

**AGREEMENT BETWEEN
THE CITY OF LOS ANGELES
AND
XXX
FOR RECREATION CREDITS AT XXX PARK**

This AGREEMENT (“AGREEMENT” or “CONTRACT”) is entered into this ____ day of ____ 20 ____, (“EFFECTIVE DATE”), by and between the City of Los Angeles, a municipal corporation acting by and through its Board of Recreation and Park Commissioners (“CITY”), and XXXX, developer (“DEVELOPER”). CITY and DEVELOPER may be referred to herein individually as “PARTY” and/or collectively as “PARTIES.” The term “CONTRACTOR” shall refer to DEVELOPER and any of its contractors and/or subcontractors involved in the making of the IMPROVEMENTS (as hereinafter defined).

WHEREAS, DEVELOPER, is developing and constructing Tract No. XXX/Parcel No. XXX/Permit No. XXXX (“DEVELOPMENT”); and,

WHEREAS, DEVELOPMENT is subject the requirements of Los Angeles Municipal Code (“LAMC”) Section 12.33; and,

WHEREAS, DEVELOPER is estimated to owe \$XXXX in Park Fees per LAMC 12.33 as of the YR Park Fee Rate in connection with the DEVELOPMENT (“PARK FEES”); and,

WHEREAS, CITY, through its Department of Recreation and Parks (“RAP”), owns and operates real property commonly referred to as Park Name (“PARK”), located at Park Address; and,

WHEREAS, DEVELOPER has proposed to construct improvements to PARK in order to receive credits against the required PARK FEES per the provisions of LAMC 12.33 H.1; and,

WHEREAS, DEVELOPER proposes to make the following improvements (“IMPROVEMENTS”) to PARK: XXXX; and,

WHEREAS, CITY will design the plans and provide specifications for the proposed IMPROVEMENTS, and determine the value of said IMPROVEMENTS per RSMeans Building Construction Cost Data YR; and,

WHEREAS, the IMPROVEMENTS are valued at \$XXX per RSMeans Building Construction Cost Data YR and the DEVELOPER will receive credit against the required PARK FEES associated with the DEVELOPMENT in said amount per LAMC 12.33 H.1.d; and,

WHEREAS, the PARK meets the standard for a [Community Park] as defined in the CITY’s Public Recreation Center Plan, and the DEVELOPMENT is located within [five (5) miles] of the PARK, which is the standard distance for the allocation of the PARK FEES for [community recreational facilities] pursuant to Los Angeles Municipal Code Section 12.33 E.3; and,

WHEREAS, DEVELOPER has proposed to construct the IMPROVEMENTS at DEVELOPER’s sole expense in accordance with RAP standards and requirements and the terms

and conditions of this AGREEMENT and in a manner and at locations as more fully specified under plans and specification which have been prepared by RAP (which shall be on file in the office of the Board of Recreation and Park Commissioners), and which are incorporated herein by reference as Exhibits A and B, respectively; and,

WHEREAS, the proposed IMPROVEMENTS constructed by the DEVELOPER is not considered a donation or gift but an improvement to dedicated parkland in lieu of the payment of all or a portion of PARK FEES to be paid by DEVELOPER for the DEVELOPMENT; and,

WHEREAS, upon the guarantee of the value of the IMPROVEMENTS by DEVELOPER to the satisfaction of RAP through an assignment of a certificate of deposit to RAP as set forth in this AGREEMENT and the payment of any remaining PARK FEES owed, RAP will issue a Right of Entry ("ROE") Permit to DEVELOPER to begin construction of the IMPROVEMENTS; and,

WHEREAS, upon completion of the IMPROVEMENTS by DEVELOPER in accordance with the terms and conditions of this AGREEMENT, the CITY will accept the IMPROVEMENTS in accordance with the terms and conditions of this AGREEMENT; and,

WHEREAS, this AGREEMENT has been authorized and approved by the Board of Recreation and Park Commissioners ("BOARD") on [DATE] [REPORT NO.].

NOW THEREFORE, in consideration of the foregoing and the terms and conditions set forth herein and the performance thereof, PARTIES hereby agree as follows:

1. PARTIES:

CITY: City of Los Angeles
Department of Recreation and Parks
221 North Figueroa Street
Suite 350
Los Angeles, CA 90012

DEVELOPER: Name
Address

2. REPRESENTATIVES:

The representatives of the parties who are authorized to administer this Contract and to whom formal notices, demands and communications will be given, in addition to any representatives identified under this Contract, is as follows:

The CITY's representative will be:

Name
Address
Phone #
Email address

With copies to:

Name
Address
Phone #
Email address

The DEVELOPER's representative will be:

Name
Address

3. PARK FEE CREDIT:

Pursuant to the requirements of LAMC 12.33, the DEVELOPER is required to pay the City the PARK FEES in the amount of \$XXXXXX in connection with the DEVELOPMENT. In accordance with the provisions set forth in LAMC 12.33 H.1, DEVELOPER has proposed constructing the IMPROVEMENTS at the PARK in lieu of payment of a portion of the PARK FEES. DEVELOPER acknowledges and agrees that the total amount of credits toward the payment of the PARK FEES shall not exceed 100 percent of the PARK FEES, that any such credit shall be granted for the IMPROVEMENT VALUE (as defined below), dollar for dollar, in satisfaction of any PARK FEES required to be paid, and that the IMPROVEMENT VALUE and the subsequent credit to the PARK FEES should bear a reasonable relationship to an independent assessment of the construction cost for the IMPROVEMENTS provided by RSMMeans Building Construction Cost Data.

It is understood and acknowledged by PARTIES that the estimated total cost of the IMPROVEMENTS is \$XXXX per the RSMMeans Building Construction Cost Data YR, as described in further detail by the IMPROVEMENTS Cost Estimate included herein as Exhibit C ("IMPROVEMENT VALUE"). Any recalculations to the IMPROVEMENT VALUE per the provisions of this AGREEMENT shall be recalculated using RSMMeans Building Construction Cost Data YR.

The DEVELOPER shall be solely responsible for the completion of the IMPROVEMENTS pursuant to the plans and specification provided by RAP, which includes the following scope of work as set forth below and in Exhibits A and B which are attached hereto and incorporated herein by this reference:

- Scope of work

Prior to DEVELOPER's commencement of any construction activities and the execution of this AGREEMENT, the DEVELOPER shall guarantee the value of the IMPROVEMENTS to the satisfaction of RAP as more fully set forth in this AGREEMENT. Such guarantee shall be in the form of a deposit with RAP of an irrevocable deposit instrument payable to RAP issued by a bank, savings and loan association or other depository whose deposits are insured by an instrumentality of the federal government ("CD"). The CD must be in the full amount of the IMPROVEMENT VALUE, fully insured by such instrumentality, and fully assigned to CITY for withdrawal by CITY upon the end of the CD term or at maturity of the CD without further consent of any other party.

Should the final cost of construction and other related costs of the IMPROVEMENTS exceed the IMPROVEMENT VALUE, DEVELOPER shall not be entitled to a credit of any portion of the PARK FEES for the amount that exceeds the IMPROVEMENT VALUE included herein as Exhibit C.

In the event the IMPROVEMENTS are not completed and approved by RAP staff as a result of all Post-Development Inspections (as hereinafter defined) during the TERM (as hereinafter defined) of this AGREEMENT, DEVELOPER shall not receive any credit for PARK FEES due for any portion of the IMPROVEMENT VALUE regardless of whether any portion of the IMPROVEMENTS have been constructed and DEVELOPER shall remain obligated to pay the total amount of the PARK FEES associated with the DEVELOPMENT to the CITY.

4. TERM AND TERMINATION:

- A. The term of this AGREEMENT ("TERM") shall commence upon the last date of execution of this AGREEMENT ("EFFECTIVE DATE"). Except for the continuing obligations of the PARTIES under this AGREEMENT, and unless otherwise terminated pursuant to the terms and conditions contained in this AGREEMENT, this AGREEMENT shall expire at the earlier of (a) three (3) years from the EFFECTIVE DATE or (b) upon completion of the IMPROVEMENTS and final acceptance of the IMPROVEMENTS by the RAP BOARD following the post-development inspection of the IMPROVEMENTS by RAP staff as stipulated in this AGREEMENT. Any amendment or modification of this AGREEMENT shall be effective only pursuant to an executed amendment to this AGREEMENT which has been approved by the BOARD.
- B. RAP may terminate this AGREEMENT, in its sole discretion, immediately upon written notice to the DEVELOPER, and shall not be liable to the DEVELOPER for any reason for terminating this AGREEMENT, if:
 - i. The \$XXXX in remaining Park Fees owed are not paid by June 30, YR as detailed in the Park Fee Calculation Letter included herein as Exhibit D;
 - ii. All permits, environmental clearance, approvals and authorizations have been issued or granted to the DEVELOPER within six (6) months from the EFFECTIVE DATE;
 - iii. Construction/installation of IMPROVEMENTS has not begun within one (1) year from the issuance of the Notice to Proceed and Right of Entry (ROE) Permit from RAP;
 - iv. The land upon which IMPROVEMENTS are to be located is no longer owned or leased by CITY;
 - v. The DEVELOPER materially breaches any term or condition of this AGREEMENT.
- C. In the event this AGREEMENT is terminated prior to its expiration or the TERM expires without completion of the IMPROVEMENTS and final acceptance of the

IMPROVEMENTS by the RAP BOARD, DEVELOPER shall not receive any credit for PARK FEES due for any portion of the IMPROVEMENT VALUE regardless of whether any portion of the IMPROVEMENTS have been constructed and DEVELOPER shall remain obligated to pay the total amount of the PARK FEES associated with the DEVELOPMENT to the CITY. In no event shall RAP be liable for any costs incurred by DEVELOPER in connection with the IMPROVEMENT.

- D. Upon termination of this AGREEMENT, DEVELOPER and any associated contractors or subcontractors will vacate RAP property within **fourteen (14) days** of the date of the notice of termination. If at the time of termination of this AGREEMENT the IMPROVEMENTS have not been completed and accepted by the RAP BOARD, DEVELOPER shall, at its sole cost and expense, promptly restore the PARK premises on which the IMPROVEMENTS were to be constructed to its original condition immediately prior to the construction of the IMPROVEMENTS,

5. CLEARANCE OF SUBDIVISION MAP CONDITION/NON-SUBDIVISION CERTIFICATE OF OCCUPANCY CONDITION. The following conditions shall be conditions precedent to the execution of this AGREEMENT:

- A. DEVELOPER shall complete the Certificate of Deposit Forms included herein as Exhibit E and provide such duly executed and completed forms to RAP concurrently with its execution of this AGREEMENT.
- B. DEVELOPER shall guarantee the IMPROVEMENT VALUE, as set forth in Exhibit C, to the satisfaction of RAP. The guarantee shall be by CD assigned to RAP, which shall be an irrevocable deposit instrument issued by a bank, savings and loan association or other depository whose deposits are insured by an instrumentality of the federal government. The CD must be fully insured by such instrumentality and delivered to RAP prior to or concurrently with the execution of this AGREEMENT. The CD must be in a form that permits collection by the CITY at the end of the CD maturity date without further consent of any other party and must conform to the requirements as set forth in Exhibit E. RAP shall have the right to withdraw all amounts on such CD upon termination of this AGREEMENT or as otherwise specified in this AGREEMENT.
- C. The maturity date of the CD shall be **XX month/years**. In no case shall this maturity date of the CD exceed the TERM of this AGREEMENT.
- D. DEVELOPER shall pay **\$XXXX** in remaining Park Fees owed to RAP prior to June 30, **YR** as detailed in the Park Fee Calculation Letter included herein as Exhibit D.
- E. RAP shall issue a clearance memo for the **Vesting Tentative Tract/Tentative Tract/Parcel Map No. XXXX, Condition No. XX** after the requirements of Section 5 have been satisfied.

6. DEVELOPMENT AND CONSTRUCTION OF IMPROVEMENTS:

Subject to the provisions set forth in this AGREEMENT, DEVELOPER shall remain solely responsible for paying, and shall pay directly, its contractors and/or subcontractors as required for the completion of the IMPROVEMENTS. DEVELOPER shall be solely responsible for administering all its contracts with contractors and/or subcontractors for all

work regarding the IMPROVEMENTS. Further, DEVELOPER shall be solely responsible for obtaining all licenses and permits to construct and install the IMPROVEMENTS. CITY shall not be responsible or liable in any manner for any materials, purchases, expenses or costs incurred by DEVELOPER related to the IMPROVEMENTS and DEVELOPER shall not be entitled to payment or credit by CITY for any such materials, purchases, expenses or costs (other than the credit to PARK FEES for the IMPROVEMENT VALUE as set forth in this AGREEMENT) or for any losses or deficiencies incurred by DEVELOPER in connection with the construction of the IMPROVEMENTS.

The CITY shall not be responsible for the payment of any licenses, permits, administrative fees, contractors and/or subcontractors hired by the DEVELOPER for the completion of the IMPROVEMENTS.

A. Design and Location:

- i. RAP shall assign a project manager to reasonably assist DEVELOPER in obtaining all necessary authorizations and consents, and in overseeing DEVELOPER's construction and installation of the IMPROVEMENTS.
- ii. DEVELOPER shall be solely responsible for obtaining all necessary permits, authorizations and consents for the construction and installation of the IMPROVEMENTS.
- iii. RAP shall prepare the plans, specification and RSMMeans cost estimates for the IMPROVEMENTS. DEVELOPER shall not make any modifications to any plans as approved in final form by RAP.
- iv. IMPROVEMENTS shall be constructed on CITY owned property within designated areas of the PARK, pursuant to plans approved by RAP and, pursuant to the Site Plan attached hereto and incorporated herein by reference as Exhibit-A.
- v. RAP may, in its sole discretion, approve or deny any modifications to the plans and specifications which are requested or recommended in writing by the DEVELOPER. If the DEVELOPER requested modifications are approved by RAP, the IMPROVEMENT VALUE shall be subject to recalculation with reference to the approved modification using RSMMeans cost estimates but only to the extent such modification results in a recalculated IMPROVEMENT VALUE that is lower than the IMPROVEMENT VALUE listed in Exhibit C of this AGREEMENT. In no event shall the IMPROVEMENT VALUE be recalculated to be higher than as originally set forth in Exhibit C for modifications requested by the DEVELOPER. In the event the IMPROVEMENT VALUE is recalculated as set forth herein, upon withdrawal of CD funds by RAP, RAP shall pay to the DEVELOPER from such withdrawn amounts the recalculated lower IMPROVEMENT VALUE as approved by the BOARD and RAP shall retain the difference between the recalculated IMPROVEMENT VALUE and the original IMPROVEMENT VALUE as payment of any additional PARK FEES owed as a result of the recalculated IMPROVEMENT VALUE. In no case shall the IMPROVEMENT VALUE or any recalculations exceed the total amount of required PARK FEES owed by the DEVELOPER.

- vi. RAP may make changes to the plans and specifications of the IMPROVEMENTS without consultation or approval by the DEVELOPER. If RAP makes changes to the plans and specifications, the IMPROVEMENT VALUE shall be subject to recalculation using RSMean cost estimates. Should the recalculation be lower than the IMPROVEMENT VALUE listed in Exhibit C, then the DEVELOPER shall receive credit for the entirety of IMPROVEMENT VALUE in Exhibit C and upon withdrawal of CD funds by RAP, RAP shall pay to the DEVELOPER from such withdrawn amounts the IMPROVEMENT VALUE listed in Exhibit C. Should the recalculation result in a higher IMPROVEMENT VALUE than that listed in Exhibit C, then upon withdrawal of CD funds by RAP, RAP shall pay to the DEVELOPER from such withdrawn amounts the IMPROVEMENT VALUE listed in Exhibit C and also pay to DEVELOPER the difference between the recalculated IMPROVEMENT VALUE and the IMPROVEMENT VALUE listed in Exhibit C. In no case shall the IMPROVEMENT VALUE or any recalculations exceed the total amount of required Park Fees owed for the DEVELOPER.
- vii. DEVELOPER shall implement any changes to the plans and specification of the IMPROVEMENTS upon written notice provided RAP.
- viii. DEVELOPER shall obtain the prior written approval of RAP of any construction signage to be used and/or posted by the DEVELOPER or any of its contractors/subcontractors prior to its use or posting.
- ix. Prior to the issuance of the Notice to Proceed by RAP and the Right of Entry (ROE) permit (which shall not occur until RAP approves the final construction schedule for the IMPROVEMENTS), DEVELOPER will conduct a pre-construction walk through of the IMPROVEMENTS site with RAP staff. .

B. Construction:

- i. DEVELOPER shall pay all costs for the construction of IMPROVEMENTS, pursuant to plans approved by RAP and in accordance with the terms and conditions of this AGREEMENT.
- ii. DEVELOPER shall be solely responsible for the construction of the IMPROVEMENTS and the completion of any environmental clearances and any other permits as may be required by law. All costs and filing of documents required for obtaining said clearances, approvals and authorizations shall be solely borne by DEVELOPER. DEVELOPER shall be primarily responsible and liable for any and all acts or omissions of its contractors and subcontractors, and DEVELOPER shall ensure that its contractors and subcontractors comply with the applicable provisions of this AGREEMENT.
- iii. DEVELOPER shall timely and regularly consult with the RAP project manager regarding its construction activities at minimum **once a week** to ensure compliance with RAP standards and applicable law. This weekly update will include photographs of the construction progress of IMPROVEMENTS.

- iv. The RAP project manager may choose to schedule and/or conduct a site visit or construction meeting at any time during the construction of the IMPROVEMENTS with or without notification of DEVELOPER and its contractors/subcontractors.
- v. DEVELOPER and its contractor/subcontractors (collectively, "CONTRACTOR") shall make themselves available for any site visits or construction meetings request by the RAP project manager.
- vi. DEVELOPER agrees and acknowledges that RAP may reject acceptance of any IMPROVEMENTS, regardless of whether construction is completed, if RAP determines, in its sole discretion, that such IMPROVEMENTS does not meet RAP standards and/or specifications.
- vii. At all times, CONTRACTOR's work must conform to all current, relevant Federal, State and Local Municipal Building Codes which may include but not limited to the California "Green Book" Building Codes, Universal Building and Electrical Codes, Los Angeles City Building and Electrical Codes.
- viii. CONTRACTOR shall endeavor to maintain good public relations at all times. Any work of CONTRACTOR shall be conducted in a manner that will cause the least possible interference with or annoyance to park patrons or RAP employees.
- ix. A qualified supervisor for CONTRACTOR shall be present and readily available to City personnel and the public during hours of operation at each work site. The site supervisor shall be available to RAP's project manager at all times during normal working hours.
- x. DEVELOPER shall comply with all provisions set forth in the Standard Provisions for City Contracts (10/17) [v.3] attached hereto as Exhibit F and incorporated herein by this reference, as well as complying with the applicable provisions of the Labor Code of the State of California relating to Public Works wages, including any prevailing wage requirements.
- xi. DEVELOPER shall obtain and maintain all insurance, and name the CITY as an additional insured to all such insurance, as required in Exhibit G attached hereto prior to the construction of the IMPROVEMENTS.
- xii. CONTRACTOR's working hours must coincide with those of RAP (Monday through Friday, 7:00 am – 3:30 pm, excluding holidays). RAP must first approve any deviation from these hours and/or work on weekends and/or holidays.
- xiii. CONTRACTOR shall carefully protect from damage all existing trees, shrubs, plants, fences, and other features. DEVELOPER shall be liable for any and all damage(s) caused by CONTRACTOR operations to such trees, shrubs, plants, other growth and features or property. All damaged trees, shrubs, plants, other growth and features, and property shall be replaced or restored to their original condition to the satisfaction of RAP at DEVELOPER's expense. CONTRACTOR shall follow RAP's Tree Protection Specifications, which shall be provided to the DEVELOPER with the issuance of the Notice to Proceed.

- xiv. At all times , traffic control measures should conform to the Work Area Traffic Control Handbook, latest edition, published by Building New, Inc. Pedestrian and vehicular traffic shall be allowed to pass through the work area only under conditions of safety and with as little inconvenience and delay as possible. CONTRACTOR shall provide and maintain adequate barricades and warning devices. Flag persons shall be stationed as reasonably necessary for the safety of persons and vehicles.
- xv. The roads and pathways shall be left free of debris at the close of each day's operation.
- xvi. CONTRACTOR shall be responsible for all safety requirements and certifications in accordance with CAL-OSHA rules and regulations. It will be CONTRACTOR's responsibility to assess the work location and implement safety controls and procedures that are compliant with Title 8 of the California Code of Regulations. All projects will be awarded to CONTRACTOR as a "Single Employer" in accordance with CAL OSHA classifications. CONTRACTOR shall be responsible and have full control over all construction activities as well as safety requirements thereof.
- xvii. The tentative timeline for the construction of IMPROVEMENTS is:

- XXXX

C. Post-Construction

- i. Upon completion of the IMPROVEMENTS, RAP shall conduct a Post-Development Inspection to ensure that the IMPROVEMENTS have been performed pursuant to RAP approved plans and specifications, and in compliance with the terms and conditions of this AGREEMENT.
- ii. The RAP project manager may request as many Post-Development Inspection deemed necessary to ensure that all the IMPROVEMENTS have been performed pursuant to RAP approved plans and specifications, and in compliance with the terms and conditions of this AGREEMENT.
- iii. Following RAP staff's final approval of the completed IMPROVEMENTS as a result of all Post-Development Inspections, the RAP staff shall submit the IMPROVEMENTS to the BOARD for final acceptance, and upon such final acceptance, RAP shall furnish a letter of completion to DEVELOPER. Upon the furnishing of such letter of completion, RAP shall withdraw the CD funds at its maturity and pay such withdrawn funds to DEVELOPER in the amount of the IMPROVEMENT VALUE finally approved by the BOARD (original or recalculated as the case may be) to DEVELOPER.
- iv. Upon the opening of the IMPROVEMENTS to the public, DEVELOPER shall have no involvement with the use, operation, maintenance, landscaping, repair, insurance, or modifications of the IMPROVEMENTS.
- v. DEVELOPER shall remain liable for the IMPROVEMENTS and any claims filed in connection with said IMPROVEMENTS until the letter of completion has been

furnished by RAP.

- vi. DEVELOPER will provide all certificate of occupancies, warranties and guarantees for completed IMPROVEMENTS to RAP within ten (10) business days of the final Post-Development Inspection.
- vii. In no case shall RAP withdraw the funds from the CD prior to its maturity date. Upon its maturity, RAP shall have the unilateral right to withdraw the total amount of funds in the CD.
- viii. Should the CD reach its maturity date prior to the completion of the IMPROVEMENTS, then the CD may be rolled over or deposited into a new CD with a new maturity date, provided, however, that in no event shall the maturity date of any such new CD be later than the TERM of this AGREEMENT.

7. NOTICES:

Any notices permitted or required to be given under this AGREEMENT shall be sent and addressed to the REPRESENTATIVES identified in Section 2.

Formal notices, demands and communications to be given hereunder by either party will be made in writing and may be affected by personal delivery or certified mail, return receipt requested and will be deemed communicated as of the date of receipt.

If the person designated to receive the notices, demands or communications or the address of such person is changed, written notice shall be given, in accord with this AGREEMENT, within five (5) working days of the change.

Without limitation, PARTIES agree to provide notice for the following events:

- A. DEVELOPER shall provide notice once the value of the IMPROVEMENTS have been guaranteed via a deposit with RAP of an irrevocable deposit instrument issued in accordance with this AGREEMENT and by a bank, savings and loan association or other depository whose deposits are insured by an instrumentality of the federal government to the satisfaction of RAP.
- B. DEVELOPER shall provide notice once all permits and required approvals for the IMPROVEMENTS have been issued or approved.
- C. DEVELOPER shall provide notice when the construction of the IMPROVEMENTS is ready to begin and need permission to access RAP property.
- D. DEVELOPER shall provide RAP with the final construction schedule for the IMPROVEMENTS.
- E. RAP shall provide a Notice to Proceed when the DEVELOPER may enter RAP property and begin construction of the IMPROVEMENTS.
- F. DEVELOPER shall provide notice once construction of the IMPROVEMENTS has been

completed and all its contractors and subcontractors have vacated RAP property.

- G. RAP shall provide notice if any changes to any previously granted approvals to the DEVELOPER are made to the plans and specifications or the Notice to Proceed.
- H. DEVELOPER shall provide notice if construction of the IMPROVEMENTS is stopped or planned to be stopped for more than five (5) working days or if any significant delays that will cause construction to finish after the date specified in the final construction schedule is anticipated.
- I. DEVELOPER shall provide notice of any recommended or requested modifications to the plans and specifications of the IMPROVEMENTS.
- J. RAP shall provide notice of any changes to the plans and specifications for the IMPROVEMENTS.

8. PUBLICITY

- A. RAP shall not be required to acknowledge DEVELOPER as a contributor to the completion of the IMPROVEMENTS, in written material(s), news releases, and related marketing or publicity materials, including but not limited to, an initial press conference and/or dedication ceremony, if applicable.
- B. DEVELOPER shall not organize or hold groundbreaking, grand-opening and/or dedication event at the PARK, without the written consent of RAP and coordination with RAP's Public Information Officer, such consent to be given in the sole discretion of RAP.

9. RECOGNITION AND NAMINGS

- A. DEVELOPER and its contractors and/or sub-contractors shall not receive recognition for the IMPROVEMENTS in the form of logos, plaques, trademarks, banners or any signage not expressly identified in the plans and specifications for the IMPROVEMENTS or at any location in the PARK;
- B. DEVELOPER shall not name nor have the authority to name and/or rename the constructed IMPROVEMENTS or any other portion of the PARK or its amenities;

10. USE OF MARKS:

Notwithstanding any provision herein, neither PARTY shall use the other's trademarks, trade-names or logos (each, a "Mark") without the prior written approval of the other. Each Mark shall remain the sole and exclusive intellectual property of the respective PARTY.

11. REPRESENTATIONS AND WARRANTIES:

- A. DEVELOPER represents and warrants that it has the right and power to enter into and perform this AGREEMENT, and to grant the rights granted herein. In performing its obligation under this AGREEMENT, including constructing and installing the IMPROVEMENTS, DEVELOPER shall comply with all applicable laws, including any

labor and wage laws.

- B. CITY represents and warrants that it has the right and power to enter into and perform this AGREEMENT, and that it will comply with all applicable rules, regulations, ordinances and laws related to the use and operation of IMPROVEMENTS and the PARK.

12. INCORPORATION OF DOCUMENTS

This AGREEMENT and incorporated documents represent the entire integrated agreement of the parties and supersedes all prior written or oral representations, discussions, and agreements. The following documents are incorporated and made a part hereof by reference:

- Exhibit A: Site Plans and Specification
- Exhibit B: Project Details (Scope of Work)
- Exhibit C: Project Cost Estimate per RSMeans
- Exhibit D: Park Fee Calculation Letter
- Exhibit E: Certificate of Deposit Forms
- Exhibit F: Standard Provisions for City Contracts
- Exhibit G: Form 146 Insurance Requirements

In the event of a conflict between any of the terms of this AGREEMENT and any of the Exhibits attached hereto, the following order of precedence shall apply: (1) This AGREEMENT, (2) Exhibit G, (3) Exhibit F, (4) Exhibit A, (5) Exhibit B, (6) Exhibit C, (7) Exhibit D, and (8) Exhibit E.

13. EXECUTION

IN WITNESS WHEREOF, the parties have executed this Agreement with all the formalities required by law as of the date first set forth above.

“CITY”
THE CITY OF LOS ANGELES, a municipal corporation, acting by and through the BOARD OF RECREATION AND PARK COMMISSIONERS

By: _____
Name: _____
Title: President

By: _____
Name: _____
Title: Secretary

APPROVED AS TO FORM:
MICHAEL FEUER,
CITY ATTORNEY

By: _____

“DEVELOPER”

Name

By: Name

By: _____

Name:

Title:

DRAFT

EXHIBIT A

Site Plan and Renderings

EXHIBIT B

Project Details and Scope of Work for XXX Park

DEVELOPER agrees to complete the following scope of work at XXX Park:

- Scope item
- Scope item
- Scope item
- Scope item

The scope of work listed above is consistent with the plans and specifications detailed in Exhibit A.

EXHIBIT C

CASE NUMBER:				SHEET # 1 of X				
RECREATIONAL AMENITY:				EXHIBIT/SHEET REFERENCE: SHEET 00				
Line Number	Description	QTY	UNITS	MATERIAL	LABOR	EQUIPMENT	SUBCONTRACT	ESTIMATE TOTAL

Division #	Subtotal
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(Cost based on National Average)

Sales Tax

Estimate Subtotal

Los Angeles City Index/100

#

Adjusted Cost (Los Angeles)

Architectural Fees	(01 11 31.10 0060)	4.90%
Costruction Management	(01 11 31.20 0350)	4%
Permit	(01 41 26.50 0100)	2%
Engineering Fees	(01 11 31.30 0800)	2.50%
Grading (if applicable)		2%
Survey		2%

Grand Total

EXHIBIT D

Park Fee Calculation Letter



ASSIGNMENT FOR PAYMENT OF FEES PAYABLE UNDER SECTIONS 12.33 OF THE LOS ANGELES MUNICIPAL CODE

ASSIGNMENT to City of Los Angeles for the Subdivision Fees Trust/Quimby Account No. 89716H/Non-Subdivision Park Fees Trust Account No. 89718H of the Department of Recreation and Parks, which Assignment is given as guarantee for the payment of fees payable under Sections 12.33 of the Los Angeles Municipal Code.

Los Angeles Municipal Code for Tract/ Parcel Map/City Plan Case No. _____

_____, hereinafter called ASSIGNOR, whose
(Name)

principal place of business is _____,
(Street) (City) (State) (Zip Code)

(do) (does) hereby assign and set over to the City of Los Angeles, Department of Recreation and Parks, whose address is _____,
(Street) (City) (State) (Zip Code)

hereinafter referred to as ASSIGNEE, all right, title and interest of any kind whatsoever owned or held by Assignor in and to the insured account of Assignor in the

_____, whose address is _____,
(Name of Depository) (Branch)

_____ as evidenced by an
(Street) (City) State (Zip Code)

account in the amount of _____ dollars

(\$ _____), identified as (Account) (Certificate) Number _____, which account is delivered by the Assignor to the Assignee. Assignor agrees and stipulates that this Assignment carries with it the right in and to the insurance of this account by the Federal Deposit Insurance Corporation and includes and gives the right to the Assignee to redeem, collect and withdraw the full amount of such account on or after _____, 20____, WITHOUT NOTICE TO ASSIGNOR.

Assignor has, concurrent with delivery of this assignment, delivered to Assignee the passbook, certificate or other evidence of deposit issued for this account.

Assignor hereby notifies the above-named depository of this Assignment.

Dated this _____ day of _____, 20____.

at _____, California.

(Name of Assignor)

By _____
(Signature)

(Name and Title of Signatory if not an Individual)

**ASSIGNMENT FOR PAYMENT OF FEES PAYABLE UNDER
SECTION 12.33 OF THE LOS ANGELES MUNICIPAL CODE**

FIRST ENDORSEMENT – RECEIPT FOR NOTICE OF ASSIGNMENT

Receipt is hereby acknowledged to the Assignee of written notice of Assignment of the above-identified account. We have noted our records to show the interest of the Assignee in said account. We hereby certify that we have not received any notice of lien, encumbrance, hold, claim, or other obligation against the above-identified account prior to its Assignment to the Assignee. We certify that the account is fully insured by the Federal Deposit Insurance Corporation. Upon written request we agree to make payment to the Assignee on _____, 20_____, or at such other subsequent date as the City may request, at the Office of the City Treasurer, at Los Angeles City Hall.

Dated this _____ day of _____, 20_____.

at _____, California.

(Name of Depository)

By _____

(Signature of Officer)

(Name and Title of Officer)

SECOND ENDORSEMENT – RECEIPT FOR SECURITY AND DIRECTION TO PAY EARNINGS

Receipt is acknowledged of the Assignment above and the account identified in the Assignment above. The depository named in the Assignment above is hereby authorized and directed to pay any earnings on the above-identified account to the above-named Assignor.

Dated this _____ day of _____, 20_____.

at _____, California.

City of Los Angeles

Department of Recreation and Parks

By _____

(Signature of Officer)

(Name and Title of Officer)

PROCEDURE TO GUARANTEE PAYMENT OF RECREATION AND PARK FEES

1. Arrangements are made by the developer to deposit the full amount of the fee in an account which meets the following requirements:
 - a. The account must be a non-negotiable time deposit with a financial institution (depository) in the Greater Los Angeles area.
 - b. The account must be in the name of the Assignor (developer), and the deposit instrument (Certificate of Deposit or passbook) must state that the account is assigned to the Department of Recreation and Parks, City of Los Angeles (RAP).
 - c. The account number must appear on the deposit instrument.
 - d. The actual account, as well as the depository, must be fully insured by an appropriate insurance corporation of the Federal government.
 - e. The term of the certificate of deposit shall be agreed upon by the Developer and RAP. The maturity date of the account must not exceed the term of the Recreation Credit Agreement.

NOTE: If the deposit instrument specifies that the account is automatically renewable, the account may be designated to be collected on the maturity date of any renewal term not to exceed the term of the Recreation Credit Agreement.

- f. The account must not exceed \$250,000. If a fee to be guaranteed exceeds \$250,000, a separate account and assignment must be established for each \$250,000 or portion thereof. Each such account must be with a separate depository.

NOTE: A branch office is not a separate depository.

THERE ARE NO EXCEPTIONS TO THE ABOVE LISTED REQUIREMENTS.

2. A required Assignment Form No. RP 0220, available only from the Department of Recreation and Parks, is completed as follows:
 - a. The Assignment (top) section is completed and signed by the developer.
 1. ALL SPACES MUST BE FILLED IN AND ALL COPIES MUST BE LEGIBLE.
Incomplete forms or unreadable copies will be cause for rejection.
 2. The date designated for collection must be the same as the maturity date of the account or the maturity date of any renewal term, not exceed six months from the date of assignment unless formally requested by the developer and approved by Recreation and Parks
 3. The account number, amount of the Certificate of Deposit, and the date of collection must be accurate. Corrections to these items will require the Assignor to fill out a new form.
 4. The name of the Assignor in the signature block must be the same as that in the body of the form.
 5. The name of the Assignor, and the name and title of the Signatory if the Assignor is not an individual, must be typed or printed legibly.

- b. The First Endorsement (middle) section of the Assignment form is completed and signed by the Depository.
 - 1. Indicate the Federal Deposit Insurance Corporation (Bank or Savings and Loan) by which the account is fully insured.
 - 2. The date on which payment is to be made must be the same as that on which the right to collect has been granted by Assignor.
 - 3. The name and title of the officer who signs the form must be typed or printed legibly.
 - 4. The endorsement must bear the embossed imprint of the corporate seal of the depository, if available. If not available, use stamped copy and/or proper imprint of the Depository.
 - 5. This instruction form must be signed by an officer of the Depository, and a business card of the person to contact for information regarding the account or collection thereof must be attached to the instruction form.
 - 6. A copy of the Assignment form may be retained by the Depository for its records.
- 3. The deposit instrument, the completed Assignment form, and the signed instruction sheet with attached card are delivered for processing to:

Department of Recreation and Parks
 Attn: Quimby/Park Fees Program
 221 N. Figueroa Street, 4th Floor
 Los Angeles, CA 90012

 - a. The Second Endorsement section of the Assignment form is completed and signed by an Authorized Officer of the Department.
 - b. The Department retains the deposit instrument and remaining copies of the Assignment form and clears the map condition with the Departments of City Planning, Building and Safety, and Public Works (Land Development Group).
 - c. The developer returns the signed Second Endorsement to the Depository, thus authorizing him or her to collect any interest accruing to the account. A copy is retained for his or her records.
- 4. The Department of Recreation and Parks will collect the principal of the account on the date designated in the assignment.

I have read the above instructions and certify that the assigned account meets the specified requirements in all material respects.

Signature of Officer of Depository

Print Name: _____

Date: _____

Email: _____

Phone No. _____

STANDARD PROVISIONS FOR CITY CONTRACTS

TABLE OF CONTENTS

PSC-1 Construction of Provisions and Titles Herein 1

PSC-2 Applicable Law, Interpretation and Enforcement..... 1

PSC-3 Time of Effectiveness..... 1

PSC-4 Integrated Contract 2

PSC-5 Amendment..... 2

PSC-6 Excusable Delays..... 2

PSC-7 Waiver..... 2

PSC-8 Suspension 3

PSC-9 Termination 3

PSC-10 Independent Contractor 5

PSC-11 Contractor’s Personnel..... 5

PSC-12 Assignment and Delegation 6

PSC-13 Permits..... 6

PSC-14 Claims for Labor and Materials 6

PSC-15 Current Los Angeles City Business Tax Registration Certificate Required 6

PSC-16 Retention of Records, Audit and Reports..... 6

PSC-17 Bonds..... 7

PSC-18 Indemnification..... 7

PSC-19 Intellectual Property Indemnification 7

PSC-20 Intellectual Property Warranty..... 8

PSC-21 Ownership and License..... 8

PSC-22 Data Protection 9

TABLE OF CONTENTS (Continued)

PSC-23 Insurance 9

PSC-24 Best Terms..... 9

PSC-25 Warranty and Responsibility of Contractor..... 10

PSC-26 Mandatory Provisions Pertaining to Non-Discrimination in Employment..... 10

PSC-27 Child Support Assignment Orders..... 10

PSC-28 Living Wage Ordinance 11

PSC-29 Service Contractor Worker Retention Ordinance 11

PSC-30 Access and Accommodations 11

PSC-31 Contractor Responsibility Ordinance..... 12

PSC-32 Business Inclusion Program..... 12

PSC-33 Slavery Disclosure Ordinance..... 12

PSC-34 First Source Hiring Ordinance..... 12

PSC-35 Local Business Preference Ordinance 12

PSC-36 Iran Contracting Act 12

PSC-37 Restrictions on Campaign Contributions in City Elections..... 12

PSC-38 Contractors’ Use of Criminal History for Consideration of Employment Applications 13

PSC-39 Limitation of City’s Obligation to Make Payment to Contractor 13

PSC-40 Compliance with Identity Theft Laws and Payment Card Data Security Standards 14

PSC-41 Compliance with California Public Resources Code Section 5164..... 14

PSC-42 Possessory Interests Tax..... 14

PSC-43 Confidentiality..... 15

Exhibit 1 Insurance Contractual Requirements..... 16

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.

EXHIBIT G

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: _____