

APPROVED
AUG 19 2021
BOARD OF RECREATION
AND PARK COMMISSIONERS

BOARD REPORT

NO. 21-143

DATE August 19, 2021

C.D. 4

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: GRIFFITH OBSERVATORY CAFÉ – AMENDMENT NO. 2 TO AGREEMENT NO. 248 WITH WOLFGANG PUCK CATERING AND EVENTS, LLC – EXTEND TERM, RENEW CONCESSION AGREEMENT, AND WAIVE THE ANNUAL MINIMUM REVENUE SHARING GUARANTEE

AP Diaz	_____	* M. Rudnick	<u>MR</u>
H. Fujita	_____	C. Santo Domingo	_____
J. Kim	_____	N. Williams	_____



General Manager

Approved X Disapproved _____ Withdrawn _____

RECOMMENDATIONS

1. Approve the proposed Amendment No. 2 (Amendment), attached hereto as Attachment 1, to Concession Agreement No. 248 (Agreement), attached hereto as Attachment 2, to: (a) extend the term equal to the duration of government-ordered closure due to the COVID-19 pandemic; (b) exercise the five (5) year option to renew; (3) waive the Annual Minimum Revenue-Sharing Guarantee (AMRSG) as set forth in this Report;
2. Find, in accordance with Charter Section 1022, that it is necessary, feasible and economical to secure these services by contract as the Department of Recreation and Parks (RAP) lacks sufficient and necessary personnel to undertake these specialized professional services;
3. Direct the Board of Recreation and Park Commissioners (Board) Secretary to transmit the proposed Amendment to the Mayor in accordance with Executive Directive No. 3 (Villaraigosa Series), the City Council for approval, and the City Attorney for approval as to form;
4. Authorize the Board President and Secretary to execute the Amendment upon receipt of the necessary approvals; and
5. Authorize RAP Staff to make any necessary technical changes to implement the Board's intentions.

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SUMMARY

Griffith Observatory (Observatory) is located at 2800 East Observatory Road in Griffith Park. The Observatory opened in 1935 and is an icon of Los Angeles, a national leader in public astronomy, and one of Southern California's most popular attractions.

In 2002, the Observatory building and grounds closed for a \$93 million renovation and expansion project then reopened in 2006. The renovation and expansion project included the creation of a café known as the "Café at the End of the Universe" (Café). The Café is casual, self-service dining located on the lower level of the Observatory offering indoor and outdoor patio seating which provides scenic views. Menu and pricing consist of high quality, reasonably priced sandwiches, wraps, salads, soup, beverages, desserts and snack items found in similar local cultural institutions.

On Feb 16, 2005, the Board approved the award of a ten (10) year Concession Agreement, with two five (5) year options to renew, to Wolfgang Puck Catering and Events, LLC (Puck) (Board Report No. 05-47). The Agreement became effective on September 6, 2006. On July 13, 2016, the Board approved Amendment No. 1 to Agreement No. 248, attached hereto as Attachment 3 (Amendment No. 1), to exercise the first of two five-year renewal options, revise the amounts for the minimum revenue sharing guarantee, increase the percentage of gross receipts payable to the City, and add additional capital improvement obligations on the part of Puck (Board Report 16-152). Under Amendment No. 1, the Agreement is set to expire September 5, 2021.

Puck has operated and maintained the Café in a clean and attractive manner, stocking it with high-quality food and beverage. Puck updates the menu while ensuring the best sellers remain available. The Café is operated by professional and friendly staff who work well with Observatory staff and visitors. In 2019, the Café generated \$2,164,545 in gross receipts and paid \$214,208 in percentage of gross receipts to RAP. To date, Puck has satisfied all contractual terms and conditions to staff's actual knowledge, including timely payment of rent and occupancy tax, and insurance requirements.

Due to health risks associated with the COVID-19 pandemic, the Observatory and three RAP concessions (Café, Gift Shop, and coin-operated telescopes) were closed to the public on March 13, 2020, in conformance with mandatory health directives. The Observatory and concessions reopened with limited hours on June 25, 2021, operating Friday through Sunday only. To allow Puck to enjoy the full term of the Agreement, RAP staff recommends extending the term of the Agreement approximately 15 additional months as part of the proposed Amendment (COVID Extension).

Also, as part of the proposed Amendment, RAP staff recommends the Board exercises the remaining five-year renewal option in accordance with Section 4 of the Agreement which states the option is exercisable at the sole discretion of the City. Thus, along with the COVID Extension, the term of the Agreement under the proposed Amendment will expire on December 31, 2027.

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Amendment No. 1 set forth amounts for an Annual Minimum Revenue-Sharing Guarantee (AMRSG) which reflected a year over year escalation of 3% for years 11 through 15 of the Agreement term. Due to lost revenue hardship as a result of the forced closure and reduced hours of the Observatory due to COVID-19, RAP staff recommends a waiver of the AMRSG for the previous contract years 2020 and 2021 as part of the proposed Amendment. For these years, Puck will be required to pay a percentage of gross receipts. Also, for the period from September 2021 to December 2021, no AMRSG would be applicable and Puck will be required to pay a percentage of gross receipts. The proposed Amendment will continue the AMRSG requirement for year 16 of the Agreement (which will now commence on January 2022) at \$191,336.50 (which was the AMRSG previously applicable for year 15) until the remaining term of the Agreement (as extended by the proposed Amendment) along with the 3% year over year escalation.

FISCAL IMPACT

For contract year (CY) 2019, revenue share to RAP from Puck was \$214,208. For CY 2020 RAP received \$33,790, an 84.2% decrease. For CY 2021, revenue to RAP is estimated to be \$73,246 based on Griffith Observatory operating Friday-Sunday through the year; a 65.8% decrease from 2019 when operations were Tuesday-Sunday.

STRATEGIC PLAN INITIATIVES AND GOALS

Approval of this Report advances RAP's Strategic Plan by supporting:
Goal No. 6: Build Financial Strength & Innovative Partnerships
Outcome No. 2: Improved management of rental facilities and concessions.

This Report was prepared by Stanley Woo, Management Analyst II, Special Operations Branch, Concessions Unit.

LIST OF ATTACHMENTS/EXHIBITS

- 1) Proposed Amendment No. 2 to Agreement No. 248 for Operation and Maintenance of Griffith Observatory Café
- 2) Agreement No. 248
- 3) Amendment No.1 to Agreement No. 248

**AMENDMENT NO. 2 TO CONCESSION AGREEMENT NO. 248
FOR THE OPERATION AND MAINTENANCE OF
GRIFFITH OBSERVATORY CAFÉ CONCESSION**

THIS AMENDMENT NO.2 TO CONCESSION AGREEMENT NO. 248 (“AMENDMENT”) is made and entered into this _____ day of _____, 202____, by and between the CITY OF LOS ANGELES, a municipal corporation (hereinafter referred to as “CITY”), acting by and through its Board of Recreation and Park Commissioners (hereinafter referred to as “BOARD”) and Wolfgang Puck Catering and Events, LLC (hereinafter referred to as “CONCESSIONAIRE”).

WITNESSETH

Whereas, on February 16, 2005, the BOARD approved Concession Agreement No. 248 (BR 05-47) (hereinafter referred to as “AGREEMENT”) for Griffith Observatory Café (hereinafter referred to as “CONCESSION”); and

Whereas, on April 5, 2006 the City Council approved the AGREEMENT for the CONCESSION (Council File 06-0332) and authorized the Board President and Secretary to execute the AGREEMENT on behalf of the CITY; and

Whereas, on July 13, 2016 the BOARD approved Amendment No. 1 to AGREEMENT (BR 16-152) (“AMENDMENT NO. 1”) which exercised the first of two five-year renewal options which extended the term of the AGREEMENT to September 5, 2021, revised the amounts for the minimum revenue sharing guarantee, increased the percentage of gross receipts payable to the City, and added additional capital improvement obligations on the part of CONCESSIONAIRE; and

Whereas, the CITY and CONCESSIONAIRE desire to amend the AGREEMENT, as previously amended, to extend the contract term until December 31, 2027 by exercising the CITY’s option to extend the term of the AGREEMENT as provided therein by an additional five (5) years as well as extending the term for an additional period of approximately 15 months to account for the closure and limited operations of the CONCESSION due to the COVID 19 pandemic; and

Whereas, the CITY and CONCESSIONAIRE desire to amend the AGREEMENT, as previously amended, to waive the Annual Minimum Revenue-Sharing Guarantee (“AMRSG”) for certain years and add applicable AMRSG for additional years of the extended term of AGREEMENT.

Now, therefore, the CITY and CONCESSIONAIRE hereby mutually agree to amend the AGREEMENT, as previously amended by AMENDMENT NO. 1, as follows:

1. SECTION 4. TERM OF AGREEMENT, RENEWAL & CONCESSIONAIRE CAPITAL INVESTMENT BUY-BACK

Delete the paragraph which reads:

“The term of the Agreement shall be fifteen (15) years, effective September 6, 2006 with one five (5) year option to renew, at the sole discretion of CITY and agreed to by CONCESSIONAIRE, provided that CONCESSIONAIRE is in full compliance with its obligations under the AGREEMENT upon the expiration of the initial term or any extensions thereof. In the event of any renewal, CITY will give CONCESSIONAIRE a preliminary notice of its willingness to renew and said renewal shall be decided no later than six (6) months prior to the end of the then current term.”

And replace with:

“The term of the Agreement shall commence on September 6, 2006 and shall expire on December 31, 2027.”

2. SECTION 13. RENTAL

Delete the years 11-15 table for Annual Minimum Revenue-Sharing Guarantee which reads:

Year	Annual Minimum Guarantee
11 (September 2016 – August 2017)	\$170,000.00
12 (September 2017 – August 2018)	\$175,100.00
13 (September 2018 – August 2019)	\$180,353.00
14 (September 2019 – August 2020)	\$185,763.59
15 (September 2020 – August 2021)	\$191,336.50

And replace with:

Year/Period	Annual Minimum Guarantee
11 (September 2016 – August 2017)	\$170,000.00
12 (September 2017 – August 2018)	\$175,100.00
13 (September 2018 – August 2019)	\$180,353.00
14 (September 2019 – August 2020)	Percentage of gross receipts
15 (September 2020 – August 2021)	Percentage of gross receipts
September 2021 – December 2021	Percentage of gross receipts
16 (January 2022 – December 2022)	\$191,336.50
17 (January 2023 - December 2023)	\$197,076.59
18 (January 2024 – December 2024)	\$202,988.89
19 (January 2025 – December 2025)	\$209,078.56
20 (January 2026 – December 2026)	\$215,350.91
21 (January 2027 – December 2027)	\$221,811.44

Delete the paragraph in its entirety which reads:

"If the annual minimum revenue-sharing is not met by August 31st of each year, the difference between the actual revenue-sharing payment received by CITY and the annual minimum revenue-sharing guarantee will be due to CITY by September 15th, prorated as necessary for the first year of operation or fractional part thereof, and prorated as necessary for the final year of operation or fractional part thereof."

And replace with:

"If the annual minimum revenue-sharing guarantee for Years 11 through 13 is not met by August 31st of each year, the difference between the actual revenue-sharing payment received by CITY and the annual minimum revenue-sharing guarantee will be due to CITY by September 15th, prorated as necessary for the first year of operation or fractional part thereof. If the annual minimum revenue-sharing guarantee for Years 16 through 21 is not met by December 31st of each year, the difference between the actual revenue-sharing payment received by CITY and the annual minimum revenue-sharing guarantee will be due to CITY by January 15th, prorated as necessary for the final year of operation or fractional part thereof."

3. SECTION 42. INCORPORATION OF DOCUMENTS

For Exhibit I:

Replace "Standard Provisions for City Contracts Rev. 3/09"
with "Standard Provisions for City Contracts (Rev. 10/17, v.3)."

4. EXHIBITS

Exhibit I of the AGREEMENT, as previously amended by AMENDMENT NO. 1, is hereby replaced in its entirety with Exhibit A of this AMENDMENT.

ATTACHMENTS

For this Amendment No. 2 to Concession Agreement No. 248 document, the following is attached:

Exhibit A - Standard Provisions for City Contracts (Rev. 10/17, v.3)

(Signature Page to Follow)

IN WITNESS WHEREOF, the parties hereto have caused this AMENDMENT NO. 2 TO CONCESSION AGREEMENT NO. 248, to be executed by their duly authorized representatives.

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

BY: _____
President

DATE: _____

BY: _____
Secretary

DATE: _____

WOLFGANG PUCK CATERING AND EVENTS, LLC - CONCESSIONAIRE

BY: _____
Pamela Brunson, CEO

DATE: _____

APPROVED AS TO FORM:

MICHAEL N. FUEUR
City Attorney

BY: _____
Steven Hong
Deputy City Attorney

DATE: _____

EXHIBIT A

STANDARD PROVISIONS FOR CITY CONTRACT (REV. 10/17, v.3)

STANDARD PROVISIONS FOR CITY CONTRACTS

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STANDARD PROVISIONS FOR CITY CONTRACTS

PSC-1. Construction of Provisions and Titles Herein

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

PSC-2. Applicable Law, Interpretation and Enforcement

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

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

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

PSC-3. Time of Effectiveness

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

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

PSC-4. Integrated Contract

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

PSC-5. Amendment

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

PSC-6. Excusable Delays

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

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

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

PSC-7. Waiver

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

PSC-8. Suspension

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

PSC-9. Termination

A. Termination for Convenience

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

B. Termination for Breach of Contract

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

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

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

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

PSC-10. Independent Contractor

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

PSC-11. Contractor's Personnel

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

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

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

PSC-12. Assignment and Delegation

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

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

PSC-13. Permits

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

PSC-14. Claims for Labor and Materials

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

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

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

PSC-16. Retention of Records, Audit and Reports

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

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

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

PSC-17. Bonds

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

PSC-18. Indemnification

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

PSC-19. Intellectual Property Indemnification

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

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

PSC-20. Intellectual Property Warranty

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

PSC-21. Ownership and License

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

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

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

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

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

PSC-22. Data Protection

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

PSC-23. Insurance

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

PSC-24. Best Terms

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

PSC-25. Warranty and Responsibility of Contractor

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

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

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

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

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

PSC-27. Child Support Assignment Orders

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

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

PSC-28. Living Wage Ordinance

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

PSC-29. Service Contractor Worker Retention Ordinance

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

PSC-30. Access and Accommodations

CONTRACTOR represents and certifies that:

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

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

PSC-31. Contractor Responsibility Ordinance

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

PSC-32. Business Inclusion Program

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

PSC-33. Slavery Disclosure Ordinance

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

PSC-34. First Source Hiring Ordinance

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

PSC-35. Local Business Preference Ordinance

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

PSC-36. Iran Contracting Act

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PSC-42. Possessory Interests Tax

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

PSC-43. Confidentiality

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

EXHIBIT 1

INSURANCE CONTRACTUAL REQUIREMENTS

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

CONTRACTUAL REQUIREMENTS

CONTRACTOR AGREES THAT:

- 1. Additional Insured/Loss Payee.** The CITY must be included as an Additional Insured in applicable liability policies to cover the CITY'S liability arising out of the acts or omissions of the named insured. The CITY is to be named as an Additional Named Insured and a Loss Payee As Its Interests May Appear in property insurance in which the CITY has an interest, e.g., as a lien holder.
- 2. Notice of Cancellation.** All required insurance will be maintained in full force for the duration of its business with the CITY. By ordinance, all required insurance must provide at least thirty (30) days' prior written notice (ten (10) days for non-payment of premium) directly to the CITY if your insurance company elects to cancel or materially reduce coverage or limits prior to the policy expiration date, for any reason except impairment of an aggregate limit due to prior claims.
- 3. Primary Coverage.** CONTRACTOR will provide coverage that is primary with respect to any insurance or self-insurance of the CITY. The CITY'S program shall be excess of this insurance and non-contributing.
- 4. Modification of Coverage.** The CITY reserves the right at any time during the term of this Contract to change the amounts and types of insurance required hereunder by giving CONTRACTOR ninety (90) days' advance written notice of such change. If such change should result in substantial additional cost to CONTRACTOR, the CITY agrees to negotiate additional compensation proportional to the increased benefit to the CITY.
- 5. Failure to Procure Insurance.** All required insurance must be submitted and approved by the Office of the City Administrative Officer, Risk Management prior to the inception of any operations by CONTRACTOR.

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

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

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

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

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

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

Required Insurance and Minimum Limits

Name: _____

Date: _____

Agreement/Reference: _____

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

Limits

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

WC Statutory

EL _____

Waiver of Subrogation in favor of City

Longshore & Harbor Workers

Jones Act

___ **General Liability** _____

Products/Completed Operations

Sexual Misconduct

Fire Legal Liability

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

___ **Professional Liability** (Errors and Omissions) _____

Discovery Period _____

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

All Risk Coverage

Boiler and Machinery

Flood

Builder's Risk

Earthquake

___ **Pollution Liability** _____

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

___ **Crime Insurance** _____

Other: _____



City of Los Angeles
Department of Recreation and Parks

OPERATING CONCESSION AGREEMENT

between the

City of Los Angeles
Department of Recreation and Parks

and

Wolfgang Puck Catering and Events, LLC

**FOR THE OPERATION AND MAINTENANCE OF
GRIFFITH OBSERVATORY CAFÉ, CATERING,
AND FOOD CART SERVICE CONCESSION**

AGREEMENT NUMBER 248

**The
Griffith Observatory**
Cafe and Catering Food Service Concession



THIS AGREEMENT, made and entered into this 6TH day of SEPTEMBER, 2006, by and between the CITY OF LOS ANGELES, a municipal corporation, (hereinafter "CITY"), acting by and through its BOARD OF RECREATION AND PARK COMMISSIONERS, (hereinafter "BOARD"), and Wolfgang Puck Catering and Events, LLC. d.b.a. Wolfgang Puck Catering (hereinafter "CONCESSIONAIRE").

WITNESSETH

WHEREAS, the principal purpose of CITY in entering into this AGREEMENT is to serve the public by providing a food service concession; and

WHEREAS, the BOARD advertised for proposals for the operation of the Griffith Observatory Café and Catering food service concession; and

WHEREAS, the BOARD received and carefully analyzed two proposals received on November 30, 2004; and

WHEREAS, the BOARD determined that CONCESSIONAIRE was the best responsible proposer, and selected said proposer to operate the CONCESSION in accordance with the terms and conditions of this AGREEMENT; and

WHEREAS, CONCESSIONAIRE desires to secure and enter into a AGREEMENT in accordance with the foregoing and undertakes to provide services of the type and character required therein by CITY to meet the needs of the public at Griffith Observatory Café and Catering food service concession; and

NOW THEREFORE, in consideration of the PREMISES and of the terms, covenants and conditions hereinafter contained to be kept and performed by the respective parties, it is agreed as follows:

SECTION 1. DEFINITIONS:

For the purpose of this AGREEMENT, the following words and phrases are defined and shall be construed as hereinafter set forth:

AGREEMENT: This Concession AGREEMENT consisting of 51 pages and 7 Exhibits (A -G) attached hereto.

BOARD: Board of Recreation and Park Commissioners.

CAFÉ AT THE END OF THE UNIVERSE (CAFÉ): Name of the café within the Griffith Observatory for which this AGREEMENT encompasses.

CEQA: California Environmental Quality Act

CITY: City of Los Angeles, acting by and through its Board of Recreation and Park Commissioners.

CONCESSION: Griffith Observatory Café, Catering, and Food Cart Service

CONCESSIONAIRE: Wolfgang Puck Catering and Events, LLC
6801 Hollywood Boulevard, Suite 513
Los Angeles, CA 90028
Phone: (323)491-1280, Fax: (323)491-1282
E-mail: carl.schuster@wolfgangpuck.com
Website: www.wolfgangpuck.com

CONCESSION MANAGER: The person with whom the GENERAL MANAGER deals with on a daily basis regarding the CONCESSION.

CONTRACT YEAR: The calendar year except that the first CONTRACT YEAR hereunder shall commence on the date that food service operations begin and shall continue until the following December 31, and the last CONTRACT YEAR hereunder shall end on the date of the expiration or earlier termination of the AGREEMENT.

DEPARTMENT: The Department of Recreation and Parks, acting through the BOARD.

FACILITY: Griffith Observatory Café and Catering Food Service Areas.

FOTO: Friends Of The Observatory – A non-profit membership organization that has been established to support and promote Griffith Observatory.

GENERAL MANAGER: GENERAL MANAGER of the DEPARTMENT, or that person's authorized representative, acting on behalf of CITY. All actions of the GENERAL MANAGER are subject to review by the BOARD.

LAAC: The Los Angeles Administrative Code.

LAMC: The Los Angeles Municipal Code.

OBSERVATORY
MANAGEMENT:

Director of Griffith Observatory or his/her designee.

PARK:

Griffith Park

PREMISES:

The geographical area, as defined in the AGREEMENT, in which the CONCESSION may be operated and for which CONCESSIONAIRE has responsibilities as described in the AGREEMENT.

SPECIAL EVENT PREMISES:

Temporary extension of PREMISES for FACILITY rentals (outside groups and organizations) and internal events as defined in Exhibit A.

SECTION 2. CONCESSION GRANTED:

CONCESSIONAIRE shall be granted the exclusive right, privilege, and obligation to furnish, equip, operate and maintain the Griffith Observatory Café, Catering, and Food Cart Service Concession. The exclusivity extends to entire Observatory area including grounds, parking, and East and West Observatory Roads.

CITY reserves the right to have up to three (3) annual exceptions where the CITY may utilize outside caterers for internal and/or external events if needed whereby CONCESSIONAIRE shall be given the first opportunity and right-of-refusal to provide said services to the satisfaction of the DEPARTMENT. The Observatory café kitchen will not be shared with outside caterers.

CITY reserves the right to receive the entire donated food and beverage catering service package for internal events. CITY also reserves the right to receive donated food and/or beverage for internal events. CONCESSIONAIRE is expected to provide services and set-up for donated food and/or beverages based on actual costs.

CONCESSIONAIRE agrees and understands that other concession businesses - non-food related, may be permitted to operate under concession permits/agreements within the immediate area of the PREMISES herein described.

CONCESSIONAIRE shall provide high quality food and beverage service consistent with the gourmet image of Wolfgang Puck; employment, training, and supervision of personnel with appropriate qualifications and experience to assist in such functions; performance or supervision of CONCESSIONAIRE employees in the performance of all other tasks related to the operation; all licenses and permits at CONCESSIONAIRE'S expense necessary for the operation of the CONCESSION granted; and all maintenance and repair of the Café.

For and in consideration of the payment of the fees and charges as hereinafter provided, and subject to all of the terms, covenants, and conditions of the AGREEMENT, CITY hereby grants to

CONCESSIONAIRE the privilege to provide only those services set forth in the AGREEMENT, and not for any other purpose without the prior written consent of the GENERAL MANAGER. The CONCESSION rights herein granted shall be carried on at the FACILITY solely within the limits and confines of said areas designated as PREMISES in the AGREEMENT. CONCESSIONAIRE, by accepting the AGREEMENT, agrees for itself, its successors and assigns that it will not make use of the PREMISES in any manner which might interfere with the intended use of the FACILITY by the DEPARTMENT.

CITY reserves the right to further develop or improve the FACILITY and the PREMISES as it sees fit, and without interference or hindrance by CONCESSIONAIRE. In the event that such development or improvement may require the suspension or termination of the AGREEMENT, CITY shall provide CONCESSIONAIRE with sixty (60) days prior written notice. CITY shall not be liable for loss of business which results from the construction of any development or improvements to the FACILITY outside of the PREMISES.

In the event of a conflict between CONCESSIONAIRE and any other concessionaire or any lessee at the FACILITY regarding the services to be offered or products to be sold by respective concessionaires or lessees, GENERAL MANAGER shall meet and confer with all necessary parties in order to determine the services to be offered or products to be sold by each, and CONCESSIONAIRE hereunder agrees thereafter to be bound by said determination. Notwithstanding, services or products sold by CONCESSIONAIRE or service or products that are substantially similar to those sold by CONCESSIONAIRE shall not be offered or sold by any other concession or any lessee at the FACILITY.

SECTION 3. PREMISES:

The PREMISES (hereinafter referred to as PREMISES) to be authorized for use by CONCESSIONAIRE at Griffith Observatory shall include The Café at the End of the Universe, SPECIAL EVENT PREMISES (except only during such times that such areas are used by CONCESSIONAIRE in accordance with the terms herein), and pre-designated “cart set-up area(s)” as determined by the DEPARTMENT (see Exhibit A1 – A6). The Café will be in an admission free area that can be accessed by visitors and the general public independently of the Observatory shows, tours, and operating hours (within the PARK operating hours of 5:30 a.m. to 10:00 p.m.).

CONCESSIONAIRE shall not use or allow the PREMISES to be used, in whole or in part, during the term of the AGREEMENT, for any use in violation of any present or future laws, ordinances, rules and regulations at any time applicable thereto of any public or governmental authority or agencies, departments or officers thereof, including CITY, relating to sanitation or the public health, safety or welfare or operations at and use of the PREMISES.

SECTION 4. TERM OF CONCESSION AGREEMENT, RENEWAL & CONCESSIONAIRE CAPITAL INVESTMENT BUY-BACK:

The term of this AGREEMENT is ten (10) years, terminating midnight, the evening of the 5TH day of SEPTEMBER, 2016.

Any renewal shall be initiated at the sole discretion of the CITY and agreed to by CONCESSIONAIRE. The CITY will consider no more than two (2) renewal terms of five (5) years each provided that CONCESSIONAIRE is in full compliance with its obligations under the AGREEMENT upon the expiration of the initial term or any extensions thereof. Any renewal shall be at the sole discretion of the CITY, which will give the CONCESSIONAIRE a preliminary notice of its willingness to renew and shall be decided not later than six (6) months prior to the end of the then current term.

Upon the expiration of any term not renewed hereunder, the CONCESSIONAIRE shall remove all of its employees and property from the Observatory facilities in a smooth, orderly and cooperative manner and the CONCESSIONAIRE shall bring current all of its financial obligations to the CITY.

The CITY reserves the right at any time during the term of the contract to pay-off the unamortized portion of CONCESSIONAIRE'S capital INVESTMENT (as specified in Section 15. Capital INVESTMENT – Fixed Equipment (FF&E) & Interior Design), if any, with no interest or penalties, and terminate the AGREEMENT for convenience upon ninety (90) days written notice. CITY and CONCESSIONAIRE agree and understand that any consideration of termination for convenience within the first twelve months places a hardship on the CITY, in efforts to provide continuity of outstanding service at OBSERVATORY, and a hardship on CONCESSIONAIRE for reasons that include insufficient opportunity to amortize start-up investments. Should the CITY exercise its right to terminate the AGREEMENT for convenience within the first twelve months of operation, CITY and CONCESSIONAIRE shall meet and confer in good faith to review and determine what remedies are equitable in regard to start-up expenditures assumed by CONCESSIONAIRE. CONCESSIONAIRE may terminate the AGREEMENT for convenience upon one-hundred-twenty (120) days notice to the CITY, as specified in Section 25; however, the Capital INVESTMENT Buy-Back must first be negotiated to the acceptance of the GENERAL MANAGER.

CONCESSIONAIRE will fund certain improvements to CAFÉ to facilitate the performance of Services (INVESTMENT). The scope and specifications for such improvements shall be mutually agreed in writing by the parties prior to the disbursement of any INVESTMENT funds. The INVESTMENT shall be payable in accordance with the disbursement scheduled agreed, in writing, by the parties, and shall be a minimum of Four Hundred Twenty-Five Thousand (\$425,000) Dollars.

The INVESTMENT, shall be amortized over a period of ten years, calculated at a rate equal to straight-line depreciation basis. If the AGREEMENT is terminated, as further detailed in Section 25 herein, prior to the full amortization of the INVESTMENT, then CITY is liable for and promises to pay to CONCESSIONAIRE within ninety (90) days of termination notice date, the unamortized portion of the INVESTMENT.

The INVESTMENT buy-back amount shall be based on single straight-line, non-interest bearing amortization over ten (10) years. Buy-back will be calculated on actual months/years of operation. The following schedule of INVESTMENT buy-back from CONCESSIONAIRE is based on full and completed years from the date of AGREEMENT execution. The schedule will be adjusted as

necessary to reflect the actual time of operation in whole months or one-twelfths (1/12) of the current operating year.

Full and completed year from date of AGREEMENT execution:	Capital INVESTMENT buy-back allowed per completed year of operation:
1	\$382,500
2	\$340,000
3	\$297,500
4	\$255,000
5	\$212,500
6	\$170,000
7	\$127,500
8	\$85,000
9	\$42,500
10	0

Note: the original capital investment eligible for buy-back is \$425,000.

If due to request of CITY additional improvements are required and approved beyond those proposed by CONCESSIONAIRE or related to minimum improvements required in accordance with Section 15, prior to adding to the INVESTMENT amount, the CITY and CONCESSIONAIRE shall meet and confer in good faith to amend the AGREEMENT to increase the amount of INVESTMENT subject to Buy-Back.

If the City terminates the contract for cause there would be no buy-back of amortized INVESTMENT and as specified in Section 15, the unamortized portion of improvements would remain property of CONCESSIONAIRE. In that event, CITY and CONCESSIONAIRE shall meet and confer in good faith to review and determine what portion of the improvement equates to the INVESTMENT amortized as of the date of termination, prorated to reflect the actual time of operation in whole months or one-twelfths (1/12) of the current operating year.

In the event of contract termination for any reason other than by CITY for cause, including termination by CONCESSIONAIRE for cause, the CITY or the successor CONCESSIONAIRE would reimburse CONCESSIONAIRE the unamortized capital cost. The reimbursement ('buy-back') of unamortized capital INVESTMENT would not include any FF&E that is proprietary to the CONCESSIONAIRE (includes trade dress, logo, etc. and is CONCESSIONAIRE-specific and not transferable to another CONCESSIONAIRE). Capital INVESTMENT and buy-back does not include the items listed in Section 16. Operating Responsibilities, Paragraph D.

SECTION 5. TIME OF EXECUTION

Unless otherwise provided, this AGREEMENT shall be considered executed when:

- A. The Office of the City Attorney has indicated in writing of its approval of this

- AGREEMENT as to form and legality; AND
- B. Said AGREEMENT has been approved by the CITY'S Council, Board, officer, or employee authorized to give such approval, AND
 - C. Said AGREEMENT has been signed on behalf of the CONCESSIONAIRE by the person or persons authorized to bind the CONCESSIONAIRE hereto, AND
 - D. This AGREEMENT has been signed on behalf of the CITY by the persons designated by the BOARD as authorized to enter into this AGREEMENT.

SECTION 6. NUMBER OF ORIGINALS

The number of original texts shall be equal to the number of the parties hereto, one text being retained by each party.

SECTION 7. INDEPENDENT CONTRACTORS/ CONSULTANTS

The CONCESSIONAIRE is acting hereunder as an independent contractor and not as an agent or employee of the CITY. The CONCESSIONAIRE shall not represent or otherwise hold out itself or any of its directors, officers, partners, employees, or agents to be an agent or employee of the CITY.

SECTION 8. CONCESSIONAIRE NON REIMBURSABLE EXPENSES

CONCESSIONAIRE shall be responsible for paying for the following investment items. These investment dollars would not be subject to amortization and buy-back in the case of contract termination under any circumstances. Such non-reimbursable items funded by CONCESSIONAIRE shall remain CONCESSIONAIRE'S property throughout the AGREEMENT term and after expiration or earlier termination of this AGREEMENT.

- A. CONCESSIONAIRE pre-opening and start-up costs and expenses including any corporate overhead, staff or related charges if applicable to your company except as otherwise stated in Section 4, Paragraph 4.
- B. Consumable food, non-alcoholic beverage (and alcoholic beverages, if applicable), gift shop/bookstore (if applicable) and supply inventories.
- C. Change and petty cash funds.
- D. Loose Equipment (defined as, but not necessarily limited to, kitchenware, point-of-sale/cash registers, computers and computer related hardware and software, catering equipment, office furniture/furnishings, carts and fax machine).
- E. Carts (food and beverage outside).

SECTION 9. REFURBISHMENT & REPLACEMENT FUND

CONCESSIONAIRE shall set aside a reserve in the amount of one percent (1%) of total gross annual receipts hereunder from foodservice operations for the purpose of replacement of the FF&E when they become worn and have to be replaced. This reserve shall be cumulative and carry-over from year-to-year during the term of the AGREEMENT. In the event of AGREEMENT termination for any reason, any surplus in this account will be turned-over to the CITY. These dollars are not to be used for routine repair and maintenance or Loose Equipment replacement.

SECTION 10. CAFÉ CONSTRUCTION & PROJECT MANAGEMENT

The CITY will have the final approval of construction, contractors and project management personnel relating to the Griffith Observatory Renovation and Expansion Project which has created the Café, kitchen, and special event spaces which will be utilized under this AGREEMENT. CITY has and will select and engage all architects, engineers and contractors for the Project. In regard to any additional work by CITY in the CONCESSION PREMISES which may be required during completion of the Project, the CITY shall coordinate and seek input as necessary from the CONCESSIONAIRE during the process, where CITY reserves the right make the final approval(s) relating to such.

SECTION 11. INTERFACE WITH OBSERVATORY MANAGEMENT:

Collaboration with OBSERVATORY MANAGEMENT is essential to the success of this CONCESSION. As such, CONCESSIONAIRE shall consult, seek approval, interact and work in unison under the reasonable direction of OBSERVATORY MANAGEMENT on a regular basis. Matters requiring coordination and direction of OBSERVATORY MANAGEMENT include, but are not limited to:

- Thematic design of the Café
- Names of the thematic food/merchandise
- Character of packaging
- Deliveries
- Cart placement and storage
- Menu approval
- FACILITY rental availability
- Appropriateness/mission of outside clients
- Staff parking
- Restrictions

The OBSERVATORY MANAGEMENT shall have reasonable editorial comments and meaningful input to the overall design of the CONCESSION PREMISES as well as the menu/selection offered by the CONCESSIONAIRE. As such, the CITY reserves the right to suspend sale of inappropriate items offered by the CONCESSIONAIRE based on the reasonable review by the OBSERVATORY MANAGEMENT. CONCESSIONAIRE retains control of menu development and recipes.

SECTION 12. START-UP SCHEDULE:

CONCESSIONAIRE shall provide a transition schedule detailing the various implementation tasks required under this AGREEMENT to ensure a full understanding of CONCESSIONAIRE responsibilities and to also ensure coordinated efforts with the DEPARTMENT and OBSERVATORY MANAGEMENT. CONCESSIONAIRE shall include said schedule as Exhibit B, attached thereto and incorporated within.

SECTION 13. RENTAL:

A. Payments:

As consideration for CITY'S granting the CONCESSION rights hereinabove set forth, CONCESSIONAIRE agrees to pay to CITY the following percentage(s) of Gross Receipts as defined below as consideration for the granting of CONCESSION:

- Café and Food Cart
 - First \$1,000,000 8%
 - Over \$1,000,000 10%

 - Catering
 - First \$1,000,000 14%
 - Over \$1,000,000 16%
- * No commissions will be paid on internal catering.
** No commissions will be paid from Griffith Observatory FACILITY rentals.

The CONCESSIONAIRE shall mail all payments and reports to:

Department of Recreation and Parks
Administrative Resources Division
P.O. Box 5358
Glendale, CA 91221-5385

A Rental Guarantee shall be guaranteed by CONCESSIONAIRE based on annual rent beginning in Year Two equal to 70% of the total rent paid in previous CONTRACT YEAR as determined by an Annual Accounting Adjustment defined in Section 13. Rental, Paragraph F, below.

Notwithstanding, in the event that the Rental Guarantee is not met by CONCESSIONAIRE for reasons beyond CONCESSION'S control, such as and by way of example only, a change in the scope of services at the directive of CITY or attendance, CONCESSIONAIRE and the GENERAL MANAGER shall meet and confer with regard to rental guarantee obligations set forth in this AGREEMENT and make recommendations on reducing or waiving minimum annual rent on a year-to-year basis to the BOARD as appropriate.

B. Product Servicing Agreements

CONCESSIONAIRE shall have the right to enter into a sponsorship agreement (Product Servicing Agreement) with corporations with respect to food and/or beverage products that are offered by the CONCESSION. CITY, FOTO and CONCESSIONAIRE may pursue Product Servicing Agreements independently; however, each party must notify the other party to avoid any conflicts between such agreements. CITY and FOTO shall not enter into any Product Servicing Agreements without the CONCESSIONAIRE'S prior written approval. CONCESSIONAIRE shall not enter into any Product Servicing Agreements without the CITY'S prior written approval. CITY agrees to provide introductions to CONCESSIONAIRE with food and beverage vendors that may be interested in having their products exclusively served or sold by the CONCESSION in exchange for marketing and/or rights fees. CONCESSIONAIRE will pay an eight percent (8%) commission on any marketing, sponsorships, or rights and fees paid in connection with Product Servicing Agreements to CITY.

Any food and/or beverage covered by a Product Servicing Agreement shall at least be of equal quality of similar products used by CONCESSIONAIRE and at all times be consistent with the gourmet image of Wolfgang Puck.

The CITY will warrant that CONCESSIONAIRE will not pay a premium over the CONCESSIONAIRE'S current pricing for any such products.

C. Gross Receipts Defined

Discounted sales will not be considered for calculation of Gross Receipts.

The term "Gross Receipts" is defined to mean the total amount charged or received for the sale of any service, food, and beverage for which a charge is made or credit is allowed, including all receipts, cash, credits, and property of any kind or nature. However, "Gross Receipts" does not include cash discounts allowed or taken on sales, nor the amount of any sales or use tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser and paid by CONCESSIONAIRE. In the event merchandise is taken in trade, "Gross Receipts" means the retail value of the merchandise sold, less the fair market trade-in allowance. When the traded merchandise is sold, "Gross Receipts" means the actual selling price less retail sales taxes. In the case of vending machines, "Gross Receipts" shall be the total amount taken by the vending machines, less all applicable sales tax, excise taxes, container deposits, spoilage, and CRV. The term "Gross Receipts" shall not include:

1. Receipts from the sale of waste or scrap materials resulting from the operation of CONCESSIONAIRE'S business;
2. Receipts from the sale of or the trade-in value of any furniture, fixtures or equipment used on the PREMISES, and owned by ;
3. The value of any merchandise, supplies or equipment exchanged or transferred from or to other business locations of CONCESSIONAIRE where such exchanges or

- transfers are not made for the purpose of avoiding a sale by CONCESSIONAIRE which would otherwise be made from or at the PREMISES;
4. Receipts in the form of refunds from or the value of merchandise, supplies or equipment returned to shippers, suppliers or manufacturers;
 5. Receipts with respect to any sale where the subject of such sale, or some part thereof, is thereafter returned by the purchaser to and accepted by CONCESSIONAIRE, to the extent of any refund actually granted or adjustment actually made, either in the form of cash or credit;
 6. The amount of any cash or quantity discounts received from sellers, suppliers or manufacturers;
 7. The amount of any discounts given to CONCESSIONAIRE'S employees;
 8. Receipts from the sale at cost of uniforms or clothing to CONCESSIONAIRE'S employees where such uniforms or clothing are required to be worn by said employees;
 9. Proceeds from any arbitration, lawsuit, judgment or settlement of a lawsuit or other dispute unless such receipts are otherwise expressly included in the definition of "Gross Receipts" or losses resulting from bad debt received from the consumers or purchasers.
 10. The cost or value of free meals given to employees of CONCESSIONAIRE pursuant to such employees' employment contracts. CONCESSIONAIRE shall not be credited with nor allowed to have any reduction in the amount of Gross Receipts, as herein defined, which results from any error in cash handling by CONCESSIONAIRE, or from any arrangement for a rebate, kickback, or hidden credit given or allowed to customer.
 11. Discounts, surcharges or business-related complimentary meals applied to receipts for services or merchandise, with the concurrence of both CONCESSIONAIRE and CITY.
 13. Tips, service charges and/or gratuities collected and paid to CONCESSIONAIRE'S employees, independent contractors or agents or subcontractor's employees, independent contractors or agents.
 14. Amounts collected by CONCESSIONAIRE for flowers, entertainment, service staff, and similar catering-related charges that are collected by CONCESSIONAIRE without mark-up to the CITY or outside customer and any facility and equipment rental fees and other charges charged by CITY or CONCESSIONAIRE. In the event that these expenses are included as part of a package, upon request of the CITY, CONCESSIONAIRE shall provide a breakdown of the components of the package and the cost of those components should be consistent with the expenses of other events.
 15. Interest, service or sales carrying charges paid by customers for extension of credit.
 16. The amount of any discounts to be provided under this AGREEMENT.

D. Method of Payment

Percentage of Gross Receipts Rental

Rental payments are to be paid by CONCESSIONAIRE to CITY in monthly installments during each year of the term of the AGREEMENT. Within fifteen (15) days after the end of each calendar month, CONCESSIONAIRE shall pay CITY as the rental payment for such previous calendar month the percent of gross receipts received in said previous month.

E. Pro Rata Payment

If the execution or termination of the AGREEMENT falls on any date other than the first or last day of any calendar month, the applicable rental payment for said month, if it is based on a flat rate or a minimum rental, shall be paid by CONCESSIONAIRE to CITY pro rata in the same proportion that the number of days the AGREEMENT is in effect for that month bears to the total number of days in that month.

F. Late Payment Fee

Failure of CONCESSIONAIRE to pay any of the rental payments or any other fees, charges, or payments required herein on time is a breach of this AGREEMENT if not cured by CONCESSIONAIRE pursuant to Section 25, Termination. CITY expects all compensation to be paid on time and CONCESSIONAIRE agrees to pay on time. Payments postmarked after the due date will be considered late.

Without waiving any rights available at law, in equity or under the AGREEMENT, in the event of late or delinquent payments by CONCESSIONAIRE, the latter recognizes that CITY will incur certain expenses as a result thereof, the amount of which is difficult to ascertain. Therefore, in addition to monies owing, CONCESSIONAIRE agrees to pay the CITY a late fee set forth below to compensate CITY for all expenses and/or damages and loss resulting from said late or delinquent payments.

Unless otherwise specified in the AGREEMENT, the charges for late or delinquent payments shall be \$50.00 plus interest calculated at the rate of eighteen percent (18%) per annum, assessed monthly on the balance of the unpaid amount.

G. Annual Accounting Adjustment

By 12:00 noon on January 30th of each year beginning 2008, CONCESSIONAIRE shall prepare and submit to CITY a statement showing the total Gross Receipts for the last calendar year by category and the rental paid for the year. If the sums paid by CONCESSIONAIRE during said period total less than the Rental Guarantee of seventy percent (70%) of the total rent paid in the previous year, CONCESSIONAIRE shall remit to the CITY the under payment amount with the annual statement due on January 30th. The Rental Guarantee is subject to an unanticipated percentage decline in Observatory attendance, applied (as a percentage) to the 70% guarantee. Notwithstanding the expiration of the AGREEMENT, Rental Guarantee provision shall survive the expiration of the AGREEMENT and rental payment, if any due based on a pro-rata portion of an equal number of days operated by CONCESSIONAIRE compared to the previous year, shall be made on or prior to thirty (30) days after AGREEMENT expiration or termination.

SECTION 14. ADDITIONAL FEES AND CHARGES

If CITY pays any sum or incurs any obligations or expense which CONCESSIONAIRE has agreed to pay or reimburse CITY for, or if CITY is required or elects to pay any sum or to incur any obligations or expense by reason of the failure, neglect or refusal of CONCESSIONAIRE to perform or fulfill any one or more of the conditions, covenants or agreements contained in the AGREEMENT, or as a result of a negligent act or omission or willful act of misconduct of CONCESSIONAIRE contrary to said conditions, covenants and agreements, CONCESSIONAIRE agrees to pay to CITY the sum so paid or the expense so incurred, including all interest, costs, (including CITY'S 15% administrative overhead cost), damages and penalties. This amount shall be added to the rental payment thereafter due hereunder, and each and every part of the same shall be and become additional rental payment, recoverable by CITY in the same manner and with like remedies as if it were originally a part of the basic rental payment set forth in Section 13. Rental, hereof.

For all purposes under this section, and in any suit, action or proceeding of any kind between the parties hereto, any receipt showing the payment of any sum by CITY for any work done or material furnished shall be prima facie evidence against CONCESSIONAIRE that the amount of such payment was necessary and reasonable. Should CITY elect to use its own operating and/or maintenance personnel in making any repairs, replacements and/or alterations and to charge CONCESSIONAIRE with the cost of same, receipts and timesheets will be used to establish the charges, which shall be presumed to be reasonable in absence of contrary proof submitted by CONCESSIONAIRE. Receipts showing payments or, in the event that CITY uses its own resources to accomplish repairs, replacements, or alterations, timesheets and receipts, shall be presented to CONCESSIONAIRE ten (10) days prior to the amount being added to the following month's rental payment due.

SECTION 15. CAPITAL INVESTMENT – FIXED EQUIPMENT (FF&E) & INTERIOR DESIGN

The CITY will provide the café space(s) based on the floor plans accompanying this AGREEMENT, which floor plans shall be attached thereto and incorporated herein as Exhibit C. CONCESSIONAIRE will be responsible to build-out (finish) the café and kitchen spaces (including seating/dining, furnishings, fixtures and equipment) in the amount, at minimum, of \$425,000.00.

CONCESSIONAIRE believes that \$425,000 is sufficient to complete all required capital improvements to the reasonable satisfaction of the GENERAL MANAGER, by September 15, 2006, or as approved by the GENERAL MANAGER. CITY shall hold CONCESSIONAIRE responsible for guaranteeing the completion of all required improvements, according to approved plans, regardless of cost, and the amount subject to buy-back is \$425,000 (in accordance with Section 4. Term of Concession Agreement, Renewal, and Concessionaire Capital INVESTMENT Buy-Back). Should the required improvements be completed to the reasonable satisfaction of the GENERAL MANAGER for less than \$425,000 in authorized costs, the balance shall be expended on other improvements at the PREMISES or environs as mutually agreed between CONCESSIONAIRE and

the GENERAL MANAGER over the original ten (10) year term of this AGREEMENT. If the CONCESSIONAIRE and GENERAL MANAGER do not mutually agree, CITY shall designate the improvements for which the remaining funds will be spent, and CITY'S decision shall be final, so long as the improvements benefit the CONCESSION.

If due to request of CITY additional improvements are required and approved beyond those proposed by CONCESSIONAIRE or related to minimum improvements, prior to performing additional work or adding to the INVESTMENT amount, the CITY and CONCESSIONAIRE shall meet and confer in good faith to amend the Agreement to increase the amount of INVESTMENT subject to Buy-Back.

When fully amortized, ownership to all improvements will revert to the CITY. CONCESSIONAIRE will be responsible for the cost of any changes (minor changes only) to the current equipment designed into the spaces, all such changes subject to the prior approval of the CITY, which approval shall not unreasonably be withheld or delayed.

All design, equipment, furnishings, etc., shall be subject to the prior review and (reasonable) approval of the CITY. CITY will be responsible for cost of any changes it requires following initial approval of design, equipment, furnishings, etc.

Capital INVESTMENTS by CONCESSIONAIRE will be approved in advance by CITY and amortized straight-line, non-interest bearing over a ten (10) year period in accordance with the INVESTMENT terms in Section 4 herein.

SECTION 16. OPERATING RESPONSIBILITIES:

To ensure CONCESSIONAIRE meets the expectations of the CITY and that the visitor experience at Griffith Observatory is positive in every respect, CONCESSIONAIRE shall operate under the following principal guidelines.

A. Food and Beverage

CONCESSIONAIRE shall offer creatively prepared food and beverage to enhance the Griffith Observatory visitor and guest experience and which shall be at all times consistent with the gourmet image of Wolfgang Puck. Thematic in nature, the Café at the End of the Universe shall offer menu items which reflect the Observatory's astronomical intent and is consistent with the Observatory's programmatic initiatives. Menu items shall be derived from the freshest local ingredients, and best quality products available. Menu items shall be fresh and appeal to both kids and adults, families, the casual visitor, program participants, and locals. Menu items shall offer ethnic and dietary options. Branded programs may include Wolfgang Puck coffees and teas as well as "signature" menu items. CONCESSIONAIRE agrees that should CITY modify, rebrand, or otherwise materially alter the theme of The Café, CONCESSIONAIRE will modify food and beverage items accordingly.

CONCESSIONAIRE shall utilize their state-of-the-art 7500 square foot kitchen/commissary at 6801 Hollywood, Suite 500 (at Highland) or other suitable location in the preparation of all Café and catering menu items for Griffith Observatory. Said commissary shall be licensed by the Los Angeles County Health Department as required. Food handling and preparation shall be performed under food industry safety standards. CONCESSIONAIRE may utilize other locations for food and cart storage and catering support, upon the written approval of the GENERAL MANAGER, which approval shall not unreasonably be withheld or delayed.

CONCESSIONAIRE shall maintain high standards of food safety and sanitation utilizing such programs as ServSafe certification, elements of Hazard Analysis Critical Control Point System (HACCP) policies and procedures or other current policies and procedures which focus on identifying hazards that may contaminate potentially hazardous foods during any food handling step from receiving to serving.

CONCESSIONAIRE shall offer the public a full range selection of breakfast, luncheon, and fast food items and beverages all consistent with the gourmet image of Wolfgang Puck. CONCESSIONAIRE shall have the option to sell alcoholic beverages (beer, wine, and spirits) at the CONCESSION. Sale of alcoholic beverages must comply with the rules and regulations of the Alcoholic Beverage Control Board. CONCESSIONAIRE shall obtain a liquor license/permit allowing for the service of all alcohol beverages at the PREMISES. CITY/Observatory Management shall cooperate fully with CONCESSIONAIRE with regard to obtaining such license.

CONCESSIONAIRE shall minimize the paper items (straw covers, serving cartons, etc.) distributed with take-out CONCESSION products. CONCESSIONAIRE shall use commercially reasonable best efforts to sell merchandise in recyclable bottles, and shall not dispense take-out food or beverage items in glass or Styrofoam containers. CONCESSIONAIRE shall not sell or give away or otherwise dispose of any commodity which in the opinion of GENERAL MANAGER will cause undue litter. CONCESSIONAIRE shall not sell lottery merchandise.

B. Price Schedules

All menu prices shall be comparable with menu prices at other first class, high quality, Los Angeles-area cultural institutions, cafés and catering/banquet facilities for substantially similar services, items and portions. Prices shall be determined with a goal of high perceived value. CITY agrees that CONCESSIONAIRE'S merchandise, including its schedule of prices, charges and rates for same, shall be within CONCESSIONAIRE'S discretion; subject, however, to disapproval by GENERAL MANAGER if the selection of items offered is inadequate, of inferior quality, or if any of said prices, charges and rates are excessively high or low. Such determination shall not be unreasonable and shall take into account the business considerations presented by CONCESSIONAIRE. All prices must be posted on display or on menus if table service is provided. Menu prices and portions will be Exhibit D

to this AGREEMENT and such prices will be set and established for each calendar year. December of each year will be the annual review time for new pricing to be effective January of the following year. No price adjustments or changes will be made without the CITY'S prior written approval and knowledge, which will not be unreasonably withheld. Whenever conditions result in cost increases to the CONCESSIONAIRE, then and in that event, the CITY will consider price adjustments at other times during the year.

Customized catering proposals shall have varied appeal and pricing to suit a wide range of budgets.

CONCESSIONAIRE retains the right to refuse catering opportunities based on pricing or other reasonable criteria.

Discounts shall be offered by CONCESSIONAIRE to Observatory staff and volunteers on Café and Cart purchases at ten percent (10%) and fountain sodas and brewed beverages at fifty percent (50%) with appropriate CITY-issued identification.

Special Pricing shall be extended for day-to-day Internal Catering needs: Gala and other special event menus will be offered at a 15% discount from CONCESSIONAIRE'S standard retail pricing. Labor and equipment rentals will be provided for internal catering at CONCESSIONAIRE'S cost (hourly wage plus 20% payroll tax and benefits); there is no "service" charge.

All services and/or merchandise carried in stock, displayed, offered for sale and/or sold by CONCESSIONAIRE in said PREMISES shall be of high quality consistent with the gourmet image of Wolfgang Puck and must be related to the ordinary business of the permitted CONCESSION operations. No limitation, adulterated, misbranded or impure articles shall be sold or kept for sale by CONCESSIONAIRE. All merchandise kept for sale or rented by the CONCESSIONAIRE shall be kept subject to the reasonable approval or rejection of the GENERAL MANAGER and CONCESSIONAIRE shall remove from the PREMISES any article which may be rejected and shall not again offer it for sale without the consent of the GENERAL MANAGER. The GENERAL MANAGER may order the improvement of the quality of any merchandise kept or offered for sale or rental.

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

C. Hours of Operation

The CONCESSIONAIRE shall operate the CAFÉ during the following hours:

Monday 10:00 a.m. to 8:00 p.m.

Tuesday	7:00 a.m. to 8:00 p.m.
Wednesday	7:00 a.m. to 8:00 p.m.
Thursday	7:00 a.m. to 8:00 p.m.
Friday	7:00 a.m. to 9:00 p.m.
Saturday	7:00 a.m. to 9:00 p.m.
Sunday	7:00 a.m. to 8:00 p.m.

Should hours of the Observatory change, CONCESSIONAIRE shall adjust café hours such that the café is open not later than one (1) hour after the Observatory opens and stays open continuously until at least one (1) hour before the Observatory closes. Extended hours of business shall be at the CONCESSIONAIRE'S discretion. The Hours of Operation for catered special events is expected to conform to the PARK'S Hours of Operation.

CONCESSIONAIRE must post the hours of operation in a location visible to the public, and must be open for business during the hours posted. Any deviation from the hours specified and the hours for special events shall be subject to the prior reasonable approval of GENERAL MANAGER.

D. Equipment, Furnishings and Expendables

CONCESSIONAIRE is requested to provide, all Loose Equipment which includes, but is not necessarily limited to, kitchenware, point-of-sale/cash registers, computers and computer related hardware and software, catering equipment, office furniture/furnishings, carts and fax machine. The CITY will have the right of review and approval of any Loose Equipment that will be used or in view of Observatory visitors/customers, which approval shall not unreasonably be withheld or delayed.

CITY may at no cost to CONCESSIONAIRE, provide certain equipment (which shall remain the property of the CITY, and reserves the right at any time to replace any and all items of CITY-owned equipment at this CONCESSION with functionally equivalent equipment.

All Loose Equipment and any personal property required for said CONCESSION shall be purchased and installed, by CONCESSIONAIRE at its sole expense and shall remain its personal property. If, upon termination of the AGREEMENT, CITY does not renew said AGREEMENT, CONCESSIONAIRE shall have the right to remove its own Loose Equipment and any personal property, but not improvements, from the PREMISES and shall be allowed a period of thirty (30) days to make such removal. If not removed within that period, said Loose Equipment shall become the property of CITY.

E. Maintenance, Refurbishing and Repair of Café Equipment

CONCESSIONAIRE shall, at all times and at its expense, keep and maintain the PREMISES including all equipment, whether owned and/or installed by CONCESSIONAIRE or CITY, such as, but not limited to, heat exchangers, fans, controls and electric panels, installed by

CITY, together with all of the fixtures, plate and mirror glass, equipment and personal property therein, in good repair and in a clean, sanitary and orderly condition and appearance. PREMISES map to state the exclusion of rest rooms. For the purposes of this Section, the PREMISES shall mean the Café at the End of the Universe and the kitchen.

No equipment provided by CITY shall be removed or replaced by CONCESSIONAIRE without the prior written consent of the GENERAL MANAGER, and if consent is secured, such removal and/or replacement shall be at the expense of CONCESSIONAIRE.

F. Maintenance of Café and SPECIAL EVENT PREMISES

CONCESSIONAIRE shall, at its expense, keep and maintain all the interior walls and surfaces of PREMISES and all improvements, fixtures, trade fixtures, and utility systems which may now or hereafter exist thereon, whether installed by CITY or CONCESSIONAIRE, in good, operable, useable and sanitary order throughout the term of the AGREEMENT, providing for such repairs, replacements, rebuilding and restoration as may be required by or given prior written approval by the GENERAL MANAGER to comply with the requirements hereof. Common passageways leading to other CONCESSION facilities or offices maintained by CITY which also lead to the PREMISES shall not be considered under the control of CONCESSIONAIRE for purposes of this Section. For the purposes of this provision, improvements shall include all buildings and appurtenances recessed into or attached by any method to the ground or to another object which is recessed or attached to the ground or to other CITY-owned facilities (such as buildings, fences, posts, signs, electrical hook-ups, plumbing, tracks, tanks, etc.).

CONCESSIONAIRE'S duties shall include all sweeping, washing, servicing, repairing, replacing, cleaning and interior painting that may be required to properly maintain the PREMISES in a safe, clean, orderly and attractive condition. Those duties shall also include electrical, mechanical and plumbing maintenance in the interior of the PREMISES, such as light fixtures, toilets and faucets. However, CITY shall maintain the walls of the PREMISES. CITY shall maintain the exterior of all buildings and will endeavor to perform all exterior repairs occasioned by normal wear and tear, and the elements, unless otherwise provided for in the AGREEMENT.

In the event that any structural or other improvements or furnishings and supplies constructed or installed by CONCESSIONAIRE in any one or all of the various PREMISES are damaged or destroyed, in whole or in part, from any cause whatsoever, CONCESSIONAIRE shall forthwith proceed with the removal of the debris and damaged or destroyed structural or other improvements, equipment, furnishings and supplies. Thereafter CONCESSIONAIRE shall proceed with all dispatch with the reconstruction work necessary to restore the damaged or destroyed PREMISES to the condition they were in prior to the occurrence of such damage or destruction. CONCESSIONAIRE shall pay all costs and expenses incurred in connection therewith unless caused by CITY'S or its agents', employees', or contractors' negligence.

CITY does not have any duty to make any improvements, replacements or repairs whatsoever to the PREMISES and any structures, improvements, fixtures, trade fixtures, equipment and utilities during the term hereof except as set forth above.

If CONCESSIONAIRE fails, after written notice, to correct such conditions which have led or, in the reasonable opinion of CITY agents, could lead to significant damage to CITY property under CONCESSIONAIRE'S control, the GENERAL MANAGER may at its option, and in addition to all other remedies which may be available to it, repair, replace, rebuild, redecorate or paint any such PREMISES included in said notice, with the cost thereof, plus fifteen percent (15%) for administrative overhead, to be paid by CONCESSIONAIRE to CITY on demand.

CONCESSIONAIRE shall be responsible for janitorial clean-up related to Special Events held at SPECIAL EVENT PREMISES.

For purposes of this Section F. the PREMISES shall mean the Café at the End of the Universe and the kitchen. The parties acknowledge and agree that CONCESSIONAIRE shall be responsible for set-up and clean up during and immediately following special event help at SPECIAL EVENT PREMISES or during and immediately following cart service at cart set-up areas.

G. Cart Operations

As a supplement to food and beverage service in the Café during peak periods such as weekends, holidays and summer, based upon attendance and profitability as mutually agreed upon, CONCESSIONAIRE shall provide mobile cart service featuring refrigeration and display area for food and beverages. The cart(s) shall be configured and merchandised to maximize visual appeal, menu variety and practicality.

CONCESSIONAIRE shall secure all necessary licenses and permits under the AGREEMENT covering the operation of these items. CONCESSIONAIRE shall maintain the carts in good repair and in a clean and sanitary condition at all times and keep the area 10' around cart(s) clean and sanitary. Cart(s) must be removed from the agreed upon set-up area daily. Temporary storage of cart(s) is permitted within the Café pending written approval from Observatory Management. During non-use periods, carts would be stored off-PREMISES at CONCESSIONAIRE'S cost and expense, at a Health Department Approved offsite location when not in use at the Observatory such as the Hollywood and Highland support location.

CONCESSIONAIRE shall be responsible for the maintenance of the mobile food and beverage cart(s) and shall provide a trash receptacle on the mobile food and beverage cart(s) for use by customers thereof. CONCESSIONAIRE shall not sell any items in glass containers from the mobile food and beverage cart(s). CONCESSIONAIRE shall be

responsible for maintenance and cleanliness of the mobile food and beverage cart(s).

H. Personnel

In the Observatory's setting, the foodservice CONCESSIONAIRE'S staff is normally perceived by the public (visitor) as "representatives of the Observatory." The CITY and Observatory is very concerned about its public image and reputation. For this reason, the GENERAL MANAGER and OBSERVATORY MANAGEMENT will have the prior approval of Manager, Assistant Manager, and Catering Manager before hiring or placement at the Observatory, which approval shall not unreasonably be withheld or delayed.

Such person must be an outstanding, highly qualified and experienced manager or supervisor of operations, vested with full power and authority to accept service of all notices provided for herein and regarding operation of the CONCESSION business herein authorized, including the quality and prices of CONCESSION merchandise and services and the appearance, conduct and demeanor of CONCESSIONAIRE'S agents, servants and employees. Said CONCESSION MANAGER shall be available during regular business hours and, at all times during that person's absence, a responsible subordinate shall be in charge and available.

The CONCESSION MANAGER shall devote the greater part of his or her working time and attention to the operation of the CONCESSION and shall promote, increase and develop the business and render every possible service and convenience to the public. During the days and hours established for the operation of the subject concession, the CONCESSION MANAGER'S personal attention shall not be directed toward the operation of any other business activity.

In the event of problems with any front-line CONCESSIONAIRE'S staff (staff that works in customer spaces and/or has customer contact), upon the CITY'S reasonable and lawful request, CONCESSIONAIRE will remove the staff person(s) from the Observatory and ensure a timely replacement of the position. Removal of the staff person does not mean "termination."

CONCESSIONAIRE management team shall consist of a manager, assistant manager, catering manager, head cashier, chef, and assistant chef. CONCESSIONAIRE staff who handle/prepare food shall complete comprehensive ServSafe training on food, hygiene, and cleanliness. All staff shall provide professional, warm and friendly service. Staff shall ensure prompt service.

CONCESSIONAIRE shall provide the GENERAL MANAGER with certificates on each employee indicating freedom from communicable tuberculosis as required by Section 5163 of the Public Resources Code.

CONCESSIONAIRE will, in the operation of the services under the AGREEMENT, employ

or permit the employment of only such personnel as will assure a high standard of service to the public and cooperation with the Department of Recreation and Parks. All such personnel, while on or about the PREMISES, shall be neat in appearance and courteous at all times and shall be appropriately attired, with badges or other suitable means of identification. No personnel employed by CONCESSIONAIRE, while on or about the PREMISES, shall be under the influence of illegal drugs, narcotics, other controlled substances or alcohol, or use inappropriate language, or engage in otherwise inappropriate conduct for a work environment. In the event an employee is not reasonably satisfactory, the GENERAL MANAGER may direct CONCESSIONAIRE to remove that person from the PREMISES.

CONCESSIONAIRE employees performing services or administrative work on PREMISES shall be subject to the rules and regulations established by CITY as reasonable and necessary for its PREMISES, operation facilities, services equipment, and offices, which rules and regulations shall not be in violation of any federal, state, or local laws.

I. Health, Safety and Security of Patrons and Employees

The following supplements the requirements of federal, state, and local authorities relative to the health and safety of employees and patrons to the Observatory foodservice facilities. The CITY reserves the right to perform health and safety inspections for food service at Griffith Park at a reasonable time and so as not to disrupt CONCESSIONAIRE'S provision of Services hereunder, and if the conditions at any of the Observatory service locations under the control of CONCESSIONAIRE do not meet the highest reasonable standards as measured by industry standards due to CONCESSIONAIRE'S acts or omissions, the CITY may direct the CONCESSIONAIRE to take necessary action at CONCESSIONAIRE cost and expense, which may include closing service locations, and the CONCESSIONAIRE agrees to abide by all such directions. CONCESSIONAIRE shall correct safety deficiencies and violations of safety practices immediately after the condition becomes known or GENERAL MANAGER notifies CONCESSIONAIRE of said condition.

If requested by the CITY, the CONCESSIONAIRE'S Café employees shall receive medical examinations of a type and scope to be specified by the CITY, prior to the commencement of their work at the Observatory facilities, and at other times which the CITY may require. The CONCESSIONAIRE shall certify to the CITY that such examinations have been performed and that its employees are in full compliance with all applicable medical standards. Any medical examinations requested by the CITY shall be consistent with foodservice industry standards and shall not be in contravention of any local, state or federal law.

The CONCESSIONAIRE'S Café employees will be required to receive tuberculin tests prior to their working at the Observatory facilities under CONCESSIONAIRE control, and other tests as the CITY may require from time to time as a cost of business under the contract. If required by CITY, upon receipt of CONCESSIONAIRE'S certifications, the CITY shall issue an identification badge to each of CONCESSIONAIRE'S employees.

The CONCESSIONAIRE agrees that it will immediately notify the CITY of all cases of communicable diseases, skin infections, or food poisoning contracted by its employees or by patrons of the CITY facilities. The CONCESSIONAIRE shall promptly report to the CITY the details of any such case, the action it has taken to remedy the case, as well as the action it has taken to prevent recurrence. The CONCESSIONAIRE shall maintain a weekly blood incident log. The CITY retains the right to review the logs at any reasonable time if lawful.

The CONCESSIONAIRE shall comply with all applicable federal, municipal and the CITY fire, safety and health laws, ordinances, rules and regulations. The CONCESSIONAIRE shall train its employees to respond to fire, civil defense, bomb threats, and other emergencies based on procedures established by the CITY, and to the extent applicable to Observatory employees.

The CONCESSIONAIRE shall immediately notify the CITY of any fire, accident, or safety hazard that occurs at any facility of the CITY under CONCESSIONAIRE'S control. The CONCESSIONAIRE shall take reasonable measures to remedy any condition in any facility under CONCESSIONAIRE'S control that is unsafe, unhealthy, or dangerous. The CITY can review and reasonably approve CONCESSIONAIRE'S OSHA required standards and CONCESSIONAIRE will be responsible for OSHA training of its staff.

The CONCESSIONAIRE shall cooperate fully with CITY in the investigation of accidents occurring on the PREMISES. In the event of injury to a patron or customer, CONCESSIONAIRE shall act reasonably to ensure that the injured person receives prompt and qualified medical attention, and as soon as possible thereafter, CONCESSIONAIRE shall submit a CITY Form General No. 87 "Non-Employee Accident or Illness Report", Exhibit E. CONCESSIONAIRE fails to correct hazardous conditions, which are within the control of CONCESSIONAIRE specified by the GENERAL MANAGER in a written notice, which have led, or in the reasonable opinion of CITY agents could lead, to injury, the GENERAL MANAGER may at his option, and in addition to all other remedies which may be available to CITY, to repair, replace, rebuild, redecorate or paint any such PREMISES to correct the specified hazardous conditions, with the cost thereof, plus fifteen percent (15%) for administrative overhead, to be paid by CONCESSIONAIRE to CITY on demand.

J. Marketing

CONCESSIONAIRE shall take all reasonable measures, in every proper manner, to develop, maintain, and increase the business conducted by it under this AGREEMENT.

Except as may be otherwise provided in the AGREEMENT with CONCESSIONAIRE, the CONCESSIONAIRE shall not refer to the Griffith Observatory or its facilities in any manner or through any medium, whether written, oral, or visual, for any purpose whatsoever, including, but not limited to, advertising, promotion, publicity, solicitation or fund-raising

without the prior written permission of the CITY. Notwithstanding, CONCESSIONAIRE shall not be obligated to seek approval more than once for identical promotional materials.

CONCESSIONAIRE shall obtain pre-approval by GENERAL MANAGER and OBSERVATORY MANAGEMENT of all signage provided and/or installed by CONCESSIONAIRE throughout the Observatory building and facilities.

CONCESSIONAIRE shall market the café on an ongoing basis to the local PARK/ Los Angeles marketplace and daily Observatory visitor, where focus is comprised of but not limited to:

- Creating loyalty programs for families, kids, nannies, Observatory members, and other potential customers;
- Promoting discount and event programs for members, staff and volunteers;
- Developing pricing strategies that will attract PARK customer audiences;
- Providing take-away health and nutrition guide for visitors;
- Designing themed menu programs for special exhibits, ethnic celebrations, and seasonal calendars;
- Bundling Planetarium entrance or retail merchandise and food programs for groups with a single charge;
- Advertising in Observatory / PARK mailings and publications, print and web family publications;
- Promoting kid-friendly menu programs to attract school / organization sponsored groups; and
- Building local and regional client base by creating event packages conforming to observatory policy.

In addition to the marketing and promotion relating to operation of the café and mobile carts, CONCESSIONAIRE shall provide support in the marketing and promotion of Griffith Observatory rental spaces as defined, permitted, and scheduled by OBSERVATORY MANAGEMENT.

CONCESSIONAIRE shall allocate 1% of annual catering revenues hereunder to an advertising and promotion budget for the Griffith Observatory. CONCESSIONAIRE'S corporate marketing team shall develop content (i.e. menu recipes) and communications (i.e. calendars) promoting the food program on the Observatory and Wolfgang Puck websites, and initiate e-mail and direct marketing initiatives to promote event and group sales.

Dates for FACILITY rentals and related catering are strictly at the availability and discretion of OBSERVATORY MANAGEMENT. To the degree in which OBSERVATORY rental spaces are afforded to CONCESSIONAIRE for promotion and subsequent booking requiring catering service, CONCESSIONAIRE shall implement a corresponding catering marketing program which may include, but not mandate, targeting a broader local, regional, national, and global event customer where focus is comprised but not

limited to:

- Leveraging the combined national and local clients of CONCESSIONAIRE of CONCESSIONAIRE'S promotion / marketing / sales efforts for Griffith Observatory;
- Maximizing the relationships established at the preeminent venues that CONCESSIONAIRE operates nationwide to drive and sustain visitor and special event sales throughout the term of the contract;
- Establishing the Observatory as a corporate and convention destination by targeting meeting planners, destination management companies, event producers, and other event decision-makers;
- Initiating open house events and Chef's Table dinners for local event and meeting planners from local corporations and entertainment companies.

K. Use of Wolfgang Puck.

1. Use of Wolfgang Puck. Subject to Section K(2) below, the parties expressly acknowledge and agree that CONCESSIONAIRE'S name or any name utilizing the name Wolfgang Puck or any derivative thereof or any other trademark, service mark or other intellectual property (including, but not limited to, recipes) of CONCESSIONAIRE, Wolfgang Puck or any affiliates thereof (whether such is owned or licensed to any of the foregoing, collectively, "Puck IP") may not be used to publicize, promote, market or in any way be used in connection with the Services in a manner that is not approved in writing by CONCESSIONAIRE.
2. Permitted Uses. Subject to the prior approval of CONCESSIONAIRE the Café, Carts and Catering shall be marketed as Wolfgang Puck Catering. In connection therewith, CITY shall have the right, subject to CONCESSIONAIRE 'S prior written approval as to manner of use, to use the name selected by the parties to promote and advertise the Catering. Furthermore, CITY shall expressly assign any rights it may have in the selected name to CONCESSIONAIRE.
3. No License. The parties further agree that except as set forth in this Section, CITY shall have no right to promote or advertise to the public or otherwise CONCESSIONAIRE'S Services. Nothing contained in this Section or any other provision of this AGREEMENT shall be interpreted or intended to convey a license or any ownership or other rights to CITY in any Puck IP, including but not limited to any rights to use, or any co-branding rights with respect to the Puck-IP.
4. Termination. Upon termination of this AGREEMENT or expiration of the Term, CITY shall immediately cease using the Puck IP under this Section and AGREEMENT or as otherwise approved by CONCESSIONAIRE.

L. Customer Surveys

The Café and catering services are an integral and important part of the visitor (or guest in the case of catering) experience. The CITY and OBSERVATORY MANGEMENT is very concerned about its public image and reputation. For this reason CONCESSIONAIRE shall install customer survey programs covering its entire foodservice, café, carts and catering services at the OBSERVATORY. The forms and techniques (i.e., automated, written, intercepts, focus groups, etc.) will be subject to prior review and approval of the CITY, which approval shall not unreasonably be withheld or delayed. CONCESSIONAIRE shall provide the results from these activities at least quarterly to the CITY.

M. Cleanliness

Though bussing is intended to be self-service, CONCESSIONAIRE staff members, shall assist patrons and visitors in public spaces.

CONCESSIONAIRE shall clean all food preparation equipment daily. Walls, ceilings, and floors shall be kept free of grease and dirt and shall be cleaned regularly. Windows shall be washed regularly. Counter tops and tables shall be kept clean and dry at all times. All dirty dishes shall be removed and stacked out of sight from public view. Grease shall not be poured down drains, but shall be disposed of in containers. All utensils, dishes, cups, bowls, and glasses shall be spotless and dry when served to patrons.

CONCESSIONAIRE shall keep the PREMISES, and the surrounding areas clean and sanitary at all times [at least twenty-five (25) feet for PREMISES; ten (10) feet for carts]. No offensive or refuse matter, nor any substance constituting an unnecessary, unreasonable or unlawful fire hazard, or material detrimental to the public health, shall be permitted or remain thereon, and CONCESSIONAIRE shall prevent any such matter or material from being or accumulating upon said PREMISES. CONCESSIONAIRE shall not be responsible for clean-up/maintenance, which is not directly related to its foodservice operations.

CONCESSIONAIRE at its own expense shall see that all garbage or refuse is collected from the CONCESSION FACILITY as often as necessary and in no case less than twice a week and deposited only into the trash dumpsters located north of the main OBSERVATORY building, in the DEPARTMENT'S shared trash bin area adjacent to the main parking lot.

For purposes of this Section M, the PREMISES shall mean the Café at the End of the Universe and the kitchen. The parties acknowledge and agree that CONCESSIONAIRE shall be responsible for set-up and clean up during and immediately following special events held at SPECIAL EVENT PREMISES or during and immediately following cart service at cart set-up areas.

N. Conduct

CONCESSIONAIRE shall at all times conduct its business in a quiet and orderly manner to the reasonable satisfaction of the GENERAL MANAGER.

O. Disorderly Persons

CONCESSIONAIRE shall use its best efforts to permit no intoxicated person or persons, profane or indecent language, or boisterous or loud conduct in or about the PREMISES and will call upon the aid of peace officers to assist in maintaining peaceful conditions. It shall not knowingly allow the use or possession of illegal drugs, narcotics or controlled substances on the PREMISES.

P. Non-Discrimination/ Equal Employment Practices/ Affirmative Action

1. CONCESSIONAIRE, in its CONCESSION operations at the FACILITY, for itself, its personal representatives, successors in interest and assigns, as part of the consideration hereof, does hereby covenant and agree that: (1) no person on the grounds of race, color, national origin, religion, ancestry, sex, age, physical handicap or sexual orientation shall be excluded from participation, denied the benefits of or be otherwise subjected to discrimination in access to or in the use of the facilities covered by the AGREEMENT; (2) that in the construction of any improvements on, over or under the PREMISES authorized to be utilized herein and the furnishing of services thereon, no person on the grounds of race, color, national origin, religion, ancestry, sex, age, physical handicap or sexual orientation shall be excluded from participation in, denied the benefits of or otherwise be subjected to discrimination.
2. CONCESSIONAIRE agrees that in the event of breach of any of the above nondiscrimination covenants, with proper notification as per Section 37. Notices, paragraph B, CITY shall have the right to terminate the AGREEMENT and to reenter and repossess said land and the facilities thereon and hold the same as if said AGREEMENT had never been made or issued.
3. In addition, CONCESSIONAIRE, during the term of the AGREEMENT, agrees not to discriminate in its employment practices against any employee or applicant for employment because of the employee's or applicant's race, color, religion, national origin, ancestry, sex, age, physical handicap or sexual orientation. All subcontracts entered into by CONCESSIONAIRE shall be approved in advance by CITY and shall contain a like provision.

Q. Diversion of Business

CONCESSIONAIRE shall not divert, cause, allow or permit to be diverted any business from the PREMISES and shall take all reasonable measures, in every proper manner, to develop, maintain and increase the business conducted by it under the AGREEMENT.

R. Claims for Labor and Materials

The CONCESSIONAIRE shall promptly pay when due all amounts payable for labor and materials furnished in the performance of this AGREEMENT so as to prevent any lien or other claim under any provision of law from arising against any CITY property (including reports, documents, and other tangible matter produced by the CONCESSIONAIRE

hereunder), against the CONCESSIONAIRE'S rights hereunder, or against the CITY, and shall pay all amounts due under the Unemployment Insurance Act with respect to such labor.

S. Signs and Advertisements

CONCESSIONAIRE shall not erect, construct or place any signs, banners, ads, or displays of any kind whatsoever upon any portion of the FACILITY or PREMISES without the prior written approval from the GENERAL MANAGER and OBSERVATORY MANAGEMENT. Certain signs and advertisements may also require the prior written approval of the Cultural Affairs Department or other appropriate agencies.

Upon the expiration or earlier termination of the AGREEMENT, CONCESSIONAIRE shall remove, obliterate or paint out, as GENERAL MANAGER may reasonably direct, any and all of its signs and displays on the PREMISES and in connection therewith, and shall restore said PREMISES and improvements thereto to the same condition as prior to the placement of any such signs or displays, ordinary wear and tear excepted.

In the FACILITY licensed hereunder, a sign shall be posted in a prominent place stating that the CONCESSION is operated under a Concession AGREEMENT issued by CITY through the Department of Recreation and Parks.

T. Taxes and Permits

CONCESSIONAIRE shall pay all taxes of whatever character that may be levied or charged upon the rights of CONCESSIONAIRE to use the PREMISES, or upon CONCESSIONAIRE'S improvements, fixtures, equipment or other property thereon or upon CONCESSIONAIRE'S operations hereunder. In addition, by executing the AGREEMENT and accepting the benefits thereof, a property interest may be created known as a "Possessory Interest" and such property interest will be subject to property taxation. CONCESSIONAIRE, as the party in whom the Possessory interest is vested, may be subject to the payment of the property taxes levied by the State and County upon such interest.

For and during the entire term of the AGREEMENT, the CONCESSIONAIRE must hold a Los Angeles Business Tax Registration Certificate required by the CITY'S Business Tax Ordinance (LAMC Article 1, Chapter 2, Sections 21.00 et. seq.). For and during the entire term covered by the AGREEMENT, the CONCESSIONAIRE shall maintain, or obtain as necessary, all such Certificates required of it under said Ordinance and shall not allow any such Certificate to be revoked or suspended.

Pursuant to Section 21.3.3 of Article 1.3 of the LAMC Commercial Tenants Occupancy Tax, CONCESSIONAIRE must pay to the CITY for the privilege of occupancy, a tax at the rate of \$1.48 per calendar quarter or fractional part thereof for the first \$1,000 or less of charges (rent) attributable to said calendar quarter, plus \$1.48 per calendar quarter for each additional \$1,000 of charges or fractional part thereof in excess of \$1,000. Said tax shall be paid to the Department of Recreation and Parks quarterly, on or before the fifteenth (15th) of April, July,

October, and January of each calendar year, for the preceding three (3) months.

CONCESSIONAIRE shall obtain and maintain at its sole expense any and all approvals, permits, or licenses that may be required in connection with the operation of the CONCESSION including, but not limited to: tax permits, business licenses, health permits, building, police and fire permits, etc.

U. Utilities

CONCESSIONAIRE shall be responsible for those utility charges including, but not limited to deposits, installation costs, meter deposits and all service charges for electricity, heat, air-conditioning, cable, telephone, DSL, and other utility/services to PREMISES (excluding SPECIAL EVENT PREMISES), and shall be paid by CONCESSIONAIRE directly to utility/service corporations. A separate meter exists for direct electrical service to the café, kitchen, and commissary of the CONCESSION. There are no natural gas lines to provide service to the CONCESSION. CONCESSIONAIRE will not be responsible for water usage relating to operation of the CONCESSION nor building Heating, Ventilating, and Air Conditioning (HVAC). As provided by the CITY, water shall be utilized by CONCESSIONAIRE in the most efficient manner possible, and CONCESSIONAIRE expressly agrees to comply with all CITY water conservation programs.

CONCESSIONAIRE hereby expressly waives all claims for compensation or for any diminution or abatement of the rental payment provided for herein for any and all loss or damage sustained by reason of any defect, deficiency or impairment of the water, heating, or air conditioning systems, electrical apparatus or wires furnished to the PREMISES which may occur from time to time and from any cause or from any loss resulting from water, earthquake, wind, civil commotion or riot; and CONCESSIONAIRE hereby expressly releases and discharges CITY, the Department of Recreation and Parks and CITY'S officers, employees, servants and agents from any and all demands, claims, actions and causes of action arising from any of the aforesaid causes.

In all instances where damage to any utility service line at the OBSERVATORY is caused by CONCESSIONAIRE'S negligence or that of, its employees, contractors, sub-contractors, suppliers, agents or invitees, CONCESSIONAIRE shall be responsible for the cost of repairs and any and all damages occasioned thereby.

For purposes of this Section U, the PREMISES shall mean the Café at the End of the Universe and the kitchen.

V. Vending Machines

CONCESSIONAIRE shall first receive written approval from the GENERAL MANAGER before installing or permitting vending, electronic game, or other coin operated machines to be installed. The GENERAL MANAGER shall have the right to order the immediate removal of any unauthorized machines.

W. Environmental Sensitivity

CONCESSIONAIRE shall implement a conservation policy to include, but not be limited to, utilizing non-toxic, recyclable paper, Styrofoam and cardboard products; sorting and separating all aluminum and tin products, providing appropriate collection containers in food service areas; sorting all polystyrene and plastic related products from paper and paperboard products; recycling cardboard boxes and wooden pallets at CONCESSIONAIRE'S distribution facilities; and maintain inventory controls to reduce waste. Such policy may include utilization of a refuse removal company that performs such services.

The CONCESSIONAIRE must operate the CONCESSION in an environmentally sensitive manner and all operations must comply with CITY directives as communicated to CONCESSIONAIRE regarding protection of the environment. CONCESSIONAIRE shall not use or allow the use on the PREMISES of environmentally unsafe products.

X. Amplified Sound

No amplified sound is permitted by CONCESSIONAIRE in its operations on PREMISES without consent by CITY.

Y. Fund Raising Activities

CONCESSIONAIRE will be expected to cooperate with DEPARTMENT personnel on all matters relative to the conduct of fund-raising and/or special events. CONCESSIONAIRE is granted the right of first refusal to provide food or beverages at DEPARTMENT-sponsored events at the PREMISES defined under this AGREEMENT should menu of the CONCESSIONAIRE be appropriate for the event as reasonably determined by the GENERAL MANAGER.

As stated in Section 2. Concession Granted, CITY reserves the right to have up to three (3) annual exceptions where the CITY may utilize outside caterers for internal and/or external events if needed whereby CONCESSIONAIRE shall be given the first opportunity and right-of-refusal to provide said services to the satisfaction of the DEPARTMENT. The Observatory café kitchen will not be shared with outside caterers. Alcohol, if served at the excepted events shall be served only by the CONCESSIONAIRE, although beverages or alcohol may be given to the CITY, where CONCESSIONAIRE is expected to provide services and set-up for such based on actual costs. In the event the products are not of the gourmet image of Wolfgang Puck, CITY reserves the right to obtain services from outside providers.

Z. Scheduled Events In Griffith Park

Long standing annual events (i.e. walk-a-thons, 5K runs) as well as new events in PARK may on occasion increase or decrease the usual amount of business CONCESSION location(s) due to increased park attendance and/or limited/restricted traffic access. CONCESSIONAIRE shall endeavor to adjust personnel scheduling and available goods

accordingly. Regular hours must be maintained, at a minimum, during scheduled special events, however, CONCESSIONAIRE may abbreviate its services, if appropriate with OBSERVATORY MANAGEMENT approval.

AA. Security

The CONCESSIONAIRE agrees to comply with all reasonable security requirements of the CITY and Observatory as it relates to its procedures, practices and its employees. All of CONCESSIONAIRE'S employees, whether or not they are regular or part time at the Observatory will be subject to the CITY and Observatory security rules and regulations when on the CITY'S property. OBSERVATORY MANAGEMENT will provide CONCESSIONAIRE with Staff Manual with regular updates. The CONCESSIONAIRE understands and agrees that its property, particularly its consumable goods, is not the responsibility of the CITY. The CITY is not responsible for the loss of personal effects of CONCESSIONAIRE'S employees, agents, and/or subcontractors. CONCESSIONAIRE shall require its employees to wear I.D. badges approved by the CITY at all times when working on the Observatory PREMISES.

CONCESSIONAIRE shall be responsible for the security of the interior Cafe and kitchen. CONCESSIONAIRE may install equipment, approved by the City, which will assist in protecting the PREMISES from theft, burglary, or vandalism. Any such equipment must be purchased, installed, and maintained by CONCESSIONAIRE.

SECTION 17. INSURANCE

A. Insurance Requirements

CONCESSIONAIRE shall acquire and maintain during the term of the AGREEMENT the established insurance, indemnity, and worker's compensation as detailed under Exhibit F attached thereto and incorporated within. These coverage limits are subject to change based on mutual agreement of the parties. Evidence of coverage shall be provided on the CITY'S insurance endorsement forms which are included in this AGREEMENT. CONCESSIONAIRE'S insurance coverage must be reviewed and approved by the CITY prior to commencement of operations and services at the Observatory.

B. Indemnification:

Except for the active negligence or willful misconduct of CITY, or any of its Boards, Officers, Agents, Employees, Assigns and Successors in Interest, CONCESSIONAIRE undertakes and agrees to defend, indemnify and hold harmless CITY and any of its Boards, Officers, Agents, Employees, Assigns, and Successors in Interest from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees and cost of litigation, damage or liability of any nature whatsoever, for death or injury to any person, including CONCESSIONAIRE'S employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of the negligent acts, errors, omissions or willful misconduct incident to the performance of this AGREEMENT by the CONCESSIONAIRE or sub-contractors of any

tier. The provisions of this paragraph survive expiration or termination of this AGREEMENT.

C. Insurance

General Conditions

1. Without limiting CONCESSIONAIRE'S indemnification of CITY, CONCESSIONAIRE shall provide and maintain at its own expense during the entire term of the AGREEMENT insurance having the limits customarily carried and actually arranged by CONCESSIONAIRE but not less than the amounts and types listed in the AGREEMENT covering its operations hereunder subject to the following conditions:

a. Additional Insured

CITY, its Officers, Agents and Employees shall be included as additional insureds in all liability insurance policies except: Workers' Compensation/ Employer's Liability, Professional Errors and Omissions and second-party Legal Liability coverages (such as Fire Legal). CITY shall be named Loss Payee As Its Interest May Appear in all required property, fidelity or surety coverages.

b. Insurance Requirements

All insurance required hereunder shall conform to CITY requirements established by Charter, ordinance or policy and shall be filed with the Office of the City Attorney for its review in accordance with Los Angeles City Administrative Code Sections 11.47 through 11.56.

c. Primary Insurance

Such insurance shall be primary with respect to any insurance maintained by CITY and shall not call on CITY'S insurance program for contributions.

d. Admitted Carrier/Licensed California Broker

Such insurance shall be obtained from brokers or carriers authorized to transact insurance business in California.

e. 30-Day Notice

With respect to the interest of CITY, such insurance shall not be canceled, materially reduced in coverage or limits or non-renewed except after thirty (30) days written notice by receipted delivery (e.g. certified mail-return receipt, courier) has been given to City Attorney Insurance and Bonds.

f. Prior Approval

Evidence of insurance shall be submitted to and approved by City Attorney and City Risk Manager prior to commencement of any work or tenancy under this AGREEMENT.

g. Severability of Interest

Except with respect to the insurance company's limits of liability, each liability insurance policy shall apply separately to each insured against who claim or suit is brought. The inclusion of any person or organization as an insured shall not affect any right which such person or organization would have as a claimant if not so included.

h. Acceptable Evidence

The appropriate CITY Special Endorsement forms are the preferred form of evidence of insurance. Alternatively, CONCESSIONAIRE may submit a certified copy of the policy or other evidence acceptable to the City Attorney and City Risk Manager containing language which complies with sub-paragraphs a. through g. above. With respect to Professional Liability insurance, either a signed copy of the Policy Declarations Page or a letter from CONCESSIONAIRE'S insurance broker certifying coverage, together with a 30-day cancellation notice endorsement in favor of the CITY as specified in subparagraph e. will satisfy with this requirement.

i. Renewal

Once the insurance has been approved by CITY, evidence of renewal of an expiring policy may be submitted on a manually signed renewal endorsement form. If the policy or the carrier has changed, however, new evidence as specified in paragraph a. through h. above must be submitted.

j. Aggregate Limits/Blanket Coverage

If any of the required insurance coverages contain aggregate limits, or apply to other operations or tenancy of CONCESSIONAIRE outside this AGREEMENT, CONCESSIONAIRE shall give CITY prompt, written notice of any incident, occurrence, claim, settlement or judgment against such insurance which in CONCESSIONAIRE'S best judgment will diminish the protection such insurance affords CITY. Further, CONCESSIONAIRE shall immediately take all reasonable and available steps to restore such aggregate limits or shall provide other insurance protection for such aggregate limits.

2. Self-Insurance and Self-Insured Retentions

Self-insurance programs and self-insured retentions in insurance policies are subject to separate approval by CITY upon review of evidence of CONCESSIONAIRE'S financial capacity to respond, which approval shall not be reasonably withheld or delayed. Additionally, such programs or retentions must provide CITY with at least the same protections from liability and defense of suits as would be afforded by first-dollar insurance.

3. Modification of Coverage

CITY reserves the right at any time during the term of this AGREEMENT to change the amounts and types of insurance required hereunder by giving CONCESSIONAIRE ninety (90) days advance written notice of such change and said change is mutually agreed upon by CONCESSIONAIRE. If such change should result in substantial additional cost to CONCESSIONAIRE, CITY agrees to negotiate additional compensation proportional to the increased benefit to CITY.

4. Availability/Failure to Procure Insurance

The required coverages and limits are subject to availability on the open market at reasonable cost as determined by CITY. Nonavailability or nonaffordability must be documented by a letter from CONCESSIONAIRE'S insurance broker or agent indicating a good faith insurance and showing as minimum the names of the insurance carriers and the declinations or quotations received from each.

Within the foregoing constraints, CONCESSIONAIRE'S failure to procure or maintain

required insurance or a self-insurance program shall constitute a material breach of contract under which CITY may immediately terminate this AGREEMENT or, at its discretion, procure or renew such insurance to protect CITY'S interests and pay any and all premiums in connection therewith, and recover all monies so paid from CONCESSIONAIRE.

5. Underlying Insurance

CONCESSIONAIRE shall be responsible for requiring indemnification and insurance as it deems appropriate from its employees receiving mileage allowance, consultants, agents and subcontractor, if any, to protect CONCESSIONAIRE'S and CITY interest, and for ensuring that such persons comply with applicable insurance statutes. CONCESSIONAIRE is encouraged to seek professional advice in this regard.

D. Workers' Compensation

CONCESSIONAIRE hereby certifies that it is aware of the provisions of Section 3700 et seq., of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and that it will comply with such provisions at all such times as they may apply during the performance of the work of this contract.

SECTION 18. PERFORMANCE BOND:

CONCESSIONAIRE shall provide a Performance Bond upon execution of this AGREEMENT by CITY whereas the amount, form, agreement of deposit and indemnity, and the deposit maintenance of said bond are set forth as follows.

CITY shall not execute the AGREEMENT and CONCESSIONAIRE may not begin operations on the licensed PREMISES until said bond has been received and reasonably approved by the CITY. The Faithful Performance Bond must meet all the following requirements:

A. Amount of Bond

The amount of the bond shall be \$10,000.00.

B. Form of Bond

The term "Faithful Performance Bond" does not mean that only a formal bond from a bonding company is acceptable. Any of the following instruments are acceptable if they meet the requirements spelled out in this Section. CONCESSIONAIRE'S bond shall be in any one of the following forms but may not be a combination of two or more types:

1. A cash deposit made at the Cashier's window of the Department of Recreation and Parks.
2. A cashier's check drawn on any bank that is a member of the Los Angeles Clearing House Association, which cashier's check is payable to the order of the City of Los Angeles.
3. A check drawn on and certified by any bank that is a member of the Los Angeles Clearing House Association, payable to the order of the City of Los Angeles.

4. United States Government negotiable securities (i.e., treasury bills, treasury notes, or treasury bonds).
5. A certificate of time deposit in a bank that is a member of the Los Angeles Clearing House Association, payable to the order of the City of Los Angeles.

C. Agreement of Deposit and Indemnity

The above instruments must be accompanied by an agreement of deposit and indemnity, approved as to form and legality by the City Attorney, wherein CONCESSIONAIRE unconditionally agrees that in the event of any default, CITY shall have full power and authority to use the deposit in whole or in part to indemnify CITY. Every deposit of securities or certificates of time deposit must be accompanied by express authority for the GENERAL MANAGER to convert same into cash and to deposit said cash in the City Treasury in the manner governing deposit of cash in the City Treasury by the Charter of the City of Los Angeles. All deposits of cash or checks must be immediately so deposited by the DEPARTMENT.

The BOARD shall authorize and request the Treasurer of the City of Los Angeles to receive said United States Government negotiable securities, together with the properly executed agreement of indemnity and deposit, for safekeeping. In the event said securities are to be converted to cash because of default, the BOARD may authorize and request the Treasurer to sell said securities on its behalf.

D. Maintenance of Deposit

Said bond shall be held by CITY during the entire term of the AGREEMENT. United States Government negotiable securities shall at all times have both a par value and a market value of not less than the amount specified in this AGREEMENT and, in the event the market value of said securities declines, CONCESSIONAIRE shall, upon written demand of the GENERAL MANAGER, within ten days of the mailing by the DEPARTMENT of such demand, pledge and furnish such additional United States Government negotiable securities with appropriate agreement of indemnity and deposit approved as to form and legality by the City Attorney, as may be necessary to maintain both a par and market value of securities on deposit of not less than the amount specified in this AGREEMENT. If such additional securities are not received by the DEPARTMENT within ten days after the mailing of written notice as stated above, all default provisions may be exercised at the discretion of CITY.

In the event of maturity of the securities prior to termination of the AGREEMENT for which they are deposited, the BOARD shall authorize and request the Treasurer to redeem the securities. The BOARD shall then use the proceeds of the redeemed securities to purchase a sufficient amount of United States Government negotiable securities to be at least equal as to both par and market value to the original amount of the deposit, and place them with Treasurer on receipt.

If the redemption proceeds are not sufficient, CONCESSIONAIRE shall deposit cash with the DEPARTMENT in an amount sufficient to make up the difference within ten days of mailing of notice of deficiency by the DEPARTMENT.

SECTION 19. IMPROVEMENTS:

The CONCESSIONAIRE agrees to make to the satisfaction of the CITY the improvements specified in the CONCESSIONAIRE'S proposal, as referenced in Section 15. Capital INVESTMENT – Fixed Equipment (FF&E) & Interior Design, incorporated herein.

Thereafter, CONCESSIONAIRE shall make no improvements to the PREMISES except with the prior written authorization of the GENERAL MANAGER as required. Said future improvements, if any, shall be subject to all environmental all other required approvals prior to construction of the improvements. CONCESSIONAIRE shall be responsible for the cost of the improvements, subject to buyback in the event of termination, only in regard to improvements required by CITY, and shall begin and complete said improvements within the time frame specified upon consideration and approval by the GENERAL MANAGER. CITY reserves the right to recover damages from CONCESSIONAIRE if the improvements are not completed once GENERAL MANAGER approval has been granted and work on the improvement has begun if due to reasons within CONCESSIONAIRE'S control. Such damages may include, but are not limited to, recovering up to the entire cost of the improvements from the CONCESSIONAIRE'S performance bond. The bond must be recompensed as stipulated in Section 18, Performance Bond, herein.

All structural or other improvements, equipment and interior design and decor constructed or installed by CONCESSIONAIRE in the FACILITY areas, both as required by Section 15 and any other improvements made by CONCESSIONAIRE on the PREMISES, including the plans and specifications therefore, shall be at its sole cost and expense, unless constructed or installed at the CITY'S request, in which case said improvements will be subject to buyback in the event of termination of this AGREEMENT, and shall in all respects conform to and comply with the applicable statutes (including CEQA), ordinances, building codes, rules and regulations of CITY and such other authorities that may have jurisdiction over the Observatory areas or CONCESSIONAIRE'S operations therein. The approval by GENERAL MANAGER as provided above shall not constitute a representation or warranty as to such conformity or compliance, but responsibility therefore shall at all times remain in CONCESSIONAIRE. CONCESSIONAIRE, at its sole cost and expense, shall also procure all building, fire, safety, aesthetics and other permits necessary for the construction of the structural and other improvements, installation of the equipment and the interior design and decor.

In addition, CONCESSIONAIRE shall require by any contract that it awards in connection with the structural or other improvements, the installation of any and all equipment and the interior designing and decor, that the contractor doing, performing or furnishing the same shall comply with all applicable statutes, ordinances, codes, rules and regulations, and submit to CITY evidence of required insurance coverage.

CITY has the right to monitor all phases of construction. All improvements must be made according to DEPARTMENT standards. All architectural services acquired by CONCESSIONAIRE must be with an agency qualified to do business in the State of California.

All improvements provided by CONCESSIONAIRE during the term of this AGREEMENT shall be and become the property of CITY upon termination of the AGREEMENT.

SECTION 20. DAMAGE OR DESTRUCTION TO PREMISES:

A. Partial Damage

If all or a portion of the PREMISES are partially damaged by fire, explosion, flooding inundation, floods, the elements, public enemy or other casualty, but not rendered uninhabitable, the same will be repaired with due diligence by CITY at its own cost and expense, subject to the limitations as hereinafter provided; if said damage is caused by the negligent acts or omissions of CONCESSIONAIRE, its agents, officers, or employees, CONCESSIONAIRE shall be responsible for reimbursing CITY for the reasonable cost and expense incurred in making such repairs.

B. Extensive Damage

If the damages as described above in paragraph A, are so extensive as to render the PREMISES or a portion thereof uninhabitable or unusable for food service operations, but are capable of being repaired within a reasonable time not to exceed sixty (60) days, the same shall be repaired with due diligence by CITY at its own cost and expense and a negotiated portion of the fees and charges payable hereunder shall abate from the time of such damage until such time as the PREMISES are fully restored and certified by GENERAL MANAGER as again ready for use; provided, however, that if such damage is caused by the negligent acts or omissions of CONCESSIONAIRE, its agents, officers or employees, said fees and charges will not abate and CONCESSIONAIRE shall be responsible for the cost and expenses incurred in making such repairs.

C. Complete Destruction

In the event all or a substantial portion of the PREMISES are completely destroyed by fire, explosion, the elements, public enemy or other casualty, or are so damaged that they are uninhabitable or unusable and cannot be replaced except after more than sixty (60) days, CITY shall be under no obligation to repair, replace or reconstruct said PREMISES, and an appropriate portion of the fees and charges payable hereunder shall abate as of the time of such damage or destruction and shall henceforth cease until such time as the said PREMISES are fully restored. If within four (4) months after the time of such damage or destruction said PREMISES have not been repaired or reconstructed, CONCESSIONAIRE may terminate this AGREEMENT in its entirety as of the date of such damage or destruction. Notwithstanding the foregoing, if the said PREMISES, or a substantial portion

thereof, are completely destroyed as a result of the negligent acts or omissions of CONCESSIONAIRE, its agents, officers, or employees, said fees and charges shall not abate and CITY may, in its discretion, require CONCESSIONAIRE to repair and reconstruct the same within twelve (12) months of such destruction and CONCESSIONAIRE shall be responsible for reimbursing CITY for the cost and expenses incurred in making such repairs.

D. Limits of CITY'S Obligation Defined

It is understood that, in the application of the foregoing provisions, CITY may, but shall not be obligated to repair or reconstruct the PREMISES. If CITY chooses to do so, CITY'S obligation shall also be limited to repair or reconstruction of the PREMISES to the same extent and of equal quality as obtained by CONCESSIONAIRE at the commencement of its operations hereunder. Redecoration and replacement of furniture, equipment and supplies shall be the responsibility of CONCESSIONAIRE and any such redecoration and refurbishing/reequipping shall be equivalent in quality to that originally installed.

SECTION 21. PROHIBITED ACTS

CONCESSIONAIRE shall not:

1. Do or allow to be done anything which may interfere with the effectiveness or accessibility of utility, heating, ventilating or air conditioning systems or portions thereof on the PREMISES or elsewhere on the FACILITY, nor do or permit to be done anything which may interfere with free access and passage in the PREMISES or the public areas adjacent thereto, or in the streets or sidewalks adjoining the PREMISES, or hinder police, fire fighting or other emergency personnel in the discharge of their duties;
2. Interfere with the public's enjoyment and use of the FACILITY or use the PREMISES for any purpose which is not essential to the CONCESSION operations;
3. Rent, sell, lease or offer any space for storing of any articles whatsoever within or on the PREMISES other than specified herein, without the written consent of the GENERAL MANAGER;
4. Overload any floor in the PREMISES;
5. Place any additional lock of any kind upon any window or interior or exterior door in the PREMISES, or make any change in any existing door or window lock or the mechanism thereof, unless a key therefore is maintained on the PREMISES, nor refuse, upon the expiration or sooner termination of the AGREEMENT, to surrender to GENERAL MANAGER any and all keys to the interior or exterior doors on the PREMISES, whether said keys were furnished to or otherwise procured by CONCESSIONAIRE, and in the event of the loss of any keys furnished by GENERAL MANAGER, CONCESSIONAIRE shall pay CITY, on demand, the cost for replacement thereof;
6. Do or permit to be done any act or thing upon the PREMISES which will invalidate, suspend or increase the rate of any insurance policy required under the

AGREEMENT, or carried by CITY, covering the PREMISES, or the buildings in which the same are located or which, in the opinion of GENERAL MANAGER, may constitute a hazardous condition that will increase the risks normally attendant upon the operations contemplated under the AGREEMENT, provided, however, that nothing contained herein shall preclude CONCESSIONAIRE from bringing, keeping or using on or about the PREMISES such materials, supplies, equipment and machinery as are appropriate or customary in carrying on its business, or from carrying on said business in all respects as is customary;

7. Use, create, store or allow any hazardous materials as listed in Division 4, Chapter 30, Article 9 of Title 22, California Administrative Code, or those which meet the toxicity, reactivity, corrosivity or flammability criteria of Article 11 of the above Code, as well as any other substance which poses a hazard to health and environment, provided, however, that nothing contained herein shall preclude CONCESSIONAIRE from bringing, keeping or using on or about the PREMISES such materials, supplies, equipment and machinery as are appropriate or customary in carrying on its business, or from carrying on said business in all respects as is customary except that all hazardous materials must be stored and used in compliance with all City, State and Federal rules, regulations, ordinances and laws;
8. Allow any sale by auction upon the PREMISES;
9. Permit undue loitering on or about the PREMISES;
10. Use the PREMISES in any manner that will constitute waste;
11. Use or allow the PREMISES to be used for any improper, immoral, or unlawful purposes.

SECTION 22. ASSIGNMENT, SUBLEASE, BANKRUPTCY

CONCESSIONAIRE shall not under-let or sub-let the subject PREMISES or any part thereof or allow the same to be used or occupied by any other person or for other use than that herein specified, nor assign this AGREEMENT nor transfer, assign or in any manner convey any of the rights or privileges herein granted without the prior written consent of CITY except to an affiliated business entity. Neither the AGREEMENT nor the rights herein granted shall be assignable or transferable by any process or proceedings in any court, or by attachment, execution, proceeding in insolvency or bankruptcy either voluntary or involuntary, or receivership proceedings. Any attempted assignment, mortgaging, hypothecation, or encumbering of the CONCESSION rights or other violation of the provisions of this Section shall be void and shall confer no right, title or interest in or to this AGREEMENT or right of use of the whole or any portion of the PREMISES upon any such purported assignee, mortgagee, encumbrance, pledgee or other lienholder, successor or purchaser.

Except to an affiliated business entity, the CONCESSIONAIRE may not, without 60-days prior written permission of the CITY:

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

Transfer or assignment to an affiliated business entity requires written notification to the CITY, 30

days in advance.

SECTION 23. BUSINESS RECORDS

CONCESSIONAIRE shall maintain during the term of the AGREEMENT and for three (3) years thereafter, all of its books, ledgers, journals and accounts wherein are kept all entries reflecting the Gross Receipts received or billed by it from the business transacted pursuant to the AGREEMENT. Such books, ledgers, journals, accounts and records shall be available for inspection and examination by GENERAL MANAGER, or a duly authorized representative, during ordinary business hours upon reasonable notice during the term of this AGREEMENT and for at least three (3) years thereafter at a location where said books and records are normally maintained by CONCESSIONAIRE.

A. Employee Fidelity Bonds

At the GENERAL MANAGER'S discretion, adequate employee fidelity bonds may be required to be maintained by CONCESSIONAIRE covering all its employees who handle money.

B. Cash And Record Handling Requirements

If requested by GENERAL MANAGER, CONCESSIONAIRE shall prepare a description of its cash handling and sales recording systems and equipment to be used for operation of the CONCESSION which shall be submitted to GENERAL MANAGER for approval, which shall not unreasonably be withheld or delayed.

CONCESSIONAIRE shall be required to maintain a method of accounting of the CONCESSION which shall correctly and accurately reflect the Gross Receipts and disbursements received or made by CONCESSIONAIRE from the operation of the CONCESSION. The bank accounts and ledgers, established for the CONCESSION shall be separate from the bank accounts and ledgers used for any other business operated by CONCESSIONAIRE or for recording CONCESSIONAIRE'S other financial affairs. Such method shall include the keeping of the following documents:

1. Regular books of accounting such as general ledgers.
2. Journals including supporting and underlying documents such as vouchers, checks, tickets, bank statements, etc.
3. State and Federal income tax returns in the event separate returns are filed for this CONCESSION, or checks, or other documents proving payment of sums shown.
4. Cash register tapes shall be retained so that day to day sales can be identified. A cash register must be used in public view which prints each sale and the daily total.
5. Any other accounting records directly related to this AGREEMENT that CITY, in its reasonable discretion, deems necessary for proper reporting of receipts.

CONCESSIONAIRE shall obtain and install a cash register(s) or points of sale system on which it shall record all gross sales. The cash register shall be non-resettable and sufficient to supply an accurate recording of all sales on tape. CONCESSIONAIRE shall not purchase

or install the cash register or point of sale system before obtaining the GENERAL MANAGER'S written approval of the specific equipment and system to be purchased. All cash registers or point of sale system(s) shall have a price display which shall remain visible to the public at all times.

CONCESSIONAIRE shall transmit sales and commission reports for the CONCESSION operations as specified in the AGREEMENT in a form acceptable to the GENERAL MANAGER, on or before sixty (60) days after the close of each calendar year during the term of the AGREEMENT. The sales and commissions reports shall also include detail on daily customer counts, average checks, per capita spending broken down by café, catering (internal and external) and carts with reasonable detail approved in advance by CITY.

CONCESSIONAIRE shall transmit with its rental payment a Monthly Gross Receipts and Rent Report for the month for which rent is submitted. The report shall include a statement of the Gross Receipts by source of sales, and such other information as the GENERAL MANAGER may properly require. See Exhibit G for a sample variation of the required monthly remittance advice form. Refer to Section 23. Business Records, paragraph B, Cash and Record Handling Requirements for more information.

SECTION 24. REGULATIONS, INSPECTION, AND DIRECTIVES

A. Regulations

The operations conducted by CONCESSIONAIRE pursuant to the AGREEMENT shall be subject to:

1. Any and all applicable rules, regulations, orders and restrictions which are now in force or which may be hereafter adopted by CITY with respect to the operation of the Department of Recreation and Parks;
2. Any and all orders, directions or conditions issued, given or imposed by GENERAL MANAGER with respect to the use of the roadways, driveways, curbs, sidewalks, parking areas or public areas adjacent to the PREMISES;
3. Any and all applicable laws, ordinances, statutes, rules, regulations or orders, including the LAMC, LAAC, the Charter of the City of Los Angeles, and of any governmental authority, federal, state or municipal, lawfully exercising authority over the CONCESSIONAIRE'S operations; and
4. Any and all applicable local, state and federal laws and regulations relative to the design and installation of facilities to accommodate disabled persons.

B. Permissions

Any permission required by the AGREEMENT shall be secured in writing by CONCESSIONAIRE from CITY, or the GENERAL MANAGER, or the OBSERVATORY MANAGEMENT and any errors or omissions therefrom shall not relieve CONCESSIONAIRE of its obligations to faithfully perform the conditions therein. CONCESSIONAIRE shall immediately comply with any written request or order submitted to it by CITY or the GENERAL MANAGER, or the OBSERVATORY MANAGEMENT.

C. Right of Inspection

CITY and the GENERAL MANAGER, their authorized representatives, agents and employees shall have the right to enter upon the PREMISES at any and all reasonable times for the purpose of inspection, evaluation, and observation of CONCESSIONAIRE'S operation. During these inspections, they shall have the right to photograph, film, or otherwise record conditions and events taking place upon the PREMISES only for reasons of documenting the inspection. The inspections may be made by persons identified to CONCESSIONAIRE as CITY employees, or may be made by independent contractors engaged by CITY, but shall not be competitors of CONCESSIONAIRE. Inspections may be made for the purposes set forth below, and for any other lawful purpose for which the CITY or another governmental entity with jurisdiction is authorized to perform inspections of the PREMISES:

1. To determine if the terms and conditions of the AGREEMENT are being complied with.
2. To observe transactions between the CONCESSIONAIRE and patrons in order to evaluate the quality and quantities of services provided or items sold or dispensed.

D. Control of PREMISES

CITY shall have absolute and full access to the PREMISES and all its appurtenances during the term of the Concession AGREEMENT and may make such changes and alterations therein, and in the grounds surrounding same, as may be determined by said CITY. Such determination shall not be unreasonable and shall take into account the business considerations presented by CONCESSIONAIRE.

E. Americans with Disabilities Act

CONCESSIONAIRE shall comply with the Americans with Disabilities Act 42 U.S.C. Section 12101 et seq., and with the provisions of the Certification Regarding Compliance with the Americans with Disabilities Act which is attached to AGREEMENT and incorporated herein by this reference.

F. Child Support Ordinance

This AGREEMENT is subject to Section 10.10, Article 1, Chapter 1, Division 10 of the LAAC, Child Support Assignment Orders Ordinance. CONCESSIONAIRE is required to complete a Certification of Compliance with Child Support obligations which is attached to the AGREEMENT and incorporated herein by this reference. Pursuant to this ordinance, CONCESSIONAIRE shall (1) fully comply with all State and Federal employment reporting requirements applicable to Child Support Assignment Orders; (2) certify that the principal owner(s) of CONCESSIONAIRE 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 AGREEMENT.

G. Minority, Women, and Other Business Enterprise Outreach Program

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

H. Living Wage Ordinance/Service Contract Worker Retention Ordinance

The CONCESSIONAIRE, if subject to, must comply with City Ordinance 172336 (Living Wage Ordinance), which requires in part that nothing less than a prescribed minimum level of compensation (a "living wage") be paid to employees of service contractors of the CITY and its financial assistance recipients and to employees of such recipients. Under Section 10.37.2 of the Ordinance, CONCESSIONAIRE shall pay service employees who spend any of their time on CITY contracts a wage of no less than the hourly rates set under the authority of the Living Wage Ordinance (LWO). Such rates shall be adjusted annually to correspond with adjustments, if any, to retirement benefits paid to members of the City Employees' Retirement System.

CONCESSIONAIRE must also comply with and sign the Service Contract Worker Retention Ordinance (SCWRO), adopted through Ordinance 171004. This Ordinance requires concessionaires to retain all employees from the previous contractor/concessionaire for a period of 90 days, and must continue to retain those satisfactorily performing employees.

I. Contractor Responsibility Ordinance

Every Request for Proposal, Request for Bid, Request for Qualifications or other procurement process is subject to the provisions of the Contractor Responsibility Ordinance, Section 10.40 et seq. of Article 14, Chapter 1 of Division 10 of the LAAC, unless exempt pursuant to the provisions of the Ordinance.

J. Equal Benefits Ordinance

Section 10.8.2.1 (c) of the LAAC (Equal Benefits Ordinance) requires that every contract with or on behalf of the City of Los Angeles for which the consideration is in excess of the \$5,000.00 must incorporate the Equal Benefits Provisions.

K. Contractor Evaluation Ordinance

At the end of this contract, the CITY will conduct an evaluation of the Contractor's performance. The CITY may also conduct evaluations of the Contractor's performance during the term of the contract. As required by Section 10.39.2 of the LAAC, evaluations

will be based on a number of criteria, including the quality of the work product or service performed the timeliness of performance, financial issues, and the expertise of personnel that the Contractor assigns to the contract. A Contractor who receives a "Marginal" or "Unsatisfactory" rating will be provided with a copy of the final City evaluation and allowed fourteen (14) calendar days to respond. The CITY will use the final City evaluation, and any response from the Contractor, to evaluate proposals and to conduct reference checks when awarding other service contracts.

L. Slavery Disclosure Ordinance

Unless otherwise exempt in accordance with the provisions of this Ordinance, this Contract is subject to the Slavery Disclosure Ordinance, Section 10.41 of the LAAC, as may be amended from time to time. Contractor certifies that it has complied with the applicable provisions of this Ordinance. Failure to fully and accurately complete the affidavit may result in termination of this Contract.

SECTION 25. TERMINATION

A. By CITY

CITY shall have the right to terminate upon sixty (60) days written notice the AGREEMENT in its entirety and all rights ensuing therefrom as provided by applicable law if any one or more of the following events occur and is not remedied within thirty (30) days of the termination notice date.

1. CONCESSIONAIRE fails to keep, perform and observe any promise, covenant and condition set forth in the AGREEMENT on its part to be kept, performed or observed after receipt of written notice of default from GENERAL MANAGER, except where fulfillment of CONCESSIONAIRE'S obligation requires activity over a period of time and CONCESSIONAIRE has commenced to perform whatever may be required within ten (10) days after receipt of such notice and continues such performance diligently and without interruption except for causes beyond its control;
2. The interest of CONCESSIONAIRE under the AGREEMENT is assigned, transferred, passes to or devolves upon, by operation of law or otherwise, any other person, firm or corporation without permission of CITY except to an affiliated business entity in accordance with Section 22. Assignment, Sublease, Bankruptcy;
3. CONCESSIONAIRE becomes, without the prior, written approval of GENERAL MANAGER a successor or merged corporation in a merger, a constituent corporation in a consolidation or a corporation in dissolution. Notwithstanding, in the event that Compass Group USA, Inc. gains majority ownership and control of CONCESSIONAIRE, such change in control shall not be considered in contravention of this Section 25A(3);
4. The levy of any attachment or execution, or the appointment of any receiver, or the execution of any other process of any court of competent jurisdiction which is not vacated, dismissed or set aside within a period of ten (10) days and which does, or as a direct consequence of such process will, interfere with CONCESSIONAIRE'S use of the PREMISES or with its operations under the AGREEMENT;

5. CONCESSIONAIRE becomes insolvent, or takes the benefit of any present or future insolvency statute, or makes a general assignment for the benefit of creditors, or files a voluntary petition in bankruptcy, or a petition or answer seeking an arrangement for its reorganization, or the arrangement for its reorganization, or the readjustment of its indebtedness under the federal bankruptcy laws or under any other law or statute of the United States, or of any state law, or consents to the appointment of a receiver, trustee or liquidator of all or substantially all of its property or its property located within the CONCESSION areas;
6. By order or decree of court, CONCESSIONAIRE is adjudged bankrupt, or an order is made approving a petition filed by any of the creditors or stockholders of CONCESSIONAIRE seeking its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws, or under any law or statute of the United States, or any state thereof;
7. A petition under any part of the federal bankruptcy laws, or an action under any present or future solvency law or statute is filed against CONCESSIONAIRE and is not dismissed within one hundred twenty (120) days;
8. By or pursuant to, or under authority of, any legislative act, resolution or rule, order or decree of any court, governmental board, agency or officer having jurisdiction, a receiver, trustee or liquidator takes possession or control of all or substantially all of the property of CONCESSIONAIRE;
9. Cessation or deterioration of service for any period which, in the opinion of GENERAL MANAGER, materially and adversely affects the operation or service required to be performed by CONCESSIONAIRE under the AGREEMENT;
10. Any lien is filed against the PREMISES because of any act or omission of CONCESSIONAIRE and such lien is not removed, enjoined or a bond for satisfaction of such lien is not posted within ten (10) days; or
11. CONCESSIONAIRE voluntarily abandons, deserts, vacates or discontinues its operation of the business herein authorized.

No acceptance by CITY of the rental payment or other payments specified herein, in whole or in part, and for any period, after a default of any of the terms, covenants and conditions to be performed, kept or observed by CONCESSIONAIRE, other than the default in the payment thereof, shall be deemed a waiver of any right on the part of CITY including the right to terminate the AGREEMENT on account of such default.

B. CITY'S Right of Reentry

CITY shall, as an additional remedy, upon the giving of written notice of termination as above provided, have the right to reenter the PREMISES and every part thereof on the effective date of termination without further notice of any kind, remove any and all persons therefrom and may regain and resume possession either with or without the institution of summary or legal proceedings or otherwise. Such reentry, however, shall not in any manner affect, alter or diminish any of the obligations of CONCESSIONAIRE under the AGREEMENT.

C. Additional Rights of CITY

CITY, upon valid termination of the AGREEMENT, or upon reentry, regaining or resumption of possession of the PREMISES upon valid termination of the AGREEMENT, may occupy said PREMISES and shall have the right to permit any person, firm or corporation to enter upon the PREMISES and use the same. Such occupation by others may be of only a part of the PREMISES, or the whole thereof or a part thereof together with other space, and for a period of time the same as or different from the balance of the term remaining hereunder, and on terms and conditions the same as or different from those set forth in the AGREEMENT.

D. Survival of CONCESSIONAIRE'S Obligations

In the event the AGREEMENT is terminated by CITY, or in the event CITY reenters, regains or resumes possession of the PREMISES upon valid termination of the AGREEMENT, all of the then-accrued obligations of CONCESSIONAIRE hereunder shall survive and shall remain in full force and effect for the full term of the AGREEMENT. Subject to CITY'S obligation to mitigate damages, the amount of the rental payment shall become due and payable to CITY to the same extent, at the same time and in the same manner as if no termination, reentry, regaining or resumption of possession had taken place. CITY may maintain separate actions to recover any monies then due, or at its option and at any time, may sue to recover the full deficiency.

The amount of damages for the period of time subsequent to termination, reentry, regaining or resumption of possession, subject to an offset for any rental payment received by CITY from a succeeding CONCESSIONAIRE, shall be the amount of rental otherwise due until the end of the term of the AGREEMENT.

The damages specified above shall not affect or be construed to affect CITY'S right to such damages in the event of termination, reentry, regaining or resumption of possession where CONCESSIONAIRE has not received any actual Gross Receipts under the AGREEMENT.

E. Waiver of Redemption and Damages

CONCESSIONAIRE hereby waives any and all rights of redemption granted by or under any present or future law or statute in the event it is dispossessed for any cause under its control, or in the event CITY obtains or retains possession of the PREMISES in any lawful manner. CONCESSIONAIRE further agrees that in the event the manner or method employed by CITY in reentering or regaining possession of the PREMISES gives rise to a cause of action in CONCESSIONAIRE in forcible entry and detailed under the laws of the State of California, the total amount of damages to which CONCESSIONAIRE shall be entitled in any such action shall be the sum of One Dollar (\$1), and CONCESSIONAIRE agrees that this provision may be filed in any such action as its stipulation fixing the amount of damages to which it is entitled.

F. By CONCESSIONAIRE

The AGREEMENT may be terminated by CONCESSIONAIRE, and Capital INVESTMENTS subject to buy-back according to the Schedule of INVESTMENT Buy-Back provided in Section 4, upon the happening of one or more of the following events:

1. The permanent abandonment of the Department of Recreation and Parks of the FACILITY or the permanent removal of all DEPARTMENT services from the FACILITY;
2. The lawful assumption by the United States government, or any authorized agency thereof, of the operation, control or use of the FACILITY or any substantial part thereof, in such manner as to materially restrict CONCESSIONAIRE from operating thereon;
3. The complete destruction of all or a substantial portion of the PREMISES from a cause other than the negligent act or omission to act of CONCESSIONAIRE, its agents, officers, or employees, and the failure of CITY to repair or reconstruct said PREMISES;
4. Any exercise of authority under this AGREEMENT which so interferes with CONCESSIONAIRE'S use and enjoyment of the PREMISES as to constitute a termination, in whole or in part, of the AGREEMENT by operation of law in accordance with the laws of the State of California;
5. The CITY'S failure to maintain the PREMISES/FACILITY with an image consistent with that of Wolfgang Puck;
6. The default by CITY in the performance of any covenant or agreement herein required to be performed by CITY and the failure of CITY to remedy such default for a period of thirty (30) days after receipt from CONCESSIONAIRE of written notice to do so; or
7. CONCESSIONAIRE may terminate the AGREEMENT without cause upon one hundred twenty (120) days notice to CITY and Observatory of its intention to do so; however, the capital INVESTMENT buy-back must first be negotiated to the acceptance of the GENERAL MANAGER.

SECTION 26. SURRENDER OF POSSESSION

CONCESSIONAIRE covenants and agrees to yield and deliver possession of the PREMISES to CITY on the date of the expiration or earlier termination of the AGREEMENT promptly, peaceably, quietly and in as good order and condition as the same now are or may be hereafter improved by CONCESSIONAIRE or CITY, normal use and wear and tear thereof excepted.

No agreement of surrender or to accept a surrender shall be valid unless and until the same has been reduced to writing and signed by the duly authorized representatives of CITY and CONCESSIONAIRE. Neither the doing nor omission of any act or thing by any of the officers, agents or employees of CITY shall be deemed an acceptance of a surrender of the PREMISES utilized by CONCESSIONAIRE under the AGREEMENT.

SECTION 27. WAIVER

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

SECTION 28. CONDITIONS AND COVENANTS

Each covenant herein is a condition, and each condition herein is as well a covenant by the parties bound thereby, unless waived in writing by the parties hereto.

SECTION 29. FORCE MAJEURE

Neither party hereto shall be liable to the other for any failure, delay or interruption in the performance of any of the terms, covenants or conditions of the AGREEMENT due to causes beyond the control of that party including, without limitation, strikes, boycotts, labor disputes, embargoes, shortage of material, acts of God, landslides, acts of the public enemy, acts of superior governmental authority, floods, riots, rebellion, sabotage or any other circumstance for which such party is not responsible and which is not in its power to control.

SECTION 30. REMEDIES ARE NON-EXCLUSIVE

No right, power, remedy or privilege of CITY shall be construed as being exhausted or discharged by the exercise thereof in one or more instances. It is agreed that each and all of said rights, powers, remedies or privileges shall be deemed cumulative and additional and not in lieu or exclusive of each other or of any other remedy available to CITY at law or in equity.

SECTION 31. CONCESSION AGREEMENT BINDING UPON SUCCESSORS

The AGREEMENT shall be binding upon and shall inure to the benefit of the successors, heirs, executors, administrators and assigns of the parties hereto. The term "CONCESSIONAIRE" shall include any assignee of CONCESSIONAIRE under any assignment permitted and approved by GENERAL MANAGER.

SECTION 32. LAW OF CALIFORNIA APPLIES

The AGREEMENT shall be enforced and interpreted under the laws of the State of California.

SECTION 33. AGENT FOR SERVICE OF PROCESS

It is expressly agreed and understood that if CONCESSIONAIRE is not a resident of the State of California, or is a partnership or joint venture without a partner or member resident in said State, or is a foreign corporation, then in any such event CONCESSIONAIRE does designate the Secretary of State, State of California, its agent for the purpose of service of process in any court action between it and CITY arising out of or based upon the AGREEMENT, and the service shall be made as provided by the laws of the State of California for service upon a non-resident. It is further expressly agreed, covenanted and stipulated that if, for any reason, service of such process is not possible, as an alternative method of service of process, CONCESSIONAIRE may be personally served with such process out of this State by mailing, by registered or certified mail, the complaint and process to CONCESSIONAIRE at the address set out hereafter in the AGREEMENT, and that such service shall constitute valid service upon CONCESSIONAIRE as of the date of mailing, and CONCESSIONAIRE shall have thirty (30) days from the date of mailing to respond thereto. It is

further expressly agreed that CONCESSIONAIRE is amenable, and hereby agrees, to the process so served, submits to the jurisdiction and waives any and all objection and protest thereto, any laws to the contrary notwithstanding.

SECTION 34. VENUE

Venue of any action brought under the AGREEMENT shall lie in Los Angeles County.

SECTION 35. ATTORNEY'S FEES

If CITY shall, without any fault, be made a party to any litigation commenced by or against CONCESSIONAIRE arising out of or related to CONCESSIONAIRE'S use or enjoyment of the PREMISES and as a result of which CONCESSIONAIRE is finally adjudicated to be liable, then CONCESSIONAIRE shall pay all reasonable costs and reasonable attorney's fees incurred by or imposed upon CITY in connection with such litigation.

If CONCESSIONAIRE shall, without any fault, be made a party to any litigation commenced by or against CITY arising out of or related to CITY 'S use or enjoyment of the PREMISES and as a result of which CITY is finally adjudicated to be liable, then CITY shall pay all reasonable costs and reasonable attorney's fees incurred by or imposed upon CONCESSIONAIRE in connection with such litigation.

Each party shall give prompt notice to the other of any claim or suit instituted against it that may affect the other party.

SECTION 36. WAIVER OF CLAIMS

Except to the extent that CITY is at fault, CONCESSIONAIRE hereby waives any claim against CITY, its officers, agents or employees, for loss of anticipated profits caused by any suit or proceeding directly or indirectly attacking the validity of the AGREEMENT or any part hereof, or by any judgment or award in any suit or proceeding declaring the AGREEMENT null, void or voidable, or delaying the same, or any part hereof, from being carried out.

SECTION 37. NOTICES

A. To CITY

Written notices to CITY hereunder shall, until CONCESSIONAIRE'S receipt of written notice otherwise from these parties, be addressed to said parties at:

Office of the Board of Recreation and Park Commissioners
Attention: General Manager
The Garland Building
1200 West 7th Street, Suite 700
Los Angeles, CA 90017
(213) 928-9040

and

City of Los Angeles
Department of Recreation and Parks
Administrative Resources Division
3900 W. Chevy Chase Drive, Mail Stop 628
Los Angeles, CA 90039

All such notices may either be delivered personally to GENERAL MANAGER, Department of Recreation and Parks, or may be deposited in the United States mail, properly addressed as aforesaid with postage fully prepaid for delivery by registered or certified mail. Service in such manner by registered or certified mail shall be effective upon receipt.

B. To CONCESSIONAIRE

Written notices to CONCESSIONAIRE hereunder shall, until CITY'S receipt of written notice otherwise from CONCESSIONAIRE, be addressed to CONCESSIONAIRE at:

Wolfgang Puck Catering and Events, LLC
Carl Shuster, CEO
6801 Hollywood Boulevard, Suite 513
Los Angeles, CA 90028
Phone: (323)491-1280, Fax: (323)491-1282
E-mail: carl.schuster@wolfgangpuck.com
Website: www.wolfgangpuck.com

With copy to:
Compass Group USA, Inc.
Attn. General Counsel
2400 Yorkmont Road
Charlotte, NC 28217
Fax: 704-328-7998

The execution of any such notice by GENERAL MANAGER shall be as effective for CONCESSIONAIRE as if it were executed by CITY, or by Resolution or Order of said CITY. All such notices may either be delivered personally to the CONCESSIONAIRE or to any officer or responsible employee of CONCESSIONAIRE or may be deposited in the United States mail, properly addressed as aforesaid with postage fully prepaid for delivery by registered or certified mail. Service in such manner by registered or certified mail shall be effective upon receipt.

The execution of any notice to CONCESSIONAIRE by GENERAL MANAGER shall be as effective for CONCESSIONAIRE as if it were executed by BOARD, or by Resolution or Order of said BOARD.

SECTION 38. INTERPRETATION

The language of the AGREEMENT shall be construed according to its fair meaning and not strictly for or against either CITY or CONCESSIONAIRE.

The section headings appearing herein are for the convenience of CITY and CONCESSIONAIRE, and shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of the AGREEMENT.

If any provision of the AGREEMENT is determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision of the AGREEMENT, and all such other provisions shall remain in full force and effect; and it is the intention of the parties hereto that if any provision of the AGREEMENT is capable of two constructions, one of which render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

The use of any gender herein shall include all genders and the use of any number shall be construed as the singular or the plural, all as the context may require.

SECTION 39. ENTIRE AGREEMENT

The provisions of the AGREEMENT contain the entire AGREEMENT between the parties hereto and said AGREEMENT may not be changed or modified in any manner except by formal, written amendment fully executed by both CITY and CONCESSIONAIRE.

SECTION 40. TIME OF THE ESSENCE

Time is of the essence for all provisions of the AGREEMENT.

SECTION 41. COUNTERPARTS

This AGREEMENT may be executed in counterparts, each of which counterparts, when so executed and delivered, shall be deemed to be an original, and all of which counterparts, taken together, shall constitute one and the same instrument.

SECTION 42. INCORPORATION OF DOCUMENTS:

The following Exhibits are to be attached to and made part of this AGREEMENT by reference:

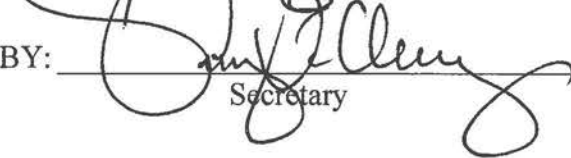
- A PREMISES Maps
- B Transition Schedule
- C CAFÉ Plans with Indications of CITY Work
- D Menu Prices and Portions
- E Non-employee Accident/Illness Report
- F Insurance Requirements
- G Sample Monthly CONCESSION Remittance Advice

IN WITNESS WHEREOF, THE CITY OF LOS ANGELES has caused this AGREEMENT to be executed on its behalf by its duly authorized Board of Recreation and Park Commissioners, and CONCESSIONAIRE has executed the same as of the day and year herein below written.

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

Date: 9/6/06

BY:  _____
President

BY:  _____
Secretary

Wolfgang Puck Catering and Events, LLC
d/b/a Wolfgang Puck Catering -
CONCESSIONAIRE

Date: _____


BY:  _____

BY: _____

[SEAL]

APPROVED AS TO FORM:

Date: 9-6-06

BY:  _____
MARK BROWN, Sr. Assistant City Attorney

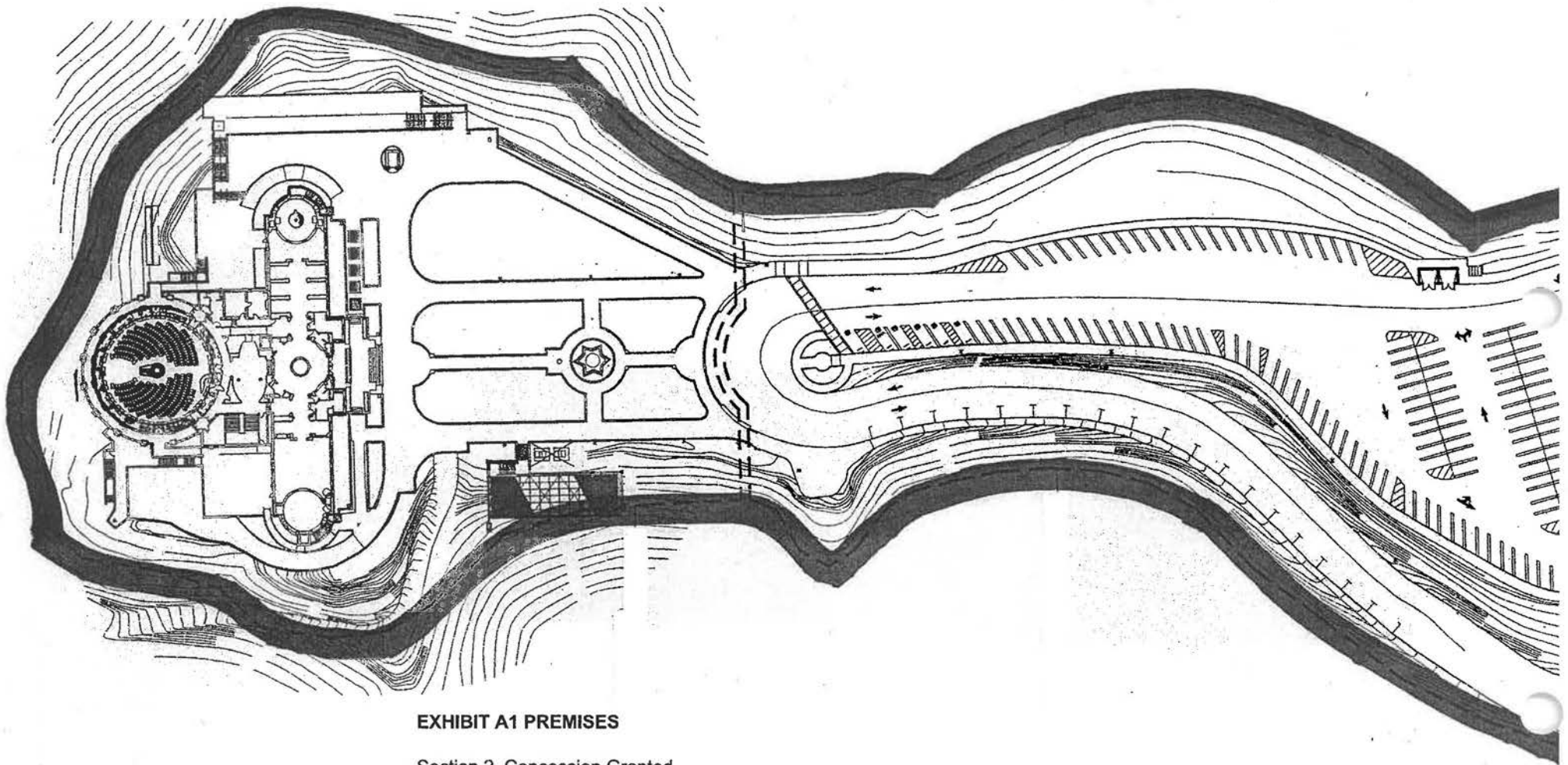


EXHIBIT A1 PREMISES

Section 2. Concession Granted

CONCESSIONAIRE shall be granted the exclusive right, privilege, and obligation furnish, equip, operate and maintain the Griffith Observatory Cafe, Catering, and Food Cart Concession. The exclusivity extends to entire Observatory area including grounds, parking and East and West Observatory Roads.

Section 3. Premises

The premises to be authorized for use by CONCESSIONAIRE at Griffith Observatory shall include The Cafe at the End of the Universe, Special Event Spaces, and pre-designated "cart set-up area(s)" as determined by the DEPARTMENT (as detailed on the six (6) pages of Exhibit A).

Section 16. G. Cart Operations

Food carts may be placed at one or more locations anywhere within the PREMISES upon mutual consent and approval of OBSERVATORY MANAGEMENT. CONCESSIONAIRE shall maintain the carts in good repair and in a clean and sanitary condition at all times and keep the area 10' around cart(s) clean and sanitary.

EXHIBIT A3 PREMISES - Commissary

Section 3. Premises

The premises to be authorized for use by CONCESSIONAIRE at the Griffith Observatory shall include the commissary for The Cafe at the End of the Universe, as outlined below.

The CONCESSIONAIRE is responsible for the full maintenance, repair, refurbishment, and utilities of the commissary for The Cafe at the End of the Universe, as delineated below and specified in Section 16. Operating Responsibilities.

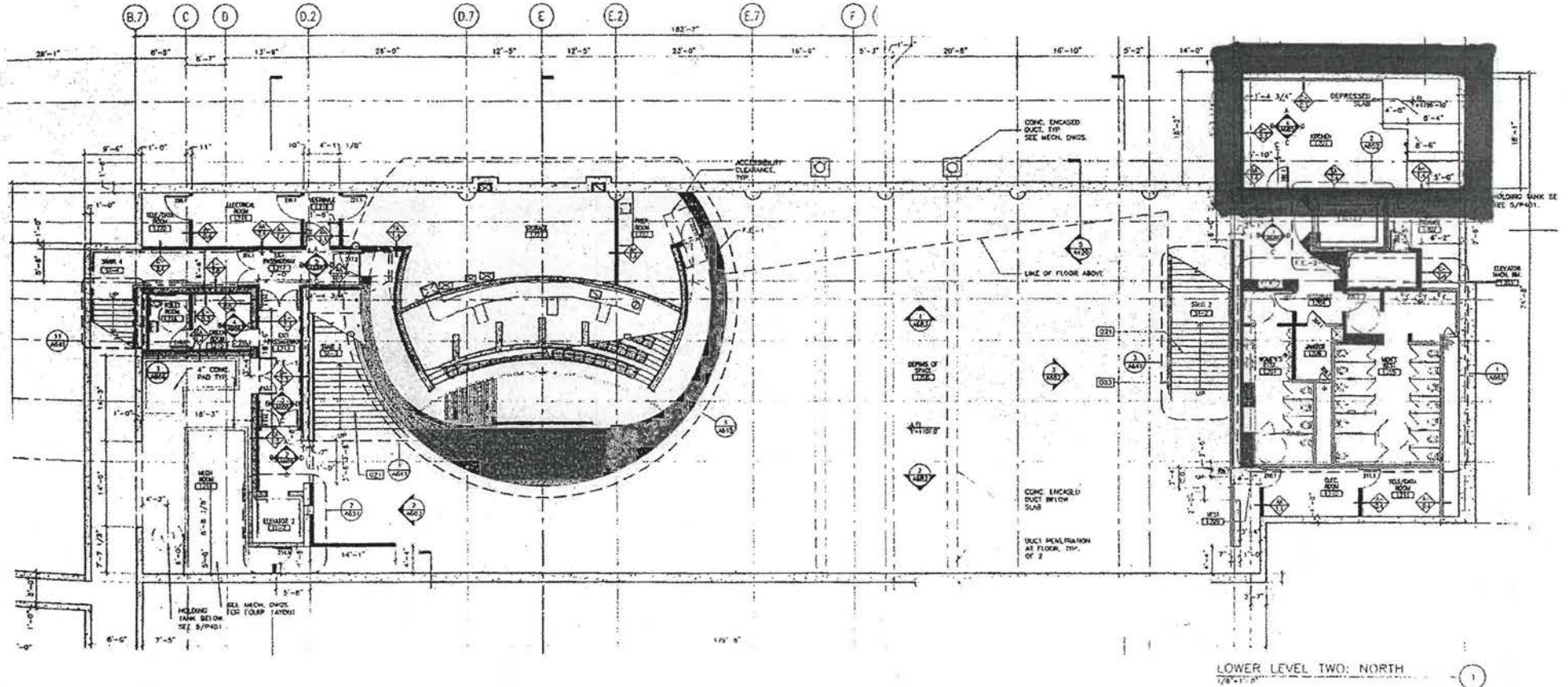


EXHIBIT A6 PREMISES - Special Event & Catering Premises

Section 3. Premises

The premises to be authorized for use by CONCESSIONAIRE at Griffith Observatory shall include Special Event and Catering Spaces. Special Event and Catering Spaces indicated on this map include Administration Conference Room (Admin Conference Room), Class Room, Conference Room, Terrace, Edge of Space and Richard and Lois Gunther Depths of Space and does not include the Leonard Nimoy Event Horizon theater. The total capacity or frequency of use of the Edge of Space and Richard and Lois Gunther Depths of Space is unknown due to the number of exhibits that share this space.

CONCESSIONAIRE must perform general clean-up of Special Event and Catering Spaces after use.

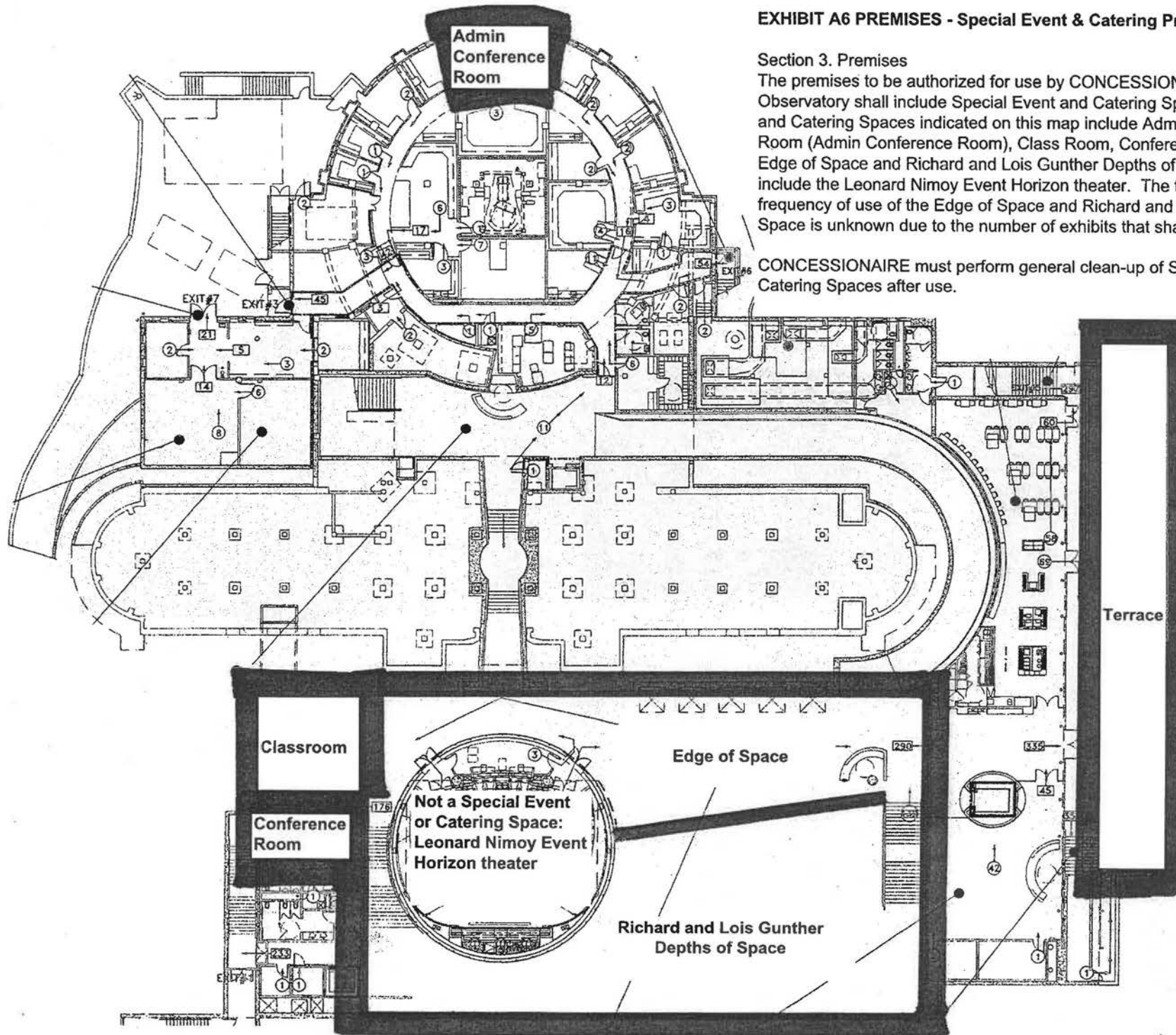


Exhibit B Transition Schedule

Service Provided by CONCESSIONAIRE	Transition Period Required
Catering for Events	2-Day Site Orientation
Café Training and Set-Up	2 Weeks following Completion of Build-Out

C. Our Proposed Services

Sample Menus and Pricing

CAFÉ AT THE END OF THE UNIVERSE	
Salad	
Butter Lettuce Salad	\$6.75
<i>Radicchio, Candied Walnuts, Oranges, Roquefort & Balsamic</i>	
Traditional Caesar	\$5.75
<i>Hearts Of Romaine, Shaved Reggiano, Sun Dried Tomatoes & Herb Croutons</i>	
Chinois Chicken Salad	\$5.25
<i>Crispy Wontons & Ginger-Sesame Vinaigrette</i>	
Thai Spiced Shrimp Salad	
<i>Chilled Noodles, Bean Sprouts, Carrots, Cucumbers & Peanut-Lime Vinaigrette</i>	
Turkey Cobb Salad	\$5.75
<i>Tomatoes, Egg, Beans, Bacon & Creamy Buttermilk Blue Cheese</i>	
Puck's Chef Salad	\$6.25
<i>Salami, Mortadella, Chili, Garlic and Herbs</i>	
Farmer's Market Salad Bar	\$6.25
Sandwich	<i>with lettuce, tomato, dressing, choice of chips</i>
Chicken Caesar Wrap	\$5.00
Chinois Chicken Wrap	\$5.00
Puck's Mufalata	\$5.50
Turkey & Cranberry	\$5.00
Ham & Swiss	\$5.00
"Rare" Roast Beef	\$5.00
Tuna Salad	\$5.25
Grilled Vegetable	\$5.00
Boxed Lunch:	<i>add</i> \$3.50
<i>any sandwich plus whole fruit, pasta or tuna salad, chips, cookie, juice or water</i>	
Seasonal Entree Specials	\$6.25
<i>Includes starch, vegetable, protein, roll and butter</i>	
Roasted Salmon With Tomato Vinaigrette	
Fresh Carved Turkey Breast	
Sautéed Vegetables	Roasted Rosemary Potatoes
Soup	<i>Seasonal variations</i>
Roasted tomato-basil with parmesan	\$2.25
Chicken with vegetables and noodles	\$2.25

C. Our Proposed Services

Breakfast

Assorted bagels with cream cheese	\$1.25
Assorted Danish	\$1.75
Assorted muffins	\$1.75
Croissant	\$1.75
Chocolate Croissant	\$2.00
 Breakfast Burrito	 \$3.50
<i>Scrambled egg, cheddar cheese, crispy bacon, roasted potatoes</i>	

Puck's Kids Corner

Peanut Butter & Jelly	\$2.25
Peanut Butter & Marshmallow	\$2.50
Ham & Cheese	\$3.50
Turkey & Cheese	\$3.50
Bologna & Cheese	\$3.50
Carrot Sticks With Dip	\$2.25
Celery & Peanut Butter	\$2.50
Cheese Sandwich	\$2.50
Ritz Crackers And Cheddar Cheese	\$2.00
Apple Wedges And Honey	\$2.25
Boxed Lunch:	add \$2.50
<i>any kids' 1/2 sandwich plus carrots/dip or fruit cup, jell-o gummi worm cup, cookie, juice and toy</i>	
 Jell-O & Gummi Worms	 \$2.00
Mini Caramel Apples	\$2.50
Homemade Ice Cream Sandwiches	\$2.50
Graham Crackers, Chocolate Pudding and Marshmallow	\$3.00
Assorted Novelty Ice Creams	price varies

Dessert

Berry Parfait	\$3.00
Oversized Cookies	\$1.50
Fudge Brownies	\$1.25
Rice Crispy Treats	\$1.50
Fresh Fruit Cup	\$3.50

Beverages

Espresso	Single \$ 1.25	Double \$1.75
Cappuccino	Single \$2.75	Double \$3.25
Regular and Decaffeinated Coffees, Brewed Teas		Regular \$1.50 Large \$ 1.75
Freshly Squeezed Juices	\$2.75	Fountain Soda 12 oz \$1.50
Premium Bottled Beverages	\$2.75	16 oz \$2.00
Mineral Water	\$1.25	24oz \$2.50
Sparkling Water	\$1.75	Iced Tea \$1.50

Form Gen. 87 (R. 2/84)

City of Los Angeles

ORIG.—City Attorney
DUP.—Safety Engineer
TRIP.—Department

NON-EMPLOYEE ACCIDENT OR ILLNESS REPORT

DEPARTMENT REPORTING

INSTRUCTIONS: All accidents, illnesses or injuries, no matter how minor, involving non-employees while on City property, must be reported by the City employee or department in proximity. Be complete as possible. The information provided may be needed by the City Attorney in preparing the case if legal action is necessary. Use typewriter or print carefully.

PART I — PERSONAL DATA

1. NAME (OF PERSON INJURED) (Last) (First) (MI)	2a. HOME ADDRESS (Street) (City) (Zone)	3a. PHONE NO.
	2b. BUSINESS ADDRESS (Street) (City) (Zone)	3b. PHONE NO.
4. SEX <input type="checkbox"/> M <input type="checkbox"/> F	5. DATE OF BIRTH	6. IF MINOR, NAME OF PARENT OR GUARDIAN
		7. PHONE NO.

PART II — ACCIDENT/INJURY

8. DATE	9. TIME A.M. P.M.	10. LOCATION OF PUBLIC PROPERTY INVOLVED	11. WAS FIRST AID GIVEN? <input type="checkbox"/> YES <input type="checkbox"/> NO
12. FIRST AID GIVEN BY (NAME)		(ADDRESS)	(PHONE NO.)
13. PHYSICIAN/HOSPITAL INJURED TAKEN TO		(ADDRESS)	(PHONE NO.)
14. NATURE OF INJURIES (BE SPECIFIC)			
15. DESCRIBE ACCIDENT (IN DETAIL)			
16. NAME AND POSITION OF PERSON IMMEDIATELY IN CHARGE OF FACILITY		17. WHERE WAS RESPONSIBLE PERSON AT TIME OF ACCIDENT?	

PART III — WITNESSES

18. NAME (Last) (First) (MI)	19. ADDRESS (Street) (City) (Zone)	20. PHONE NO.	CITY EMPLOYEE <input type="checkbox"/> YES <input type="checkbox"/> NO
a.			<input type="checkbox"/> YES <input type="checkbox"/> NO
b.			<input type="checkbox"/> YES <input type="checkbox"/> NO
c.			<input type="checkbox"/> YES <input type="checkbox"/> NO
d.			<input type="checkbox"/> YES <input type="checkbox"/> NO

PART IV — STATEMENT OF INJURED PARTY OR WITNESS

21.

PART V — EMPLOYEE FILING REPORT

22. NAME AND POSITION	23. SIGNATURE	24. DATE
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Insurance Requirements

Name: Wolfgang Puck Catering and Events, LLC

Date: 3/21/06

Agreement/Reference: Operation/Maintenance of Griffith Observatory Cafe/Catering/Food Concession

Evidence of coverages checked below which have as a minimum the limits shown must be submitted and approved prior to occupancy/start of operations. Amounts shown are Combined Single Limits ("CSL"). Split limits may be substituted if the total per occurrence equals or exceeds the CSL amount.

		Limits
<input checked="" type="checkbox"/>	Workers' Compensation (Statutory Limit)/Employer's Liability	1,000,000
<input checked="" type="checkbox"/>	Waiver of Subrogation in favor of City	
<input type="checkbox"/>	Longshore & Harbor Workers	
<input type="checkbox"/>	Jones Act	
<input checked="" type="checkbox"/>	General Liability	1,000,000
<input checked="" type="checkbox"/>	Premises and Operations	
<input checked="" type="checkbox"/>	Contractual Liability	
<input checked="" type="checkbox"/>	Independent Contractors	
<input type="checkbox"/>		
<input type="checkbox"/>	Collapse and Underground	
<input checked="" type="checkbox"/>	Products/Completed Operations	
<input checked="" type="checkbox"/>	Fire Legal Liability <u>7,000,000</u>	
<input checked="" type="checkbox"/>	Automobile Liability (if vehicle is used for this contract, other than commuting to/from work)	1,000,000
<input checked="" type="checkbox"/>	Hired Automobiles	
<input checked="" type="checkbox"/>	Non-owned Automobiles	
<input checked="" type="checkbox"/>	Owned Automobiles	
<input type="checkbox"/>		
	Professional Liability (Errors and Omissions)	
	Discovery Period _____	
<input checked="" type="checkbox"/>	Property Insurance to cover value of building (as determined by City or insurance company)	
<input checked="" type="checkbox"/>	All Risk Coverage	
<input type="checkbox"/>	Extended Coverage	
<input type="checkbox"/>	Flood _____	
<input type="checkbox"/>	Earthquake _____	
<input type="checkbox"/>	Boiler and Machinery	
<input type="checkbox"/>	Debris Removal	
<input type="checkbox"/>		
	Pollution Liability	
<input type="checkbox"/>		
	Fidelity Bond <input checked="" type="checkbox"/> Surety Bond <input checked="" type="checkbox"/> Crime Insurance	
Other	<u>Provide Performance Bond in the amount of \$10,000</u>	

Insurance Requirements

Name: Wolfgang Puck Catering and Events, LLC

Date: 3/21/06

Agreement/Reference: Capital Improvements - Fixed Equipment and Interior Design

Evidence of coverages checked below which have as a minimum the limits shown must be submitted and approved prior to occupancy/start of operations. Amounts shown are Combined Single Limits ("CSL"). Split limits may be substituted if the total per occurrence equals or exceeds the CSL amount.

	Limits
<input checked="" type="checkbox"/> Workers' Compensation (Statutory Limit)/Employer's Liability <input checked="" type="checkbox"/> Waiver of Subrogation in favor of City <input type="checkbox"/> Longshore & Harbor Workers <input type="checkbox"/> Jones Act	1,000,000
<input checked="" type="checkbox"/> General Liability <input checked="" type="checkbox"/> Premises and Operations <input checked="" type="checkbox"/> Contractual Liability <input checked="" type="checkbox"/> Independent Contractors <input type="checkbox"/> Collapse and Underground <input checked="" type="checkbox"/> Products/Completed Operations <input type="checkbox"/> Fire Legal Liability	1,000,000
<input checked="" type="checkbox"/> Automobile Liability (if vehicle is used for this contract, other than commuting to/from work) <input checked="" type="checkbox"/> Hired Automobiles <input checked="" type="checkbox"/> Non-owned Automobiles <input checked="" type="checkbox"/> Owned Automobiles	1,000,000
<input checked="" type="checkbox"/> Professional Liability (Errors and Omissions) Discovery Period <u>12 months after completion or work or termination of contract</u>	1,000,000
<input checked="" type="checkbox"/> Property Insurance to cover value of building (as determined by City or insurance company) <input checked="" type="checkbox"/> All Risk Coverage <input type="checkbox"/> Extended Coverage <input type="checkbox"/> Flood <input type="checkbox"/> Earthquake <input type="checkbox"/> Boiler and Machinery <input type="checkbox"/> Debris Removal <input checked="" type="checkbox"/> Builder's Risk Installation <input type="checkbox"/> Floater	
<input type="checkbox"/> Pollution Liability	
<input type="checkbox"/> Fidelity Bond <input checked="" type="checkbox"/> Surety Bond <input type="checkbox"/> Crime Insurance	
Other <u>Provide Performance Bond for the total cost of the project and Labor and Materials Bond for the total cost of labor and materials prior to contractor's performance of any work.</u>	

City of Los Angeles
Department of Recreation and Parks
 Administrative Resources Division – Concessions

Exhibit G Sample Monthly
CONCESSION Remittance Advice

P. O. Box 5385
 Glendale, CA 91221-5385

(818) 243-6488
 Fax (818) 243-1459

CONCESSION REMITTANCE ADVICE

Name: _____ Period Covered From _____ To _____

Concession Name: _____

Location: _____

Category of Rentals	Gross Sales	Minus Sales Tax	Net Sales
1)			
2)			
3)			
4)			

Total Net Sales	Rent Percentage	Rent Due on Sales
1)	%	\$
2)	%	\$
3)	%	\$
4)	%	\$
Total Sales		\$

Additions (Specify):

Utilities \$ _____

_____ \$ _____

_____ \$ _____

Adjustments (Specify):

_____ \$ _____

_____ \$ _____

Total Due This Report: \$ _____

I hereby certify that this is a true and correct copy of the receipts for the period stated above.

Signed: _____ Date: _____

**BOARD OF RECREATION AND
PARK COMMISSIONERS**

SYLVIA PATSAOURAS
PRESIDENT

LYNN ALVAREZ
VICE PRESIDENT

MELBA CULPEPPER
PILAR DIAZ
MISTY M. SANFORD

ARMANDO X. BENCOMO
COMMISSION EXECUTIVE ASSISTANT II

CITY OF LOS ANGELES
CALIFORNIA



ERIC GARCETTI
MAYOR

**DEPARTMENT OF
RECREATION AND PARKS**

COMMISSION OFFICE
221 NORTH FIGUEROA STREET
THIRD FLOOR, SUITE 300
LOS ANGELES, CA 90012

Telephone: (213) 202-2640
Facsimile: (213) 202-2610
RAP.Commissioners@LACity.org

MICHAEL A. SHULL
GENERAL MANAGER

December 1, 2016

Wolfgang Puck Catering and Events, LLC
6801 Hollywood Boulevard, Suite 513
Los Angeles, CA 90028

Attention: Carl Shuster, CEO

Dear Mr. Shuster:

Enclosed is the Amendment to Concession Agreement No. 248, executed on December 1, 2016, between the City of Los Angeles, by and through its Board of Recreation and Park Commissioners, and your firm for the operation and maintenance of the Griffith Observatory Café, Catering, and Food Cart Service Concession.

Very truly yours,

BOARD OF RECREATION AND
PARK COMMISSIONERS

ARMANDO X. BENCOMO
Commission Executive Assistant II

Enclosure

- cc: City Controller (w/ enclosure)
- City Attorney (w/ enclosure)
- Rachel Ramos, Finance, Concessions (w/ enclosure)
- Departmental Chief Accountant (w/ enclosure)

**AMENDMENT TO CONCESSION AGREEMENT NO. 248
FOR THE OPERATION AND MAINTENANCE OF GRIFFITH OBSERVATORY CAFÉ,
CATERING, AND FOOD CART SERVICE CONCESSION**

THIS AMENDMENT TO CONCESSION AGREEMENT NO. 248 is made and entered into this 1ST day of DECEMBER, 2016, by and between the CITY OF LOS ANGELES, a municipal corporation (hereinafter referred to as "CITY"), acting by and through its Board of Recreation and Park Commissioners (hereinafter referred to as "BOARD") and Wolfgang Puck Catering and Events, LLC (hereinafter referred to as "CONCESSIONAIRE").

WITNESSETH

Whereas, on April 5, 2006, the City Council approved Concession Agreement No. 248 (hereinafter referred to as "AGREEMENT") for Griffith Observatory Café, Catering, and Food Cart Service (hereinafter referred to as "CONCESSION") and authorized the Board President and Secretary to execute the AGREEMENT on behalf of the CITY; and

Whereas, CONCESSIONAIRE has operated in full compliance with its obligations under the initial ten (10) year term of the AGREEMENT and the BOARD hereby exercises the first of two (2) five (5) year renewal options; and

Whereas, the new expiration date of the AGREEMENT is September 5, 2021; and

Whereas, CONCESSIONAIRE has proposed capital improvements not to exceed \$250,000; and

Whereas, CITY accepts CONCESSIONAIRE'S proposed capital improvements.

Now, therefore, the parties to Concession Agreement No. 248 hereby mutually agree to amend the AGREEMENT as follows:

1. SECTION 4. TERM OF CONCESSION AGREEMENT, RENEWAL & CONCESSIONAIRE CAPITAL INVESTMENT BUY-BACK

Delete the first two paragraphs of Section 4 in their entirety and replace with:

"The term of the Agreement shall be fifteen (15) years, effective September 6, 2006 with one five (5) year option to renew, at the sole discretion of CITY and agreed to by CONCESSIONAIRE, provided that CONCESSIONAIRE is in full

compliance with its obligations under the AGREEMENT upon the expiration of the initial term or any extensions thereof. In the event of any renewal, CITY will give CONCESSIONAIRE a preliminary notice of its willingness to renew and said renewal shall be decided no later than six (6) months prior to the end of the then current term.”

Delete the sixth paragraph of Section 4 in its entirety and replace with:

The investment buy-back amount shall be based on single straight-line, non-interest bearing amortization over fifteen (15) years. Buy-back will be calculated on actual months/years of operation. The following schedule of investment buy-back from CONCESSIONAIRE is based on full and completed years from the date of AGREEMENT execution. The schedule will be adjusted as necessary to reflect the actual time of operation in whole months or one-twelfths (1/12) of the current operating year.

Full and completed year from date of AGREEMENT execution:	Capital investment buy-back allowed per completed year of operation:
11	\$200,000
12	\$150,000
13	\$100,000
14	\$50,000
15	0

2. SECTION 13. RENTAL

Delete Section 13 (A) in its entirety and replace with:

“As consideration for CITY’S granting the CONCESSION rights hereinabove set forth, CONCESSIONAIRE agrees to pay to CITY the following percentages of Gross Receipts as defined below:

- Percentage of Gross Receipts of all Sales:

Sales Type	Gross Receipts	Fee
Café and Food Cart	Up to \$1,000,000	8%
	\$1,000,001 to \$1,500,000	10%

	\$1,500,001 to \$2,000,000	12%
	\$2,000,001 to \$2,500,000	15%
	\$2,500,001 +	20%
Catering	Up to \$1,000,000	14%
	\$1,000,001 +	16%

or

- The Annual Minimum Revenue-Sharing Guarantee:

Year	Annual Minimum Guarantee
11 (September 2016 – August 2017)	\$170,000.00
12 (September 2017 – August 2018)	\$175,100.00
13 (September 2018 – August 2019)	\$180,353.00
14 (September 2019 – August 2020)	\$185,763.59
15 (September 2020 – August 2021)	\$191,336.50

whichever is greater.

If the annual minimum revenue-sharing is not met by August 31st of each year, the difference between the actual revenue-sharing payment received by CITY and the annual minimum revenue-sharing guarantee will be due to CITY by September 15th, prorated as necessary for the first year of operation or fractional part thereof, and prorated as necessary for the final year of operation or fractional part thereof.

CONCESSIONAIRE shall mail all payments and reports to:

Department of Recreation and Parks
Partnership and Revenue Branch / Concessions Unit
P.O. Box 86328
Los Angeles, CA 90086

Notwithstanding, in the event that the Rental Guarantee is not met by CONCESSIONAIRE for reasons beyond CONCESSIONAIRE'S control, such as and by way of example only, a change in the scope of services at the directive of CITY, or due to closure or unavailability of the Café or Special Event Premises or "cart set up areas", CONCESSIONAIRE and the GENERAL MANAGER shall meet and confer with regard to rental guarantee

obligations set forth in this AGREEMENT and make recommendations on reducing or waiving minimum annual rent on a year-to-year basis to the BOARD as appropriate.

Delete Section 13 (G) in its entirety.

3. SECTION 15. CAPITAL INVESTMENT – FIXED EQUIPMENT (FF&E) & INTERIOR DESIGN

Delete Section 15 in its entirety and replace with:

“CONCESSIONAIRE will be responsible to fund and complete a new Capital Investment improvement project submitted to CITY in April 2016 (Exhibit H). It includes demolition of the display island, relocation of soda fountain dispensers to the glass wall in enclosed millwork, relocation of coffee machines, creation of millwork for streamlined shelving along window, installation of a self-service salad bar with soup wells, replacement of the hot-line sneeze guard to create a self-service station, and installation of new air-screen coolers for grab and go items and bottled beverages. The total value of the Capital Investment is Two Hundred Fifty Thousand Dollars (\$250,000.00).

All design, equipment, furnishings, etc., shall be subject to the prior review and (reasonable) approval by CITY.

In no event shall CITY have any obligation to pay any investment costs in excess of \$250,000.00 incurred by CONCESSIONAIRE to improve the CONCESSION, unless otherwise specifically agreed to in a writing signed by both parties.

Facility Improvements shall be completed no later than ninety (90) days after execution of the AMENDMENT, or within ninety (90) days of mutual agreement - scheduled with CITY (acting through Observatory management). The Facility Improvements become property of CITY.

Invoices and receipts shall be submitted to CITY to document all expenses relating to the Facility Improvements. If actual cost is more than stated in this AGREEMENT, CONCESSIONAIRE is still responsible for completing the projects. If actual cost is less than \$250,000.00 the remaining amount must

be invested in improvements to the CONCESSION facility as approved by CITY.

The \$250,000.00 Capital Investment is subject to Buy-Back in accordance with Section 4. When fully amortized, ownership of all improvements will revert to CITY.”

4. SECTION 16. OPERATING RESPONSIBILITIES

Add the following clauses:

“Craft services specific to film or television production (Production) for up to 100 guests may be provided by a third party with no buyout arrangement due to CONCESSIONAIRE. All other Production-related events are subject to CONCESSIONAIRE’S right of first refusal. If refused, there is no buyout arrangement due to CONCESSIONAIRE. Initial contact from Production-related events for craft services shall be made with CONCESSIONAIRE for determination on service by a third party with no buy out.”

“Discounts shall be offered by CONCESSIONAIRE to Observatory staff and volunteers on Café and Cart purchases at fifteen percent (15%) and fountain sodas and brewed beverages at fifty percent (50%) with appropriate CITY-issued identification.”

“Site-specific brands and names, such as but not limited to Café at the End of the Universe, belong to CITY and do not require permission of CONCESSIONAIRE for use by CITY.”

5. SECTION 25. TERMINATION

Add the following to the beginning of the last paragraph of 25(A) of contract No. 248:

“Additional terms of Termination are stipulated in Exhibit I - Standard Provisions for City Contracts (Rev. 3/09), Section PSC-10, “Termination.” In the event of any conflict or inconsistency between the provisions of the AGREEMENT and those of the Exhibit documents incorporated herein by reference, this AGREEMENT shall be controlling.

CITY reserves the right to pay-off the unamortized portion of CONCESSIONAIRE'S Capital Investment (Section 4, Section 15), if any, with no interest or penalties, and terminate the AGREEMENT in its entirety and all rights ensuing therefrom as provided by applicable law, for convenience, upon ninety (90) days written notice; and”

6. SECTION 42. INCORPORATION OF DOCUMENTS

Add the following:

“H: Capital Investment 2016

I: Standard Provisions for City Contracts (Rev. 3/09)


In the event of any conflict or inconsistency between the provisions of the AGREEMENT and those of the Exhibit documents incorporated herein by reference, this AGREEMENT shall be controlling.”

Exhibits H and I are attached to this Amendment to Concession Agreement No. 248 document.

(Signature Page to Follow)

IN WITNESS WHEREOF, the parties hereto have caused this AMENDMENT TO CONCESSION AGREEMENT NO. 248, to be executed by their duly authorized representatives.

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

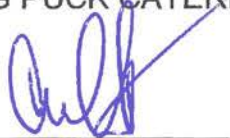
BY: 
President

DATE: 11/30/2016

BY: 
Secretary

DATE: 11/30/2016

WOLFGANG PUCK CATERING AND EVENTS, LLC


BY: 
Carl Schuster CEO

DATE: 11-18-16

BTRC No.: 0002114551-0002-1

APPROVED AS TO FORM:

MICHAEL N. FUEUR
City Attorney

BY: 
Stefan Fauble
Deputy City Attorney III

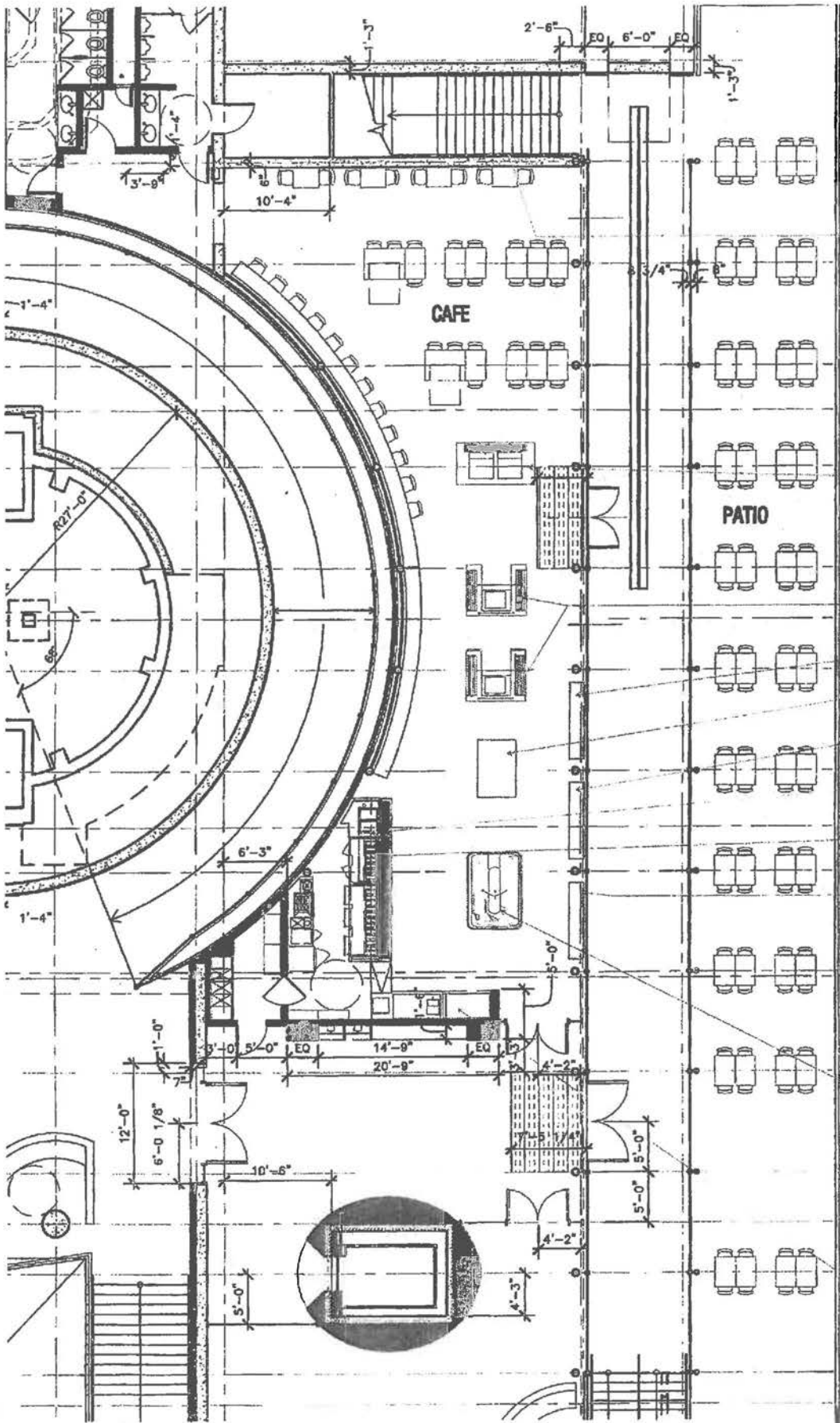
DATE: Dec 1, 2016

SCOPE of WORK

Objective: increase variety of fresh offerings, speed of service, visibility of product, guest flow.

Café: Schematic and timeline attached.

- Demo display island
- Move soda fountain dispensers to west glass wall in enclosed millwork
- Move coffee machines to right window
- Create millwork to provide streamlined shelving along window
- Install self-service salad bar and soup wells
- Replace hot line sneeze guard to become self-service
- Install new air-screen coolers for grab and go and bottled beverage along front left wall



Potential arc piece

Relocate soda dispensers to here

2 New POS stations one with capability for 2nd terminal

New condiment and display cart

New dry food merchandiser

Turn this counter into coffee and hot drink station - will require plumbing

Rework hot food station ala NBCU

Rework sneeze guard and new skin on counter face

New condiment and display cart



New salad bar

2 New 5' G&G cases

W
P

Griffith Park Cafe	
Scope of Work Plan	
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STANDARD PROVISIONS FOR CITY CONTRACTS

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STANDARD PROVISIONS FOR CITY CONTRACTS

PSC-1. CONSTRUCTION OF PROVISIONS AND TITLES HEREIN

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

PSC-2. NUMBER OF ORIGINALS

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

PSC-3. APPLICABLE LAW, INTERPRETATION AND ENFORCEMENT

Each party's performance hereunder shall comply with all applicable laws of the United States of America, the State of California, and the **CITY**, including but not limited to, laws regarding health and safety, labor and employment, wage and hours and licensing laws which affect employees. This Contract shall be enforced and interpreted under the laws of the State of California without regard to conflict of law principles. **CONTRACTOR** shall comply with new, amended, or revised laws, regulations, and/or procedures that apply to the performance of this Contract.

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

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

PSC-4. TIME OF EFFECTIVENESS

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

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

PSC-5. INTEGRATED CONTRACT

This Contract sets forth all of the rights and duties of the parties with respect to the subject matter hereof, and replaces any and all previous Contracts or understandings, whether written or oral, relating thereto. This Contract may be amended only as provided for in paragraph PSC-6 hereof.

PSC-6. AMENDMENT

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

PSC-7. EXCUSABLE DELAYS

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

PSC-8. BREACH

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

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

PSC-9. WAIVER

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

PSC-10. TERMINATION

A. TERMINATION FOR CONVENIENCE

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

B. TERMINATION FOR BREACH OF CONTRACT

1. Except for excusable delays as provided in PSC-7, if **CONTRACTOR** fails to perform any of the provisions of this Contract or so fails to make progress as to endanger timely performance of this Contract, the **CITY** may give **CONTRACTOR** written notice of such default. If **CONTRACTOR** does not cure such default or provide a plan to cure such default which is acceptable to the **CITY** within the time permitted by the **CITY**, then the **CITY** may terminate this Contract due to **CONTRACTOR'S** breach of this Contract.
2. If a federal or state proceeding for relief of debtors is undertaken by or against **CONTRACTOR**, or if **CONTRACTOR** makes an assignment for the benefit of creditors, then the **CITY** may immediately terminate this Contract.
3. If **CONTRACTOR** engages in any dishonest conduct related to the performance or administration of this Contract or violates the

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

4. In the event the **CITY** terminates this Contract as provided in this section, the **CITY** may procure, upon such terms and in such manner as the **CITY** may deem appropriate, services similar in scope and level of effort to those so terminated, and **CONTRACTOR** shall be liable to the **CITY** for all of its costs and damages, including, but not limited, any excess costs for such services.
5. All finished or unfinished documents and materials produced or procured under this Contract, including all intellectual property rights thereto, shall become **CITY** property upon date of such termination. **CONTRACTOR** agrees to execute any documents necessary for the **CITY** to perfect, memorialize, or record the **CITY'S** ownership of rights provided herein.
6. If, after notice of termination of this Contract under the provisions of this section, it is determined for any reason that **CONTRACTOR** was not in default under the provisions of this section, or that the default was excusable under the terms of this Contract, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to PSC-10(A) Termination for Convenience.
7. The rights and remedies of the **CITY** provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

PSC-11. INDEPENDENT CONTRACTOR

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

PSC-12. CONTRACTOR'S PERSONNEL

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

CONTRACTOR shall not use subcontractors to assist in performance of this Contract without the prior written approval of the **CITY**. If the **CITY** permits the use of subcontractors, **CONTRACTOR** shall remain responsible for performing all aspects of

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

PSC-13. PROHIBITION AGAINST ASSIGNMENT OR DELEGATION

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

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

PSC-14. PERMITS

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

PSC-15. CLAIMS FOR LABOR AND MATERIALS

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

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

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

PSC-17. RETENTION OF RECORDS, AUDIT AND REPORTS

CONTRACTOR shall maintain all records, including records of financial transactions, pertaining to the performance of this Contract, in their original form, in accordance with

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

PSC-18. FALSE CLAIMS ACT

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

PSC-19. BONDS

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

PSC-20. INDEMNIFICATION

Except for the active negligence or willful misconduct of the **CITY**, or any of its Boards, Officers, Agents, Employees, Assigns and Successors in Interest, **CONTRACTOR** undertakes and agrees to defend, indemnify and hold harmless the **CITY** and any of its Boards, Officers, Agents, Employees, Assigns, and Successors in Interest from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the **CITY**, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever, for death or injury to any person, including **CONTRACTOR'S** employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of the negligent acts, errors, omissions or willful misconduct incident to the performance of this Contract by **CONTRACTOR** or its subcontractors of any tier. Rights and remedies available to the **CITY** under this provision are cumulative of those provided for elsewhere in this Contract and those allowed under the laws of the United States, the State of California, and the **CITY**. The provisions of PSC-20 shall survive expiration or termination of this Contract.

PSC-21. INTELLECTUAL PROPERTY INDEMNIFICATION

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

and Successors in Interest from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the **CITY**, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever arising out of the infringement, actual or alleged, direct or contributory, of any intellectual property rights, including, without limitation, patent, copyright, trademark, trade secret, right of publicity and proprietary information right (1) on or in any design, medium, matter, article, process, method, application, equipment, device, instrumentation, software, hardware, or firmware used by **CONTRACTOR**, or its subcontractors of any tier, in performing the work under this Contract; or (2) as a result of the **CITY'S** actual or intended use of any Work Product furnished by **CONTRACTOR**, or its subcontractors of any tier, under the Agreement. Rights and remedies available to the **CITY** under this provision are cumulative of those provided for elsewhere in this Contract and those allowed under the laws of the United States, the State of California, and the **CITY**. The provisions of PSC-21 shall survive expiration or termination of this Contract.

PSC-22. INTELLECTUAL PROPERTY WARRANTY

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

PSC-23. OWNERSHIP AND LICENSE

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

For all Work Products delivered to the **CITY** that are not originated or prepared by **CONTRACTOR** or its subcontractors of any tier under this Contract, **CONTRACTOR** hereby grants a non-exclusive perpetual license to use such Work Products for any **CITY** purposes.

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

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

PSC-24. INSURANCE

During the term of this Contract and without limiting **CONTRACTOR'S** indemnification of the **CITY**, **CONTRACTOR** shall provide and maintain at its own expense a program of insurance having the coverages and limits customarily carried and actually arranged by **CONTRACTOR**, but not less than the amounts and types listed on the Required Insurance and Minimum Limits sheet (Form General 146 in Exhibit 1 hereto), covering its operations hereunder. Such insurance shall conform to **CITY** requirements established by Charter, ordinance or policy, shall comply with the Insurance Contractual Requirements (Form General 133 in Exhibit 1 hereto) and shall otherwise be in a form acceptable to the Office of the City Administrative Officer, Risk Management. **CONTRACTOR** shall comply with all Insurance Contractual Requirements shown on Exhibit 1 hereto. Exhibit 1 is hereby incorporated by reference and made a part of this Contract.

PSC-25. DISCOUNT TERMS

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

PSC-26. WARRANTY AND RESPONSIBILITY OF CONTRACTOR

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

PSC-27. NON-DISCRIMINATION

Unless otherwise exempt, this Contract is subject to the non-discrimination provisions in Sections 10.8 through 10.8.2 of the Los Angeles Administrative Code, as amended from time to time. The **CONTRACTOR** shall comply with the applicable non-discrimination and affirmative action provisions of the laws of the United States of America, the State of California, and the **CITY**. In performing this Contract, **CONTRACTOR** shall not

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

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

PSC-28. EQUAL EMPLOYMENT PRACTICES

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

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

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

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

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

PSC-29. AFFIRMATIVE ACTION PROGRAM

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

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

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

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

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

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

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

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

PSC-30. CHILD SUPPORT ASSIGNMENT ORDERS

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

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

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

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

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

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

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

PSC-32. AMERICANS WITH DISABILITIES ACT

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

PSC-33. CONTRACTOR RESPONSIBILITY ORDINANCE

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

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

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

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

PSC-35. EQUAL BENEFITS ORDINANCE

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

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

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

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

PSC-36. SLAVERY DISCLOSURE ORDINANCE

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

EXHIBIT 1

INSURANCE CONTRACTUAL REQUIREMENTS

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

CONTRACTUAL REQUIREMENTS

CONTRACTOR AGREES THAT:

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

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

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

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

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

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

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

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

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

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

9. Commencement of Work. For purposes of insurance coverage only, this Contract will be deemed to have been executed immediately upon any party hereto taking any steps that can be considered to be in furtherance of or towards performance of this Contract. The requirements in this Section supersede all other sections and provisions of this Contract, including, but not limited to, PSC-4, to the extent that any other section or provision conflicts with or impairs the provisions of this Section.

Exhibit 1 (Continued) Required Insurance and Minimum Limits

Name: _____ Date: _____

Agreement/Reference: _____

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

	<u>Limits</u>
<p>Workers' Compensation – Workers' Compensation (WC) and Employer's Liability (EL)</p> <p style="text-align: right;">WC <u>Statutory</u> EL _____</p> <p><input type="checkbox"/> Waiver of Subrogation in favor of City <input type="checkbox"/> Longshore & Harbor Workers <input type="checkbox"/> Jones Act</p>	
<p>General Liability</p> <p><input type="checkbox"/> Products/Completed Operations <input type="checkbox"/> Sexual Misconduct _____ <input type="checkbox"/> Fire Legal Liability _____ <input type="checkbox"/> _____</p>	
<p>Automobile Liability (for any and all vehicles used for this Contract, other than commuting to/from work)</p>	_____
<p>Professional Liability (Errors and Omissions)</p>	_____
<p>Property Insurance (to cover replacement cost of building – as determined by insurance company)</p> <p><input type="checkbox"/> All Risk Coverage <input type="checkbox"/> Boiler and Machinery <input type="checkbox"/> Flood _____ <input type="checkbox"/> Builder's Risk <input type="checkbox"/> Earthquake _____ <input type="checkbox"/> _____</p>	
<p>Pollution Liability</p> <p><input type="checkbox"/> _____</p>	
<p>Surety Bonds – Performance and Payment (Labor and Materials) Bonds</p>	100 % of Contract Price
<p>Crime Insurance</p>	_____

Other: _____

