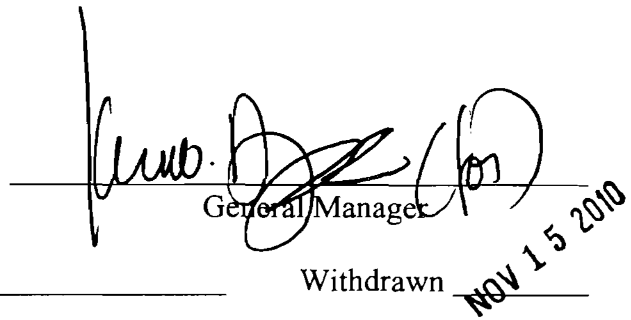
REPORT OF GENERAL MANAGER | NO. 10-278

DATE October 20, 2010 | C.D. All

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: PARK PROPERTY – INSTALLATION OF CELLULAR TELECOMMUNICATION EQUIPMENT

R. Adams	______	F. Mok	______
H. Fujita	______	K. Regan	______
S. Huntley	______	*M. Shull	______
V. Israel	______		



General Manager

Approved ______ Disapproved ______ Withdrawn NOV 15 2010

RECOMMENDATIONS:

That the Board:

1. Approve the attached policies and revised guidelines regulating the conditions for the installation of telecommunications equipment on Department of Recreation and Parks (Department) property;

2. Approve a proposed Master Lease Agreement and Site Lease Agreement, substantially in the form on file in the Board Office, subject to the approval of Mayor and City Council;

3. Authorize the Board Secretary to forward the policies, guidelines, Master Lease Agreement and Site Lease Agreement to the City Attorney for approval as to form; and,

4. Authorize the Department's Chief Accounting Employee to establish a Department fund and account number for the receipt of the funds from application fees for Site Lease Agreements and the rents subsequently collected from any such Agreements approved by the Board.

SUMMARY:

The Board of Recreation and Parks Commissioners has long recognized the need for policies and guidelines to consistently direct the installation of cellular telecommunication equipment on park property. As evidenced by the 2007 fire in Griffith Park, a lack of cellular facilities can disrupt rescue and fire-fighting efforts, becoming a public safety issue. Hikers and general park users

within larger City parks may be unable to communicate in the case of an emergency. Despite attempts to develop citywide regulations regarding these installations, (Mayoral Executive Directive No. 2001-38, issued on May 10, 2001) at least two Departments, the Department of Public Works, Bureau of Engineering (BOE) and the Department of Water and Power (DWP), have developed policies on the granting of permits in various right-of-ways.

Like BOE and DWP, Department receives many requests for telecommunication placements. In spite of a previous call for a coordinated, uniform City policy that would protect the interests of all City entities, it may be prudent for the Board to approve procedures and guidelines for telecommunication placements as well as a Master Lease Agreement and Site Lease Agreement tailored to meet the Department's needs. However, this Department will continue to work closely with other City Departments toward the goal of a uniform policy.

The Board has recognized the need for comprehensive guidelines since at least 1998. In that year the Board approved a set of guidelines or regulations applicable to telecommunication service providers but acknowledged that further action would be needed to implement a fully-developed policy (Report No. 410-98). The approved Report raised several issues including the desirability of incorporating antennas into a building's façade or on a utility pole or water tank as opposed to a free-standing installation. The design plans of firms were to be reviewed and input obtained from the affected Council Office and nearby community. As for fees, it was recommended that both rent and staff administrative time be charged and that the agreement contain renewal options which, when exercised, would allow for rate increases.

In approving the 1998 Report, the Board directed that the guidelines be amended to take into account comments made during the meeting by both the public and the Commissioners. In response to this directive and the realization that the Department needed to clarify certain wording, the guidelines were revised in May 2001. This version was not presented to the Board because the Mayor's Executive Directive, which called for a Citywide policy, had just been issued. Staff later revised those guidelines in October 2002 and presented them to the Board in November 2002 (Board Report No. 02-401). Neither the May 2001 nor the October 2002 guidelines included specifics on a fee structure for applications or rents, nor a clear process for the approval of telecommunication installation requests.

Staff has developed procedures for the review and processing of telecommunication installation applications as well as made slight modifications to the guidelines for the approval of said installations. The procedures are intended to give clear direction to potential applicants. These procedures and guidelines are attached to this Report at Exhibit A.

Any entity seeking to install telecommunication equipment on Recreation and Park property will have to enter into a Master Lease Agreement with the Department. This revocable lease agreement clearly assigns responsibilities to both the applicant and the Department, however it does not authorize the installation of any specific equipment. A supplemental application, known as a Site Lease Agreement, would have to be made for each individual installation and would be subject to the approval of the Commission. The Master Lease Agreement and supplemental Site Lease Agreement are attached to this Report as Exhibit B. It is intended that the procedures, guidelines and lease agreements will provide for a consistent application, review and approval process.

An applicant wishing to install telecommunications equipment on Recreation and Park property will be required to pay certain application fees and rents. A site application fee of ~~$1,500~~ for each discrete installation (Site Lease Agreement) will cover staff review, initial report to the Board of Commissioners, community outreach, site visit, and other necessary expenditures for project application review. This application fee does not guarantee approval of the Site Lease Agreement. Approved site installations will be charged rents according to the ten-year schedule of rents incorporated into the Master Lease Agreement. These rents begin at $2,000 per month, with a 3% increase per annum. Rents will be due annually as detailed in the attached Master Lease Agreement. Rents charged for installations will be available for operations or maintenance uses at the site at which the installations are located, possibly offsetting general fund obligations. The application and rental fees are identical to those currently charged by DWP. Applicants will also be fiscally responsible for any and all increase in utility charges that result from the installation of telecommunications equipment.

Staff has determined that the procedures, guidelines and lease agreements are tools for guiding future telecommunication installation projects, which does not make a commitment to any specific project that may result in physical environmental impacts. Therefore, each adopted Site Lease Agreement will require an individual review under the CEQA process. The CEQA review process will be completed through the Conditional Use Permit application process.

FISCAL IMPACT STATEMENT:

There shall be no fiscal impact to the Department's General Fund as the application fees for individual Site Lease Agreements shall be sufficient to cover staff costs for review. Approved telecommunication installations shall be a revenue generating use through the collection of rents as included in each approved Site Lease Agreement.

This Report was prepared by Melinda Gejer, City Planning Associate, Planning and Construction.

Exhibit A

DEPARTMENT OF RECREATION AND PARKS
PROCEDURES AND GUIDELINES
FOR THE
INSTALLATION OF CELLULAR EQUIPMENT
ON
PARK PROPERTY

In November 1998 the Board of Recreation and Park Commissioners (Board) adopted guidelines concerning the placement, installation, maintenance and dismantling of wireless or other telecommunication and ancillary equipment on Department of Recreation and Parks (RAP) property. The Board also approved the incorporation of certain additions to the guidelines, which have since been added to this revised version. Applicants seeking to place telecommunication equipment on RAP property are required to adhere to the ten sets of regulations listed below as well as to any requirements set forth by other affected agencies, by federal or state regulators and by other City of Los Angeles entities.

These revised guidelines do not constitute a Lease Agreement and cannot be construed in any manner as granting permission to install telecommunication equipment on RAP property. Permission for such installation will be granted by way of a fully executed Lease Agreement approved by both the Board of Recreation and Park Commissioners and the City Attorney as to form after all of the following conditions have been met to the satisfaction of the Department. It is understood that Lease Agreements in excess of three-years duration as defined by the Los Angeles Administrative Code Section 10.5(b) are subject to the approval of the City Council.

PROCEDURES

1. Any installation of cellular equipment on RAP property will require:

    a. A fully executed Master Lease Agreement (MLA), approved by both the Board and the City Attorney.

    b. A fully executed Site Lease Agreement (SLA) for each individual installation, approved by both the Board and the City Attorney, and if applicable, the City Council.

2. Upon application for each Site Lease Agreement a fee of $2,000 will be paid by the applicant. This fee will cover staff review, initial report to the Board, community outreach, site visit, and other necessary expenditures for project application review. This application fee does not guarantee approval of the Site Lease Agreement.

3. Upon application for a Site Lease Agreement, the following information will be provided by the applicant:

    a. Photographs or photo simulations;
    b. Architectural renderings;
    c. Site development and construction plans;
    d. Site mitigation measures;
    e. Installation time frame;
    f. Analysis of all existing infrastructure including, but not limited to, mounting of equipment and power supply/feed modifications.

4. Initial consultation with the Mayor's Office, the Council District, and the community including, but not limited to, the Park Advisory Board and/or Neighborhood Council shall take place.

5. The Board will do an initial review of the proposed Site Lease Agreement. All information contained in procedures numbers 1-4 shall be presented to the Board for consideration of the concept.

6. If the Board approves the concept, a final Report to the Board will be made following the completion of CEQA, community outreach process and Conditional Use Permit process.

7. A "Notice-to-Proceed" must be issued by RAP, Planning and Construction Division to permit construction to begin.

GUIDELINES

1. **Agreement Type and Duration**:

   Telecommunication Lease Agreements will be both conditional and revocable. The maximum initial term of the Master Lease Agreement will be five years and may automatically renew for successive one-year (1) periods unless Tenant notifies Landlord of Tenant's intention not to renew at least ninety (90) days prior to commencement of a successive one-year (1) renewal period; provided, however, that this Agreement will in any event remain in effect with respect to each fully executed SLA for so long as said SLA remains in effect. Exercise of the initial term and each option will require Board approval.

   The term of each SLA shall be five (5) years. The SLA may be extended for three (3) additional and successive five (5) year periods on the same terms and conditions unless Tenant notifies Landlord of Tenant's intention not to renew at least one hundred eighty (180) days prior to commencement of the succeeding Renewal Term, subject to approval by Landlord.

2. **Community/Public Comments**:

   In considering the placement of telecommunication equipment, RAP must remain sensitive to the wishes of the community. RAP will notify and solicit comments from affected groups and individuals, where applicable, when there is a reasonable possibility that telecommunication equipment will be placed on RAP property. RAP may also require the applicant to initiate and conduct the notifications. Examples of affected groups and individuals are as follows:

   a. Volunteer Neighborhood Oversight Committee(s) [VNOC];
   b. Park Advisory Board (PAB);
   c. Neighborhood Councils;
   d. Park User Groups (Little League, senior citizen associations, etc.);
   e. Community groups active at the RAP facility selected for the proposed installation; and,
   f. Residents/property owners and businesses located within 500 feet of the outer rim of the proposed placement site.

The applicant, under RAP supervision, will post a RAP-approved public notice in a conspicuous location at the RAP facility intended for the proposed placement. The notice will generally describe the applicant's proposal; the notice will also include a phone number where additional information may be obtained and a RAP address to which comments and recommendations may be mailed. Written comments received by RAP will be summarized and presented to the Board for consideration.

The applicant will be responsible for arranging and conducting public meetings or hearings.

The City Planning Department holds a variety of hearings as part of the normal approval process for a Conditional Use Permit (CUP); these hearings assist the City to remain informed of community opinion. RAP, not being a telecommunications applicant, will not be involved with any related CUP hearings except to report to the Board any issues relevant to the telecommunications request being made by the applicant. These issues shall be included in any report recommending final approval by the Board.

3. **Costs and Expenses**:

Upon obtaining all necessary approvals, the applicant will be fully responsible for all costs and expenses associated with the construction, installation, operation, upgrading, ongoing service or maintenance and, as applicable, the replacement, dismantling or removal of telecommunications equipment at the site.

4. **Design Requirements**:

Design elements will be obtained from the applicant and distributed to the Council Office, PAB, and other interested groups. Comments from these groups will be presented to the Board and other interested City entities before any Site Lease Agreement is approved.

The applicant will take all appropriate measures to minimize the size of the proposed telecommunication installation and to screen or disguise the presence of the equipment at the RAP site. These measures include but are not limited to the following element designs: planting natural, vegetative screening; using artificial structures aimed at disguising or lessening the visual impact of the installation; and attaching or visually blending the telecommunication equipment to existing structures. Each application must first analyze the feasibility of existing infrastructure for mounting of equipment. A good example of existing infrastructure which may be utilized in this way is sportsfield lighting. The applicant must include an analysis of the feasibility of utilizing these existing infrastructures prior to requesting installation of freestanding telecommunication equipment.

The applicant will, when first presenting a proposal, incorporate the telecommunication industry's best design practices that will minimize the size and amount of equipment to be installed and minimize the visual impact of the installation.

The general appearance or plan of the proposed installation will be reviewed by the Planning and Construction Division of RAP. The plans will then be presented to the Board prior to the issuance of final approval.

5. **General Requirements**:

Permission to grant the applicant's request is contingent upon whether the proposed telecommunication use is compatible with any specific trust or dedication upon which the site was acquired, is currently leased or otherwise permitted to RAP. Permission is also contingent upon RAP finding that the installation will not in any material respect or degree be detrimental to the purposes for which the property was acquired or is now devoted. RAP shall also consider comments received from the public. All telecommunication equipment installed under a RAP-approved Lease Agreement will be upgraded as technology advances; installed equipment and structures will be removed in a timely fashion at the applicant's sole cost when no longer needed at the licensed site or when the Site Lease Agreement is terminated.

6. **Health and Safety Concerns**:

All telecommunication installations approved by RAP will conform to federal, state and local requirements concerning construction codes and safety requirements concerning electromagnetic energy.

7. **Other Requirements**:

Any Lease Agreement will be limited in its ability to be assigned and contain the standard indemnification and insurance requirements established by the City Administrative Office and the City Risk Manager.

8. **Location of Telecommunication Site**:

Applicants will not be permitted to develop cellular sites at or near highly visible locations on RAP's property, namely, at or near play or sitting areas, walkways, community gardens, etc. In addition, the public's ability to fully use the park facilities must not be materially affected by the proposed placement site.

Where two or more telecommunication service providers desire to locate equipment at or close to the same site, the applicant must agree to the co-location of antennas and other equipment if such is technologically feasible. The applicant also agrees to cooperate fully with the City's Information Technology Agency in assisting them to determine if co-location is feasible.

Every applicant's initial design must take into account the potential co-location of up to two (2) additional carriers.

9. **Fees and Rent**:

An application fee of fifteen hundred dollars ($2,000) is due for each individual Site Lease Agreement.

Rental fees are due annually and will begin at two thousand dollars ($2,000) per month for fiscal year 2010-2011. There will be a three percent (3%) increase beginning on July 1st of each subsequent year.

Lessee will be responsible for payment for the electricity it consumes in its operation at the rate charged by the servicing utility company. If a separate electrical meter cannot be installed at a particular site, Lessee shall pay RAP the sum of $1,800, annually in advance, based on estimated annual consumption. Should Lessee want to audit their actual use, Lessee may sub-meter at their expense and submit an actual usage report for comparison against the estimated use.

10. **Permits**:

All telecommunication applicants will be solely responsible for obtaining any governmentally imposed licenses, permits or approvals and will pay all associated fees. The General Manager of RAP will have the authority after Board approval in concept, to issue a temporary permit or authorization if such is needed by the applicant in order to obtain governmentally imposed licenses, permits or approvals or to allow the applicant to perform preconstruction studies and related activities.

Exhibit B

MASTER LEASE AGREEMENT

Between

The City of Los Angeles,

Department of Recreation and Parks

And

[Name of Tenant]

Dated _______________, 20__

MASTER LEASE AGREEMENT

This Master Lease Agreement (this "Agreement") is entered into on ______________, 20__ (the "Effective Date"), between The City of Los Angeles, a municipal corporation, acting by and through the Board of Recreation and Park Commissioners, ("Landlord"), and ____________________________ ("Tenant"). Landlord and Tenant may hereinafter be collectively referred to as the "Parties" or individually as the "Party".

RECITALS

WHEREAS, Landlord holds a fee interest in multiple locations throughout the City of Los Angeles, California (each such location is referred to individually herein as a "Site" and all such locations are referred to collectively herein as the "Sites");

WHEREAS, Tenant may, from time to time, desire to lease space at certain Sites in order for Tenant to install, operate and maintain thereon wireless communication facilities; and

WHEREAS, Landlord is willing to lease to Tenant space at certain Sites, from time to time, under the terms and conditions set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree as follows:

1. Master Lease.

   This agreement sets forth the basic terms and conditions upon which Landlord shall lease Sites to Tenant. Upon Landlord's agreement to lease a particular Site to Tenant and as to the particular terms of any such lease, the Parties shall execute a Site Lease Agreement (SLA) in the form attached hereto as Exhibit A, which SLA shall be deemed to incorporate each of the terms and conditions set forth herein. The terms and conditions of any SLA shall govern and control in the event of a discrepancy or inconsistency with the terms and conditions of this Agreement.

   The execution of this Master Lease Agreement, or any subsequent SLA, in no way eliminates the need for Tenant to secure any and all necessary permits from the appropriate agencies. Each SLA will require Tenant to obtain a Conditional Use Permit (CUP) from the Department of City Planning in compliance with its land use ordinance, rules and regulations. As a part of the CUP process the proposed project will be reviewed according to the California Environmental Quality Act (CEQA).

2. Procedures for Site Selection.

   A. This Agreement sets forth the basic terms and conditions upon which Landlord agrees to lease to Tenant and Tenant agrees to lease from Landlord, from time to time, specified space at such Sites as the Parties may mutually select in accordance with the procedures set forth in this Agreement.

B. Landlord agrees to enter into an SLA with Tenant to lease specified space at each Site selected by Tenant and approved by Landlord as provided below; provided that Tenant's proposed installation is compatible with existing park related infrastructure and which use is technically feasible. "Technical feasibility" refers to the ability to make the necessary installation of antennas and equipment, including, without limitation, a tower and base, without creating unsafe conditions, including, without limitation, structural effects, excess cumulative Site emissions, or interference with radio transmission or reception of other users of the same Site at the time the Site is proposed by Tenant. Additionally, no SLA will be entered into should the proposed installation substantially interfere with the primary use of the property for recreational purposes.

C. Where two or more telecommunication service providers desire to locate equipment at (i.e. attaching equipment to the same support structure) or close to the same site, Tenant agrees to the co-location of antennas and other equipment on Tenant's support structure (but not within Tenant's ground space, which is for Tenant's exclusive use) if: (i) such co-location is technologically feasible, (ii) such provider enters into a separate ground lease with Landlord for ground space, and (iii) Tenant's support structure can safely support the addition of such provider's equipment. Tenant shall be entitled to all revenue (including, without limitation, any capital contributions and reimbursements) from the co-location agreement for space on Tenant's support structure and Landlord shall be entitled to all revenue from the ground lease. Tenant also agrees to cooperate fully with the City's Information Technology Agency in assisting them to determine if co-location is feasible.

Subject to applicable land use regulations, space limitations relating to each site, and technological and structural limitations, Tenant's proposed design(s) shall take into account the co-location of up to two (2) additional carriers.

3. Premises.

Pursuant to the applicable SLA, Landlord shall lease to Tenant and Tenant shall lease from Landlord space at the Site, along with non-exclusive easements for access to Landlord's right-of-way for ingress, egress and utilities, each as set forth in the applicable SLA (collectively, the "Premises").

4. Use.

At each Site, the Premises may be used by Tenant for the transmission and reception of radio communication signals and for the construction, installation, operation, maintenance, repair or removal of Tenant's Facilities (as defined below). Landlord agrees to reasonably cooperate with Tenant, at Tenant's sole expense, in making application for and obtaining all licenses, permits and any and all other necessary approvals that may be required for Tenant's intended use of the Premises, however, the obtaining of all such licenses, permits, and approvals are the sole responsibility of Tenant.

5. Tests and Construction.

A. Conceptual approval of SLA must be approved by the Recreation and Parks Board of Commissioners (Board) prior to any test being performed to determine technical feasibility.

B. Tenant shall execute a "Right-of-Entry" Agreement (See SLA Attachment 5) with Landlord, prior to the execution of each SLA by Landlord and Tenant, to enter upon the Premises for the purpose of conducting necessary engineering surveys, inspections, soil test borings, and other reasonably necessary tests relating to Tenant's intended and proposed use of the Premises. Such tests shall be at Tenant's sole cost and expense, and Tenant shall be responsible for any loss and/or damage caused by such tests and shall indemnify Landlord against same, and shall repair and restore the Site in good, usable condition, normal wear and tear casualty excepted, following any such tests. No such tests nor construction shall interfere with normal park operations or activities.

C. Upon Tenant's request, Landlord agrees to provide Tenant copies of all plans, specifications, surveys and maps in Landlord's possession or reasonably available to Landlord pertaining to each Site.

D. None of Tenant's Facilities shall be installed at any Site, nor shall any construction pertaining to Tenant's Facilities commence until:

(1) Tenant has submitted its construction and installation plans, including structural analysis and any other reasonable documents requested by Landlord, and such documents have been approved in writing by Landlord, such approval not to be unreasonably withheld, conditioned or delayed (Landlord shall respond to Tenant's request for approval of Tenant's construction and installation plans and provide Tenant with its requests for changes and/or objections within a reasonable period of time, not to exceed fifteen (15) days after Landlord's receipt of any such request from Tenant);

(2) Tenant has submitted the names of its contractors to Landlord in writing;

(3) Tenant has obtained all necessary governmental approvals and supplied proof of such approvals to Landlord;

(4) Tenant has paid first years rent;

(5) Tenant has received the final approval of the Board; and

(6) Landlord has provided Tenant written notice permitting Tenant to commence construction ("Notice-to-Proceed"). Upon receipt of Notice to Proceed, Tenant shall notify Landlord (pursuant to the contact information found in Attachment 3 of the applicable SLA) of its intent to commence construction. Such notice shall be required at least seventy-two (72) hours prior to construction. Tenant shall not commence installation of its equipment at any Site until Tenant has submitted evidence of compliance

with the insurance and safety requirements as pertains to the Site contained in this Agreement and, as applicable, the SLA.

E. Tenant shall provide all labor for the installation, maintenance and repair of Tenant's Facilities at Tenant's sole cost and expense.

F. Upon the completion of Tenant's Facilities' installation, but in no event later than thirty (30) days following such completion, Tenant shall provide Landlord with as-built drawings of the equipment installed on the Premises.

G. Notwithstanding anything to the contrary in this Agreement or any SLA, after the initial construction and installation of the Tenant's Facilities on the Premises, Tenant may add to, improve, alter or otherwise modify Tenant's Facilities subject to Landlord's prior consent, which shall not be unreasonably withheld, conditioned or delayed. Notwithstanding anything to the contrary, prior to commencing any modifications, Tenant must provide Landlord with prior notice of any modifications; however, Landlord's consent shall not be required, if these modifications do not (i) increase the dimensions, or extend beyond the boundaries, of the Premises, or (ii) increase the height of the tower or other antenna support structure installed by Tenant on the Premises. Tenant has the right to replace existing equipment with substantially similar equipment without the necessity to obtain Landlord consent provided that the new equipment does not exceed the footprint of the original approval (in number, dimension, or location) and does not require additional regulatory approval from any other authorizing agency.

H. Tenant shall take all precautions necessary to ensure the safety and protection of all persons and materials at the Site while accessing the Premises or performing any work at any Site. Tenant shall give any applicable notices and comply with all applicable local, state and federal laws, ordinances, rules, regulations and orders related to Tenant's work and persons, property and worker safety on the Site. Such compliance shall include, but not be limited to, the most recent revision of 29 CFR §§ 1910 *et seq.* and 29 CFR §§ 1926 *et seq.* (commonly known as OSHA code), in addition to any pertinent Federal Communications Commission ("FCC") and environmental, laws, rules and regulations. If Landlord becomes aware of a Tenant violation, it may require Tenant to immediately provide additional safety precautions, including but not limited to an on-site safety supervisor at Tenant's expense or to cease construction and operation of the pertinent Site.

6. Term

A. Master Lease. The initial term of this Agreement shall commence on the Effective Date, and unless terminated earlier in accordance with Section 13 below, shall continue for a five-year period following the Effective Date. Upon expiration of the initial term, this Agreement shall automatically renew for successive one-year (1) periods unless Tenant notifies Landlord of Tenant's intention not to renew at least ninety (90) days prior to commencement of a successive one-year (1) renewal period; provided, however, that this Agreement will in any event remain in effect with respect to each fully executed SLA for so long as said SLA remains in effect in accordance with the provisions thereof.

B. SLA. The term of each SLA shall be five (5) years commencing on the earlier of (i) the issuance of a Notice to Proceed by Landlord to Tenant, or (ii) one hundred twenty (120) days after the SLA is fully executed by both Parties (the "Commencement Date"), and terminating at midnight on the fifth (5th) anniversary of the Commencement Date ("Term"), unless otherwise terminated as provided in this Agreement. The SLA may be extended for three (3) additional and successive five (5) year periods ("Renewal Term(s)") on the same terms and conditions as set forth herein. The SLA shall automatically be extended for the first (1st) Renewal Term unless Tenant notifies Landlord of Tenant's intention not to renew at least one hundred eighty (180) days prior to the expiration of the initial Term. The SLA shall thereafter automatically be extended for the second (2nd) and third (3rd) Renewal Terms unless either Tenant or Landlord notifies the other party of its intention not to renew at least one hundred eighty (180) days prior to the commencement of the succeeding Renewal Term.

7. Fee Structure

A. A one-time, non-refundable, fee of $2,000 shall be paid to initiate a Site Lease Agreement application. That fee will cover the Landlord's costs of site review, preparation of Board Reports, preparation of Right of Entry permits, and community, council, committee, and Board meetings. The application fee will be split into two portions. The first $750 shall be paid to initiate the application process with a report requesting Conceptual Approval from the RAP Board of Commissioners. Should Conceptual Approval be granted then the balance of $1,250 will be due to initiate commencement of the balance of the review and approval process.

B. Under each SLA, within thirty (30) days of the applicable Commencement Date, Tenant shall pay to Landlord as rent ("Rent") the following:

During the first year of the Term of any SLA, the Rent amount shall be based on the following ten-year fee structure, pro-rated and payable in full to the end of the fiscal year. Thereafter, the Rent shall be increased annually each July 1st by three percent (3%) of the Rent paid over the preceding year. After initial rental payment, all payments shall be made annually in advance, no later than July 1st, for each year of said term. The Rent shall be made payable to the Landlord and Landlord will submit to Tenant any documents required by Tenant in connection with the payment of Rent, including, without limitation, an IRS Form W-9.

Tenant agrees to pay Landlord the following sums per fiscal year:

- July 1, 2010 - June 30, 2011:
  Twenty-four Thousand Dollars ($24,000)
- July 1, 2011 – June 30, 2012:
  Twenty-four Thousand Seven Hundred Twenty Dollars ($24,720)
- July 1, 2012 – June 30, 2013:
  Twenty-five Thousand Four Hundred Sixty-One Dollars and Sixty Cents ($25,461.60)

- July 1, 2013 – June 30, 2014:
  Twenty-six Thousand Two Hundred Twenty-Five Dollars and Forty-Nine Cents ($26,225.49)
- July 1, 2014 - June 30, 2015:
  Twenty-seven Thousand Twelve Dollars and Twenty-One Cents ($27,012.21)
- July 1, 2015 – June 30, 2016:
  Twenty-seven Thousand Eight Hundred Twenty-Two Dollars and Fifty-Eight Cents ($27,822.58)
- July 1, 2016 – June 30, 2017:
  Twenty-eight Thousand Six Hundred Fifty-Seven Dollars and Twenty-Five Cents ($28,657.25)
- July 1, 2017 – June 30, 2018:
  Twenty-nine Thousand Five Hundred Sixteen Dollars and Ninety-Seven Cents ($29,516.97)
- July 1, 2018 – June 30, 2019:
  Thirty Thousand Four Hundred Two Dollars and Forty-Eight Cents ($30,402.48)
- July 1, 2019 – June 30, 2020:
  Thirty-One Thousand Three Hundred Fourteen Dollars and Fifty-Five Cents ($31,314.55)

Should the SLA be extended the rent due will increase by 3% each subsequent year.

If Tenant fails to pay the rent when due, and fails to pay the rent within five (5) business days of receiving written notice of Landlord, Tenant shall pay Landlord a late charge of ten percent of the amount due, plus interest on all overdue rent amounts at a rate of ten percent per annum. By this provision, Landlord does not waive the right to insist on payment of the rent in full on the day it is due. Tenant shall be in default as determined by Section 12 below.

C. Tenant shall be responsible for utility costs as described in Section 8(d).

8. Facilities; Utilities; Access.

A. At each Site, Tenant, at its sole cost and expense and subject to Landlord's approval as provided in Section 5 above and other relevant portions of this Agreement above, shall have the right to erect, maintain and operate on the Premises wireless radio communication facilities, including, without limitation, tower and base or other antenna support structure, utility lines, cables, transmission lines, air-conditioned equipment shelter or cabinets, electronic equipment, radio transmitting and receiving antennas and other associated equipment shelter or facilities as depicted in the SLA (collectively, "Tenant's Facilities"). All construction and installation work shall be performed in a good and workmanlike manner. Tenant shall have the right to remove all of Tenant's Facilities at its sole expense on the expiration or earlier termination of an applicable SLA. Tenant shall repair any damage to the Site or Premises caused by such removal to the satisfaction of Landlord.

Upon any termination of this Lease, or any associated SLA, Tenant shall surrender the leased area in a neat and clean condition. Tenant shall complete restoration of the leased area to its original condition prior to termination of this Lease. Restoration of the leased area shall include, but not be limited to, removal of all of the Tenant's equipment, vehicles, trailers, containers, signs, litter, and debris. Tenant shall remove all improvements unless otherwise instructed in writing by Landlord. All improvements allowed to remain shall become the property of Landlord. If Landlord must remove any improvements allowed to remain by Tenant, Tenant agrees to reimburse Landlord for the removal of said improvements and any costs incurred to restore the leased area to its original condition.

B. Liens. Tenant must keep the Premises and Site free from any liens arising from any work performed, materials furnished, or obligations incurred by or at the request of Tenant, Tenant's agents, employees or contractors.

If any lien is filed against the Premises or Site as a result of the acts or omissions of Tenant, or Tenant's employees, agents or contractors, Tenant must discharge the lien or bond the lien off, in a commercially reasonable manner, within thirty (30) days after Tenant receives written notice from any party that the lien has been filed.

If Tenant fails to discharge or bond any lien within such period, then, in addition to any other right or remedy of Landlord, Landlord may, at Landlord's election, discharge the lien by either paying the amount claimed to be due or obtaining the discharge by deposit with a court or a title company or by bonding.

Tenant must pay, within thirty (30) days of receipt of Landlord's written demand, any amount paid by Landlord for the discharge or satisfaction of any lien, and all reasonable attorneys' fees and other legal expenses of Landlord incurred in defending any such action or in obtaining the discharge of such lien, together with all necessary disbursements in connection therewith.

C. At each Site, Tenant shall obtain, at its sole cost and expense, separate utility services from any utility company that will provide service to the Site. Tenant shall pay for the electricity it consumes in its operation at the rate charged by the servicing utility company. Landlord will reasonably cooperate with Tenant's efforts to acquire necessary utility services at any Site. Any easement necessary for power or other utilities will be at a location reasonably acceptable to Landlord and the servicing utility company. Whenever possible, Tenant shall install a separate meter for Tenant's use within the Site, unless Tenant obtains Landlord's prior written approval of an alternate location.

D. If a separate electrical meter cannot be installed at a particular Site, Tenant shall pay Landlord the sum of One Thousand Eight Hundred Dollars ($1,800.00), annually in advance, based on estimated annual consumption, beginning on the Commencement Date of the applicable SLA and thereafter on July 1st during the Term and any Renewal Terms, which amount shall be in addition to and payable in the same manner as the Rent payable hereunder, as an annual utility charge (the "Estimated Utility Charge"). Should Tenant want to audit their actual use, Tenant may sub-meter at their expense and submit an actual usage report for

comparison against the estimated use. In the event the Estimated Utility Charge paid by Tenant is less than the Actual Charge for any such twelve month period, Tenant shall pay the difference between the Estimated Utility Charge and the Actual Charge within thirty (30) days of Tenant's receipt of a notice from Landlord setting forth the amount due. In the event the Estimated Utility Charge paid by Tenant for any such twelve-month period is more than the Actual Charge for any such twelve month period, Landlord shall credit the difference to the estimated utility charge for the next succeeding twelve-month period or refund the difference if the SLA has expired or terminated.

E. After the issuance of Notice to Proceed at each Site, Tenant, Tenant's employees, agents, contractors and subcontractors may enter on or across the Site, twenty-four (24) hours a day, seven (7) days a week, at no charge, to obtain entry to the Premises for the purpose of constructing, installing, operating, maintaining and repairing the Tenant's Facilities. At no time shall Tenant, Tenant's employees, agents, contractors and subcontractors interfere with normal park operations nor recreational activities.

9. Radio Frequency (RF) Compliance.

At each Site, Tenant agrees to comply with all FCC rules and regulations. Prior to commencement of Tenant's operations at any Site and at all other times that Landlord may reasonably request, Tenant will provide Landlord with a radio frequency ("RF") site analysis that evaluates the simultaneous operation of all transmitters on the Site and compares the radiated power density in all accessible areas with the FCC maximum permissible exposure ("MPE") limits for workers and the general public. The power density within all accessible areas of the Site must not exceed the FCC specified MPE Limits currently in effect. If mitigation is required due to Tenant's Facilities, such mitigation measures shall be the responsibility and expense of Tenant, provided, however, that Landlord shall reasonably cooperate with all such mitigation measures. Should Tenant not undertake mitigation or other efforts that bring the site into compliance with FCC rules within a reasonable time, Landlord may undertake any reasonable efforts to bring the Site into compliance at the sole expense of Tenant. If mitigation is required due to a subsequent change in the Landlord's operation, or a subsequent user on the Site, such mitigation measures shall be the responsibility of Landlord or the subsequent user, provided however, that Tenant shall reasonably cooperate with all such mitigation efforts.

10. Non-Interference.

At each Site, Tenant agrees that Tenant's Facilities shall not cause interference to existing use or enjoyment of the Site by Landlord and other tenants, lessees and licensees located on the Site prior in time to Tenant's use including, but not limited to, interference with radio communication facilities so located and existing as of the Commencement Date of the SLA. Similarly, Landlord shall not use, nor shall Landlord permit its tenants, licensees, employees, invitees or agents to use, any portion of the Site for radio communications facilities located and existing after the Commencement Date of the SLA that in any way interferes with the operations of Tenant thereunder that comply with the terms of this Agreement or the applicable SLA. Such interference shall be deemed to be a material breach by the interfering Party under this Agreement and the applicable SLA, who shall, upon written notice from the other, be responsible for

terminating said interference at such interfering Party's sole expense. The non-interfering Party shall not be required to provide a cure period to the interfering Party, but shall provide the interfering Party with written notice of such interference and the interfering Party shall use its best efforts to eliminate the interference immediately but in no later than seventy-two (72) hours from the receipt of such notice. Thereafter, the Party suffering the interference may terminate the applicable SLA, or pursue remedies available at law or in equity, or pursue injunctive relief. Landlord agrees that leases subsequent to Tenant's shall contain a substantially similar provision as this Section 10.

11. Taxes.

At each Site, except as hereinafter provided, Landlord shall pay all taxes it is obligated to pay under applicable laws. Tenant shall reimburse Landlord for any taxes or tax increases that Landlord is obligated to pay as a direct result of Tenant's use of the Site. As a condition of Tenant's obligation to pay such taxes or tax increases, Landlord shall, if reasonably possible, provide to Tenant documentation in Landlord's possession from the taxing authority that indicates the tax was due to Tenant's use of the Site.

Possessory Interest Tax. By executing this Lease and accepting the benefits thereof, ____________ may be creating a property interest known as "possessory interest" which may be subject to property taxation. ___________, as the party in whom the possessory interest is vested, shall be responsible for the payment of all property taxes, if any, levied upon such interest. ______________ acknowledges that the notice required under California Revenue and Taxation Code section 107.6 has been provided.

12. Default.

A. Any of the following shall be considered a default under this Agreement and the applicable SLA:

(1) Tenant fails to pay any Rent or other monetary obligation required by this Agreement and any SLA within thirty (30) days after receipt of written notice of such failure; or

(2) Except as otherwise set forth in Section 10, if either Party fails to observe or perform its non-monetary obligations under this Agreement or any SLA and does not cure within thirty (30) days after receipt of written notice of such breach, or such longer period as may be required to diligently complete a cure provided said Party has commenced cure within thirty (30) days after receipt of written notice of breach and continually pursues cure.

B. Tenant shall be liable for all expenses, including reasonable attorneys' fees and costs, incurred by Landlord in connection with any Tenant default, including, without limitation, any action to enforce the terms hereof or any SLA, or in connection with any action for the recovery of the Premises itself.

13. Termination.

A. The applicable SLA, and this Agreement as pertains thereto, may be terminated immediately upon written notice by Landlord if Tenant fails to cure a default under Section 12(a)(i), above.

B. The applicable SLA, and this Agreement as pertains thereto, may be terminated without further liability to either Party on thirty (30) days prior written notice as follows:

(1) by Tenant if it does not, following commercially diligent efforts, obtain or maintain any license, permit or other approval necessary for the construction and operation of Tenant's Facilities; or

(2) by either Party if the other Party fails to cure a default under Section 12(a)(ii), above; or

(3) by Tenant, if it is unable to occupy and utilize the Premises due to a ruling or direction of the FCC or other governmental or regulatory agency, including a take back of channels or change in frequencies.

C. The applicable SLA may be terminated by Tenant at any time upon ninety (90) days' prior written notice to Landlord if Tenant determines, in its sole discretion, that the Site or Tenant's Facilities thereon are not appropriate for its operations for economic or technological reasons, including, without limitation, signal interference. However, Tenant shall be responsible for a termination fee to Landlord equal to three (3) months of the then current Rent upon notice of termination by Tenant to the Landlord should Tenant terminate an SLA pursuant to this subsection 13(c).

D. Tenant shall remove its personal property from the affected Site within sixty (60) days after termination or expiration of any SLA. If tenant fails to remove its personal property within sixty (60) days after such termination or expiration, Landlord may, at its sole discretion, remove and store or dispose of same. Tenant shall reimburse Landlord for any expenses Landlord incurs as a result thereof, including reasonable attorneys' fees, within thirty (30) days of receipt of Landlord's written demand for payment. Tenant is responsible for payment of rent until such time as all personal property is removed and the leased area is returned to its original condition.

14. Condemnation or Destruction.

A. At any Site, if the whole or any substantial part of the Premises subject to the applicable SLA shall be taken by any public authority under the power of eminent domain so as to interfere with Tenant's use and occupancy thereof, then the applicable SLA shall cease on the date of possession by the condemning authority, and any Rent paid in advance of such date for Tenant's previously expected occupancy of the condemned property after the date of the condemning authority's possession shall be refunded to Tenant. In the event of any such taking by eminent domain or condemnation, Tenant shall have the right to claim from the condemning authority all compensation that may be legally

recoverable by Tenant on account of any loss incurred by Tenant, including, but not limited to, loss due to removing Tenant's Facilities and related equipment, damage to Tenant's business, loss of business, and/or loss of leasehold interest.

B. At any Site, if the Premises or any portion thereof are destroyed or damaged such, that in Tenant's judgment, the destruction or damage substantially affects the effective use of the Premises or Tenant's Facilities thereon, the Tenant shall have the right to terminate the applicable SLA immediately upon written notice to Landlord. In the event of such termination, all rights and obligations of the Parties under the SLA shall cease as of the date of the damage or destruction, except for Tenant's obligation to remove equipment and restore any damage cause thereby. If Tenant does not elect to terminate the SLA pursuant to this subsection 14(b), all Rent shall abate until the Premises are restored to the similar condition existing prior to such damage or destruction or to a reasonable condition sufficient for Tenant's operations, provided that such damage or destruction is not the fault of Tenant. Tenant shall be permitted to install a temporary facility, at Tenant's sole cost, during such reconstruction period, subject to space availability as determined in Landlord's reasonable discretion. Rent shall no longer be abated upon the full activation, not including testing, by Tenant of the temporary facility.

15. Insurance.

Tenant shall maintain the following insurance coverage in full force during the term of this Agreement and each SLA:

A. Worker's Compensation and Employer's Liability Insurance. Worker's compensation insurance shall be provided as mandated by state law for all Tenant employees, agents, contractors and subcontractors. Employer's liability insurance shall be provided in amount not less than One Million Dollars ($1,000,000).

B. Commercial General Liability Insurance. Tenant shall carry commercial general liability insurance covering all operations by or on behalf of Tenant for injury to or death of persons and damage to property (including the loss of use thereof), including broad form property damage and explosion, collapse and underground hazards, Products and Completed Operations coverage and Contractual Liability covering the indemnification contained in Section 19 of this Agreement. Limits of liability shall be in amounts not less than One Million Dollars ($1,000,000) per occurrence and Two Million Dollars ($2,000,000) general aggregate. Landlord shall be named as an additional insured.

C. Automobile Insurance. Tenant shall carry commercial automobile liability insurance, including coverage for all owned, hired and non-owned automobiles. The amount of coverage shall not be less than One Million Dollars ($1,000,000) combined single limit each accident for bodily injury and property damage.

D. Commercial Property Insurance. Tenant shall carry "all risks" or "special causes of loss" property insurance on its personal property, including but not limited to its tools, equipment, machinery, materials and supplies in an amount sufficient to repair or replace such property. Tenant agrees its property insurance will include a Waiver of Subrogation provision for the benefit of Landlord.

E. Umbrella Insurance. Tenant shall maintain an Umbrella insurance policy providing coverage in excess of its primary Commercial General Liability, Automobile Liability, and Employer's Liability policies in an amount not less than Five Million Dollars ($5,000,000) per occurrence and Five Million Dollars ($5,000,000) general aggregate. Landlord shall be named as an additional insured. Tenant agrees that its Umbrella Liability policy will include a Waiver of Subrogation provision for the benefit of Landlord.

F. Professional Liability. As applicable, Tenant (or its contractor or subcontractors) shall carry errors and omissions liability insurance appropriate to the Tenant's (or its contractor's or subcontractors') profession, in an amount not less than One Million Dollars ($1,000,000) per occurrence, with a discovery period of not less than twelve (12) months after completion of Work or termination of Contract.

G. Certificate of Insurance. Such insurance shall conform to City requirements established by Charter, ordinance or policy, shall comply with the Instructions and Information on Complying with City Insurance Requirements (available online at http://cao.lacity.org/risk/Submitting proof of Insurance.pdf), and shall otherwise be in a form satisfactory to the Office of the City Administrative Officer, Risk Management. Certificates of insurance, as evidence of the insurance required by this Agreement, shall be furnished by Tenant to Landlord before the commencement of installation of any equipment at any site. The certificates of insurance shall provide that there will be no cancellation without thirty (30) days prior written notice (ten (10) days for nonpayment of premium) to Landlord.

H. The coverage afforded under Tenant's Commercial General Liability and Umbrella insurance policies shall be primary to any liability insurance carried by Landlord, whose insurance shall be excess and non-contributory for claims and losses arising out of Tenant's performance under this Agreement and applicable SLA.

I. Tenant shall cause each contractor or subcontractor to maintain insurance coverages and limits of liability of the same type and the same amount as are required of Tenant under this Section 15, adjusted to the nature of the contractor's or subcontractor's operations. Tenant shall obtain, prior to the commencement of the contractor's or subcontractor's work, certificates of insurance.

16. Assignment and Subleasing.

A. Except as hereinafter provided, Tenant may not assign or otherwise transfer all or any part of its interest in this Agreement or in any SLA, without the prior written consent of Landlord, such consent not to be unreasonably withheld, conditioned or delayed; provided that, in connection with any third party assignment which requires Landlord consent, the proposed transferee shall deliver to Landlord a

written agreement whereby it expressly assumes all of the Tenant's obligations under the affected SLA and this Agreement as pertains thereto, and the proposed transferee shall deliver to Landlord evidence that is has the financial ability to satisfy the obligations under the SLA and the Agreement. Notwithstanding anything to the contrary, Tenant may assign or otherwise transfer its interest in an SLA and this Agreement as pertains thereto without Landlord's consent, but with prior notice to, to (i) any affiliate of Tenant, (ii) any partnership, corporation or other business entity into which Tenant shall be merged, converted or consolidated in accordance with applicable statutory provisions governing merger, conversion or consolidation of the applicable business entity, (iii) a partnership, corporation or other business entity which is a direct successor to Tenant owning all or substantially all of Tenant's business and assets, or (iv) any person or entity that, after first receiving the necessary FCC licenses, acquires Tenant's radio communications business or assets and assumes all obligations of Tenant under the SLA and this Agreement as pertains thereto. Any assignment or transfer of this Agreement or any SLA shall fully release Tenant from any further obligations or liabilities under the Agreement or an SLA that arise after the effective date of the assignment or transfer. A person, association, partnership, corporation or joint-stock company, trust or other business entity, however organized, is an affiliate of the person or entity which directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such person. Control shall be defined as (i) ownership of 50% or more of the voting power of all classes of voting stock or assets or (ii) ownership of 50% or more of the beneficial interests in income and capital of an entity other than a corporation. Tenant may not assign or otherwise transfer its interest in an SLA to any entity which does not first enter into an approved MLA and SLA with Landlord.

B. Tenant may sublease tower space within any Premises upon written notice to Landlord; provided, however, that as a condition of any such sublease, the subtenant must enter into a separate MLA and SLA with Landlord.

17. Warranty of Title and Quiet Enjoyment.

As to each SLA, Landlord warrants that: (i) Landlord owns the Site and has rights of access thereto; (ii) Landlord has full right to make and perform the SLA and this Agreement as pertains thereto; and (iii) Landlord covenants and agrees with Tenant that upon Tenant paying the Rent and observing and performing all the terms, covenants and agreements set forth in the SLA and this Agreement as pertains thereto, Tenant may peacefully and quietly enjoy the Premises.

18. Maintenance and Repairs.

At each Site, Tenant shall perform all repairs necessary or appropriate to keep Tenant's Facilities on or about the Premises or located on any appurtenant rights-of-way or access to the Premises in good and tenantable condition.

19. Indemnity

A. Except for the active negligence or willful misconduct of Landlord, or any of its Boards, officers, agents, employees, assigns and successors in interest, Tenant hereby agrees to indemnify, defend and hold Landlord and any of its Boards, officers, agents, employees, assigns and successors in interest harmless from and against any and all claims, damages, losses and expenses (including but not limited to, attorneys' fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by Landlord, including but not limited to, costs of experts and consultants) claimed by anyone by reason of injury to or death of persons, or damage to or destruction of property, including property of Tenant, sustained in, on or about the demised premises or arising out of Tenant's use or occupancy thereof, as a result of the acts or omissions of Tenant, its employees, agents, subtenants, invitees, licensees, contractors or subcontractors, including Tenant's breach of this Agreement.

B. Tenant shall pay all fines, penalties, and other similar charges which may be imposed upon it or Landlord because of the failure of Tenant or its respective officers, agents, employees, contractors, or subcontractors in the course of the installation to adhere to applicable federal, state or local laws, ordinances, rules, regulations, or building and safety codes.

C. Tenant shall further hold harmless and indemnify Landlord from and against any and all suits, claims, actions or liabilities whatsoever, including reasonable attorney's fees and expenses, incurred in connection therewith or with successfully establishing the right of indemnification hereunder which arises out of breach or default by Tenant in performance of any obligation to be performed by Tenant under this Agreement.

20. Environmental.

A. As to each Site, Tenant shall not use or store any Hazardous Materials (defined below) of any kind on the Site except in accordance with applicable law. In the event the Site becomes contaminated by Hazardous Materials or contaminated waste materials brought, used, manufactured, or stored on the Site in violation of applicable law by Tenant or any of its agents, employees or independent contractors, Tenant shall be responsible for, and pay all costs for, the removal and disposal of all such materials as required by law and, further, Landlord may terminate the applicable SLA and this Agreement as pertains thereto without penalty.

B. Tenant will be responsible for and will defend, indemnify, and hold Landlord harmless from and against any and all direct claims, costs, and liabilities, including reasonable attorneys' fees and costs, arising out of or in connection with the cleanup or restoration of the Site associated with Tenant's use of Hazardous Materials.

C. Landlord will be responsible for and will defend, indemnify and hold Tenant harmless from and against any and all direct claims, costs, and liabilities, including reasonable attorneys' fees and costs, arising out of or in connection

with the cleanup or restoration of the Site associated with Landlord's use of Hazardous Materials.

D. "Hazardous Materials" means asbestos or any hazardous substance, waste or materials as defined in any federal, state or local environmental or safety law or regulation including, but not limited to CERCLA. The obligations of this Section shall survive the expiration or other termination of the applicable SLA and this Agreement.

21. Estoppel.

Either Party shall, at any time upon thirty (30) days prior written notice from the other, execute acknowledge and deliver to the other a statement in writing (i) certifying that each SLA is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying the Lease, as so modified, is in full force and effect) and the date to which the Rent and other charges thereunder are paid in advance, if any, and (ii) acknowledging that there are not, to such Party's knowledge, any uncured defaults on the part of the other Party hereunder, or specifying such defaults if any are claimed. Any such statement may be conclusively relied upon by any prospective purchaser or encumbrancer of the Site.

22. Notice.

All notices must be in writing and are effective three (3) business days after deposit in the U.S. mail, certified and postage prepaid, or upon receipt when sent via nationally recognized overnight courier, to the address set forth below. Either Party may from time to time designate any other address for this purpose by written notice to the other Party.

If to Landlord, to: Jon Kirk Mukri, General Manager Department of Recreation and Parks 221 N. Figueroa Street, Ste. 1550 Los Angeles, CA 90012	With a copy to: Michael A. Shull, Superintendent, Planning & Construction Department of Recreation and Parks 221 N. Figueroa Street, Ste. 100 Los Angeles, CA 90012
If to Tenant, to: ______________________________ ______________________________ ______________________________ ______________________________ ______________________________	With a copy to: ______________________________ ______________________________ ______________________________ ______________________________ ______________________________

23. Miscellaneous.

A. This Agreement (together with any SLAs entered into hereunder) constitutes the entire agreement and understanding between the Parties hereto, and supersedes all offers, negotiations and other leases concerning the subject matter contained herein. Any amendments to this Agreement or any SLA must be in writing and executed by both Parties hereto.

B. If any provision of this Agreement or any SLA is invalid or unenforceable with respect to any Party, the remainder thereof or the application of such provision to persons other than those as to whom it is held invalid or unenforceable shall not be affected, and each provision of this Agreement and each SLA shall be valid and enforceable to the fullest extent permitted by law.

C. This Agreement and each SLA shall be binding on and inure to the benefit of the successors and permitted assignees of the respective Parties.

D. Each SLA and this Agreement as applied to that SLA shall be construed in accordance with the laws of the State of California.

E. All Riders, Exhibits, and Attachments annexed hereto from material parts of this Agreement are incorporated herein.

F. This Agreement may be executed in duplicate counterparts, each of which shall be deemed an original.

G. Each Party agrees to waive and hereby waives any claim for consequential, incidental, punitive, damages or lost profits as to the other Party.

H. Publicity. Neither Party shall use the other Party's name, insignia or any language, pictures or symbols which could, in such other Party's judgment, imply its identity in, including but not limited to, any: (a) written or oral advertising or presentation; or (b) brochure, newsletter, book or other written material or whatever nature, without such other Party's express prior written consent.

I. As to each Site, Landlord acknowledges that a Memorandum of Lease in the form attached to the SLA may be recorded by Tenant, at Tenant's option and cost, in the Official Records of the County where the Site is located; provided, Tenant shall promptly record a termination of the Memorandum of Lease upon termination of the applicable SLA.

J. The persons who have executed this Agreement or any persons who execute an SLA represent and warrant that they are duly authorized to execute this Agreement or the applicable SLA in their individual or representative capacity as indicated.

24. ORDINANCE MANDATED PROVISIONS

A. **Child Support Assignment Orders.** This Lease is subject to Section 10.10, Article 1, Chapter 1, Division 10 of the Los Angeles Administrative Code related to Child Support Assignment Orders, a copy of which is attached hereto as Exhibit C and by this reference incorporated herein. Pursuant to this Section, Tenant (and any subcontractor of Tenant providing services to CITY under this Lease) shall (1) fully comply with all State and Federal employment reporting requirements for Tenant's or Tenant's subcontractor's employees applicable to Child Support Assignment Orders; (2) certify that the principal owner(s) of Tenant and applicable subcontractors are in compliance with any Wage and Earnings Assignment Orders and Notices of Assignment applicable to them personally; (3) fully comply with all lawfully served Wage and Earnings Assignment Orders and

Notices of Assignment in accordance with California Family Code Section 5230, et seq.; and (4) maintain such compliance throughout the Term of this Lease. Pursuant to Section 10.10.b of the Los Angeles Administrative Code, failure of Tenant or an applicable subcontractor to comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignment Orders and Notices of Assignment or the failure of any principal owner(s) of Tenant or applicable subcontractors to comply with any Wage and Earnings Assignment Orders and Notices of Assignment applicable to them personally shall constitute a default of this Lease.

B. **Service Contract Worker Retention Ordinance.** This Lease is subject to the Service Contract Worker Retention Ordinance ("**SCWRO**") (Section 10.36, et seq, of the Los Angeles Administrative Code), a copy of which is attached hereto as Exhibit C. The SCWRO requires that, unless specific exemptions apply, all employers (as defined) under contracts that are primarily for the furnishing of services to or for the City of Los Angeles and that involve an expenditure or receipt in excess of $25,000 and a contract term of at least three (3) months shall provide retention by a successor contractor for a ninety-day (90-day) transition period of the employees who have been employed for the preceding twelve (12) months or more by the terminated contractor or subcontractor, if any, as provided for in the SCWRO. Under the provisions of Section 10.36.3(c) of the Los Angeles Administrative Code, CITY has the authority, under appropriate circumstances, to terminate this Lease and otherwise pursue legal remedies that may be available if CITY determines that the subject contractor violated the provisions of the SCWRO.

C. **Living Wage Ordinance.**

(1) **General Provisions: Living Wage Policy** This Lease is subject to the Living Wage Ordinance ("**LWO**") (Section 10.37, et seq, of the Los Angeles Administrative Code), a copy of which is attached hereto as Exhibit C. The LWO requires that, unless specific exemptions apply, any employees of tenants or licensees of CITY property who render services on the leased or licensed premises are covered by the LWO if any of the following applies: (1) the services are rendered on premises at least of portion of which are visited by substantial numbers of the public on a frequent basis, (2) any of the services could feasibly be performed by City of Los Angeles employees if the awarding authority had the requisite financial and staffing resources, or (3) the designated administrative agency of the City of Los Angeles has determined in writing that coverage would further the proprietary interests of the City of Los Angeles. Employees covered by the LWO are required to be paid not less than a minimum initial wage rate, as adjusted each year (July 1, 2004, levels: $8.78 per hour with health benefits of at least $1.25 per hour or otherwise $10.03 per hour). The LWO also requires that employees be provided with at least twelve (12) compensated days off per year for sick leave, vacation, or personal necessity at the employee's request, and at least ten (10) additional days per year of uncompensated time pursuant to Section 10.37.2(b). The LWO requires employers to inform employees making less than twelve dollars ($12) per hour of their possible right to the federal Earned Income Tax Credit ("**EITC**") and to make available the

forms required to secure advance EITC payments from the employer pursuant to Section 10.37.4. Tenant shall permit access to work sites for authorized CITY representatives to review the operation, payroll, and related documents, and to provide certified copies of the relevant records upon request by the CITY. Whether or not subject to the LWO, Tenant shall not retaliate against any employee claiming non-compliance with the provisions of the LWO, and, in addition, pursuant to Section 10.37.6(c), Tenant agrees to comply with federal law prohibiting retaliation for union organizing.

(2) **Living Wage Coverage Determination.** The Board of Recreation and Parks Commissioners and the Office of the City Administrative Officer have made an initial determination as to whether this Lease is a proprietary lease or a proprietary license under the LWO, and, if so, whether it is exempt from coverage by the LWO, and the Living Wage Coverage Determination Form reflecting that initial determination is attached to this Lease as Exhibit C. If the determination has been made that the LWO is applicable to Tenant with respect to this Lease, a Declaration of Compliance, attached to this Lease as Exhibit C, must be executed by Tenant prior to or contemporaneously with this Lease. Determinations as to whether this Lease is a proprietary lease or license covered by the LWO, or whether an employer or employee are exempt from coverage under the LWO are not final, but are subject to review and revision as additional facts are examined and/or other interpretations of the law are considered. In some circumstances, applications for exemption must be renewed periodically (e.g., every two (2) years for proprietary lessees or licenses claiming exemption due to annual gross revenues of less than $200,000 and with less than seven (7) employees (section 10.37.1(I)). CITY shall notify Tenant in writing about any redetermination by CITY of coverage or exemption status. To the extent Tenant claims non-coverage or exemption from the provisions of the LWO, the burden shall be on Tenant to prove such non-coverage or exemption.

(3) **Termination Provisions And Other Remedies: Living Wage Policy.** Under the provisions of Section 10.37.6(c) of the Los Angeles Administrative Code, violation of the LWO shall constitute a material breach of this Lease.

D. **Non-Discrimination.** There shall be no discrimination against or segregation of any person, or group of persons, on account of race, religion, national origin, ancestry, sex, sexual orientation, age, physical handicap, marital status, or medical condition in the lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Premises or any part of the Premises or any operations or activities conducted on the Premises or any part of the Premises, nor shall Tenant or any person claiming under or through Tenant establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use of occupancy of tenants, subtenants, or vendees of the Premises. Any sublease or assignment which may be permitted under this Lease shall also be subject to the non-discrimination clauses contained in this Section.

(1) **Non-Discrimination In Employment.** During the Term of this Lease Tenant agrees not to discriminate against any employee or applicant for employment because of race, religion, national origin, ancestry, sex, sexual orientation, age, physical handicap, marital status or medical condition. Tenant shall take affirmative action to insure that applicants for employment are treated during the Term of this Lease without regard to the aforementioned factors and shall comply with the affirmative action requirements of the Los Angeles Administrative Code sections 10.8, et seq., a copy of which is attached hereto as Exhibit C, or any successor ordinances or law concerned with discrimination.

E. **Contractor Responsibility Ordinance.**

A. **General Provisions; Contractor Responsibility Policy.** This Lease is subject to the Contractor Responsibility Ordinance ("**CRO**") (Section 10.40, et seq, of the Los Angeles Administrative Code "LAAC"), a copy of which is attached hereto as Exhibit C and the rules and regulations promulgated pursuant thereto as they may be updated. The CRO requires that, unless specific exemptions apply as specified in LAAC 10.37.1(I)(b) or LAAC 10.40.4, lessees or licensees of City property who render services on the leased or licensed premises are covered by the CRO if any of the following applies: (1) the services are rendered on premises at least a portion of which are visited by substantial numbers of the public on a frequent basis, (2) any of the services could feasibly be performed by City employees if the awarding authority had the requisite financial and staffing resources, or (3) designated administrative agency of the City has determined in writing that coverage would further the proprietary interests of the City. Lessees or licensees of City property who are not exempt pursuant to LAAC 10.40.4 (a) or (b), unless subject to the CRO solely due to an amendment to an existing lease or license, are required to have completed a questionnaire ("**Questionnaire**") signed under penalty of perjury designed to assist the City in determination that the lessee or licensee is one that has the necessary quality, fitness and capacity to perform the work set forth in the contract. All lessees or licensees of City property who are covered by the CRO, including those subject to the CRO due to an amendment, are required to complete the following Pledge of Compliance ("**POC**"):

(a) comply with all applicable federal state, and local laws and regulations in the performance of the contract, including but not limited to laws regarding health and safety, labor and employment, wage and hour, and licensing laws which affect employees;

(b) notify the awarding authority within thirty (30) calendar days after receiving notification that any government agency has initiated an investigation that may result in a finding that the lessee or licensee did not comply with subparagraph (1) above in the performance of the lease or license;

(c) notify the awarding authority within thirty (30) calendar days of all findings by a government agency or court of competent jurisdiction that the lessee or licensee has violated subparagraph (1) above in the performance of the lease or license;

(d) ensure within thirty (30) days (or such shorter time as may be required by the awarding authority) that subcontractors working on the lease or license submit a POC to the awarding authority signed under penalty of perjury; and

(e) ensure that subcontractors working on the lease or license abide by the requirements of the POC and the requirement to notify the awarding authority within thirty (30) calendar days that any government agency or court of competent jurisdiction has initiated an investigation or has found that the subcontractor has violated subparagraph (1) above in the performance of the lease or license.

Tenant shall ensure that its subcontractors meet the criteria for responsibility set forth in the CRO and any rules and regulations promulgated thereto. Tenant may not use any subcontractor that has been determined or found to be a non-responsible contractor by City. Subject to approval by the awarding authority, Tenant may substitute a non-responsible subcontractor with another subcontractor with no change in the consideration for this Lease. Tenant shall submit to City a Pledge of Compliance, as attached hereto in Exhibit C, for each subcontractor listed by the Tenant in its Questionnaire, as performing work on this Lease within thirty (30) calendar days of execution of this Lease, unless the Department of General Services requires in its discretion the submission of a Pledge of Compliance within a shorter time period. The signature of Tenant shall constitute a declaration under penalty of perjury that Tenant shall comply with the POC.

B. Update of Information. Tenant shall:

(a) notify the awarding authority within thirty (30) calendar days after receiving notification that any governmental agency has initiated an investigation that may result in a finding that Tenant did not comply with any applicable federal, state, or local law in the performance of this Lease, including but not limited to laws regarding health and safety, labor and employment, wage and hour, and licensing laws which affect employees;

(b) notify the awarding authority within thirty (30) calendar days of receiving notice of any findings by a government agency or court of competent jurisdiction that Tenant violated any applicable federal, state, or local law in the performance of this Lease, including but not limited to laws regarding health and safety, labor and employment, wage and hour, and licensing laws which affect employees; and

(c) notify the awarding authority within thirty (30) calendar days of becoming aware of any information regarding its subcontractors and investigations or findings regarding the subcontractor's violations of any applicable federal, state, or local law in the performance of this Lease, including but not limited to laws regarding health and safety, labor and employment, wage and hour, and licensing laws which affect employees.

Updates of information contained in Tenant's responses to the Questionnaire must be submitted to the awarding authority within thirty (30) days of any changes to the responses if the change would affect Tenant's fitness and ability to continue performing this Lease. Notwithstanding the above, Tenant shall not be required to provide updates to the Questionnaire if Tenant became subject to the CRO solely because of an amendment to the original lease or license. Tenant shall cooperate in any investigation pursuant to CRO by providing such information as shall be requested by City. Tenant agrees that City may keep the identity of any complainant confidential. Tenant shall ensure that subcontractors who perform work on this Lease abide by these same updating requirements including the requirement to:

(1) notify the awarding authority within thirty (30) calendar days after receiving notification that any government agency has initiated an investigation which may result in a finding that the subcontractor did not comply with any applicable federal, state, or local law in the performance of this Lease, including but not limited to laws regarding health and safety, labor and employment, wage and hour, and licensing laws which affect employees; and

(2) notify the awarding authority within thirty (30) calendar days of all findings by a government agency or court of competent jurisdiction that the subcontractor violated any applicable federal, state, or local law in the performance of this Lease, including but not limited to laws regarding health and safety, labor and employment, wage and hour, and licensing laws which affect employees.

The requirement that Tenant provide Questionnaires and updates to Questionnaire responses does not apply to subcontractors.

C. **Compliance; Termination Provisions and Other Remedies.** If Tenant is not initially exempt from the CRO, Tenant shall comply with all of the provisions of the CRO and this Lease. If Tenant is initially exempt from the CRO, but later no longer qualifies for such exemption, Tenant shall, at such time Tenant is no longer exempt, comply with the provisions of the CRO and this Lease. Failure to comply with the provisions of the CRO, including without limitation the requirements that all responses to the Questionnaire are complete and accurate, to provide updates as provided

therein and to correct any deficiencies within ten (10) days of notice by City, or failure to comply with the provisions of this Lease shall constitute a material breach of this Lease.

F. **Slavery Disclosure Ordinance.** This Lease is subject to the applicable provisions of the Slavery Disclosure Ordinance. ("SDO") (Section 10.41, et seq, of the Los Angeles Administrative Code), a copy of which is attached hereto as Exhibit C. Unless otherwise exempt in accordance with the provision of this Ordinance, Landlord certifies that it has complied with the applicable provisions of the Ordinance. Under the provisions of Section 10.41.2(b) of the Los Angeles Administrative Code, City has the authority, under appropriate circumstances, to terminate this Ground Lease and otherwise pursue legal remedies that may be available to City if City determines that the Landlord failed to fully and accurately complete the SDO affidavit or otherwise violated any provision of the SDO.

G. Equal Benefits Provisions. This Lease is subject to Section 10.8.2.1, Article 1, Chapter 1, Division 10 of the Los Angeles Administrative Code ("Equal Benefits Provisions") related to equal benefits to employees, a copy of which is attached hereto in Exhibit C. Lessee agrees to comply with the provisions of Section 10.8.2.1. By way of specification but not limitation, pursuant to Section 10.8.2.1.c of the Los Angeles Administrative Code, the failure of Lessee to comply with the Equal Employment Practices provisions of this Lease may be deemed to be a material breach of this Lease. No such finding shall be made or penalties assessed except upon a full and fair hearing after notice and an opportunity to be heard has been given to Lessee. Upon a finding duly made that Lessee has failed to comply with the Equal Employment Practices provisions of this Lease, this Lease may be forthwith terminated.

H. **Tax Registration Certificates And Tax Payments.** This Section is applicable where Tenant is engaged in business within the City of Los Angeles and Tenant is required to obtain a Tax Registration Certificate ("TRC") pursuant to one or more of the following articles (collectively "Tax Ordinances") of Chapter II of the Los Angeles Municipal Code: Article 1 (Business Tax Ordinance) [Section 21.00, et seq.], Article 1.3 (Commercial Tenant's Occupancy Tax) [section 21.3.1, et seq.], Article 1.7 (Transient Occupancy Tax) [Section 21.7.1, et seq.], Article 1.11 (Payroll Expense Tax) [section 21.11.1, et seq.], or Article 1.15 (Parking Occupancy Tax) [Section 21.15.1, et seq.]. Prior to the execution of this Lease, or the effective date of any extension of the Term or renewal of this Lease, Tenant shall provide to the Department of General Services proof satisfactory to the General Manager of the Department of General Services that Tenant has the required TRCs and that Tenant is not then currently delinquent in any tax payment required under the Tax Ordinances. City may terminate this Lease upon thirty (30) days' prior written notice to Tenant if City determines that Tenant failed to have the required TRCs or was delinquent in any tax payments required under the Tax Ordinances at the time of entering into, extending the Term of, or renewing this Lease. City may also terminate this Lease upon ninety (90) days prior written notice to Tenant at any time during the Term of this Lease if Tenant fails to maintain required TRCs or becomes delinquent in tax payments required under the Tax Ordinances and Tenant fails to cure such deficiencies within the ninety (90) day period (in lieu of any time for cure provided in Section 15).

I. **Ordinance Language Governs.** Exhibit C is provided as a convenience to the parties only; in the event of a discrepancy between Exhibit C and the applicable ordinance language, as amended, the language of the ordinance shall govern. Tenant understands and agrees that said ordinances may be amended from time to time and that all such amendments shall apply to this Lease.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

Executed this ______________ day

of __________________________, 20___

THE CITY OF LOS ANGELES, a municipal corporation, acting by and through its Board of Recreation and Park Commissioners

By ______________________________
PRESIDENT

By ______________________________
SECRETARY

Executed this ______________ day

of __________________________, 20___

COMPANY NAME

By ______________________________
PRESIDENT

By ______________________________
SECRETARY

Approved as to Form:

Date: ____________________________

CARMEN A. TRUTANICH,
City Attorney

By ______________________________
SR. ASSISTANT CITY ATTORNEY

EXHIBIT A:

CITY ORDINANCE MANDATES CHILD SUPPORT ASSIGNMENT ORDERS ORDINANCE

Los Angeles Administrative Code

(Applicable portions)

Sec. 10.10 Child Support Assignment Orders

Sec. 10.10 Child Support Assignment Orders.

a. **Definitions.**

1. **Awarding Authority** means a subordinate or component entity or person of the City (such as a City department or Board of Commissioners) that has the authority to enter into a contract or agreement for the provision of goods or services on behalf of the City of Los Angeles.

2. **Contract** means any agreement, franchise, lease or concession including an agreement for any occasional professional or technical personal services, the performance of any work or service, the provision of any materials or supplies, or the rendering of any service to the City of Los Angeles or to the public which is let, awarded, or entered into with, or on behalf of, the City of Los Angeles or any awarding authority thereof.

3. **Contractor** means any person, firm, corporation, partnership or any combination thereof which submits a bid or proposal or enters a contract with any awarding authority of the City of Los Angeles.

4. **Subcontractor** means any person, firm, corporation, partnership or any combination thereof who enters into a contract with a contractor to perform or provide a portion of any contract with the City.

5. **Principal Owner** means any person who owns an interest of 10 percent or more in a contractor or subcontractor as defined herein.

b. **Mandatory Contract Provisions.**

Every contract that is let, awarded or entered into with or on behalf of the City of Los Angeles shall contain a provision obligating the contractor or subcontractor to fully comply with all applicable State and Federal employment reporting requirements for the contractor or subcontractor's employees. The contractor or subcontractor will also be required to certify that the principal owner(s) thereof are in compliance with any Wage and Earnings Assignment Orders and Notices of Assignment applicable to them personally, that the contractor or subcontractor will fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments in accordance with California Family Code Section 5230 et seq. and that the contractor or subcontractor will maintain such compliance throughout the term of the contract.

Failure of a contractor or subcontractor to comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignments or Notices of Assignment or failure of the principal owner(s) to comply with Wage and Earnings Assignments or Notices of Assignment applicable to them personally shall constitute a default under the contract. Failure of the contractor or subcontractor or principal owner thereof to cure the default within 90 days of notice of such default by the City shall subject the contract to termination.

c. **Notice to Bidders.**

Each awarding authority shall be responsible for giving notice of the provisions of this ordinance to those who bid on, or submit proposals for, prospective contracts with the City.

d. **Current Contractor Compliance.**

Within 30 days of the operative date of this ordinance, the City, through its operating departments, shall serve upon existing contractors a written request that they and their subcontractors (if any) comply with all applicable State and Federal employment reporting requirements for the contractor and subcontractor's employees, that they certify that the principal owner(s) of the contractor and any subcontractor are in compliance with any Wage and Earnings Assignment Orders and Notices of Assignment applicable to them personally, that the contractor and subcontractor will fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments in accordance with California Family Code Sec. 5230 et seq. and that the contractor and subcontractor will maintain such compliance throughout the term of the contract.

ARTICLE HISTORY

Added by Ord. No. 172,401, eff. 2-13-99

SERVICE CONTRACT WORKER RETENTION ORDINANCE

LOS ANGELES ADMINISTRATIVE CODE
ARTICLE 10 SERVICE CONTRACT WORKER RETENTION

Article added by Ord. No. 170,784, Eff.1-13-96; amended by Ord. No. 171,004, Eff. 5-18-96.

Sec. 10.36 Findings and Statement of Policy.

The City awards many contracts to private firms to provide services to the public and to City government. The City also provides financial assistance and funding to others for the purpose of economic development or job growth. At the conclusion of the terms of a service contract with the City or with those receiving financial assistance from the City, competition results in the awarding of a service contract to what may be a different contractor. These new contracts often involve anticipated changes in different managerial skills, new technology or techniques, new themes or presentations, or lower costs.

The City expends grant funds under programs created by the federal and state governments. Such expenditures serve to promote the goals established for those programs by such governments and similar goals of the City. The City intends that the policies underlying this article serve to guide the expenditure of such funds to the extent allowed by the laws under which such grant programs are established.

Despite desired changes through the process of entering into new contracts, it is the experience of the City that reasons for change do not necessarily include a need to replace workers presently performing services who already have useful knowledge about the workplace where the services are performed.

Incumbent workers have already invaluable knowledge and experience with the work schedules, practices, and clients. The benefits of replacing these workers without such experiences decreases efficiency and results in a disservice to City and City financed or assisted projects.

Retaining existing service workers when a change in contractors occurs reduces the likelihood of labor disputes and disruptions. The reduction of the likelihood of labor disputes and disruptions results in the assured continuity of services to citizens who receive services provided by the City or by City financed or assisted projects.

It is unacceptable that contracting decisions involving the expenditure of City funds should have any potential effect of creating unemployment and the consequential need for social services. The City, as a principal provider of social support services, has an interest in the stability of employment under contracts with the City or by those receiving financial assistance from the City. The retention of existing workers benefits that interest.

SECTION HISTORY

Article and Section Added by Ord. No. 170,784, Eff. 1-13-96. Amended by: Article and Section, Ord. No. 171,004, Eff. 5-18-96.

Sec. 10.36.1. Definitions.

The following definitions shall apply throughout this article:

(a) "Awarding authority" means that subordinate or component entity or person of the City (such as a department) or of the financial assistance recipient that awards or is otherwise responsible for the administration of a service contract or, if none, then the City or the City financial assistance recipient.

(b) "City" means the City of Los Angeles and all awarding authorities thereof, including those City departments which exercise independent control over their expenditure of funds, but excludes the Community Redevelopment Agency of the City of Los Angeles.

(c) "City financial assistance recipient" means any person that receives from the City discrete financial assistance expressly articulated and identified by the City in excess of one hundred thousand dollars ($100,000), such as, through bond financing, planning assistance, tax increment financing, tax credits, or any other form of financial assistance if the purpose of such other form of assistance is economic development or job growth; provided, however, that Xs organized under Section § 501(c)(3) of the United States Internal Revenue Code of 1954, 26 U.S.C. § 501(c)(3), with annual operating budgets of less than five million dollars ($5,000,000) or that regularly employ homeless persons, persons who are chronically unemployed, or persons receiving public assistance, shall be exempt.

(d) "Contractor" means any person that enters into a service contract with the City or a City financial assistance recipient.

(e) "Employee" means any person employed as a service employee of a contractor or subcontractor earning less than fifteen dollars ($15.00) per hour in salary or wage whose primary place of employment is in the City on or under the authority of a service contract and including but not limited to: hotel employees, restaurant, food service or banquet employees; janitorial employees; security guards; parking attendants; nonprofessional health care employees; gardeners; waste management employees; and clerical employees; and does not include a person who is (1) a managerial, supervisory, or confidential employees, or (2) required to possess an occupational license.

(f) "Person" means any individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association, or other entity that may employ individuals or enter into contracts.

(g) "Service contract" means a contract let to a contractor by the City or a City financial assistance recipient primarily for the furnishing of services to or for the City or financial assistance recipient (as opposed to the purchase of goods or other property) and that involves an expenditure or receipt in excess of twenty-five thousand dollars ($25,000) and a contract term of at least three months.

(h) "Subcontractor" means any person not an employee that enters into a contract with a contractor to assist the contractor in performing a service contract and that employs employees for such purpose.

(i) "Successor service contract" means a service contract where the services to be performed are substantially similar to a service contract that has been recently terminated.

SECTION HISTORY

Added by Ord. No. 170,784, Eff. 1-13-96. Amended by: Ord. No. 171,004, Eff. 5-18-96.

Sec. 10.36.2. Transition Employment Period.

(a) Where an awarding authority has given notice that a service contract has been terminated, or where a service contractor has given notice of such termination, upon receiving or giving such notice, as the case may be, the terminated contractor shall within ten (10) days thereafter provide to the successor contractor the name, address, date of hire, and employment occupation classification of each employee in employment, of itself or subcontractors, at the time of contract termination. If the terminated contractor has not learned the identity of the successor contractor, if any, by the time that notice was given of contract termination, the terminated contractor shall obtain such information from the awarding authority. If a successor service contract has not been awarded by the end of the ten (10)-day period, the employment information referred to earlier in this subsection shall be provided to the awarding authority at such time. Where a subcontract of a service contract has been terminated prior to the termination of the service contract, the terminated subcontractor shall for purposes of this article be deemed a terminated contractor.

(1) Where a service contract or contracts are being let where the same or similar services were rendered by under multiple service contracts, the City or City financial aid recipient shall pool the employees, ordered by seniority within job classification, under such prior contracts.

(2) Where the use of subcontractors has occurred under the terminated contract or where the use of subcontractors is to be permitted under the successor contract, or where both circumstances arise, the City or City financial assistance recipient shall pool, when applicable, the employees, ordered by seniority within job classification, under such prior contracts or subcontracts where required by and in accordance with rules authorized by this article.

(b) A successor contractor shall retain, for a ninety (90)-day transition employment period, employees who have been employed by the terminated contractor or its subcontractors, if any, for the preceding twelve (12) months or longer. Where pooling of employees has occurred, the successor contractor shall draw from such pools in accordance with rules established under this article. During such ninety (90)-day period, employees so hired shall be employed under the terms and conditions established by the successor contractor (or subcontractor) or as required by law.

(c) If at anytime the successor contractor determines that fewer employees are required to perform the new service contract than were required by the terminated contractor (and subcontractors, if any), the successor contractor shall retain employees by seniority within job classification.

(d) During such ninety (90)-day period, the successor contractor (or subcontractor, where applicable) shall maintain a preferential hiring list of eligible covered employees not retained by the successor contractor (or subcontractor) from which the successor contractor (or subcontractor) shall hire additional employees.

(e) Except as provided in Subsection (c) of this section, during such ninety (90)-day period the successor contractor (or subcontractor, where applicable) shall not discharge without cause an employee retained pursuant to this article. "Cause" for this purpose shall include, but not be limited to, the employee's conduct while in the employ of the terminated contractor or subcontractor that contributed to any decision to terminate the contract or subcontract for fraud or poor performance.

(f) At the end of such ninety (90)-day period, the successor contractor (or subcontractor, where applicable) shall perform a written performance evaluation for each employee retained pursuant to this article. If the employee's performance during such ninety (90)-day period is satisfactory, the successor contractor (or subcontractor) shall offer the employee continued employment under the terms and conditions established by the successor contractor (or subcontractor) or as required by law. During such ninety (90)-day period, the successor contractor shall maintain a preferential hiring list of eligible covered employees not retained by the successor contractor from which the successor contractor shall hire additional employees.

(g) If the City or a City financial assistance recipient enters into a service contract for the performance of work that prior to the service contract was performed by the City's or the recipient's own service employees, the City or the recipient, as the case may be, shall be deemed to be a "terminated contractor" within the meaning of this section and the contractor under the service contract shall be deemed to be a "successor contractor" within the meaning of this section and Section 10.36.3.

SECTION HISTORY

Added by Ord. No. 170,784, Eff. 1-13-96. Amended by: Ord. No. 171,004, Eff. 5-18-96; Subsec. (g) Added, Ord. No. 172,349, Eff. 1-29-99.

Sec. 10.36.3. Enforcement.

(a) An employee who has been discharged in violation of this article by a successor contractor or its subcontractor may bring an action in the Municipal Court or Superior Court of the State of California, as appropriate, against the successor contractor and, where applicable, its subcontractor, and may be awarded:

(1) Back pay for each day during which the violation continues, which shall be calculated at a rate of compensation not less than the higher of:

(A) The average regular rate of pay received by the employee during the last 3 years of the employee's employment in the same occupation classification; or

(B) The final regular rate received by the employee.

(2) Costs of benefits the successor contractor would have incurred for the employee under the successor contractor's (or subcontractor's, where applicable) benefit plan.

(b) If the employee is the prevailing party in any such legal action, the court shall award reasonable attorney's fees and costs as part of the costs recoverable.

(c) Compliance with this article shall be required in all City contracts to which it applies, and such contracts shall provide that violation of this article shall entitle the City to terminate the contract and otherwise pursue legal remedies that may be available.

(d) Notwithstanding any provision of this Code or any other ordinance to the contrary, no criminal penalties shall attach for any violation of this article.

SECTION HISTORY

Added by Ord. No. 170,784, Eff. 1-13-96. Amended by: Ord. No. 171,004, Eff. 5-18-96.

Sec. 10.36.4. Exemption for Successor Contractor or Subcontractor's Prior Employees.

An awarding authority shall upon application by a contractor or subcontractor exempt from the requirements of this article a person employed by the contractor or subcontractor continuously for at least twelve (12) months prior to the commencement of the successor service contract or subcontract who is proposed to work on such contract or subcontract as an employee in a capacity similar to such prior employment, where the application demonstrates that (a) the person would otherwise be laid off work and (b) his or her retention would appear to be helpful to the contractor or subcontractor in performing the successor contract or subcontract. Once a person so exempted commences work under a service contract or subcontract, he or she shall be deemed an employee as defined in Section 10.36.1(e) of this Code.

SECTION HISTORY

Added by Ord. No. 170,784, Eff. 1-13-96. Amended by: Ord. No. 171,004, Eff. 5-18-96.

Sec. 10.36.5. Coexistence with Other Available Relief for Specific Deprivations of Protected Rights.

This article shall not be construed to limit an employee's right to bring legal action for wrongful termination.

SECTION HISTORY

Added by Ord. No. 170,784, Eff. 1-13-96. Amended by: Ord. No. 171,004, Eff. 5-18-96.

Sec. 10.36.6. Expenditures Covered by this Article.

This article shall apply to the expenditure, whether through service contracts let by the City or by its financial assistance recipients, of funds entirely within the City's control and to other funds, such as federal or state grant funds, where the application of this article is consonant with the laws authorizing the City to expend such other funds.

SECTION HISTORY

Added by Ord. No. 171,004, Eff. 5-18-96. Amended by: Ord. No. 172,337, Eff. 1-14-99.

Sec. 10.36.7. Timing of Application of Ordinances Adding and then Amending this Article.

The provisions of this article as set forth in City Ordinance No. 171,004 shall apply to contracts consummated and financial assistance provided after May 18, 1996 (the effective date of City Ordinance No. 171,004). As for contracts consummated and financial assistance provided after the original version of this article took effect on January 13, 1996 (by City Ordinance No. 170,784) and through May 18, 1996, the City directs its appointing authorities and urges others affected to use their best efforts to work cooperatively so as to allow application City Ordinance No. 171,004 rather than City Ordinance No. 170,784 to service contracts let during such period. No

abrogation of contract or other rights created by City Ordinance No. 170,784, absent consent to do so, shall be effected by the retroactive application of City Ordinance No. 171,004.

SECTION HISTORY
Added by Ord. No. 170,784, Eff. 1-13-96. Amended by: Ord. No. 171,004, Eff. 5-18-96; Ord. No. 172,337, Eff. 1-14-99.

Sec. 10.36.8. Promulgation of Implementing Rules.
The City Council shall by resolution designate a department or office, which shall promulgate rules for implementation of this article and otherwise coordinate administration of the requirements of this article.

SECTION HISTORY
Added by Ord. No. 171,004, Eff. 5-18-96.

Sec. 10.36.9. Severability.
If any severable provision or provisions of this article or any application thereof is held invalid, such invalidity shall not affect other provisions or applications of the article that can be given effect notwithstanding such invalidity.

SECTION HISTORY
Added by Ord. No. 171,004, Eff. 5-18-96.

LIVING WAGE ORDINANCE

DEPARTMENTAL DETERMINATION OF COVERAGE UNDER THE LIVING WAGE ORDINANCE

This form must be completed by the department and attached to the proposed contract, lease, license, or Authority for Expenditure that includes a Letter of Agreement, in the review process (e.g., CAO Budget Analyst, City Attorney, etc.). If the contract/agreement is "subject" to the LWO, a signed Declaration of Compliance must also be attached; or, if the contract/agreement is "not covered" or "exempt," an Exemption form approved by the CAO. Upon contract execution, these documents must be provided to the CAO, Living Wage Section and the City Controller (see exceptions below). Payment to the contractor will not be processed unless the required documents are on file.

Department Board of Recreation and Park Commissioners **Dept. Rep.** Joel Alvarez

Date **Phone** (213) 978-0185

Contractor LANLT, a nonprofit **public benefit corporation** **Contract #**

This is a: New Contract **Renewal Contract** **Amended Contract** **Successor Contract** **Other(explain)**

If this is a Successor Contract, with employees paid less than $15 per hour, did the department comply with the Service Contract Worker Retention Ordinance? **Yes** **No**

Contracts, Leases and Licenses Subject to the Living Wage Ordinance

	LAAC	Covered	Not Covered
Service contract (at least 3 months and over $25,000)	10.37.1(j)		*
Proprietary leases or licenses	10.37.1(i)		*

Other leases or licenses	10.37.1(i)		______ *
City financial assistance recipient (see below)	10.37.1(c)	______	______
Child care workers with non-profit organization	10.37.1(g)	______	
Non-profit organization under IRS 501(c)(3) w/ chief executive officer salary greater than 8 times lowest paid worker	10.37.1(g)	______	
Business Improvement Districts (BIDs), City or grant funds	Reg. 11	______	

Contracts, Leases and Licenses Exempt from the Living Wage Ordinance

An Awarding Authority or Bidder Request for Non-Coverage or Exemption must be attached to all of the following contracts, leases, licenses or AFE's that the Awarding Department has determined to be exempt from coverage:

Amount		Exempt	Term
Service contract (less than 3 months or $25,000 or less)	10.37.1(j)	❖	
Other governmental entity	10.37.1(g)	______ ❖	
Purchase or rental of goods, equipment, property	10.37.1(j)	______ ✪	
Construction contract	10.37.1(j)	______ ✪	
Occupational license required	10.37.1(f)	______	
Collective bargaining agreement w/ LWO supersession language	10.37.12	______	
Financial assistance recipient	10.37.1(c)		
Below $1,000,000 in 12 months		______	
At least $100,000 assistance/year (non-continuing)		______	
First year of operation		______	
Other than economic development or job growth		______	
Economic hardship (only applicable to employers of long-term unemployed, or provide training for preparation for permanent employment; requires Council approval)		______	
Non-profit organization under IRS 501(c)(3) w/ chief executive officer salary less than 8 times lowest paid worker	10.37.1(g)	______	
Proprietary lessee or licensee w/ less than $200,000 gross revenue and no more than 7 employees	10.37.1(i)	______	
One person contractors, lessee, licensee, financial assistance recipient with no workers	10.37.1(f)	______	
Business Improvement Districts (BIDs), assessment monies	Reg. 11	______	

*** Complete Exemption Form.**

❖ No Exemption Form is required.

✪ This Form Does NOT need to be completed for these contracts.

CITY OF LOS ANGELES

Office of the City Administrative Officer
Living Wage Section
111 North Hope Street, Room 625
Los Angeles, CA 90012

DECLARATION OF COMPLIANCE
Service Contract Worker Retention Ordinance and the Living Wage Ordinance

Los Angeles Administrative Code (LAAC) Sections 10.36 et seq. and 10.37 et seq. provide that all employers (except where specifically exempted) under contracts primarily for the furnishing of services to or for the City and that involve an expenditure in excess of $25,000 and a contract term of at least three months; leases; licenses; or certain recipients of City financial assistance shall comply with all applicable provisions of the Ordinances.

During the performance of this agreement, the contractor, lessee, licensee, or City financial assistance recipient certifies that it shall comply and require each subcontractor hereunder to comply with the provisions of the above referenced Ordinances. The contractor shall provide to the City a list of all subcontractors and a list of all employees under the agreement (including employees of subcontractors) within 10 days after execution. The list of employees shall include the name, position classifications and rate of pay for each employee. An updated list shall be submitted upon demand and upon termination of the contract. A completed Declaration of Compliance from each subcontractor subject to the Living Wage Ordinance must be provided to the City Administrative Officer within 90 days of execution of the subcontract. In case of a successor service contract, a successor contractor shall retain for a 90-day transition employment period employees who have been employed by the terminated contractor or its subcontractor, if any, for the preceding 12 months or longer, pursuant to Section 10.36.2.

The contractor, lessee, licensee, or City financial assistance recipient further agrees:

(a) To pay covered employees a wage no less than the minimum initial compensation of $7.51 per hour (adjusted July 1, 1999) with health benefits, as referred to in (c) below, or otherwise $8.76 per hour (adjusted July 1, 1999), pursuant to Section 10.37.2(a). Such rates shall be adjusted annually and shall become effective July 1;

(b) To provide at least 12 compensated days off per year for sick leave, vacation, or personal necessity at the employee's request, and at least 10 additional days per year of uncompensated time off pursuant to Section 10.37.2(b) and Regulation 4(e)(3);

(c) Where so elected under (a) above, to pay at least $1.25 per hour per employee toward the provision of health benefits for the employees and their dependents pursuant to Section 10.37.3;

(d) To inform employees making less than $12 per hour of their possible right to the federal Earned Income Tax Credit (EITC) and make available the forms required to secure advance EITC payments from the employer pursuant to Section 10.37.4;

(e) To permit access to work sites for authorized City representatives to review the operation, payroll and related documents, and to provide certified copies of the relevant records upon request by the City; and

(f) Not to retaliate against any employee claiming non-compliance with the provisions of these Ordinances and to comply with federal law prohibiting retaliation for union organizing.

Failure to complete and submit this form to the Awarding Authority and to the City Administrative Officer may result in withholding of payments by the City Controller, or contract termination.

☐ **Check box <u>only</u> if applicable: I certify under penalty of perjury that I do not have any employees earning less than $15 per hour working on this City agreement.**

Company Name	Signature of Officer or Authorized Representative
LANLT	
Company Address and Phone Number	Type or Print Name and Title

Date	Contract Number	Awarding City Department	Type of Service
		Bd. of Rec. and Parks Commissioners	Lessee

Form CAO/LW-5 Rev. 7/27/99

LOS ANGELES ADMINISTRATIVE CODE
ARTICLE 11 LIVING WAGE

Article added by Ord. No. 171,547, Eff. 5-5-97; amended by Ord. No. 172,337, Eff. 1-14-99.

Sec. 10.37. Legislative Findings.

The City awards many contracts to private firms to provide services to the public and to City government. The City also provides financial assistance and funding to others for the purpose of economic development or job growth. The City expends grant funds under programs created by the federal and state governments. Such expenditures serve to promote the goals established for those programs by such governments and similar goals of the City. The City intends that the policies underlying this article serve to guide the expenditure of such funds to the extent allowed by the laws under which such grant programs are established.

Experience indicates that procurement by contract of services has all too often resulted in the payment by service contractors to their employees of wages at or slightly above the minimum required by federal and state minimum wage laws. Such minimal compensation tends to inhibit the quantity and quality of services rendered by such employees, to the City and to the public. Underpaying employees in this way fosters high turnover, absenteeism, and lackluster performance. Conversely, adequate compensation promotes amelioration of these undesirable conditions. Through this article the City intends to require service contractors to provide a minimum level of compensation that will improve the level of services rendered to and for the City.

The inadequate compensation typically paid today also fails to provide service employees with resources sufficient to afford life in Los Angeles. It is unacceptable that contracting decisions involving the expenditure of City funds should foster conditions placing a burden on limited social services. The City, as a principal provider of social support services, has an interest in promoting an employment environment that protects such limited resources. In requiring the payment of a higher minimum level of compensation, this article benefits that interest.

Nothing less than the living wage should be paid by the recipients of City financial assistance themselves. Whether they be engaged in manufacturing or some other line of business, the City does not wish to foster an economic climate where a lesser wage is all that is offered to the working poor. The same adverse social consequences from such inadequate compensation emanate just as readily from manufacturing, for example, as service industries. This article is meant to protect these employees as well.

The City holds a proprietary interest in the work performed by many employees employed by lessees and licensees of City property and by their service contractors and subcontractors. In a very real sense, the success or failure of City operations may turn on the success or failure of these enterprises, for the City has a genuine stake in how the public perceives the services rendered for them by such businesses. Inadequate compensation of these employees adversely impacts the performance by the City's lessee or licensee and thereby does the same for the success of City operations. By the 1998 amendment to this article, recognition is given to the prominence of this interest at those facilities visited by the public on a frequent basis, including but not limited to, terminals at Los Angeles International Airport, Ports O'Call Village in San Pedro, and golf courses and recreation centers operated by the Department of Recreation and Parks. This article is meant to cover all such employees not expressly exempted.

Requiring payment of the living wage serves both proprietary and humanitarian concerns of the City. Primarily because of the latter concern and experience to date regarding the failure of some employers to honor their obligation to pay the living wage, the 1998 amendments introduce additional enforcement mechanisms to ensure compliance with this important obligation. Non-complying employers must now face the prospect of paying civil penalties, but only if they fail to cure non-compliance after having been given formal notice thereof. Where non-payment is the issue, employers who dispute determinations of non-compliance may avoid civil penalties as well by paying into a City holding account the monies in dispute. Employees should not fear retaliation, such as by losing their jobs, simply because they claim their right to the living wage, irrespective of the accuracy of the claim. The 1998 amendments strengthen the prohibition against retaliation to serve as a critical shield against such employer misconduct.

Sec. 10.37.1. Definitions.

The following definitions shall apply throughout this article:

(a) "Awarding authority" means that subordinate or component entity or person of the City (such as a department) or of the financial assistance recipient that awards or is otherwise responsible for the administration of a service contract or proprietary lease or license, or, where there is no such subordinate or component entity or person, then the City or the City financial assistance recipient.

(b) "City" means the City of Los Angeles and all awarding authorities thereof, including those City departments which exercise independent control over their expenditure of funds, but excludes the Community Redevelopment Agency of the City of Los Angeles ("CRA"). The CRA is urged, however, to adopt a policy similar to that set forth in this article.

(c) "City financial assistance recipient" means any person who receives from the City discrete financial assistance for economic development or job growth expressly articulated and identified by the City, as contrasted with generalized financial assistance such as through tax legislation, in accordance with the following monetary limitations. Assistance given in the amount of one million dollars ($1,000,000) or more in any twelve-month period shall require compliance with this article for five years from the date such assistance reaches the one million dollar ($1,000,000) threshold. For assistance in any twelve-month period totaling less than one million dollars ($1,000,000) but at least one hundred thousand dollars ($100,000), there shall be compliance for one year if at least one hundred thousand dollars ($100,000) of such assistance is given in what is reasonably contemplated at the time to be on a continuing basis, with the period of compliance beginning when the accrual during such twelve-month period of such continuing assistance reaches the one-hundred thousand dollar ($100,000) threshold.

Categories of such assistance include, but are not limited to, bond financing, planning assistance, tax increment financing exclusively by the City, and tax credits, and shall not include assistance provided by the Community Development Bank. City staff assistance shall not be regarded as financial assistance for purposes of this article. A loan shall not be regarded as financial assistance. The forgiveness of a loan shall be regarded as financial assistance. A loan shall be regarded as financial assistance to the extent of any differential between the amount of the loan and the present value of the payments thereunder, discounted over the life of the loan by the applicable federal rate as used in 26 U.S.C. §§1274(d), 7872(f). A recipient shall not be deemed to include lessees and sublessees.

A recipient shall be exempted from application of this article if (1) it is in its first year of existence, in which case the exemption shall last for one (1) year, (2) it employs fewer than five (5) employees for each working day in each of twenty (20) or more calendar weeks in the current or preceding calendar year, or (3) it obtains a waiver as provided herein. A recipient — who employs the long-term unemployed or provides trainee positions intended to prepare employees for permanent positions, and who claims that compliance with this article would cause an economic hardship — may apply in writing to the City department or office administering such assistance, which department or office which shall forward such application and its recommended action on it to the City Council. Waivers shall be effected by Council resolution.

(d) "Contractor" means any person that enters into (1) a service contract with the City, (2) a service contract with a proprietary lessee or licensee or sublessee or sublicensee, or (3) a contract with a City financial assistance recipient to assist the recipient in performing the work for which the assistance is being given. Vendors, such as service contractors, of City financial assistance recipients shall not be regarded as contractors except to the extent provided in subsection (f).

(e) "Designated administrative agency (DAA)" means that City department or office designated by Council resolution to bear administrative responsibilities under section 10.37.7. The City Clerk shall maintain a record of such designations.

(f) "Employee" means any person — who is not a managerial, supervisory, or confidential employee and who is not required to possess an occupational license — who is employed (1) as a service employee of a contractor or subcontractor on or under the authority of one or more service contracts and who expends any of his or her time thereon, including but not limited to: hotel employees, restaurant, food service or banquet employees; janitorial employees; security guards; parking attendants; nonprofessional health care employees; gardeners; waste management employees; and clerical employees; (2) as a service employee -- of a proprietary lessee or licensee, of a sublessee or sublicensee -- who works on the leased or licensed premises; (3) by a City financial assistance recipient who expends at least half of his or her time on the funded project, or (4) by a service contractor or subcontractor of a City financial assistance recipient and who expends at least half of his or her time on the premises of the City financial assistance recipient directly involved with the activities funded by the City.

(g) "Employer" means any person who is a City financial assistance recipient, contractor, subcontractor, proprietary lessee, proprietary sublessee, proprietary licensee, or proprietary sublicensee and who is required to have a business tax registration certificate by Los Angeles Municipal Code §§21.00-21.198 or successor ordinance or, if expressly exempted by the Code from such tax, would otherwise be subject to the tax but for such exemption; provided, however, that corporations organized under §501(c)(3) of the United States Internal Revenue Code of 1954, 26 U.S.C. §501(c)(3), whose chief executive officer earns a salary which, when calculated on an hourly basis, is less than eight (8) times the lowest wage paid by the corporation shall be exempted as to all employees other than child care workers.

(h) "Person" means any individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association, or other entity that may employ individuals or enter into contracts.

(i) "Proprietary lease or license" means a lease or license of City property on which services are rendered by employees of the proprietary lessee or licensee or sublessee or sublicensee, or of a contractor or subcontractor, but only where any of the following applies: (1) the services are rendered on premises at least a portion of which is visited by substantial members of the public on a frequent basis (including, but not limited to, airport passenger terminals, parking lots, golf courses, recreational facilities), (2) any of the services could feasibly be performed by City employees if the awarding authority had the requisite financial and staffing resources, or (3) the DAA has determined in writing that coverage would further the proprietary interests of the City; provided, however, that a proprietary lessee or licensee having annual gross revenues of less than two-hundred thousand dollars ($200,000) from business conducted on the premises and employing no more than seven (7) employees will be exempt from this article, except that for proprietary leases or licenses having a term of more than two (2) years, the exemption shall expire after two (2) years but shall be renewable in two-year increments upon meeting the requirements therefor at the time of the renewal application. To qualify for this exemption, the proprietary lessee or licensee must provide proof of its gross revenues and number of employees to the awarding authority of the proprietary lease or license as required by regulation. The determination of whether annual gross revenues are less than two-hundred thousand dollars ($200,000) shall be based on the gross revenues for the last tax year prior to application or such other period as may be established by regulation. Such annual gross revenue ceiling of two-hundred thousand dollars ($200,000) shall be adjusted annually at the same rate and at the same time as the living wage is adjusted under section 10.37.2(a). A proprietary lessee or licensee shall be deemed to be employing no more than seven (7) employees if its workforce worked an average of no more than one-thousand, two-hundred, and fourteen (1214) hours per month for at least three-fourths of the time period upon which the revenue limitation is measured. Proprietary "leases" and "licenses" shall be deemed to include subleases and sublicenses. Proprietary "lessees" and "licensees" shall be deemed to include their sublessees and sublicensees.

(j) "Service contract" means a contract let to a contractor by the City primarily for the furnishing of services to or for the City (as opposed to the purchase of goods or other property or the leasing or renting of property) and that involves an expenditure in excess of twenty-five thousand dollars ($25,000) and a contract term of at least three (3) months; but only where any of the following applies: (1) at least some of the services rendered are rendered by employees whose work site is on property owned by the City, (2) the services could feasibly be performed by City employees if the awarding authority had the requisite financial and staffing resources, or (3) the DAA has determined in writing that coverage would further the proprietary interests of the City.

(k) "Subcontractor" means any person not an employee that enters into a contract (and that employs employees for such purpose) with (1) a contractor or subcontractor to assist the contractor in performing a service contract or (2) a contractor or subcontractor of a proprietary lessee or licensee or sublessee or sublicensee to perform or assist in performing services on the leased or licensed premises. Vendors, such as service contractors or subcontractors, of City financial assistance recipients shall not be regarded as subcontractors except to the extent provided in subsection (f).

(l) "Willful violation" means that the employer knew of his, her, or its obligations under this article and deliberately failed or refused to comply with its provisions.

Sec. 10.37.2. Payment of Minimum Compensation to Employees.

(a) Wages.

Employers shall pay employees a wage of no less than the hourly rates set under the authority of this article. The initial rates were seven dollars and twenty-five cents ($7.25) per hour with health benefits, as described in this article, or otherwise eight dollars and fifty cents ($8.50) per hour. With the annual adjustment effective July 1, 1998, such rates were adjusted to seven dollars and thirty-nine cents ($7.39) per hour with health benefits and eight dollars and sixty-four cents ($8.64) without. Such rates shall continue to be adjusted annually to correspond with adjustments, if any, to retirement benefits paid to members of the City Employees Retirement System ("CERS"), made by the CERS Board of Administration under §4.1040. The City Administrative Office shall so advise the DAA of any such change by June 1 of each year and of the required new hourly rates, if any. On the basis of such report the DAA shall publish a bulletin announcing the adjusted rates, which shall take effect upon such publication.

(b) Compensated days off.

Employers shall provide at least twelve compensated days off per year for sick leave, vacation, or personal necessity at the employee's request. Employers shall also permit employees to take at least an additional ten days a year of uncompensated time to be used for sick leave for the illness of the employee or a member of his or her immediate family where the employee has exhausted his or her compensated days off for that year.

Sec. 10.37.3. Health Benefits.

Health benefits required by this article shall consist of the payment of at least one dollar and twenty-five cents ($1.25) per hour towards the provision of health care benefits for employees and their dependents. Proof of the provision of such benefits must be submitted to the awarding authority to qualify for the wage rate in section 10.37.2(a) for employees with health benefits.

Sec. 10.37.4. Notifying Employees of their Potential Right to the Federal Earned Income Credit.

Employers shall inform employees making less than twelve dollars ($12) per hour of their possible right to the federal Earned Income Credit ("EIC") under §32 of the Internal Revenue Code of 1954, 26 U.S.C. §32, and shall make available to employees forms informing them about the EIC and forms required to secure advance EIC payments from the employer.

Sec. 10.37.5. Retaliation Prohibited

Neither an employer, as defined in this article, nor any other person employing individuals shall discharge, reduce in compensation, or otherwise discriminate against any employee for complaining to the City with regard to the employer's compliance or anticipated compliance with this article, for opposing any practice proscribed by this article, for participating in proceedings related to this article, for seeking to enforce his or her rights under this article by any lawful means, or for otherwise asserting rights under this article.

Sec. 10.37.6. Enforcement.

(a) An employee claiming violation of this article may bring an action in the Municipal Court or Superior Court of the State of California, as appropriate, against an employer and may be awarded:

(1) For failure to pay wages required by this article -- back pay for each day during which the violation continued.

(2) For failure to pay medical benefits -- the differential between the wage required by this article without benefits and such wage with benefits, less amounts paid, if any, toward medical benefits.

(3) For retaliation -- reinstatement, back pay, or other equitable relief the court may deem appropriate.

(4) For willful violations, the amount of monies to be paid under (1) - (3) shall be trebled.

(b) The court shall award reasonable attorney's fees and costs to an employee who prevails in any such enforcement action and to an employer who so prevails if the employee's suit was frivolous.

(c) Compliance with this article shall be required in all City contracts to which it applies, and such contracts shall provide that violation of this article shall constitute a material breach thereof and entitle the City to terminate the contract and otherwise pursue legal remedies that may be available. Such contracts shall also include a pledge that there shall be compliance with federal law proscribing retaliation for union organizing.

(d) An employee claiming violation of this article may report such claimed violation to the DAA which shall investigate such complaint. Whether based upon such a complaint or otherwise, where the DAA has determined that an employer has violated this article, the DAA shall issue a written notice to the employer that the violation is to be corrected within ten (10) days. In the event that the employer has not demonstrated to the DAA within such period that it has cured such violation, the DAA may then:

(1) Request the awarding authority to declare a material breach of the service contract, proprietary lease or license, or financial assistance agreement and exercise its contractual remedies thereunder, which are to include, but not be limited to, termination of the service contract, proprietary lease or license, or financial assistance agreement and the return of monies paid by the City for services not yet rendered.

(2) Request the City Council to debar the employer from future City contracts, leases, and licenses for three (3) years or until all penalties and restitution have been fully paid, whichever occurs last. Such debarment shall be to the extent permitted by, and under whatever procedures may be required by, law.

(3) Request the City Attorney to bring a civil action against the employer seeking:

(i) Where applicable, payment of all unpaid wages or health premiums prescribed by this article; and/or

(ii) A fine payable to the City in the amount of up to one hundred dollars ($100) for each violation for each day the violation remains uncured.

Where the alleged violation concerns non-payment of wages or health premiums, the employer will not be subject to debarment or civil penalties if it pays the monies in dispute into a holding account maintained by the City for such purpose. Such disputed monies shall be presented to a neutral arbitrator for binding arbitration. The arbitrator shall determine whether such monies shall be disbursed, in whole or in part, to the employer or to the employees in question. Regulations promulgated by the DAA shall establish the framework and procedures of such arbitration process. The cost of arbitration shall be borne by the City, unless the arbitrator determines that the employer's position in the matter is frivolous, in which event the arbitrator shall assess the employer for the full cost of the arbitration. Interest earned by the City on monies held in the holding account shall be added to the principal sum deposited, and the monies shall be disbursed in accordance with the arbitration award. A service charge for the cost of account maintenance and service may be deducted therefrom.

(e) Notwithstanding any provision of this Code or any other ordinance to the contrary, no criminal penalties shall attach for any violation of this article.

Sec. 10.37.7. Administration.
The City Council shall by resolution designate a department or office, which shall promulgate rules for implementation of this article and otherwise coordinate administration of the requirements of this article ("designated administrative agency" - DAA). The DAA shall monitor compliance, including the investigation of claimed violations, and shall promulgate implementing regulations consistent with this article. The DAA shall also issue determinations that persons are City financial assistance recipients, that particular contracts shall be regarded as "service contracts" for purposes of section 10.37.1(j), and that particular leases and licenses shall be regarded as "proprietary leases" or "proprietary licenses" for the purposes of section 10.27.1(j), when it receives an application for a determination of non-coverage or exemption as provided for in section 10.37.13. The DAA shall also establish employer reporting requirements on employee compensation and on notification about and usage of the federal Earned Income Credit referred to in §10.37.4. The DAA shall report on compliance to the City Council no less frequently than annually.

During the first, third, and seventh years of this article's operation since May 5, 1997, and every third year thereafter, the Chief Administrative Officer and the Chief Legislative Analyst shall conduct or commission an evaluation of this article's operation and effects. The evaluation shall specifically address at least the following matters: (a) how extensively affected employers are complying with the article; (b) how the article is affecting the workforce composition of affected employers; (c) how the article is affecting productivity and service quality of affected employers; (d) how the additional costs of the article have been distributed among workers, their employers, and the City. Within ninety days of the adoption of this article, these offices shall develop detailed plans for evaluation, including a determination of what current and future data will be needed for effective evaluation.

Sec. 10.37.8. Exclusion of Service Contracts from Competitive Bidding Requirement.
Service contracts otherwise subject to competitive bid shall be let by competitive bid if they involve the expenditure of at least two million dollars ($2,000,000). Charter §387 shall not be applicable to service contracts.

Sec. 10.37.9. Coexistence with Other Available Relief for Specific Deprivations of Protected Rights.
This article shall not be construed to limit an employee's right to bring legal action for violation of other minimum compensation laws.

Sec. 10.37.10. Expenditures Covered.
This article shall apply to the expenditure — whether through aid to City financial assistance recipients, service contracts let by the City, or service contracts let by its financial assistance recipients — of funds entirely within the City's control and to other funds, such as federal or state grant funds, where the application of this article is consonant with the laws authorizing the City to expend such other funds.

Sec. 10.37.11 Timing of Application.
(a) Original 1997 ordinance.

The provisions of this article as enacted by City ordinance no. 171,547, effective May 5, 1997, shall apply to (1) contracts consummated and financial assistance provided after such date, (2) contract amendments consummated after such date and before the effective date of the 1998 ordinance which themselves meet the requirements of former section 10.37.1(h) (definition of "service contract") or which extended contract duration, and (3) supplemental financial assistance provided after such date which itself met the requirements of section 10.37.1(c).

(b) 1998 amendment.

The provisions of this article as amended by the 1998 ordinance shall apply to (1) service contracts, proprietary leases or licenses, and financial assistance agreements consummated after the effective date of such ordinance and (2) amendments, consummated after the effective date of such ordinance, to service contracts, proprietary leases or licenses, and financial assistance agreements that provide additional monies or which extend term.

Sec. 10.37.12. Supersession by Collective Bargaining Agreement.

Parties subject to this article may by collective bargaining agreement provide that such agreement shall supersede the requirements of this article.

Sec. 10.37.13. Liberal Interpretation of Coverage; Rebuttable Presumption of Coverage.

The definitions of "City financial assistance recipient" in section 10.37.1(c), of "proprietary lease or license" in section 10.37.1(i), and of "service contract" in section 10.37.1(j) shall be liberally interpreted so as to further the policy objectives of this article. All recipients of City financial assistance meeting the monetary thresholds of section 10.37.1(c), all City leases and licenses (including subleases and sublicenses) where the City is the lessor or licensor, and all City contracts providing for services that are more than incidental, shall be presumed to meet the corresponding definition just mentioned, subject, however, to a determination by the DAA of non-coverage or exemption on any basis allowed by this article, including, but not limited to, non-coverage for failure to satisfy such definition. The DAA shall by regulation establish procedures for informing persons engaging in such transactions with the City of their opportunity to apply for a determination of non-coverage or exemption and procedures for making determinations on such applications.

Sec. 10.37.14. Severability.

If any provision of this article is declared legally invalid by any court of competent jurisdiction, the remaining provisions shall remain in full force and effect.

AFFIRMATIVE ACTION PROGRAM ORDINANCE

Sec. 10.8.2. All Contracts: Non-discrimination Clause.

Notwithstanding any other provision of any ordinance of the City of Los Angeles to the contrary, every contract which is let, awarded, or entered into with or on behalf of the City of Los Angeles, shall contain by insertion therein a provision obligating the contractor in the performance of such contract not to discriminate in his employment practices against any employee or applicant for employment because of the applicant's race, religion, national origin, ancestry, sex, sexual orientation, age, physical handicap, marital status or medical condition. All subcontracts awarded under any contract mentioned in this section shall contain a like provision.

SECTION HISTORY

Amended by: Ord. No. 147,030, Eff. 4-28-75; Ord. No. 164,516, Eff. 4-13-89; Ord. No. 168,244, Eff. 10-18-92.

Sec. 10.8.4. Contracts for More than $5,000.

Every contract or subcontract with, or on behalf of the City of Los Angeles for which the consideration is in excess of $5,000 shall contain the following provisions which shall be designated as the AFFIRMATIVE ACTION PROGRAM of such contract or subcontract:

"A. During the performance of this contract, the contractor certifies and represents that the contractor and each subcontractor hereunder will adhere to an affirmative action program to ensure that in its employment practices persons are employed and employees are treated equally and without regard to or because of race, religion, ancestry, national origin, sex, sexual orientation, age or physical handicap.

"1. This provision applies to work or services performed or materials manufactured or assembled in the United States.

"2. Nothing in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work, or service category.

"3. The contractor or subcontractor agrees to post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.

"B. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, physical handicap, marital status or medical condition.

"C. At the request of the awarding authority or the Office of Contract Compliance, the contractor shall certify on a form to be supplied, that the contractor has not discriminated in the performance of this contract against any employee or applicant for employment on the basis or because of race, religion, ancestry, national origin, sex, sexual orientation, age, physical handicap, marital status or medical condition.

"D. The contractor shall permit access to and may be required to provide certified copies of all of its records pertaining to employment and to its employment practices by the awarding authority or the Office of Contract Compliance, for the purpose of investigation to ascertain compliance with the Affirmative Action Program of this contract, and on their or either of their request to provide evidence that it has or will comply therewith.

"E. The failure of any contractor or subcontractor to comply with the Affirmative Action Program of this contract may be deemed to be a material breach hereof. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made except upon a full and fair hearing after notice and an opportunity to be heard has been given to the contractor or subcontractor in accordance with the provisions of Section 22.359.3 of the Los Angeles Administrative Code.

"F. Upon a finding duly made that the contractor or subcontractor has breached the Affirmative Action Program of this contract, this contract may be forthwith cancelled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the City of Los Angeles. In addition thereto, such breach may be the basis for a determination by the awarding authority or the Board of Public Works that the said contractor or subcontractor is an irresponsible bidder pursuant to the provisions of Section 386 of the Los Angeles City Charter. In the event of such determination, such contractor or subcontractor shall be disqualified from being awarded a contract with the City of Los Angeles for a period of two years, or until he shall establish and carry out a program in conformance with the provisions hereof.

"F. In the event of a finding by the Fair Employment Practice Commission of the State of California, or the Board of Public Works of the City of Los Angeles, or any Court of competent jurisdiction that the contractor or subcontractor has been guilty of a willful violation of the Fair Employment Practice Act of California, or the Affirmative Action Program of this contract, there may be deducted from the amount payable to the contractor or subcontractor by the City of Los Angeles under this contract, a penalty of TEN DOLLARS ($10.00) for each person for each calendar day on which such person was discriminated against in violation of the provisions of this contract.

"G. Notwithstanding any other provisions of this contract, the City of Los Angeles shall have any and all other remedies at law or in equity for any breach hereof.

"H. The Office of Contract Compliance shall promulgate rules and regulations and forms for the implementation of the Affirmative Action Program of this contract, and rules and regulations and forms shall, so far as practicable, be similar to those adopted in applicable Federal Executive Orders. No other rules, regulations or forms may be used by an awarding authority of the City to accomplish this contract compliance program.

"I. Nothing contained in this contract shall be construed in any manner so as to require or permit any act which is prohibited by law.

"J. At the time its bid is submitted, the contractor shall submit an AFFIRMATIVE ACTION PLAN to the awarding authority which shall meet the requirements of this ordinance. The awarding authority may also require contractors and suppliers to take part in a pre-bid or pre-award conference in order to develop, improve or implement a qualifying Affirmative Action Plan. Affirmative Action Programs developed pursuant to this section shall be effective for a period of twelve months next succeeding the date of contract award or the date of first approval by the Office of Contract Compliance whichever is the earlier.

"(1) Every contract or subcontract in excess of $5,000 which may provide construction, demolition, renovation, conservation, or major maintenance of any kind shall in addition comply with the requirements of Section 10.13 of the Los Angeles Administrative Code.

"(2) A contractor may establish and adopt as its own Affirmative Action Plan, by affixing his signature thereto, an Affirmative Action Plan prepared and furnished by the Office of Contract Compliance.

"K. Contractors and suppliers who are members in good standing of a trade association which has negotiated an Affirmative Action Program with the Board of Public Works, Office of Contract Compliance may make the program of such association their commitment for the specific contract upon approval of the Office of Contract Compliance, without the process of a separate pre-bid or pre-award conference. Such an association agreement shall be effective for a period of twelve months next succeeding the date of approval by the Office of Contract Compliance. Trade associations shall provide the Office of Contract Compliance with a list of members in good standing in such association.

"L. The Office of Contract Compliance shall annually supply the awarding authorities of the City with a list of contractors and suppliers who have developed Affirmative Action Non-discrimination Programs. For each contractor and supplier the Office of Contract Compliance shall state the date the approval expires. The Office of Contract Compliance shall not withdraw its approval for any affirmative action plan or change the affirmative action plan after the date of contract award for the entire contract term without the mutual agreement of the awarding authority and the contractor.

"M. The Affirmative Action Plan required to be submitted hereunder and the pre-bid or pre-award conference which may be required by the Board of Public Works, Office of Contract Compliance or the awarding authority shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:

"1. Apprenticeship where approved programs are functioning, and other on-the-job training for nonapprenticeable occupations;

"2. Classroom preparation for the job when not apprenticeable;

"3. Pre-apprenticeship education and preparation;

"4. Upgrading training and opportunities;

"5. Encouraging the use of contractors, subcontractors and suppliers of all ethnic groups, provided, however, that any contract subject to this ordinance shall require the contractor, subcontractor or supplier to provide not less than the prevailing wage, working conditions, and practices generally observed in private industries in the contractor's, subcontractor's or supplier's geographical area for such work; and

"6. The entry of qualified women and minority journeymen into the industry.

"7. The provision of needed supplies or job conditions to permit persons w ith some unusual physical condition to be employed, and minimize the impact of any physical handicap.

"N. Any adjustments which may be made in the contractor's or supplier's work force to achieve the requirements of the City's affirmative action contract compliance program in purchasing and construction shall be accomplished by either an increase in the size of the work force or replacement of those employees who leave the work force by reason of resignation, retirement or death and not by termination, lay-off, demotion, or change in grade.

"O. Affirmative Action Agreements resulting from the proposed Affirmative Action Plan or the pre-bid or pre-award conferences shall not be confidential and may be publicized by the contractor at his discretion. Approved Affirmative Action Agreements become the property of the City and may be used at the discretion of the City in its contract compliance affirmative action program.

"P. This ordinance shall not confer upon the City of Los Angeles or any Agency, Board or Commission thereof any power not otherwise provided by law to determine the legality of any existing collective bargaining agreement and shall have application only to discriminatory employment practices by contractors, subcontractors or suppliers engaged in the performance of City contracts."

SECTION HISTORY

Amended by Ord. No. 147,030, Eff. 4-28-75; Paragraphs A., B., C., Ord. No. 164,516, Eff. 4-13-89; Paragraphs B. and C., Ord. No. 168,244, Eff. 10-18-92.

CONTRACTOR RESPONSIBILITY

LOS ANGELES ADMINISTRATIVE CODE
Division 10, Chapter 1, Article 14

Sec. 10.40. Purpose.

Each year the City spends millions of dollars contracting for the delivery of products and services from private sector contractors. The prudent expenditure of public dollars requires that the City's procurement process result in the selection of qualified and responsible contractors who have the capability to perform the contract. Further, many lessees or licensees of City property perform services that affect the proprietary interests of City government in that their performance impacts the success of City operations. The City also provides financial assistance and funding to others for a variety of purposes. The City expends grant funds under programs created by federal and state government. The City intends that the procurement procedures set forth in this article guide the expenditure of federal and state grant funds to the extent permitted by federal or state procurement regulations.

SECTION HISTORY
Article and Section Added by Ord. No. 173,677, Eff. 1-14-01

Sec. 10.40.1. Definitions.

(a) "**Awarding Authority**" means any Board or Commission of the City of Los Angeles, or any employee or officer of the City of Los Angeles, that is authorized to award or enter into any contract as defined herein, on behalf of the City of Los Angeles, and shall include departments having control of their own funds and which adopt policies consonant with the provisions of this article.

(b) "**Contract**" means any agreement for the performance of any work or service, the provision of any goods, equipment, materials or supplies, or the rendition of any service to the City or to the public, or the grant of City financial assistance or a public lease or license, which is let, awarded or entered into by, or on behalf of, the City of Los Angeles. Contracts for services which are less than three months and less than Twenty-Five Thousand Dollars ($25,000.00) are not covered by this article. Contracts for purchasing goods and products which are less than One Hundred Thousand Dollars ($100,000.00) are not covered by this article, unless they are contracts for the purchase of garments such as uniforms or other apparel, in which case they are only exempt from this article if they are less than Twenty-Five Thousand Dollars ($25,000.00). Construction contracts are covered by this article without regard to threshold amount.

(c) "**Contractor**" means any person, firm, **LANLT**, partnership, association or any combination thereof, which enters into a Contract with any awarding authority of the City of Los Angeles and includes a recipient of City financial assistance and a public lessee or licensee.

(d) "**Subcontractor**" means any person not an employee who enters into a contract with a contractor to assist the contractor in performing a contract, including a contractor or subcontractor of a public lessee or licensee or sublessee or sublicensee, to perform or assist in performing services on the leased or licensed premises. The term subcontractor does not include vendors or suppliers to City purchasing contractors, unless the purchasing contract is for the purchase of garments such as uniforms or other apparel.

(e) "**Bidder**" means any person or entity that applies for any contract whether or not the application process is through an Invitation for Bid, Request for Proposal, Request for Qualifications or other procurement process.

(f) "**Bid**" means any application submitted by a bidder in response to an Invitation for Bid, Request for Proposal or Request for Qualifications or other procurement process.

(g) "**Invitation for Bid**" means the process through which the City solicits Bids including Requests for Proposals and Requests for Qualifications.

(h) "**City Financial Assistance Recipient**" means any person who receives from the City discrete financial assistance in the amount of One Hundred Thousand Dollars ($100,000.00) or more for economic development or job growth expressly articulated and identified by the City, as contrasted with generalized financial assistance such as through tax legislation.

Categories of such assistance shall include, but are not limited to, bond financing, planning assistance, tax increment financing exclusively by the City, and tax credits, and shall not include assistance provided by the Community Development Bank. City staff assistance shall not be regarded as financial assistance for purposes of this article. A loan shall not be regarded as financial assistance. The forgiveness of a loan shall be regarded as financial assistance. A loan shall be regarded as financial assistance to the extent of any differential between the

amount of the loan and the present value of the payments thereunder, discounted over the life of the loan by the applicable federal rate as used in 26 U.S.C. Sections 1274(d), 7872(f). A recipient shall not be deemed to include lessees and sublessees.

(i) "**Public Lease or License**" means a lease or license of City property as defined in the Living Wage Ordinance, Section 10.37 et seq. of Article 11, Chapter 1 of Division 10 of the Los Angeles Administrative Code.

(j) "**Designated Administrative Agency (DAA)**" means the City department(s), board(s), or office(s) designated by City Council to bear administrative responsibilities under this article. The City Clerk shall maintain a record of such designation.

SECTION HISTORY

Added by Ord. No. 173,677, Eff. 1-14-01

Sec. 10.40.2. Determination of Contractor Responsibility

(a) Prior to awarding a contract, the City shall make a determination that the prospective contractor is one that has the necessary quality, fitness and capacity to perform the work set forth in the contract. Responsibility will be determined by each awarding authority from reliable information concerning a number of criteria, including but not limited to: management expertise; technical qualifications; experience; organization, material, equipment and facilities necessary to perform the work; financial resources; satisfactory performance of other contracts; satisfactory record of compliance with relevant laws and regulations; and satisfactory record of business integrity.

(b) Every bidder for a City contract must complete and submit with its bid a questionnaire developed by the DAA which will provide information the awarding authority needs in order to determine if the bidder meets the criteria set forth in Paragraph (a) of this section. If no bid is required, the prospective contractor must submit a questionnaire. The response to the questionnaire must be signed under penalty of perjury. If, after execution of a contract, the City learns that the contractor submitted false information on the questionnaire, the City may terminate the contract and pursue the remedies set forth in Section 10.40.6 of this article. The contractor shall be obligated to update its responses to the questionnaire during the term of the contract within thirty calendar days after any change to the responses previously provided if such change would affect contractor's fitness and ability to continue performing the contract. The City may consider failure of the contractor to update the questionnaire with this information as a material breach of the contract and invoke the remedies set forth in Section 10.40.6 of this article.

(c) There shall be a period of no fewer than fourteen calendar days between the date for receipt of bids and the award of the contract in order to allow full review of questionnaires submitted by bidders. If no bid is required, the prospective contractor must submit a questionnaire no fewer than fourteen calendar days prior to execution of the contract in order to allow full review of the questionnaire. Questionnaires will be public records and information contained therein will be available for public review, except to the extent that such information is exempt from disclosure pursuant to applicable law. The awarding authority may rely on responses to the questionnaire, information from compliance and regulatory agencies and/or independent investigation to determine bidder responsibility.

(d) Before being declared non-responsible, a bidder shall be notified of the proposed determination of non-responsibility, served with a summary of the information upon which the awarding authority is relying and provided with an opportunity to be heard in accordance with applicable law. At the responsibility hearing, the bidder will be allowed to rebut adverse information and to present evidence that it has the necessary quality, fitness and capacity to perform the work. The bidder must exercise its right to request a hearing within five calendar days after receipt of such notice. Failure to submit a written request for a hearing within the time frame set forth in this section, will be deemed a waiver of the right to such a hearing and the awarding authority may proceed to determine whether or not the award of the contract should be made to another bidder or whether or not the bidder is non-responsible for this and future contracts. The determination by an awarding authority that the bidder is non-responsible shall be final and constitute exhaustion of the bidder's administrative remedies.

(e) A list of individuals and entities which have been determined to be non-responsible by the City shall be maintained by the DAA. After two years from the date the individual or entity has been determined to be non-responsible, the individual or entity may request removal from the list by the awarding authority. If the individual or entity can satisfy the awarding authority that it has the necessary quality, fitness, and capacity to perform work in accordance with the criteria set forth in Paragraph (a) of this section, its name shall be removed from the list. Unless otherwise removed from the list by the awarding authority, names shall remain on the list for five years from the date of being declared non-responsible.

(f) Contractors shall ensure that their subcontractors meet the criteria for responsibility as set forth in Paragraph (a) of this section, unless the subcontract is below the threshold requirements for contracts contained in Section 10.40.1(b).

SECTION HISTORY

Added by Ord. No. 173,677, Eff. 1-14-01

Sec. 10.40.3. Compliance with all laws.

(a) Contractors shall comply with all applicable federal, state and local laws in the performance of the contract, including but not limited to laws regarding health and safety, labor and employment, wage and hours, and licensing laws which affect employees.

(b) Contractors shall notify the awarding authority within thirty calendar days after receiving notification that any government agency has initiated an investigation which may result in a finding that the contractor is not in compliance with Paragraph (a) of this section. Initiation of an investigation is not, by itself, a basis for a determination of non-responsibility by an awarding authority.

(c) Contractors shall notify the awarding authority within thirty calendar days of all findings by a government agency or court of competent jurisdiction that the contractor has violated Paragraph (a) of this section.

(d) Upon award of a contract, contractors shall complete a Pledge of Compliance attesting under penalty of perjury to compliance with Paragraph (a) of this section. Whenever any contract, which was not initially subject to this article is amended, the contractor shall complete a Pledge of Compliance attesting under penalty of perjury to compliance with Paragraph (a) of this section.

(e) Contractors shall ensure that their subcontractors complete a Pledge of Compliance attesting under penalty of perjury to compliance with Paragraph (a) of this section, unless the subcontract is below the threshold requirements for Contracts contained in Section 10.40.1(b).

(f) Contractors shall ensure that their subcontractors comply with Paragraphs (b) and (c) of this section, unless the subcontract is below the threshold requirements for contracts contained in Section 10.40.1(b).

SECTION HISTORY

Added by Ord. No. 173,677, Eff. 1-14-01

Sec.10.40.4. Exemptions.

(a) In order to promote the purposes of this article and to protect the City's interests, the following contracts are exempt from its application:

(1) Contracts with a governmental entity such as the United States of America, the State of California, a county, city or public agency of such entities, or a public or quasi-public **LANLT** located therein and declared by law to have such public status.

(2) Contracts for the investment of trust moneys or agreements relating to the management of trust assets.

(3) Banking contracts entered into by the Treasurer pursuant to California Government Code Section 53630 *et seq.*

(b) In order to promote the purposes of this article and to protect the City's interests, the following contracts are exempt from application of Section 10.40.2 of this article:

(1) Contracts awarded on the basis of exigent circumstances whenever any awarding authority finds that the City would suffer a financial loss or that City operations would be adversely impacted unless exempted from the provisions of Section 10.40.2 of this article. This finding must be approved by the DAA prior to contract execution.

(2) Contracts awarded on the basis of urgent necessity in accordance with Charter Section 371(e)(5).

(3) Contracts entered into pursuant to Charter Section 371(e)(6).

(4) Contracts entered into pursuant to Charter Section 371(e)(7).

(5) Contracts entered into pursuant to Charter Section 371(e)(8).

(6) Contracts where the goods or services are proprietary or only available from a single source.

SECTION HISTORY

Added by Ord. No. 173,677, Eff. 1-14-01

Sec.10.40.5. Administration

(a) The DAA shall promulgate rules and regulations for implementation of this article. Said rules shall be submitted to City Council for consideration within sixty days after the effective date of this Ordinance.

(b) The DAA shall develop a questionnaire to be used by awarding authorities for determining bidder responsibility within sixty days after the effective date of this Ordinance.

(c) The DAA shall monitor compliance with this article including investigation of alleged violations.

SECTION HISTORY

Added by Ord. No. 173,677, Eff. 1-14-01

Sec.10.40.6. Enforcement

(a) Contracts shall provide that violation of this article shall constitute a material breach thereof and entitle the City to terminate the contract and otherwise pursue legal remedies that may be available.

(b) Compliance with Section 10.40.3 of this article shall be required in contract amendments, if the initial contract was not subject to the provisions of this article. Contract amendments shall provide that violation of Section 10.40.3 shall constitute a material breach thereof and entitle the City to terminate the contract and otherwise pursue legal remedies that may be available.

(c) Violations of this article may be reported to the DAA which shall investigate such complaint. Whether based upon such complaint or otherwise, if the DAA has determined that the contractor has violated any provision of this article, the DAA shall issue a written notice to the contractor that the violation is to be corrected within ten calendar days from receipt of notice. In the event the contractor has not corrected the violation, or taken reasonable steps to correct the violation within ten calendar days, then the DAA may:

1. Request the awarding authority to declare a material breach of the contract and exercise its contractual remedies thereunder, which are to include but not be limited to termination of the contract.
2. Request the awarding authority to declare the contractor to be non-responsible in accordance with the procedures set forth in Section 10.40.2 of this article.

SECTION HISTORY

Added by Ord. No. 173,677, Eff. 1-14-01

Sec. 10.40.7. Application of This Article.

(a) This article shall be applicable to Invitations for Bids issued after the rules and regulations have been adopted by City Council.

(b) This article shall be applicable to contracts entered into after the rules and regulations have been adopted by City Council, unless the contract is awarded pursuant to an Invitation for Bid issued prior to adoption of the rules and regulations by City Council. (c) Section 10.40.3 of this article shall be applicable to contract amendments, entered into after the rules and regulations have been adopted by City Council if the initial contract was not subject to the provisions of this article.

SECTION HISTORY

Added by Ord. No. 173,677, Eff. 1-14-01

Sec. 10.40.8. Consistency with Federal or State Law

The provisions of this article shall not be applicable to those instances in which its application would be prohibited by federal or state law or where the application would violate or be inconsistent with the terms or condition of a grant or contract with an agency of the United States, the State of California or the instruction of an authorized representative of any such agency with respect to any such grant or contract.

SECTION HISTORY

Added by Ord. No. 173,677, Eff. 1-14-01

Sec. 10.40.9. Severability

If any provision of this article is declared legally invalid by any court of competent jurisdiction, the remaining provisions shall remain in full force and effect.

SECTION HISTORY

Added by Ord. No. 173,677, Eff. 1-14-01

CITY OF LOS ANGELES
Office of the City Administrative Officer
Contractor Enforcement Section
200 North Main Street, Room 606
Los Angeles, CA 90012
Phone: (213) 485-3514 - Fax: (213) 485-0672

SUBCONTRACTOR'S PLEDGE OF COMPLIANCE

with the Contractor Responsibility Ordinance

Los Angeles Administrative Code (LAAC) Section 10.40 (Contractor Responsibility Ordinance) provides that all public lessees and public licensees shall comply with all applicable provisions of the Ordinance. Upon award of such public lease or public license, the lessee or licensee, by signing the public lease or public license, has pledged to comply with the Contractor Responsibility Ordinance. Within thirty (30) days of execution of such public lease or public license, the public lessee or public licensee shall submit to City the following Pledge of Compliance from each subcontractor who has been listed or will be performing work pursuant to the public lease or public license.

The subcontractor agrees to comply with the Contractor Responsibility Ordinance and the following provisions:

(a) To comply with all federal, state, and local laws in the performance of the contract, including but not limited to laws regarding health and safety, labor and employment, wage and hours, and licensing laws, which affect employees.
(b) To notify the awarding authority within 30 calendar days after receiving notification that any governmental agency has initiated an investigation which may result in a finding that the contractor did not comply with any federal, state, or local law in the performance of the contract, including but not limited to laws regarding health and safety, labor and employment, wage and hours, and licensing laws, which affect employees.
(c) To notify the awarding authority within 30 calendar days of all findings by a governmental agency or court of competent jurisdiction that the contractor has violated any federal, state, or local law in the performance d the contract, including but not limited to laws regarding health and safety, labor and employment, wage and hours, and licensing laws which affect employees.
(d) If applicable, to provide the awarding authority, within 30 calendar days, updated responses to the Responsibility Questionnaire if any change occurs which would change any response contained within the Responsibility Questionnaire and such change would affect the contractor's fitness and ability to continue the contract.
(e) To ensure that subcontractors working on the City agreement (including contractors or subcontractors of a public lessee, licensee, sublessee, or sublicensee that perform or assist in performing services on the leased or licensed premises) shall comply with all federal, state, and local laws in the performance of the contract, including but not limited to laws regarding health and safety, labor and employment, wage and hours, and licensing laws, which affect employees.
(f) To ensure that subcontractors working on the City agreement (including contractors or subcontractors of a public lessee, licensee, sublessee, sublicensee that perform or assist in performing services on the leased or licensed premises) submit a Pledge of Compliance.
(9) To ensure that subcontractors working on the City agreement (including contractors or subcontractors of a public lessee, licensee, sublessee, or sublicensee that perform or assist in performing services on the leased or licensed premises) shall comply with paragraphs (b) and (c).

Failure to complete and submit this form to the Awarding Authority and to the Office of City Administrative Officer may result in withholding of payments by the City Controller, or contract termination.

Subcontracting Company	NameSignature of Officer or Authorized Representative
Company Address and Phone Number	Type or Print Name and Title
Date · Contract Number · Awarding City Department/Type of Service Department of Recreation & Parks Lease	

Form CAO/CRO Rev. 9/13/01

SLAVERY DISCLOSURE ORDINANCE

LOS ANGELES ADMINISTRATIVE CODE

Division 10, Chapter 1, Article 15

Sec. 10.41. Definitions.

(a) "**Awarding Authority**" means a subordinate or component entity or person of the City, such as a City Department or Board of Commissioners, that has the authority to enter into a Contract or agreement for the provision of goods or services on behalf of the City of Los Angeles.

(b) "**Company**" means any person, firm, corporation, partnership or combination of these.

(c) "**Contract**" means any agreement, franchise, lease or concession including an agreement for any occasional professional or technical personal services, the performance of any work or service, the provision of any materials or supplies or rendering of any service to the City of Los Angeles or the public, which is let, awarded or entered into with or on behalf of the City of Los Angeles or any Awarding Authority of the City.

(d) "**Designated Administrative Agency (DAA)**" means the Contract Enforcement Section of the Office of the City Administrative Officer.

(e) "**Enslaved Person**" means any person who was wholly subject to the will of another and whose person and services were wholly under the control of another and who was in a state of enforced compulsory service to another during the Slavery Era.

(f) "**Investment**" means to make use of an Enslaved Person for future benefits or advantages.

(g) "**Participation**" means having been a Slaveholder during the Slavery Era.

(h) "**Predecessor Company**" means an entity whose ownership, title and interest, including all rights, benefits, duties and liabilities were acquired in an uninterrupted chain of succession by the Company.

(i) "**Profits**" means any economic advantage or financial benefit derived from the use of Enslaved Persons.

(j) "**Slavery**" means the practice of owning Enslaved Persons.

(k) "**Slavery Era**" means that period of time in the United States of America prior to 1865.

(l) "**Slaveholder**" means holders of Enslaved Persons, owners of business enterprises using Enslaved Persons, owners of vessels carrying Enslaved Persons or other means of transporting Enslaved Persons, merchants or financiers dealing in the purchase, sale or financing of the business of Enslaved Persons.

(m) "**Slaveholder Insurance Policies**" means policies issued to or for the benefit of Slaveholders to insure them against the death of, or injury to, Enslaved Persons.

SECTION HISTORY

Added by Ord. No. 175,346, Eff. 10-15-03.

Sec. 10.41.1. Purpose of Slavery Era Business Corporate / Insurance Disclosure.

Many early American industries including, but not limited to, insurance, banking, tobacco, cotton, railroads, and shipping, realized enormous Profits by utilizing the uncompensated labor of Enslaved Persons. Many individuals and business enterprises were directly enriched by the labor of Enslaved Persons or benefited from insurance policies insuring Enslaved Persons.

The City of Los Angeles, whose citizenry includes descendants of Enslaved Persons, is entitled to full disclosure of any Participation in or Profits derived through Slavery by Companies seeking to do business with the City.

The State of California has implemented Insurance Code Sections 13810-13813 requiring insurance companies to provide information to the California Department of Insurance regarding Slaveholder Insurance Policies sold during the Slavery Era as part of its licensing and renewal procedure.

In further support of this legislative act and to further promote the ideals the act embraces, this ordinance requires those seeking to do business with the City to fully and accurately disclose any and all Participation in or Profits derived from Slavery.

SECTION HISTORY

Added by Ord. No. 175,346, Eff. 10-15-03.

Sec. 10.41.2.

Each Awarding Authority, shall require that any Company that enters into a Contract with the City, whether the Contract is subject to competitive bidding or not,
shall complete an affidavit, prior to or contemporaneous with entering into the Contract, certifying that:

(a) The Company has searched any and all records of the Company, or any Predecessor Company, regarding records of Participation or Investments in, or Profits derived, from Slavery, including Slaveholder Insurance Policies issued during the Slavery Era; and

(b) Disclosed any and all records of Participation in or Profits derived by the Company, or any Predecessor Company, from Slavery, including issuance of Slaveholder Insurance Policies, during the Slavery Era, and identified the names of any Enslaved Persons or Slaveholders described in the records.

The Awarding Authority may terminate the Contract if a Company fails to fully and accurately complete the affidavit.

SECTION HISTORY

Added by Ord. No. 175,346, Eff. 10-15-03.

Sec. 10.41.3. Exceptions.

This article shall not be applicable to the following Contracts:

(a) Contracts for the investment of: (1) City trust moneys or bond proceeds; (2) pension funds; (3) indentures, security enhancement agreements for City tax-exempt and taxable financings; (4) deposits of City surplus funds in financial institutions; (5) the investment of City moneys in securities permitted under the California State Government Code and/or the City's investment policy; (6) investment agreements, whether competitively bid or not; (7) repurchase agreements; (8) City moneys invested in United States government securities; and (9) Contracts involving City moneys in which the Treasurer or the City Administrative Officer finds that the City will incur a financial loss or forego a financial benefit, and which in the opinion of the Treasurer or the City Administrative Officer would violate his or her fiduciary duties.

(b) Grant funded Contracts if the application of this article would violate or be inconsistent with the terms or conditions of a grant or Contract with an agency of the United States, the State of California or the instruction of an authorized representative of any of those agencies with respect to any grant or Contract.

(c) Contracts with a governmental entity such as the United States of America, the State of California, a county, city or public agency of one of these entities, or a public or quasi-public corporation located in the United States and declared by law to have a public status.

(d) Contracts awarded on the basis of exigent circumstances whenever any Awarding Authority finds that the City would suffer a financial loss or that City operations would be adversely impacted unless exempted from the provisions of this article. This finding must be approved by the DAA prior to Contract execution.

(e) Contracts with any Company that has been designated as a non-profit organization pursuant to the United States Internal Revenue Code Section 501(c)(3).

(f) Contracts for the furnishing of articles covered by letters patent granted by the government of the United States or where the goods or services are proprietary or only
available from a single source.

(g) Contracts awarded on the basis of urgent necessity in accordance with Charter Section 371(e)(5).

(h) Contracts entered into pursuant to Charter Section 371 (e) (6).

(i) Contracts entered into pursuant to Charter Section 371 (e) (7).

SECTION HISTORY

Added by Ord. No. 175,346, Eff. 10-15-03.

Sec. 10.41.4. Administration.

(a) The DAA shall promulgate rules and regulations to implement this article within sixty days after the effective date of this ordinance.

(b) The DAA shall develop an affidavit to be used by Awarding Authorities within sixty days after the effective date of this ordinance.

(c) The DAA shall administer the requirements of this article and monitor compliance, including investigation of alleged violations.

SECTION HISTORY

Added by Ord. No. 175,346, Eff. 10-15-03.

Sec. 10.41.5 Application of this Article.

(a) This article shall be applicable to Contracts entered into after the rules and regulations have been promulgated by the DAA.

(b) This article shall be applicable to Contract amendments entered into after the rules and regulations have been promulgated by the DAA where the initial Contract was not subject to the provisions of this article.

SECTION HISTORY

Added by Ord. No. 175,346, Eff. 10-15-03.

Sec. 10.8.2.1. Equal Benefits Ordinance.

(a) Legislative Findings. The City awards many contracts to private firms to provide services to the public and to City government. Many City contractors and subcontractors perform services that affect the proprietary interests of City government in that their performance impacts the success of City operations. The City holds a proprietary interest in the work performed by many employees employed by City contractors and subcontractors. In a very real sense, the success or failure of City operations may turn on the success or failure of these enterprises, for the City has a genuine stake in how the public perceives the services rendered for them by these businesses.

Discrimination in the provision of employee benefits between employees with domestic partners and employees with spouses results in unequal pay for equal work. Los Angeles law prohibits entities doing business with the City from discriminating in employment practices based on marital status and/or sexual orientation. The City's departments and contracting agents are required to place in all City contracts a provision that the company choosing to do business with the City agrees to comply with the City's nondiscrimination laws.

It is the City's intent, through the contracting practices outlined in this Ordinance, to assure that those companies wanting to do business with the City will equalize the total compensation between similarly situated employees with spouses and with domestic partners. The provisions of this Ordinance are designed to ensure that the City's contractors will maintain a competitive advantage in recruiting and retaining capable employees, thereby improving the quality of the goods and services the City and its people receive, and ensuring protection of the City's property.

(b) Definitions. For purposes of the Equal Benefits Ordinance only, the following shall apply.

(1) Awarding Authority means any Board or Commission of the City, or any employee or officer of the City, that is authorized to award or enter into any Contract, as defined in this ordinance, on behalf of the City, and shall include departments having control of their own funds and which adopt policies consonant with the provisions of the Equal Benefits Ordinance.

(2) Benefits means any plan, program or policy provided or offered by a Contractor to its employees as part of the employer's total compensation package. This includes but is not limited to the following types of benefits: bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits, and travel benefits.

(3) Cash Equivalent means the amount of money paid to an employee with a Domestic Partner (or spouse, if applicable) in lieu of providing Benefits to the employee's Domestic Partner (or spouse, if applicable). The Cash Equivalent is equal to the direct expense to the employer of providing Benefits to an employee for his or her Domestic Partner (or spouse, if applicable) or the direct expense to the employer of providing Benefits for the dependents and family members of an employee with a Domestic Partner (or spouse, if applicable).

(4) City means the City of Los Angeles.

(5) Contract means an agreement the value of which exceeds $5,000. It includes agreements for work or services to or for the City, for public works or improvements to be performed, agreements for the purchase of goods, equipment, materials, or supplies, or grants to be provided, at the expense of the City or to be paid out of monies under the control of the City. The term also includes a Lease or License, as defined in the Equal Benefits Ordinance.

(6) Contractor means any person or persons, firm, partnership, corporation, joint venture, or any combination of these, or any governmental entity acting in its proprietary capacity, that enters into a Contract with any Awarding Authority of the City. The term does not include Subcontractors.

(7) Designated Administrative Agency (DAA) means the Department of Public Works, Bureau of Contract Administration.

(8) Domestic Partner means any two adults, of the same or different sex, who have registered as domestic partners with a governmental entity pursuant to state or local law authorizing this registration or with an internal registry maintained by the employer of at least one of the domestic partners.

(9) Equal Benefits Ordinance means Los Angeles Administrative Code Section 10.8.2.1, et seq., as amended from time to time.

(10) Equal Benefits means the equality of benefits between employees with spouses and employees with Domestic Partners, between spouses of employees and Domestic Partners of employees, and between dependents and family members of spouses and dependents and family members of Domestic Partners.

(11) Lease or License means any agreement allowing others to use property owned or controlled by the City, any agreement allowing others the use of City property in order to provide services to or for the City, such as for concession agreements, and any agreement allowing the City to use property owned or controlled by others.

(12) Subcontractor means any person or persons, firm, partnership, corporation, joint venture, or any combination of these, and any governmental entity, that assists the Contractor in performing or fulfilling the terms of the Contract. Subcontractors are not subject to the requirements of the Equal Benefits Ordinance unless they otherwise have a Contract directly with the City.

([illegible]) Equal Benefits Requirements.

(1) No Awarding Authority of the City shall execute or amend any Contract with any Contractor that discriminates in the provision of Benefits between employees with spouses and employees with Domestic Partners, between spouses of employees and Domestic Partners of employees, and between dependents and family members of spouses and dependents and family members of Domestic Partners.

(2) A Contractor must permit access to, and upon request, must provide certified copies of all of its records pertaining to its Benefits policies and its employment policies and practices to the DAA, for the purpose of investigation or to ascertain compliance with the Equal Benefits Ordinance.

(3) A Contractor must post a copy of the following statement in conspicuous places at its place of business available to employees and applicants for employment: "During the performance of a Contract with the City of Los Angeles, the Contractor will provide equal benefits to its employees with spouses and its employees with domestic partners." The posted statement must also include a City contact telephone number which will be provided each Contractor when the Contract is executed.

(4) A Contractor must not set up or use its contracting entity for the purpose of evading the requirements imposed by the Equal Benefits Ordinance.

(d) Other Options for Compliance. Provided that the Contractor does not discriminate in the provision of Benefits, a Contractor may also comply with the Equal Benefits Ordinance in the following ways:

(1) A Contractor may provide an employee with the Cash Equivalent only if the DAA determines that either:

a. The Contractor has made a reasonable, yet unsuccessful effort to provide Equal Benefits; or

b. Under the circumstances, it would be unreasonable to require the Contractor to provide Benefits to the Domestic Partner (or spouse, if applicable).

(2) Allow each employee to designate a legally domiciled member of the employee's household as being eligible for spousal equivalent Benefits.

(3) Provide Benefits neither to employees' spouses nor to employees' Domestic Partners.

(e) Applicability.

(1) Unless otherwise exempt, a Contractor is subject to and shall comply with all applicable provisions of the Equal Benefits Ordinance.

(2) The requirements of the Equal Benefits Ordinance shall apply to a Contractor's operations as follows:

a. A Contractor's operations located within the City limits, regardless of whether there are employees at those locations performing work on the Contract.

b. A Contractor's operations on real property located outside of the City limits if the property is owned by the City or the City has a right to occupy the property, and if the Contractor's presence at or on that property is connected to a Contract with the City.

c. The Contractor's employees located elsewhere in the United States but outside of the City limits if those employees are performing work on the City Contract.

(3) The requirements of the Equal Benefits Ordinance do not apply to collective bargaining agreements ("CBA") in effect prior to January 1, 2000. The Contractor must agree to propose to its union that the requirements of the Equal Benefits Ordinance be incorporated into its CBA upon amendment, extension, or other modification of a CBA occurring after January 1, 2000.

(f) Mandatory Contract Provisions Pertaining to Equal Benefits. Unless otherwise exempted, every Contract shall contain language that obligates the Contractor to comply with the applicable provisions of the Equal Benefits Ordinance. The language shall include provisions for the following:

(1) During the performance of the Contract, the Contractor certifies and represents that the Contractor will comply with the Equal Benefits Ordinance.

(2) The failure of the Contractor to comply with the Equal Benefits Ordinance will be deemed to be a material breach of the Contract by the Awarding Authority.

(3) If the Contractor fails to comply with the Equal Benefits Ordinance the Awarding Authority may cancel, terminate or suspend the Contract, in whole or in part, and all monies due or to become due under the Contract may be retained by the City. The City may also pursue any and all other remedies at law or in equity for any breach.

(4) Failure to comply with the Equal Benefits Ordinance may be used as evidence against the Contractor in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40, et seq., Contractor Responsibility Ordinance.

(5) If the DAA determines that a Contractor has set up or used its Contracting entity for the purpose of evading the intent of the Equal Benefits Ordinance, the Awarding Authority may terminate the Contract on behalf of the City. Violation of this provision may be used as evidence against the Contractor in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40, et seq., Contractor Responsibility Ordinance.

(g) Administration.

(1) The DAA is responsible for the enforcement of the Equal Benefits Ordinance for all City Contracts. Each Awarding Authority shall cooperate to the fullest extent with the DAA in its enforcement activities.

(2) In enforcing the requirements of the Equal Benefits Ordinance, the DAA may monitor, inspect, and investigate to insure that the Contractor is acting in compliance with the Equal Benefits Ordinance.

(3) The DAA shall promulgate rules and regulations and forms for the implementation of the Equal Benefits Ordinance. No other rules, regulations or forms may be used by an Awarding Authority of the City to accomplish this contract compliance program.

(h) Enforcement.

(1) If the Contractor fails to comply with the Equal Benefits Ordinance:

a. The failure to comply may be deemed to be a material breach of the Contract by the Awarding Authority; or

b. The Awarding Authority may cancel, terminate or suspend, in whole or in part, the contract; or

c. Monies due or to become due under the Contract may be retained by the City until compliance is achieved;

d. The City may also pursue any and all other remedies at law or in equity for any breach.

e. The City may use failure to comply with the Equal Benefits Ordinance as evidence against the Contractor in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40, et seq., Contractor Responsibility Ordinance.

(i) Non-applicability, Exceptions and Waivers.

(1) Upon request of the Awarding Authority, the DAA may waive compliance with the Equal Benefits Ordinance under the following circumstances:

a. The Contract is for the use of City property, and there is only one prospective Contractor willing to enter into the Contract; or

b. The Contract is for needed goods, services, construction of a public work or improvement, or interest in or right to use real property that is available only from a single prospective Contractor, and that prospective Contractor is otherwise qualified and acceptable to the City; or

c. The Contract is necessary to respond to an emergency that endangers the public health or safety, and no entity which complies with the requirements of the Equal Benefits Ordinance capable of responding to the emergency is immediately available; or

d. The City Attorney certifies in writing that the Contract involves specialized litigation requirements such that it would be in the best interests of the City to waive the requirements of the Equal Benefits Ordinance; or

e. The Contract is (i) with a public entity; (ii) for goods, services, construction of a public work or improvement, or interest in or right to use real property; and (iii) that is either not available from another source, or is necessary to serve a substantial public interest. A Contract for interest in or the right to use real property shall not be considered as not being available from another source unless there is no other site of comparable quality or accessibility available from another source; or

f. The requirements of the Equal Benefits Ordinance will violate or are inconsistent with the terms or conditions of a grant, subvention or agreement with a public agency or the instructions of an authorized representative of the agency with respect to the grant, subvention or agreement, provided that the Awarding Authority has made a good faith attempt to change the terms or conditions of the grant, subvention or agreement to authorize application of the Equal Benefits Ordinance; or

g. The Contract is for goods, a service or a project that is essential to the City or City residents and there are no qualified responsive bidders or prospective Contractors who could be certified as being in compliance with the requirements of the Equal Benefits Ordinance; or

h. The Contract involves bulk purchasing arrangements through City, federal, state or regional entities that actually reduce the City's purchasing costs and would be in the best interests of the City.

(2) The Equal Benefits Ordinance does not apply to contracts which involve:

a. The investment of trust monies, bond proceeds or agreements relating to the management of these funds, indentures, security enhancement agreements (including, but not limited to, liquidity agreements, letters of credit, bond insurance) for City tax-exempt and taxable financings, deposits of City's surplus funds in financial institutions, the investment of City monies in competitively bid investment agreements, the investment of City monies in securities permitted under the California State Government Code and/or the City's investment policy, investment agreements, repurchase agreements, City monies invested in U.S. government securities or pre-existing investment agreements;

b. Contracts involving City monies in which the Treasurer or the City Administrative Officer finds that either:

(i) No person, entity or financial institution doing business in the City, which is in compliance with the Equal Benefits Ordinance, is capable of performing the desired transaction(s); or

(ii) The City will incur a financial loss or forego a financial benefit which in the opinion of the Treasurer or City Administrative Officer would violate his or her fiduciary duties.

(3) The Equal Benefits Ordinance does not apply to contracts for gifts to the City.

(4) Nothing in this Subsection shall limit the right of the City to waive the provisions of the Equal Benefits Ordinance.

(5) The provisions of this Subsection shall apply to the Equal Benefits Ordinance only. The Equal Benefits Ordinance is not subject to the exemptions provided in Section 10.9 of this Code.

(j) Consistency with Federal or State Law. The provisions of the Equal Benefits Ordinance do not apply where the application of these provisions would violate or be inconsistent with the laws, rules or regulations federal or state law, or where the application would violate or be inconsistent with the terms or conditions of a grant

or contract with the United States of America, the State of California, or the instruction of an authorized representative of any of these agencies with respect to any grant or contract.

(k) Severability. If any provision of the Equal Benefits Ordinance is declared legally invalid by any court of competent jurisdiction, the remaining provisions shall remain in full force and effect.

(l) Timing of Application.

(1) The requirements of the Equal Benefits Ordinance shall not apply to Contracts executed or amended prior to January 1, 2000, or to bid packages advertised and made available to the public, or any bids received by the City, prior to January 1, 2000, unless and until those Contracts are amended after January 1, 2000 and would otherwise be subject to the Equal Benefits Ordinance.

(2) The requirements of the Equal Benefits Ordinance shall apply to competitively bid Contracts that are amended after April 1, 2003, and to competitively bid Contracts that result from bid packages advertised and made available to the public after May 1, 2003.

(3) Unless otherwise exempt, the Equal Benefits Ordinance applies to any agreement executed or amended after January 1, 2000, that meets the definition of a Contract as defined within Subsection 10.8.2.1(b).

SECTION HISTORY

Added by Ord. No. 172,908, Eff. 1-9-00.
Amended by: Ord. No. 173,054, Eff. 2-27-00; Ord. No. 173,058, Eff. 3-4-00; Ord. No. 173,142, Eff. 3-30-00; Ord. No. 173,285, Eff. 6-26-00, Oper. 7-1-00; In Entirety, Ord. No. 175,115, Eff. 4-12-03; Subsec. (b)(7), Ord. No. 176,155, Eff. 9-22-04.

EXHIBIT B
SITE LEASE AGREEMENT

This SITE LEASE AGREEMENT ("SLA") is entered into this _____ day of ___________, 20___, by and between The City of Los Angeles, a municipal corporation, acting by and through its Board of Recreation and Park Commissioners ("Landlord"), and ______________________________________ ("Tenant"). Landlord and Tenant may hereinafter be collectively referred to as the "Parties" or individually as the "Party".

WHEREAS, there is an existing Master Lease Agreement between Landlord and Tenant dated ____________, 2010 ("Master Agreement"), which remains in full force and effect; and which anticipates the execution of this SLA by the Parties hereto; and

WHEREAS, the Parties desire to enter into this SLA pursuant to and in accordance with the Master Agreement.

NOW THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound, agree as follows:

1. All of the terms and conditions of the Master Agreement shall apply to and are deemed incorporated in this SLA provided, that in the event of conflict between this SLA and the Master Agreement, this SLA shall control. Unless otherwise defined herein, all capitalized terms used herein shall have the meanings given to such terms in the Master Agreement.

2. Landlord Site Reference: ____

3. Tenant Site Reference: ____

4. Site Address: ____, and which is more particularly described in Attachment 1 attached hereto and incorporated herein.

5. Tenants Facilities to be erected are detailed and shall be installed in the manner set forth in Attachment 2 attached hereto and incorporated herein.

6. All notices pursuant to Section 5(c) of the Master Agreement shall be provided to Landlord's designee whose contact information is listed on Attachment 3.

7. The initial Term and Renewal Terms of this SLA shall be as set forth in Section 6 of the Master Agreement. The Commencement Date shall be confirmed in writing by Landlord and Tenant.

8. The Rent payable in consideration of this SLA shall be paid per annum in accordance with Section 7 of the Master Agreement. The Rent shall be made payable to Landlord at the following address: __________________________. All rent checks shall have Landlord's Site number clearly written on the face of the check.

9. Special Provisions:____

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

Executed this ______________day

of________________________, 20___

THE CITY OF LOS ANGELES, a municipal corporation, acting by and through its Board of Recreation and Park Commissioners

By ______________________________
PRESIDENT

By ______________________________
SECRETARY

Executed this ______________day

of________________________, 20___

COMPANY NAME

By ______________________________
PRESIDENT

By ______________________________
SECRETARY

Approved as to Form:

Date: ___________________________

CARMEN A. TRUTANICH,
City Attorney

By ____________________________
SR. ASSISTANT CITY ATTORNEY

Attachments
Attachment 1: Legal Description of the Site
Attachment 2: Plans and Specifications
Attachment 3: Contact Information
Attachment 4: Memorandum of Lease

ATTACHMENT 1
LEGAL DESCRIPTION OF PROPERTY

To the Site Lease Agreement dated ________________________ 20____, by and between the City of Los Angeles, a municipal corporation, acting by and through its Board of Recreation and Park Commissioners, as Landlord, and ______________________________________ Corporation, as Tenant.

ATTACHMENT 2
PLANS AND SPECIFICATIONS
(including description of the antenna location, and location of ground equipment adjacent to the Premises)

To the Site Lease Agreement dated ________________________ 20____, by and between the City of Los Angeles, a municipal corporation, acting by and through its Board of Recreation and Park Commissioners, as Landlord, and ______________________________________ Corporation, as Tenant.

Proposed Equipment is defined below and Plans and specifications are attached hereto.
Number of Antennas: ____
Antenna Manufacturer and Type-Number: ____
Weight and Dimension of Antenna(s) (LxWxD) ____
Number of Transmission Lines: ____
Transmission Line Mrf. and Type No.: ____
Diameter and Length of Transmission Line: ____
Location of Antenna(s) on Tower (RAD Center): ____
Direction of Radiation (Azimuth): ____
Dimensions of Ground Space: ____
Frequencies/Max. Power Output: ____

ATTACHMENT 3
CONTACT INFORMATION

To the Site Lease Agreement dated ______________________ 20____, by and between the City of Los Angeles, a municipal corporation, acting by and through its Board of Recreation and Park Commissioners, as Landlord, and ______________________________________ Corporation, as Tenant.

LANDLORD:
Operation's Department, Address, Telephone, Fax

TENANT:
Operation's Department, Address, Telephone, Fax

ATTACHMENT 4
MEMORANDUM OF LEASE

This Memorandum of Lease is entered into on ____________________, 20___, by and between the City of Los Angeles, a municipal corporation, acting by and through its Board of Recreation and Park Commissioners ("Landlord"), and ____ Corporation ("Tenant").

1. Landlord and Tenant entered into a Site Lease Agreement ("SLA") on _______________, 20___, for the purpose of installing, operating and maintaining a radio communications facility and other improvements. All of the foregoing are set forth in the Lease.
2. The term of the SLA is for five (5) years commencing on ____________________, 20___, and ending on __________________, with three (3) additional and successive five (5) year options to renew, subject to approval in writing by both Tenant and Landlord.
3. The property subject to the SLA is described in Attachment 1 annexed hereto. That portion of the property being leased to Tenant ("Premises") is described in Attachment 2 and annexed hereto.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

Executed this ________________day

of___________________________, 20___

THE CITY OF LOS ANGELES, a municipal corporation, acting by and through its Board of Recreation and Park Commissioners

By ___________________________________
PRESIDENT

By ___________________________________
SECRETARY

Executed this ________________day

of___________________________, 20___

COMPANY NAME

By ___________________________________
PRESIDENT

By ___________________________________
SECRETARY

Approved as to Form:

Date: ______________________________

CARMEN A. TRUTANICH,
City Attorney

By _________________________________
SR. ASSISTANT CITY ATTORNEY