

PUBLICLY ACCESSIBLE PARK AND RECREATIONAL FACILITY  
OPERATION AND MAINTENANCE AGREEMENT

THIS PUBLICLY ACCESSIBLE PARK FACILITY OPERATION AND MAINTENANCE AGREEMENT (“**Agreement**”) is made and entered into as of \_\_\_\_\_, 202X, by and between **developer name** (“**Developer**”), and THE CITY OF LOS ANGELES, a municipal corporation, acting by and through the BOARD OF RECREATION AND PARK COMMISSIONERS (the “**City**”).

Developer is the owner of that certain real property (“**Site**”) located at the **[Address]** in the City of Los Angeles, State of California.

A condition of **Vesting Tentative Tract Map (VTT) No. #####** is the payment of the in-lieu Subdivision Park Fees to the Department of Recreation and Parks (“**RAP**”) Park fees, as required by LAMC §§ 12.33 and in the total amount of **\$\$\$\$\$** (“**Developer’s Park Fees**”)

Developer has developed a public plaza on a portion of the Site fronting on Broadway Street as shown on **Exhibit C.1**, which will be a privately owned public open space (“**POPS**”) pursuant to plans and recreation credit exhibits approved by the Board of Recreation and Park Commissioners (“**RAP Board**”). The POPS is accessible for use by the general public with no discrimination between residents and non-residents, are open at hours comparable to those of City parks and facilities, and have appropriate signage indicating that the space is public;

**VTT-XXXXX** received **\$\$\$\$** in recreation credit for the POPS towards the Developer’s Park Fees consistent with the provisions of LAMC §§ 12.33 H.2. Pursuant to LAMC §§ 12.33 H.2.f.1 the Developer and RAP have entered into this Agreement whereby Developer agrees to operate and maintain the POPS for the life of the development as follows:

Section 1. Maintenance and Operation of Park.

(a) Maintenance Guidelines and Standards. Developer (so long as it is the owner of all or a portion of the Project and a homeowner’s association has not been formed), the homeowners’ association, or other ownership body of the Project (such entity as applicable, the “**Developer**”) shall cause the POPS to be open and accessible to the public and maintained and operated in a clean and safe condition. Developer agrees that the POPS shall be maintained and operated in accordance with the guidelines and standards set forth in this Agreement.

(b) The POPS Improvements, as shown on **Exhibit C.1** and attached hereto, shall not be modified or removed without the prior written approval of RAP Board.

(c) Operation of POPS. The POPS shall be operated and maintained by Developer, and its successors and assigns, as a public plaza, and shall be open and accessible for use by the general public with no discrimination between residents of the Mixed-Use Project and non-residents.

(1) POPS shall be open from [sunrise to sunset, daily]. In no event shall the POPS be open for residents of the Development at any time when the POPS is closed to the general public;

(2) Signage with hours of operation and park rules and regulations shall be clearly and visibly posted at the entrance(s) to the POPS by Developer, and the signage shall include the 24-hour emergency telephone number of the Developer's representative; and,

(3) Developer shall install and pay all charges associated with the installation and use of any electricity, natural gas, sewer, water, or other utility services, as well as pay all fees and obtain all permits for said services.

## Section 2. Maintenance Standards and Guidelines for POPS

A. Scope of Work: Furnish all supervision, labor, materials, equipment and transportation needed to maintain the POPS in accordance with all of the applicable guidelines in this document and to a standard of quality equivalent to that cited in nearby City parks as indicated by staff of the Department of Recreation and Parks. All work and workers shall comply with applicable federal, state, and local laws. Maintenance activity shall include the following:

1. Landscape planting and an irrigation system
2. Pavement cleaning and repair (if applicable)
3. Trash pick-up and graffiti abatement
4. Site lighting
5. Site or amenity furnishings as indicated in the design plan.

B. Work Force: The park maintenance supervisor or contractor shall be experienced in landscape maintenance and shall have training in ornamental horticulture. Workers are to be personably presentable at all times on site.

C. Materials: All materials used shall be of high quality and compatible with those used to develop the POPS. The L.A. County Agricultural Commissioner's Office must be given a list of the control chemicals used. Any maintenance supervisor or contractor shall also provide the City Department of Recreation and Parks, as requested, a copy of the record of fertilizers, herbicides, insecticides, fungicides and other materials used at the POPS. Records shall indicate the dates, type and amount applied and the person making the application. All waste products must be legally disposed off-site.

D. General Tree and Shrub Care: Maintain trees, vines and shrubs in a healthy growing condition by performing all necessary operations including the following:

1. Watering: Plants shall not be watered until a moisture check has been made of representative plants in the landscape. Use a probe or other tool to check the moisture in the root ball as well as the soil surrounding the root ball. Use mulches to reduce evaporation and the frequency of watering. Maintain a large enough water basin around plants so that enough water can be applied to irrigate the major root zone. In the rainy season, open the edge of the basins to allow surface drainage away from the root crown so that excess water shall not

accumulate. Plants in terra cotta or other planters, if any, shall be watered manually.

2. Pruning Trees:

- a. All pruning shall be performed under supervision of a certified arborist. Pruning standards shall conform to ISA standards specified in the Urban Forest Program of the City Department of Recreation and Parks. Prune trees (1) to select and develop permanent scaffold branches that are smaller in diameter than the trunk or branch to which they are attached and that have vertical spacing from 18 to 48 inches and radial orientation so as to not overlay one another; (2) to eliminate diseased or damaged growth; (3) to eliminate narrow, V-shaped branch forks that lack strength; (4) to reduce toppling and wind damage by thinning out crowns; (5) to maintain growth within space limitations; (6) to maintain a natural appearance; (7) to balance the surface of the crown with the roots.
- b. Do not strip off the lower branches of young trees so as to increase the distance of the lowest branches from the ground. Lower branches shall be retained in a "tipped back" or pinched condition with as much foliage as possible in order to promote caliper or tapered trunk growth. Lower branches can be cut flush with the trunk only after the tree can remain erect without staking or other support.
- c. Evergreen trees shall be thinned and shaped when needed to prevent wind and storm damage.
- d. The primary pruning of deciduous trees shall be done during the dormant season.
- e. Damaged or diseased trees or those that constitute safety hazards may be pruned at any time of the year. All pruning cuts shall be made to lateral branches or to buds or flush with the trunk. Do not leave "stubs". Use "tree seal" for all cuts of 1 inch or larger in diameter.

3. Pruning Shrubs and Vines: The objectives of shrub and vine pruning are the same as those for trees. Shrubs and vines shall be trimmed or clipped as needed to maintain a desirable shape.

4. Trees, vines and shrubs shall be checked for possible pruning once per month. All green waste products shall be legally disposed off-site and recycled in a "green waste" container.

5. Staking and Guying: When trees attain a trunk caliper of 4", consider removing existing stakes and guy wires or ties. If the trees are still unstable, consider replacing them. Stakes and guys are to be inspected at least twice per year to prevent the girdling of trunks or branches and to prevent rubbing that causes bark wounds. Eye screws in specimen tree trunks are preferred to protective, looped wire and hose.

6. Weed Control: Keep basins and areas between plants free of weeds. This will reduce damage to tree trunks and roots by mowing machinery and by excess water accumulation. Use only recommended, legally approved herbicides to control growth in these open areas. Avoid frequent soil cultivation that destroys

shallow roots and breaks the seal of pre-emergent herbicides. Great care must be used when applying systematic herbicides so as not to damage plantings. Any plantings destroyed must be replaced with material of the same specific type and size (if practical) as the dead plantings within a four-week period or when (seasonally) recommended in accordance with accepted horticultural practices. Weeds with spreading underground rootstock must be hand dug to remove all of the invading roots. All green waste products shall be legally disposed off-site and recycled in a "green waste" container.

7. Fertilizing and Spraying

- a. Apply fertilizer for shrubs and ground cover with a formula of at least 18-8-4 two times a year between early spring and early fall at the rate of 10 lbs. per 1,000 sq. ft. Lawns shall be fertilized with a formula of 16-6-8, or approved equivalent, every three months at the rate of 8 lbs. per 1,000 sq. ft. Slow-release fertilizer may also be used per manufacturer's specifications if a good, healthy, vigorous growth and good color are maintained.
- b. Apply insecticides and slug/snail controls as needed to protect plant material.
- c. Apply the proper fungicide, herbicide and pesticide for the control of pests, weeds and plant diseases. Also treat cuts and breaks on tree surfaces.
- d. Chemicals and insecticides used shall conform to standards of the City Department of Recreation and Parks. Prior to use, the Forestry Division must be made aware and approve use of any chemicals and/or insecticides. The Forestry Divisions may be contacted at (213) 485-4826. Roundup shall not be used at any time.

E. Ground Cover Care:

1. Control weeds with pre-emergent, weed herbicides, and hand weeding. Avoid damaging plantings.
2. Apply 4 lbs. pounds of actual nitrogen per 1,000 sq. ft. in two to four applications during the first year of a new planting or if the ground cover is nitrogen starved. One application shall be in the early spring when growth begins. Reduce the application to 3 lbs. of actual nitrogen per 1,000 sq. ft. in the following years or as needed to maintain vigorous growth and good color. Complete, tri-formula fertilizers are not desired unless a soil test shows specific nutrient deficiencies.
3. Water enough so that that moisture penetrates throughout the root zone and only as frequently as necessary to maintain healthy growth.
4. A cleared circle 18" to 24" in diameter shall be maintained at the base of trees to reduce competition for nutrients by ground cover. A cleared circle 12" to 18" in diameter shall be maintained at the base of palms.
5. Edge the ground cover to keep it in bounds and trim tip growth as needed to achieve an overall even appearance. Great care shall be taken not to damage

adjacent plantings when mowing. The debris generated must be legally disposed off-site and preferably recycled in a "green waste" container.

6. Control rodents, insects, and diseases as necessary, using legally approved materials.
7. Replace dead and missing plants. Plantings shall be replaced within a month. All replacements shall be the same specific types and, if possible, sizes as the plantings. All dead plants shall be legally disposed of off-site and recycled in a "green waste" container.

F. Lawn Care:

1. Lawns shall be kept weed free.
2. Mowing and edging: Mow, edge, and trim lawns weekly or as required to maintain an even, well-groomed appearance.
3. Renovation: Renovate lawns occasionally by using a vertical mower to reduce thatch-like undergrowth and encourage new growth.
4. Excess lawn clippings shall not be left on the grass and shall be legally disposed of off-site and recycled in a "green waste" container.

G. Vine Care:

1. Pruning
  - a. Vines and espalier plants shall be checked and re-tied as required.
  - b. Do not use nails to secure vines.
  - c. Prune all vines annually using accepted horticultural practices.
  - d. Vines shall be pruned and maintained so as not to obstruct fixtures, signs, windows, etc.
2. Apply 1/4 lb. of a formula 10-10-5 fertilizer at least twice a year to each vine.
3. Water as necessary to provide optimal growth.

H. Irrigation Systems:

1. Check and adjust sprinkler valves and heads as needed.
2. Program or reprogram the irrigation controller as needed.
3. The irrigation system shall be kept in good working order and condition. Any damage to the irrigation system caused by any person other than an employee of the City shall be repaired by the Developer at no cost to the City. Repairs shall be made within one watering period.
4. Faulty electrical controllers shall be replaced as soon as possible.

5. In late winter, check all systems for proper operation. Lateral lines shall be flushed out after removing the last sprinkler head or two at each end of the lateral. All heads shall be adjusted as needed for unimpeded coverage.
6. Set and program automatic controllers for seasonal water requirements. The watering schedule shall be arranged so as not to interfere with the public's use of the POPS.
7. An accurate, up-to-date log shall be maintained of all irrigation repairs with the date and nature of the repair. The log shall be made available to the City for inspection, upon request.

I. Paving:

1. Keep all paved areas free from foreign matter, waste, and trash on a daily basis. Concrete walks and unit paver areas shall be steam cleaned as needed but at least twice a year.
2. All paved areas shall be cleaned of debris caused by maintenance operations or silting.
3. Keep cracks in walks or along paved areas free from plant growth.
4. Drains: All subsurface drains shall be periodically flushed with clean water to avoid the accumulation of silt and debris. Keep all inlets to subsurface drains clear of leaves, paper and other debris to ensure the unimpeded passage of water.
5. Patch, repair or replace damaged paving as necessary to keep the area safe and suitable for children at play.
6. Do not use gas blowers per City Ordinance.

J. Trash Pick-up:

1. Pick-up litter throughout the POPS and empty trash containers at least once per day. Legally dispose of all trash off-site.

K. Site Lighting:

1. Maintain site lighting in accordance with the POPS's design plans.
2. Replace any lighting equipment, fixtures and infrastructure as needed to ensure site lighting remains functional.
3. Repair and replace damaged poles and luminaries within 72 hours.

L. Site Furnishings:

1. Clean and wipe benches as often as needed to keep them clean and tidy but no less than once a week. Maintain all site furnishings in a clean condition, including but not limited to drinking fountains, play equipment, seating, bollards, pergolas, gateways, and trash containers.

2. Repair or replace worn or damaged furnishings.

M. Debris Removal:

1. All debris accumulated as a result of maintenance operations shall be removed from the site and disposed of in a lawful manner.
2. All paper and litter shall be removed from the site on a daily basis. Fallen leaves, twigs, etc., shall be removed daily and recycled in a "green waste" container.

N. Dog Run Maintenance Protocols:

1. Signage must be posted with selected hours of closure for maintenance purposes.
2. Empty trash receptacles twice daily and address all graffiti concerns of the residents within 72 hours receipt of complaint.
3. Resupply dog waste bags immediately.
4. Disinfect all frequently touched surfaces such as hydration stations, benches, pooper scoopers, entry gate handles, bag stations, and amenities.
5. Remove dog feces on a daily basis and dispose of lawfully.
6. Fill holes dug by dogs.
7. Wash hardscape, if applicable.
8. Inspect and make repairs to the dog run amenities to ensure operation and safety of the area, as needed.

O. Community Room Maintenance Protocols:

1. Pick-up debris, trash, and remove cobwebs and other foreign materials from doors, walls, ceilings, partitions, vents, etc.
2. Dust counter tops and other horizontal surfaces.
3. Remove, empty, clean, and disinfect all trash receptacles.
4. Stack chairs on tables when cleaning floor area.
5. Removal all graffiti using graffiti removal materials or scrubbing techniques.
6. Clean and disinfect doors, door frames, light switch, kick and push plates, and handles.
7. Clean and disinfect top and side of drinking fountains, and scrub and dry all fixtures
8. Sweep and dust mop floors making sure to clean corners and around obstacles.
9. Spot mop around entry ways, and clean all stains and spills.

10. Deodorize room
11. All areas shall be left clean and free of streaks, stains, film, debris, water spots, and odors.
12. Thoroughly vacuum carpeted floors, making sure to clean corners and around obstacles.
13. Clean and disinfect all furniture including desks, chairs, and tables.
14. Inspect and make repairs to the Community Room amenities listed above to ensure operation and safety, as needed.

**P. Other Maintenance Standards Depending on Amenities Provided**

Q. Graffiti Removal and Vandalism: All graffiti shall be removed from the POPS within two days of its coming to the notice of maintenance personnel. Damage from vandalism shall be repaired as quickly as is practicable. In the instance of a disagreement between RAP and Developer over practicability, RAP's schedule for repairs of damage from vandalism shall control.

R. Corrective Action:

1. Weed control - Corrective action shall be made within five working days of receipt of a complaint.
2. Plant Material Pruning - Within the limitations of these guidelines, corrective action on complaints shall be made within five working days of the receipt of a complaint.
3. Plant Material Replacement - Dead and missing plants shall be promptly replaced, including damage due to any contractor's negligence, at no charge to the City. Wherever possible, plantings shall be replaced within two weeks. All replacement material shall be of the same specific types and, where reasonably feasible, of the same sizes as the ones destroyed.
4. POPS Signage Replacement – Corrective action shall be made within five working of receipt of complaint of damaged or missing sign.
5. Site Furnishing and Fixtures – Corrective action shall be made within thirty working days within receipt of complaint to repair or replace all site furnishing and fixtures that are required to be provided for the benefit of the public per the POPS plan.

S. Other Equipment:

Unless otherwise indicated herein, other POPS equipment shall be maintained in accordance with manufacturers' warranties, manuals, and product specifications.

T. Licenses, Taxes and Bonds: Any landscaping contractor operating at the POPS must have a C-27 State Landscape Contractor's License if any single project consists of more than \$250 of replacement landscaping. Any landscaping or maintenance contractor shall obtain all licenses required by applicable federal, state, and local laws. The contractor shall pay all applicable taxes, including sales taxes, on all materials supplied.



Section 3 Developer's Reporting Obligations.

1. Initial Report: Not later than six months following the issuance of Certificate of Occupancy for the Development, Developer shall prepare an initial report to City regarding use of the POPS by the public and confirming satisfaction of Developer's obligations under this Agreement. This report shall include, but not be limited to: (i) the approximate number of visitors to the POPS, (ii) the status of any safety or security issues at the POPS, (iii) the status of any fire, building and safety, or health code violation that impacts the POPS and (iv) any improvements made to the POPS.
2. Annual Report: Following the initial six month report, the Developer shall provide an annual report due on August 1<sup>st</sup>, which shall cover the reporting period of July 1<sup>st</sup> to June 30<sup>th</sup>. Developer shall prepare an annual report to City regarding use of the POPS by the public and confirming satisfaction of Developer's obligations under this Agreement. This report shall include, but not be limited to: (i) the approximate number of visitors to the POPS, (ii) the status of any safety or security issues at the POPS, (iii) the status of any fire, building and safety, or health code violation that impacts the POPS and (iv) any improvements made to the POPS

Section 4 Inspections. City shall have the right to inspect the premises for compliance per this Agreement. Such inspections shall be coordinated with Developer, as necessary. The Developer's approval of a date and time of an inspection shall not be unreasonably withheld.

Section 5 Covenants to Run with Land. The covenants contained in this Agreement shall run with the land and shall be binding upon any future owners, encumbrancers, their successors, heirs, or assigns.

Section 6 Indemnification and Insurance

(a) Indemnification. Except for the active negligence or willful misconduct of CITY, or any of its boards, officers, agents, employees, assigns and successors in interest, Developer 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 Developer'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 Developer, 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.

(b) Insurance. During the term of this Agreement and periodically as required during such term, Developer shall furnish CITY with evidence of insurance as attached hereto

as Exhibit C.2, on an annual basis, from firms reasonably acceptable to City and approved to do such business in the State of California. Developer or any third party providing work or services under this Agreement shall name the City of Los Angeles and its boards, officers, agents, employees, assigns and successors in interest as an additional insured for all required coverage(s), as applicable. Developer will ensure that like insurance will be maintained by any such third party. Evidence of required coverage shall be on forms reasonably acceptable to City's Risk Manager and shall include the types and minimum limits set forth in Exhibit C.2 attached hereto and incorporated herein by reference.

Developer shall maintain all such insurance at its sole cost and expense throughout the term of this Agreement. City may, by applying generally accepted risk management principles, change the required amounts and types of insurance to be effective at the renewal date of the insurance then in effect by giving Developer sixty (60) calendar days written notice, provided that such amounts and/or types shall be reasonably available to Developer.

If any of the required insurance contains aggregate limits or applies to other operations of Developer outside of this Agreement, Developer shall give City written notice of any incident, occurrence, claim, settlement or judgment against such insurance that in Developer's best judgment may diminish the protection such insurance affords City within thirty (30) calendar days of the knowledge of same. Developer shall further restore such aggregate limits or shall provide other replacement insurance for such aggregate limits within sixty (60) calendar days of the knowledge of same.

If an insurance company elects to (i) cancel insurance before the stated expiration date, (ii) declines to renew in the case of a continuous policy, (iii) reduces the stated limits other than by impairment of an aggregate limit, or (iv) materially reduces the scope of coverage, thereby affecting City's interest, Developer shall provide City at least thirty (30) calendar days prior written notice of such intended election by the insurance company, or ten (10) calendar days prior written notice if such cancellation is for non-payment of premium.

Such notice shall be sent by receipted delivery addressed as follows:

City Administrative Officer, Risk Management

200 North Main Street, Room 1240, City Hall East

Los Angeles, California 90012

Or to such address as City may specify by written notice to Developer.

Notwithstanding anything to the contrary in this Agreement, Developer's failure to procure and maintain the required insurance shall constitute a material default of this Agreement under which CITY may either (i) provide Developer five (5) calendar days written notice of such failure, upon receipt of which ORGANIZATION shall have five (5) calendar days to cure such failure or (ii) CITY shall pay to procure or renew such insurance to protect CITY's interest. ORGANIZATION agrees to reimburse CITY for all money so paid. Nothing herein shall limit any other remedies City may have under this Agreement for such default.

Self-insurance programs and self-insured retention in insurance policies are subject to separate approval by City upon review of evidence of Developer's financial capacity. Additionally, such programs or retention must provide City with an equivalent protection from liability.

Section 7. Termination of Agreement. This Agreement shall terminate and all covenants contained in this Agreement shall expire only upon written consent from the City.

Section 8. Amendments. This Agreement may be modified or amended by the mutual written agreement of City and Developer.

Section 9. Defaults. In the event the POPS is not maintained or operated in accordance with the requirements of this Agreement or reporting requirement set forth in Section 3 are not met, City shall have the right to demand payment of the previously credited Park Fees, in their entirety. If the POPS is not maintained and operated as required by this Agreement, the City shall notify Developer of such failure in writing and provide Opportunity to Cure ("Notice"). All events of default must be cured within the timeframe specified in the Notice. In the event the default is not satisfactorily cured within the allotted amount of time, RAP shall provide a Notice of Default which will include the amount of Park Fees owed by the Developer that must be paid within thirty (30) days of receipt

Section 10. Notices. Any notices to be given under this Agreement shall be given in writing. Such notices may be served by personal delivery, facsimile transmission or by first class regular mail, postage prepaid. Any such notice, when served by mail, shall be effective two (2) calendar days after the date of mailing of the same, and when served by facsimile transmission or personal delivery shall be effective upon receipt. For the purposes hereof, the address of Developer, and City to receive any such notices on its behalf, are:

City  
City of Los Angeles  
Department of Recreation and Parks  
Planning Construction and Maintenance  
221 North Figueroa Street, Suite 400  
Los Angeles, CA 90012  
Attn: Superintendent of Planning

with copies to:  
Board of Recreation and Park Commissioners  
Department of Recreation and Parks  
221 North Figueroa Street, Suite 300  
Los Angeles, CA 90012  
Attn: Board Secretary

Developer:  
Name  
Address  
Attn: Name  
Telephone: ###  
Email:

With copies to:  
Name  
Address  
Attn: Name  
Telephone: ###

Email:

Section 11. Governing Law. This Agreement shall be governed by and construed in accordance with and governed by the laws of the State of California.

[EXECUTION PAGE TO FOLLOW]

DRAFT

Section 12. 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:

EXHIBIT "C.1"

DEPICTION OF POPS

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EXHIBIT "C.2"

INSURANCE REQUIREMENTS

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