the effective date of this Agreement.

7.9.2   Protection of Confidential Information
Except as expressly authorized herein, Contractor shall (a) hold in confidence and not disclose any Confidential Information to third parties and (b) not use Confidential Information for any purpose other than fulfilling its obligations and exercising its rights under this Agreement or performing the contracted services. Contractor shall limit access to Confidential Information to Contractor personnel and subcontractors that are previously disclosed to City and, (1) who have a need to know such information for the purpose of Contractor performing its obligations or exercising its rights under this Agreement, or performing Contracted Services; (2) who have confidentiality obligations no less restrictive than those set forth herein; and (3) who have been informed of the confidential nature of such information. In addition, the Contractor shall protect Confidential Information from unauthorized use, access, or disclosure in the same manner that it protects its own proprietary information of a similar nature, but in no event with less than reasonable care. At LAFD's request or upon termination or expiration of this Agreement, the Contractor shall return to LAFD any Deliverables not provided to the City and Contractor shall destroy (or permanently erase in the case of electronic files) all copies of Confidential Information, and Contractor shall, upon request, certify to City its compliance with this sentence.

7.9.3   Exceptions
The confidentiality obligations set forth in Section 6.9 shall not apply to any Confidential Information that (a) is at the time of disclosure or becomes generally available to the public through no fault of the Contractor; (b) is lawfully provided to the Contractor by a third party free of any confidentiality duties or obligations; (c) was already known to the Contractor at the time of disclosure free of any confidentiality duties or obligations; or (d) the Contractor can demonstrate was independently developed by personnel of the Contractor without reference to the Confidential Information. In addition, the Contractor may disclose Confidential Information to the extent that such disclosure is necessary for the Contractor to enforce its rights under this Agreement or is required by law or by the order of a court or similar judicial or administrative body, provided that (to the extent legally permissible) the Contractor promptly notifies LAFD in writing of such required disclosure, cooperates with LAFD if LAFD seeks an appropriate protective order, and the Contractor discloses no more information that is legally required.

7.10   Compliance with Privacy Laws
Contractor is responsible for ensuring that Contractor's performance of its obligations and exercise of its rights under this Agreement complies with all applicable local, state, and federal privacy laws and regulations, as amended from time to time. If this Agreement or any practices which could be, or are, employed in performance of this Agreement become inconsistent with or fail to satisfy the requirements of any of these privacy laws and regulations, City and Contractor shall in good faith execute an amendment to this Agreement sufficient to comply with these laws and regulations and

Contractor shall complete and deliver any documents necessary to show such compliance. The City acknowledges and agrees that Contractor is not responsible for giving any notices to or obtaining any consents from any other party in order for Contractor to process the City Data as contemplated by this Agreement.

8.0   SECTION 8: INTELLECTUAL PROPERTY RIGHTS

8.1   Assignment Agreement
Upon completion of deliverables and services under this Contract, Contractor shall, pursuant to Section PSC-21, Ownership and License, of the Standard Provisions for City Contracts (Revised 10/17 [v.3]), which document is attached to this agreement as Attachment A and incorporated into this Agreement by reference as though fully set forth herein, execute at the City's request any additional agreements necessary (i) to assign to the City the intellectual property rights to the completed deliverables and other Work Products (as defined in PSC-21), or (ii) to otherwise perfect, memorialize, or record City ownership of intellectual property rights as provided in PSC-21 and in this Agreement.

8.2   Full Ownership by City
To the extent, if any, that this Agreement does not provide the City with full ownership, right, title, and interest in and to the Work Products, Contractor hereby grants the City a perpetual, irrevocable, fully paid, royalty-free, worldwide license to reproduce, create derivative works from, distribute, publicly display, publicly perform, use, make, have made, offer for sale, sell or otherwise dispose of the Work Products, with the right to sublicense each and every such right. The Work Products shall include programming code developed by the Contractor, and the intellectual property rights of this code shall belong to the City.

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

9.0   SECTION 9: REPRESENTATIONS AND WARRANTIES

Contractor represents and warrants that:

9.1   Compliance with Law
The services that the Contractor provides pursuant to this Agreement will comply with all applicable laws, including without limitation federal, state, and local.

9.2 Authority to Contract and No Pending Litigation

The Contractor has the full right and authority to enter into, execute, and perform its obligations under this Agreement and that no pending or threatened claim or litigation known to it would have a material adverse impact on its ability to perform as required by this Agreement.

9.3 Intellectual Property Warranty

(i) The Contractor's performance under this Agreement 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 or proprietary information; and (ii) the Contractor is the owner of the intellectual property rights for the services provided pursuant to this Agreement and of each and every component thereof, or has a valid license for the services provided, as described in Subsection 8.3.1

9.3.1 Third Party Software

In the event the Contractor provides any third-party software ("Third-Party Software"), including Open Source Software, to the City in connection with this Agreement:

9.3.1.1 The Contractor has and will maintain the right to license and provide access to any Third-Party Software licensed to the City, or otherwise provided to the City under this Agreement;

9.3.1.2 The Third-Party Software does not, and the use of the Third-Party Software by the City as contemplated by this Agreement will not, infringe any intellectual property rights, including, without limitation, patents, copyrights, trademarks, trade secrets, rights of publicity, and proprietary information, of any third party in any way;

9.3.1.3 The City is not obligated to pay any third party any fees, royalties, or other payments for the City's use of any Third-Party Software in accordance with the terms of this Agreement; and

9.3.1.4 To the extent permitted by law or contract, the Contractor shall pass through to the City the warranties for the Third-Party Software.

9.3.2 Definition of Open Source Software.

For purposes of this section, "Open Source Software" means any software, programming, or other intellectual property that is subject to (i) the GNU General Public License, GNU Library General Public License, Artistic License, BSD license, Mozilla Public License, or any similar license, including, but not limited to, those licenses listed at www.opensource.org/licenses, or (ii) any agreement with terms requiring any intellectual property owned or licensed by the City to be (a) disclosed or distributed in source code or object code form; (b) licensed for the purpose of making derivative works; or (c) redistributable.

9.3.3 Third-Party and Open Source Software.
With regard to open-source software and any third-party software embedded system, all such software shall be considered, as appropriate, part of and included in the definition of "the System" and subject to all warranties, indemnities, and other requirements of this Agreement, including scope of license and maintenance and support.

9.4 Conformity to Specifications
The System will perform materially as described in the Specifications.

9.5 Workmanlike Performance
All professional services will be performed in a professional and workmanlike manner, according to at least prevalent industry standards, and performed by competent personnel.

9.6 Disabling Code Warranty
No software or services to which the City is provided access and use hereunder contains any undisclosed disabling code (defined as computer code designed to interfere with the normal operation of the software or the City's hardware or software) or any program routine, device or other undisclosed feature, including but not limited to, a time bomb, virus, drip-dead device, malicious logic, worm, Trojan horse, or trap door which is designed to delete, disable, deactivate, interfere with or otherwise harm the software or the City's hardware or software.

9.7 Virus/Malicious Software Warranty
The Contractor has used its best efforts to scan for viruses within the software, and no malicious system will be supplied under this Agreement.

10.0 SECTION 10: MISCELLANEOUS

10.1 Not a Waiver
Contractor acknowledges and agrees that nothing contained in this Agreement is, represents, or is intended to be construed as: a release, compromise, settlement, or waiver by City of any cause of action that City may have against Contractor. City reserves its rights in full, including, but not limited to, the right to bring any claim, cause of action, or request for reimbursement against Contractor in relation to this Agreement and other transactions between City and Contractor.

10.2 Audit Rights
In addition to those rights available to City elsewhere in this Agreement, including pursuant to PSC-16, Retention of Records, Audit and Reports, of Attachment A – Standard Provisions for City Contracts (Rev. 10/17)[v.3)]. Contractor shall provide City, or City's duly authorized representatives, access for the purposes of audit and investigation, to any and all books, documents, papers, records, deliverables, and software documentation pertaining to any past, current, or future (i) transactions between City and Contractor, (ii) work requested to be performed of Contractor, or (iii) demands for payment by Contractor.

10.3 Payment Does Not Imply Acceptance of Work
The granting of any payment by City, or the receipt thereof by Contractor, in no way lessens the liability of Contractor to replace unsatisfactory work, equipment, or materials although the unsatisfactory character of this work, equipment or materials may not have been apparent or detected at the time the payment was made. Materials, equipment, components, or workmanship that do not conform to the requirements of this Agreement may be rejected by City and upon rejection must be replaced by Contractor without delay.

11.0 SECTION 11: NON-EXCLUSIVE AGREEMENT

City and Contractor understand and agree that this is a non-exclusive Agreement to provide services to the City and the LAFD and that the City or the LAFD reserve the right to enter into an agreement with other Contractors to provide similar services during the term of this Agreement.

12.0 SECTION 12: CITY CONTRACTING REQUIREMENTS

12.1 Standard Provisions
By entering into this Agreement with the City, the Contractor agrees to abide by the Standard Provisions for City Contracts (Rev. 10/17)[v.3], attached hereto and incorporated herein as Attachment A.

12.2 Disclosure of Border Wall Contracting 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 Agreement.

12.3 Disclosure of Contracts and Sponsorship of the National Rifle Association
Contractor shall comply with Los Angeles Administrative Code ("LAAC") Section 10.52 et seq., "Disclosure of Contracts and Sponsorship of the National Rifle Association Ordinance." City may terminate this Agreement at any time if City determines that Contractor failed to fully and accurately complete the required affidavit and disclose all Contracts and Sponsorship with the National Rifle Associate, as defined in LAAC Section 10.52.

13.0 SECTION 13: ORDER OF PRECEDENCE

This Agreement, and any exhibits, attachments or documents incorporated herein by inclusion or by reference constitutes the complete and entire Agreement between the City and the Contractor. In the event of any inconsistency between the body of this Agreement and the Exhibit, the order of precedence will be as follows:

1) This Agreement between the City of Los Angeles and Netkinetix, Inc.

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

14.0   SECTION 14: ENTIRE AGREEMENT

This Agreement contains the full and complete Agreement between the parties. No verbal agreement or conversation with any officer or employee of either party will affect or modify any of the terms and conditions of this Agreement.

15.0   SECTION 15: NUMBER OF PAGES AND ATTACHMENTS

This Agreement is executed in three (3) triplicate originals, each of which is deemed to be an original. This Agreement includes twenty-three (23) pages and one (1) Attachment, which constitute the entire understanding and agreement of the parties.

[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   Netkinetix Inc., a Wisconsin Corporation

By: _____   By*: _____
     Ralph M. Terrazas   Andrew Meyer
     Fire Chief   President

Date: _____   Date: _____

APPROVED AS TO FORM: By**: _____
MICHAEL N. FEUER, City Attorney
                                         Name: _____

                                         Title: _____

By: _____   Date: _____
     Samuel Petty
     Deputy City Attorney

Date: _____

ATTEST:
HOLLY L. WOLCOTT, City Clerk

By: _____
     Deputy City Clerk

Date: _____

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

Agreement Number: _____

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. <u>Construction of Provisions and Titles Herein</u>

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. <u>Applicable Law, Interpretation and Enforcement</u>

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. <u>Time of Effectiveness</u>

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. <u>Suspension</u>

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. <u>Termination</u>

    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 to time.

PSC-18. Indemnification

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

PSC-19. Intellectual Property Indemnification

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

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

PSC-20.   Intellectual Property Warranty

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

PSC-21.   Ownership and License

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

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

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

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

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

PSC-22. Data Protection

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

      B.   If **CITY** is subject to liability for any Data Breach or Security Incident, then **CONTRACTOR** shall fully indemnify and hold harmless **CITY** and defend against any resulting actions.

PSC-23. Insurance

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

PSC-24. Best Terms

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

PSC-25. Warranty and Responsibility of Contractor

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

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

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

    A.   **CONTRACTOR** shall comply with the applicable non-discrimination and affirmative action provisions of the laws of the United States of America, the State of California, and **CITY**. In performing this Contract, **CONTRACTOR** shall not discriminate in any of its hiring or employment practices against any employee or applicant for employment because of such person's race, color, religion, national origin, ancestry, sex, sexual orientation, gender, gender identity, age, disability, domestic partner status, marital status or medical condition.

    B.   The requirements of Section 10.8.2.1 of the LAAC, the Equal Benefits Ordinance, and the provisions of Section 10.8.2.1(f) are incorporated and made a part of this Contract by reference.

    C.   The provisions of Section 10.8.3 of the LAAC are incorporated and made a part of this Contract by reference and will be known as the "Equal Employment Practices" provisions of this Contract.

    D.   The provisions of Section 10.8.4 of the LAAC are incorporated and made a part of this Contract by reference and will be known as the "Affirmative Action Program" provisions of this Contract.

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

PSC-27. Child Support Assignment Orders

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

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

PSC-28.   Living Wage Ordinance

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

PSC-29.   Service Contractor Worker Retention Ordinance

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

PSC-30.   Access and Accommodations

CONTRACTOR represents and certifies that:

A.   **CONTRACTOR** shall comply with the Americans with Disabilities Act, as amended, 42 U.S.C. Section 12101 et seq., the Rehabilitation Act of 1973, as amended, 29 U.S.C. Section 701 et seq., the Fair Housing Act, and its implementing regulations and any subsequent amendments, and California Government Code Section 11135;

B.   **CONTRACTOR** shall not discriminate on the basis of disability or on the basis of a person's relationship to, or association with, a person who has a disability;

C.   **CONTRACTOR** shall provide reasonable accommodation upon request to ensure equal access to **CITY**-funded programs, services and activities;

D.   Construction will be performed in accordance with the Uniform Federal Accessibility Standards (UFAS), 24 C.F.R. Part 40; and

E.   The buildings and facilities used to provide services under this Contract are in compliance with the federal and state standards for accessibility as set forth in the 2010 ADA Standards, California Title 24, Chapter 11, or other applicable federal and state law.

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

PSC-31. Contractor Responsibility Ordinance

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

PSC-32. Business Inclusion Program

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

PSC-33. Slavery Disclosure Ordinance

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

PSC-34. First Source Hiring Ordinance

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

PSC-35. Local Business Preference Ordinance

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

PSC-36. Iran Contracting Act

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PSC-42. Possessory Interests Tax

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

PSC-43. Confidentiality

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

EXHIBIT 1

INSURANCE CONTRACTUAL REQUIREMENTS

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

CONTRACTUAL REQUIREMENTS

CONTRACTOR AGREES THAT:

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

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

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

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

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

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

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

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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 <u>admitted</u> 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: <u>Los Angeles Fire Department</u>   Date: _____ <u>8/6/2019</u> _____

Agreement/Reference: <u>Netkinetix - Custom Software Development Sworn Scheduling and Timekeeping System</u>

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

● Products/Completed Operations   ☐ Sexual Misconduct _____
☐ Fire Legal Liability _____
☐ _____

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

✓ **Professional Liability** (Errors and Omissions)   5,000,000

Discovery Period <u>12 month extended reporting period</u>

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

☐ All Risk Coverage   ☐ Boiler and Machinery
☐ Flood _____   ☐ Builder's Risk
☐ Earthquake _____   ☐ _____

☐ _____

—— **Surety Bonds** - Performance and Payment (Labor and Materials) Bonds _____

—— **Crime Insurance** _____

Other: <u>General Notes:</u>
<u>1. If a contractor has no employees and decides to not cover herself/himself for workers' compensation, please</u>
<u>complete the form entitled "Request For Waiver Of Workers' Compensation Insurance Requirement" located at:</u>
<u>http://cao.lacity.org/risk/InsuranceForms.htm</u>
<u>2. In the absence of imposed auto liability insurance requirements all contractors using vehicles during the course</u>
<u>of their contract must adhere to the financial responsibility laws of the State of California.</u>