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(213) 202-2633

November 07, 2024

Honorable City Council  
City of Los Angeles  
c/o: Office of the City Clerk  
City Hall, Room 395

Honorable Members of the City Council:

Subject:

Griffith Park – Agreement Between the Department of Recreation and Parks and the Los Angeles Parks Foundation for the Operation and Maintenance of the Nursery House, Demonstration Garden and Terraces at Commonwealth Nursery – Categorical Exemption from the Provisions of the California Environmental Quality Act (CEQA) Pursuant to Article 19, Section 15301 [Minor Alteration of Existing Public or Private Structures, Facilities, Mechanical Equipment, or Topographical Features, Involving Negligible or No Expansion of Existing Or Former Use] of the California CEQA Guidelines and Article III, Section 1, Class 1(14) and Class 4(3) of City CEQA Guidelines

Recommendation for Council Action:

The Board of Recreation and Park Commissioners (Board) respectfully requests the City Council authorize the Department of Recreation and Parks (RAP) (i) Approve a proposed Agreement (Agreement) between the Department of Recreation and Parks (RAP) and the Los Angeles Parks Foundation (Organization) for the operation and maintenance of the Nursery House, Demonstration Garden, and a portion of the terraces at the Commonwealth Nursery located within Griffith Park at 2650 N. Commonwealth Avenue, Los Angeles, CA 90027 (Premises), for a term of five years, with one five-year option to extend at the discretion of the RAP General Manager.

Background:

RAP manages and provides stewardship over Griffith Park, one of the largest municipal parks in the United States with over 4,511 acres of existing wilderness areas, native plant terrain, landscaped parkland, and numerous community amenities.

Commonwealth Nursery is an existing 11-acre site located within Griffith Park which was established in 1928 for the purpose of locally producing all trees, shrubs and flowers, many of which were native to Griffith Park, for city parks and public buildings. At its height, the nursery was producing between one and two million plants annually and simultaneously supported a horticulture education program for interested individuals to apprentice at the nursery and learn from experts. This program ended in the 1970s and subsequent budget cuts led to decreased use



of the nursery until it was ultimately abandoned, but recent renovations, interest from non-profit partners, and the City's biodiversity and native planting goals have led to a renewed interest in the revitalization of a municipal nursery at Commonwealth, an effort supported in part by the Organization.

The Organization was established in 2008 to advance the work of RAP with a focus on park equity, revitalization, and environmental stewardship. The Organization has a mission of enhancing, expanding, preserving and promoting public recreation, parks and open space for the diverse people of Los Angeles, and it has supported RAP by raising more than \$45 million for projects such as the park forest and Adopt-A-Park programs. The Organization engages with the community and philanthropic leaders to help raise funds to support the park system in many ways, including support for recreational programming, community cohesion, safe public spaces, and protected parkland.

The Organization has previously been granted temporary, revocable Right of Entry permits to be able to renovate and occupy the Nursery House, formerly known as the Caretaker's Residence, as an office space from which to oversee all Organization programming, and for their management, coordination and construction oversight of the restoration of Commonwealth Nursery. The Organization has also developed and maintains a Demonstration Garden adjacent to the Nursery House, which acts as an outdoor educational space in which the community can learn about ecologically-sound landscaping and native plant propagation. The Organization's usage of a portion of the Commonwealth Nursery terraces, previously also referred to as the Griffith Park Urban Environmental Center, will be an extension of the Demonstration Garden, as a space to propagate plants for use at RAP and City facilities, and as an educational space.

Fiscal Impact Statement:

The approval of this Agreement will have no adverse impact on the RAP General Fund, as the Organization will continue to be solely responsible for costs and expenses associated with the operation and maintenance of the Premises.

If you have any questions with regard to the aforementioned matters, please contact Mariana Valdivia, Chief Management Analyst, with the Partnership Section.

Very truly yours,

BOARD OF RECREATION AND  
PARK COMMISSIONERS



TAKISHA SARDIN  
Commission Executive Assistant II

Attachments: Board Report No. 24-237

cc: Mariana Valdivia, Chief Management Analyst

APPROVED

Nov 07 2021

BOARD OF RECREATION  
AND PARK COMMISSIONERS

BOARD REPORT

NO. 24-237

DATE November 07, 2024

C.D. 4

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: GRIFFITH PARK – AGREEMENT BETWEEN THE DEPARTMENT OF RECREATION AND PARKS AND THE LOS ANGELES PARKS FOUNDATION FOR THE OPERATION AND MAINTENANCE OF THE NURSERY HOUSE, DEMONSTRATION GARDEN AND TERRACES AT COMMONWEALTH NURSERY – CATEGORICALLY EXEMPT FROM THE PROVISIONS OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) PURSUANT TO ARTICLE 19, SECTION 15301 [OPERATION, REPAIR, MAINTENANCE, PERMITTING, LEASING, LICENSING, OR MINOR ALTERATION OF EXISTING PUBLIC OR PRIVATE STRUCTURES, FACILITIES, MECHANICAL EQUIPMENT, OR TOPOGRAPHICAL FEATURES, INVOLVING NEGLIGIBLE OR NO EXPANSION OF EXISTING OR FORMER USE] AND SECTION 15304(b) [NEW GARDENING OR LANDSCAPING, INCLUDING THE REPLACEMENT OF EXISTING CONVENTIONAL LANDSCAPING WITH WATER EFFICIENT OR FIRE RESISTANT LANDSCAPING] OF CALIFORNIA CEQA GUIDELINES AND ARTICLE III, SECTION 1, CLASS 1(14) AND CLASS 4(3) OF CITY CEQA GUIDELINES

\* B. Aguirre

BA

M. Rudnick

C. Stoneham

C. Santo Domingo

B. Jones

N. Williams

General Manager

Approved X

Disapproved

Withdrawn

RECOMMENDATIONS

1. Approve a proposed Agreement (Agreement) between the Department of Recreation and Parks (RAP) and the Los Angeles Parks Foundation (Organization) for the operation and maintenance of the Nursery House, Demonstration Garden, and a portion of the terraces at the Commonwealth Nursery located within Griffith Park at 2650 N. Commonwealth Avenue, Los Angeles, CA 90027 (Premises), for a term of five years, with one five-year option to extend at the discretion of the RAP General Manager, attached hereto as Attachment 2, subject to approval of the City Council and the City Attorney as to form;
2. Direct the Board of Recreation and Parks Commissioners (Board) Secretary to transmit the proposed Agreement to the City Council and the City Attorney;
3. Authorize the Board President and Secretary to execute the Agreement subsequent to all

## BOARD REPORT

PG. 2 NO. 24-237

necessary approvals;

4. Direct RAP's Chief Accounting Employee to create a Cost Recovery Reimbursement Fees (CRRF) account for the deposit of future CRRF payments received from the Organization;
5. Determine that approval of the Agreement and related actions (Project) is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Article 19, Section 15301 [Operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use] and Section 15304(b) [New gardening or landscaping, including the replacement of existing conventional landscaping with water efficient or fire resistant landscaping] of California CEQA Guidelines and Article III, Section 1, Class 1(14) and Class 4(3) of City CEQA Guidelines, and direct staff to file a Notice of Exemption (NOE) with the Los Angeles County Clerk and the California Office of Planning and Research;
6. Authorize RAP's Chief Accounting Employee to prepare a check to the Los Angeles County Clerk in the amount of \$75.00 for the purpose of filing an NOE; and,
7. Authorize RAP Staff to make technical corrections in order to carry out the Board's intent in approving this Report.

### BACKGROUND

RAP manages and provides stewardship over Griffith Park, one of the largest municipal parks in the United States with over 4,511 acres of existing wilderness areas, native plant terrain, landscaped parkland, and numerous community amenities.

Commonwealth Nursery is an existing 11-acre site located within Griffith Park which was established in 1928 for the purpose of locally producing all trees, shrubs and flowers, many of which were native to Griffith Park, for city parks and public buildings. At its height, the nursery was producing between one and two million plants annually and simultaneously supported a horticulture education program for interested individuals to apprentice at the nursery and learn from experts. This program ended in the 1970s and subsequent budget cuts led to decreased use of the nursery until it was ultimately abandoned, but recent renovations, interest from non-profit partners, and the City's biodiversity and native planting goals have led to a renewed interest in the revitalization of a municipal nursery at Commonwealth, an effort supported in part by the Organization.

The Organization was established in 2008 to advance the work of RAP with a focus on park



## BOARD REPORT

PG. 3 NO. 24-237

equity, revitalization, and environmental stewardship. The Organization has a mission of enhancing, expanding, preserving and promoting public recreation, parks and open space for the diverse people of Los Angeles, and it has supported RAP by raising more than \$45 million for projects such as the park forest and Adopt-A-Park programs. The Organization engages with the community and philanthropic leaders to help raise funds to support the park system in many ways, including support for recreational programming, community cohesion, safe public spaces, and protected parkland.

The Organization has previously been granted temporary, revocable Right of Entry permits to be able to renovate and occupy the Nursery House, formerly known as the Caretaker's Residence, as an office space from which to oversee all Organization programming, and for their management, coordination and construction oversight of the restoration of Commonwealth Nursery. The Organization has also developed and maintains a Demonstration Garden adjacent to the Nursery House, which acts as an outdoor educational space in which the community can learn about ecologically-sound landscaping and native plant propagation. The Organization's usage of a portion of the Commonwealth Nursery terraces, previously also referred to as the Griffith Park Urban Environmental Center, will be an extension of the Demonstration Garden, as a space to propagate plants for use at RAP and City facilities, and as an educational space.

Due to the Organization's successful operation, maintenance, improvement and management of the Premises, and strong support for RAP's projects, RAP staff recommends that the Board approve the proposed Agreement in order to allow the Organization to continue its use of the Premises for up to ten years for the benefit of the public.

### TREES AND SHADE

This Proposed Agreement will not have any impact on existing trees or shade at the Premises.

### ENVIRONMENTAL IMPACT

The proposed Project consists of permitting, the use of existing public structures, and topographical features, involving negligible or no expansion of existing or former use to allow new gardening or landscaping.

According to the parcel profile report retrieved October 24, 2024, this area resides in a liquefaction zone. The implementation of this Agreement will not create conditions that would expose patrons or workers to increased risk of liquefaction. This site is not within a coastal or methane zone. Although the site is in an ecologically sensitive area, the operation of the nursery terraces will not create and adverse effect on the local environment, so there is no reasonable possibility that the proposed Project may impact an environmental resource of hazardous or critical concern or have a significant effect due to unusual circumstances. No other known projects would involve

## BOARD REPORT

PG. 4 NO. 24-237

cumulatively significant impacts, and no future projects would result from the proposed Project. As of October 24, 2024, the State Department of Toxic Substances Control (DTSC) (Envirostor at [www.envirostor.dtsc.ca.gov](http://www.envirostor.dtsc.ca.gov)) and the State Water Resources Control Board (SWRCB) (Geotracker at <https://geotracker.waterboards.ca.gov/>) have not listed the Project site or any contaminated sites near the Project area (within 1,000 feet). According to the Caltrans Scenic Highway Map, there is no scenic highway located within the vicinity of the proposed Project or within its site. Furthermore, the proposed Project is located in Griffith Park, a City of Los Angeles historic cultural monument (HCM #942) and is one of the contributing elements to the historic determination. The reconstruction of the terraces has been conducted consistently with the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings. The operations authorized under the Agreement are inspired to the original use of the nursery; such activities will not cause a substantial adverse change in the significance of any historical resource.

Based in this information, staff recommends that the Board determine that the proposed Project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Article 19, Section 15301 and 15304(b) of California CEQA Guidelines as well as to Article III, Section 1, Class 1(14) and Class 4(3) of City CEQA Guidelines. Staff will file a Notice of Exemption with the Los Angeles County Clerk and the California Office of Planning and Research upon Board's approval.

### FISCAL IMPACT STATEMENT:

The approval of this Agreement will have no adverse impact on the RAP General Fund, as the Organization will continue to be solely responsible for costs and expenses associated with the operation and maintenance of the Premises.

This Report was prepared by Priya Macwan, Management Analyst, and Mariana Valdivia, Chief Management Analyst, with the Partnership Section.

### List of Attachments:

1. Proposed Agreement

**AGREEMENT  
BETWEEN CITY OF LOS ANGELES  
AND  
THE LOS ANGELES PARKS FOUNDATION  
FOR THE OPERATION AND MAINTENANCE OF  
THE NURSERY HOUSE, DEMONSTRATION GARDEN,  
AND PORTION OF COMMONWEALTH NURSERY**

This AGREEMENT ("AGREEMENT" or "CONTRACT") is entered into as of \_\_\_\_\_, 20\_\_\_\_, ("COMMENCEMENT 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 the Los Angeles Parks Foundation, a California 501(c)(3) non-profit corporation ("ORGANIZATION"), for the operation and maintenance of the facility known as Nursery House, Demonstration Garden, and portion of Commonwealth Nursery ("PREMISES"). CITY and ORGANIZATION may be referred to herein individually as "PARTY" or collectively as "PARTIES".

WHEREAS, CITY, through its Department of Recreation and Parks ("RAP"), owns real property commonly referred to as Griffith Park, which consists of more than 4,511 acres with existing urban wilderness areas, landscaped parkland, active recreation areas, passive green space and picnic areas, comprising one of the largest municipal parks in the United States; and,

WHEREAS, CITY, through its Department of Recreation and Parks ("RAP"), owns and operates real property within Griffith Park commonly known as the Nursery House, Demonstration Garden, and Commonwealth Nursery, located at 2650 N. Commonwealth Avenue, Los Angeles, CA 90027 as depicted on the site maps attached hereto and incorporated herein by reference as Exhibit A ("SITE PLAN"); and,

WHEREAS, ORGANIZATION's mission is to enhance, expand, preserve, and promote public recreation, parks, and open space for the diverse people of Los Angeles; and has financially supported a number of RAP; and,

WHEREAS, ORGANIZATION has previously held Right of Entry permits for the renovation and occupation of the Nursery House, and management, coordination and construction oversight of the restoration of Commonwealth Nursery; and,

WHEREAS, ORGANIZATION has notified CITY that ORGANIZATION wishes to continue its operation and maintenance of the PREMISES through a long-term agreement in order to continue supporting RAP projects, through nature-based programming and fundraising efforts ("PROGRAM") at ORGANIZATION's sole expense and no cost to CITY; and,

WHEREAS, CITY desires to authorize ORGANIZATION to continue operating and maintaining the PREMISES for such purposes described above and as more fully set forth in this AGREEMENT pursuant to the terms and conditions of this AGREEMENT, for a period of five years with one five-year option to extend at the sole discretion of the RAP General Manager; and,

WHEREAS CITY, through its Board of Recreation and Park Commissioners ("BOARD"), has approved this AGREEMENT at the BOARD meeting held on \_\_\_\_\_ **date** \_\_\_\_\_

(Board Report No. XX-XXX), allowing for operation of the PREMISES in accordance with the terms and conditions of this AGREEMENT.

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

**1. Use of PREMISES**

In consideration of the anticipated benefits to the public, the sufficiency of which is mutually acknowledged, CITY grants to ORGANIZATION by this AGREEMENT authority to operate and maintain the PREMISES as described in the Permitted Uses set forth below in Section 5 ("PERMITTED USES"), which shall be performed by ORGANIZATION in accordance with the terms and conditions of this AGREEMENT. RAP shall have no obligation to provide staff, supplies, equipment, services, or funding for the operation of the PREMISES, and if such is requested from RAP by ORGANIZATION, ORGANIZATION agrees to reimburse RAP for any financial impacts resulting from RAP's provision of such, in accordance with RAP Standard Schedule of Rates and Fees and/or permitting requirements.

The PREMISES authorized for use by ORGANIZATION under this AGREEMENT are depicted in the SITE PLAN attached hereto as Exhibit A, to be operated and maintained in accordance with the terms and conditions of this AGREEMENT.

**2. TERM and Termination**

The performance period authorized under this AGREEMENT (for ease of reference, shall be referred to herein as "TERM") shall be five years from the COMMENCEMENT DATE with one five-year option at the sole discretion of the RAP General Manager, subject to periodic performance evaluations ("PERFORMANCE REVIEWS") as more fully described below in Section 3 of this AGREEMENT.

- a. Commencement and Expiration. This AGREEMENT shall take effect on the COMMENCEMENT DATE above and shall end upon the expiration of the TERM or the earlier of (i) a written termination notice from RAP or ORGANIZATION to the other, effective after sixty (60) calendar days from the date of issuance due to either an unfavorable PERFORMANCE REVIEW or termination for cause during the TERM; or, (ii) the date that ORGANIZATION ceases to operate on the PREMISES; or, (iii) ORGANIZATION implements the general termination provision described herein.
- b. Termination. In addition to the CITY's right to terminate this AGREEMENT for an uncured breach or default as set forth in Sections 22 and 23, CITY and ORGANIZATION may terminate this AGREEMENT upon written notice of termination given to the other PARTY no less than sixty (60) days prior to the date of termination. Further, CITY may immediately terminate this AGREEMENT in the event ORGANIZATION ceases to operate as defined below. CITY and ORGANIZATION reserve the right to terminate this AGREEMENT at their sole discretion for convenience, emergency, or necessity.

If CITY or ORGANIZATION should elect to terminate this AGREEMENT, ORGANIZATION agrees to immediately cease all operations and other activity, remove all personal property and equipment and to peacefully surrender the PREMISES to CITY within sixty (60) calendar days of receiving or providing a written notice of termination. If ORGANIZATION fails to remove all its personal property and equipment within sixty (60) calendar days after termination of this AGREEMENT, CITY, at its option, may remove such property and equipment, in which event ORGANIZATION shall pay to the CITY, upon demand the reasonable cost of such removal, plus the cost of transportation and disposition thereof.

- c. Cease to Operate. The phrase “cease to operate” shall mean the first to occur of any of the following: (i) the termination (but not temporary suspension) of ORGANIZATION’s corporate charter or grant of non-profit status, unless the same is reinstated within sixty (60) calendar days after such termination; (ii) a material change in ORGANIZATION’s purposes or function as contained in ORGANIZATION’s corporate charter or grant of non-profit status (“Stated Purposes”); (iii) a material change in the delivery of services by ORGANIZATION from that described herein; or (iv) the failure of ORGANIZATION to use the PREMISES for any of the PERMITTED USES or any other default of the terms and conditions or other obligations contained in this AGREEMENT, for a consecutive period of sixty (60) calendar days; unless prevented from doing so because of damage, destruction, major repairs or refurbishment of the improvements within the PREMISES, or for reasons beyond ORGANIZATION’s control. Under such circumstances, ORGANIZATION shall immediately cease and desist from all use of the PREMISES, and this AGREEMENT shall be deemed terminated upon ORGANIZATION’s receipt of such notification of immediate termination from RAP.

### **3. Performance Reviews**

PARTIES mutually agree to PERFORMANCE REVIEWS, which shall be conducted by RAP to determine the feasibility and benefit of continuing the relationship between PARTIES under this AGREEMENT.

- a. Continuance of CITY’s collaboration with ORGANIZATION under this AGREEMENT shall be contingent upon a favorable PERFORMANCE REVIEW, which shall include, but not be limited to:
  - i. An evaluation of ORGANIZATION’s compliance with the terms and conditions of this AGREEMENT;
  - ii. Fulfillment of ORGANIZATION’s obligations for the operation and maintenance of the PREMISES under this AGREEMENT as more fully described under the PERMITTED USES specified herein in Section 5, and maintenance of the PREMISES under this AGREEMENT;
  - iii. Fulfillment of all PERFORMANCE REQUIREMENTS included herein and more fully described in the Sample Performance Report Questionnaire included as Exhibit B;

- iv. Adequacy of ORGANIZATION's funding and financial resources to continue operating and maintaining the PREMISES for the benefit of the public throughout the TERM of this AGREEMENT;
  - v. The volume of the public's use of the PREMISES and participation in ORGANIZATION's PROGRAM; and,
  - vi. ORGANIZATION's cooperation with CITY staff.
- b. Every year during the TERM of this AGREEMENT, for purposes of completing the PERFORMANCE REVIEW process, ORGANIZATION shall submit to RAP during the period of August 15th through September 15th, a performance or program report ("PERFORMANCE REPORT") based on the ORGANIZATION's operation of the PREMISES during the prior fiscal year. Information related to any previous unreported years may be requested by RAP Staff. Staff requested PERFORMANCE REPORTS shall not exceed three years. PARTIES understand the fiscal year to be between July 1st and June 30<sup>th</sup>.

The PERFORMANCE REPORT should generally describe ORGANIZATION's PROGRAM activities, issues, accomplishments, etc., to provide RAP with an understanding of ORGANIZATION's performance. This PERFORMANCE REPORT shall include, but not be limited to:

- i. Financial Statement (Revenue and Expenditures for prior fiscal year);
  - ii. Annual Budget for upcoming fiscal year (July 1<sup>st</sup> through June 30<sup>th</sup>);
  - iii. The number of persons served during the prior fiscal year;
  - iv. Sample copies of marketing, recruitment, and press materials should any exist;
  - v. Summary of PERFORMANCE REQUIREMENTS completed during the previous fiscal year; and,
  - vi. Discussion of PROGRAM changes or challenges.
- c. RAP reserves the right to request reasonable additional materials or clarifying information after review of the submitted PERFORMANCE REPORT.
- d. CITY's approval to continue the collaborative relationship may be based in part on findings obtained through the PERFORMANCE REVIEW process, evaluation of the PERFORMANCE REPORT, and a review of ORGANIZATION's compliance with the terms and conditions of this AGREEMENT, including interviews with RAP Maintenance staff with jurisdiction over the PREMISES and any other factors that RAP may deem as reasonably necessary, including input and feedback from PROGRAM participants and the public. With the understanding that the PERFORMANCE REVIEW process may be modified, a sample Performance

Report Questionnaire is attached hereto and incorporated herein by reference as Exhibit B. Results of the PERFORMANCE REVIEW may be used in determining future collaborations with ORGANIZATION. CITY shall not unreasonably withhold its determination of the PERFORMANCE REVIEW.

#### **4. Access to PREMISES**

ORGANIZATION and any authorized third party associated with ORGANIZATION's activities on the PREMISES shall abide by the terms and conditions expressed in this AGREEMENT, and shall cooperate fully with CITY and its employees in the performance of their duties. Any third-party participation on the PREMISES shall be supervised by ORGANIZATION at all times while such third-party is present on the PREMISES, and RAP on-site staff shall be made aware of such third-party activities.

Authorized representatives, agents and employees of CITY will have the right to enter the PREMISES for purposes of fulfilling normal duties, performing inspections, conducting events or programs, or in case of emergencies. RAP shall make a reasonable effort to provide ORGANIZATION with twenty-four (24) hours prior notice. However, no such advance notice by RAP to ORGANIZATION shall be required in the case of emergencies. If a governmental body with jurisdiction over the PREMISES and/or the CITY or RAP determines that a certain activity, or all of the activities, conducted on the PREMISES, are material threats to public safety as may be determined by the CITY, CITY may immediately suspend and/or terminate ORGANIZATION's right to conduct such activities on the PREMISES by providing written notice to ORGANIZATION of such suspension. Such activities shall remain suspended until they are no longer deemed a threat to public safety, at which time the CITY shall promptly provide written notice to ORGANIZATION of same. If required for public safety, the CITY may immediately suspend and/or temporarily terminate ORGANIZATION activities involving the PREMISES.

PARTIES agree that RAP staff has the authority to access and use any portion of the PREMISES if needed and shall communicate with ORGANIZATION staff if such use is deemed necessary. Additionally, PARTIES agree to allow CITY access to and use of any portion of the PREMISES in case of a natural disaster or emergency such as an earthquake, fire, etcetera, as a designated public emergency shelter site or showering facility for the homeless. Such use shall take precedence over regularly scheduled ORGANIZATION activities and CITY shall not be charged a fee for such use; provided, however, that ORGANIZATION's obligation to pay the CRRF (defined below) to the CITY shall be suspended during such time period that CITY has taken over the PREMISES for the above use.

#### **5. Permitted Uses**

ORGANIZATION shall not expand and/or change the scope of PERMITTED USES set forth in this Section without the prior written approval and consent of the BOARD through an amendment to this AGREEMENT. ORGANIZATION, at its sole cost and expense, shall:

- a. Operate PREMISES in the following manner:
  - i. Nursery House: As an office space for ORGANIZATION's PROGRAM operations and management.

- ii. Demonstration Garden: As an outdoor learning environment in which native plant horticulture and landscaping is highlighted as a way of engaging the community on ecologically-sound landscaping.
  - iii. Commonwealth Nursery Terraces: For the usage of a portion of the nursery as an extension of the Demonstration Garden, to propagate plants for use at RAP and City facilities, which will be managed in coordination with RAP Maintenance staff identified in Section 25.
- b. ORGANIZATION shall operate the PREMISES in accordance with uses and restrictions set forth herein. ORGANIZATION shall provide access and use of the PREMISES to the general public free of charge and shall not charge any fees for membership or participation in programs or events held on the PREMISES.
- c. Operate the PREMISES only during specified days and hours listed in Section 6 of this AGREEMENT.
- d. Provide all staff, materials, supplies, equipment and funds necessary to perform the operation of the PROGRAM including the provision of services as agreed to herein to the reasonable satisfaction of CITY.
- e. Ensure ORGANIZATION's protocol for selecting and authorizing any person participating in the provision of PROGRAM activities on the PREMISES complies with applicable local, State, and/or Federal protocols for employees, volunteers, contractors and subcontractors engaging in the PERMITTED USES described herein, including background checks, fingerprinting, and any certifications, licenses and approvals to the extent required by applicable law. ORGANIZATION shall comply, and ensure any of its employees, volunteers and authorized third parties complies with all applicable CITY, State and Federal rules, laws and regulations in the performance of this AGREEMENT and in the operation of the PROGRAM.
- f. Comply with all RAP policies and procedures as well as all Federal, State, County, and local regulations, ordinances, orders and mandates, including but not limited to health and safety ordinances, orders and guidelines, and background checks and fingerprinting for any volunteer or paid staff participating in the PROGRAM on the PREMISES, throughout the TERM of this AGREEMENT. In doing so, ORGANIZATION shall maintain regular communication with RAP staff to ensure ORGANIZATION's compliance with such policies, procedures, regulations, orders and requirements and ORGANIZATION shall be solely responsible for all costs related to ensuring such compliance.
- g. Punctually pay or cause to be paid all ORGANIZATION financial obligations incurred in connection with the operation and maintenance of the PREMISES as set forth in this AGREEMENT. ORGANIZATION shall discharge or provide for the discharge of all claims authorized or incurred for labor, equipment, materials, and supplies furnished in connection with ORGANIZATION's use of the PREMISES to the extent such claims do not arise due to any CITY action or omission.



- h. Prohibit and prevent the dispensing and/or consumption of beer, wine or other intoxicating liquors (commonly referred to as alcoholic beverages), which is NOT one of the PERMITTED USES authorized herein, and therefore shall not be permitted to occur in the PREMISES under any circumstances.
- i. Not allow commercial activity on the PREMISES, unless written approval is provided by RAP in advance of such activity occurring. No products grown or cultivated on the PREMISES may be used for for-profit commercial purposes.
- j. Ensure that no photographs of minors or depiction of their likeness is included in any publication without obtaining prior written consent from the child's parent or legal guardian.
- k. Not sublet or issue any permit for use of the PREMISES.
- l. Assume responsibility for the actions of all individuals and/or organizations participating in the PROGRAM on the PREMISES, and ensure that such individuals and/or organizations agree in writing to abide by all conditions set forth in this AGREEMENT.
- m. Obtain any and all operating permits and/or licenses that may be required in connection with its operations, including but not limited to tax permits, business licenses, health permits, certifications, etc.

## **6. Days and Periods of Use**

The hours and days of PREMISES operation are sunrise to sunset daily for the operation and maintenance of the PREMISES ("PERMITTED TIMES"). ORGANIZATION shall not utilize PREMISES during hours other than the authorized PERMITTED TIMES, without RAP's prior written authorization. When required by RAP, ORGANIZATION shall yield use of the PREMISES to possible film production work authorized by the RAP Park Services Office and Film LA Office, as well as short term construction and/or maintenance projects authorized by RAP that may take place on the PREMISES, including use of nearby parking lots for storage and staging of construction materials and equipment. ORGANIZATION shall have in place a written plan that will be implemented for continuation of ORGANIZATION's operations during such events. ORGANIZATION shall cooperate with RAP personnel and staff on all matters relative to the conduct of operations or any activity, event, and/or special use, including concerns related to parking, traffic, security, and attendance.

- a. PROGRAM Operation: Any extended times or hours for specified events or programs related to the program may be granted with prior written consent from RAP.
- b. Special Events: ORGANIZATION shall make requests for use of PREMISES or portion thereof for events and activities other than operations, repair, or maintenance, including for any fundraising as authorized in Section 9, by completing a Building Use Application at least sixty (60) days in advance of the

particular activity or event and submitting it to the RAP representative referenced in Sections 24 and 25. No application fees will be charged for non-fundraising events or for fundraising events authorized in Section 9. Upon approval by RAP, the event or activity hours may be extended beyond normal closing time, but not beyond 10:30 p.m. in accordance with Los Angeles Municipal Code Section 63.44.

- c. ORGANIZATION shall cooperate with RAP personnel and Park staff on all matters relative to the conduct of operations or any activity, event, and/or special use or fundraiser, including concerns related to parking, traffic, security and attendance.

## **7. Vacating Park**

Upon termination or expiration of this AGREEMENT, ORGANIZATION shall vacate the PREMISES and remove from it all belongings, furniture, and other items owned by ORGANIZATION. Should any items be left behind and not removed within seven (7) days after the termination or expiration of this AGREEMENT, RAP shall reserve the right to remove and discard such items at its discretion and charge ORGANIZATION for any expenses associated with the removal and disposal of ORGANIZATION's personal property.

## **8. Parking**

During the TERM of this AGREEMENT and during PERMITTED TIMES specified above in Section 6 of this AGREEMENT, ORGANIZATION, its staff, and public patrons and/or guests, whether or not involved in ORGANIZATION activities on the PREMISES, shall have the non-exclusive right to park eight vehicles within designated signed parking stalls. Exclusive or designated parking shall not be allowed, unless previously approved in writing by RAP.

## **9. Funding and Fundraising**

All funds, including grants, donations, or any other funds received by ORGANIZATION in connection with and/or specified for, the PREMISES or related to matters covered by this AGREEMENT, or generated from programs or activities conducted on the PREMISES, shall be applied exclusively to the operations and maintenance of the PREMISES and/or benefit a park purpose, and shall be strictly accounted for as provided herein. Such funds shall not be commingled with other funds of ORGANIZATION unrelated to this AGREEMENT and/or the operation and maintenance of the PREMISES. If for any reason ORGANIZATION fails to secure necessary funding to carry out its obligations and commitments under this AGREEMENT, CITY may and can terminate this AGREEMENT pursuant to a Breach and Default of this AGREEMENT.

ORGANIZATION may hold fundraising activities on the PREMISES, but must coordinate with RAP representatives listed in Sections 24 and 25 for each fundraising event, no fewer than thirty (30) calendar days prior to the scheduled activity in accordance with the procedure in Section 6b. All monies raised from fundraising conducted on the PREMISES must be used only in support of the activities authorized under this AGREEMENT. Fundraising activities shall comply with RAP's alcoholic beverages policies. ORGANIZATION shall cooperate with RAP personnel and PREMISES staff on all matters relative to the conduct of fundraising and/or special events, which may include concerns

related to parking, traffic and attendance, or closure of the host facility for as many as seven days per calendar year.

#### **10. Maintenance of PREMISES**

During the TERM of this AGREEMENT, and subject to the terms and conditions contained herein, ORGANIZATION, at its sole cost and expense, shall perform the functions of maintenance and/or repair of the PREMISES as described herein.

- a. Pursuant to the mutual agreement of PARTIES, ORGANIZATION shall operate and maintain PREMISES efficiently and economically at its sole cost and expense, and shall perform the functions of daily maintenance and/or repair of the PREMISES, providing all materials, supplies, equipment, and funds necessary to perform appropriate maintenance and required repair to the reasonable satisfaction of CITY.
- b. Maintenance to be performed by ORGANIZATION:
  - i. Pick up and dispose of trash and debris, whether by ORGANIZATION's activity or activity of a contracted vendor, during and after use by ORGANIZATION;
  - ii. Prevent any such matter or material from being or accumulating upon the PREMISES immediately around the PREMISES, such that it is clearly visible to public view;
  - iii. Keep the PREMISES and the surrounding areas clean and safe at all times while on the PREMISES; and,
  - iv. Maintain the PREMISES in a manner that is consistent and in compliance with all Federal, State, County and local regulations, orders and guidelines, including but not limited to health and safety orders and guidelines related to COVID-19.
- c. ORGANIZATION, at its sole cost and expense, shall perform or cause to be performed all necessary maintenance and repair of improvements to the PREMISES, in consultation with CITY's designated representative, or by CITY's written request and/or instruction.
- d. ORGANIZATION, in performing any required maintenance and repair of the PREMISES, shall provide all staff and materials, supplies, equipment, and funds necessary to perform appropriate maintenance and/or repairs. All maintenance and/or repairs shall be performed to the reasonable satisfaction of CITY and in consultation with CITY's designated representative, or by CITY's written request and/or instruction.
- e. ORGANIZATION accepts the PREMISES in its current condition and hereby assumes all risk of injury, loss or damage, which may result from any defective conditions of the PREMISES or which may otherwise arise by reason of the use of the PREMISES, and releases and discharges the CITY from any claims therefore.

CITY shall not have any obligation to repair, remodel, replace, and/or reconstruct any building, facility, feature, or portion of the PREMISES, nor any appliance or fixture thereon, whether installed by CITY or ORGANIZATION, and regardless of cause.

- f. ORGANIZATION shall ensure that no offensive or dangerous materials, nor any substance constituting an unnecessary, unreasonable or material hazard detrimental to the public health, is permitted or allowed to remain on the PREMISES.
- g. ORGANIZATION shall be responsible for securing the PREMISES and ORGANIZATION's equipment, materials and any and all personal property existing on the PREMISES during PERMITTED TIMES and ensuring the same during non-operating hours. CITY and/or RAP shall bear no responsibility for the security of the ORGANIZATION's personal property at any time, whether before, during, or after PERMITTED TIMES, including but not limited to equipment, supplies, materials, vehicles, or personal items.
- h. ORGANIZATION shall immediately repair, or cause to be repaired, any damages to the PREMISES which occur during ORGANIZATION's operations, or that is caused by ORGANIZATION's use of the PREMISES. ORGANIZATION shall immediately report any damages to the PREMISES which occur during ORGANIZATION's operations, or by vandalism, its restoration, refurbishment, or maintenance. ORGANIZATION acknowledges that any damage which remains unrepaired may constitute a hazard to public safety, requiring that all use of the PREMISES immediately cease. ORGANIZATION shall be responsible for any damage to the PREMISES and/or PREMISES caused by ORGANIZATION's PROGRAM activities, its participants, vendors, contractors, or other entities associated with PROGRAM activities.
- i. To the extent that needed repairs are not made, ORGANIZATION waives any and all claims against CITY for damages or indemnification as a result of the failure to make repairs.

#### **11. Consideration and CRRF**

The consideration for this AGREEMENT in exchange for ORGANIZATION's use of the PREMISES shall be ORGANIZATION's nature-based programming and fundraising efforts in support of RAP programs and projects, and the development, maintenance and/or repair of the PREMISES at no cost to CITY, pursuant to the terms and conditions of this AGREEMENT and in accordance with RAP policies, together with the attendant benefits to the people of the City of Los Angeles. Additionally, ORGANIZATION's use of the PREMISES shall be subject to certain cost recovery fees described below. Such fees are subject to change with prior notice to ORGANIZATION sixty (60) days in advance.

- a. **Utilities.** Pursuant to RAP policy regarding utility payments for services provided at park facilities operated by non-profit and other collaborating entities, approved by the RAP Board on July 13, 2011 (Report No. 11-202), the cost of utility services to the PREMISES, such as electricity, gas and water, shall be the sole financial

responsibility of the organization operating and maintaining the subject facility. With respect to the PREMISES under this AGREEMENT, ORGANIZATION shall reimburse RAP for such water consumption through Cost Recovery Reimbursement Fees (CRRF) paid to RAP in accordance with this Section, based on periodic submeter readings performed by RAP Maintenance staff. CRRF payments shall be made to RAP on a quarterly basis in the manner described below in Section 11(c).

- b. **Trash, Solid Waste Disposal and Portable Toilets.** Pursuant to RAP policy regarding trash and solid waste disposal for services provided at park facilities operated by non-profit organizations and other collaborations, approved by the RAP Board on February 1, 2012 (Report No. 12-028), removal of waste, trash and recyclables and rental of portable toilets shall be the sole responsibility and expense of ORGANIZATION. CITY shall bear no costs in regards to the disposal and/or removal of trash and solid waste.
- c. The CRRF shall be paid on a biannual basis pursuant to submeter readings and electronic invoices provided by RAP to ORGANIZATION, with such payment due within thirty (30) days of the ORGANIZATION's receipt of the invoice. ORGANIZATION is wholly responsible for the timely payment of the CRRF.

All CRRF payments must be made by check or money order made payable to: "City of Los Angeles Department of Recreation and Parks"

All CRRF payments must be mailed or delivered to:

City of Los Angeles Department of Recreation and Parks  
Attention: Partnership Section  
221 North Figueroa Street, Suite # 180  
Los Angeles, California 90012

## **12. Alterations, Improvements and Replacements**

No physical alterations, additional improvements, and/or replacements shall be made to existing improvements on the PREMISES without prior written authorization by RAP. ORGANIZATION shall provide RAP detailed information and specifications for review and written approval by the RAP Planning, Maintenance and Construction Branch, including but not limited to an explanation of the project scope of work, design or architectural plans, renderings or models, budget and funding source information for capital improvement projects, and any other information reasonably requested by RAP. Unless agreed to in advance, all project associated costs shall be paid at the sole expense of ORGANIZATION.

## **13. Capital Project Proposal**

When proposing a project involving any alterations, additional improvements, and/or replacements to the PREMISES, ORGANIZATION shall adhere to the following guidelines and instructions for submitting a proposed project for RAP consideration:

- a. Submit a project proposal for RAP review and presentation for conceptual approval by the BOARD. The proposal should include but not be limited to, project objectives, conceptual drawings, a written description of the project's scope of work, general project details and requirements, and estimated preliminary budget.
- b. Should the project be conceptually approved by the BOARD, ORGANIZATION will be authorized to perform any required preliminary work or site assessments, either through a right-of-entry permit (if appropriate), or the CITY's authority and/or this AGREEMENT.
- c. Depending on the scope of work and magnitude of the proposed project, ORGANIZATION may be assessed an administrative fee to be determined by RAP, for project review and all services provided by CITY staff. Such fee shall be paid to the "City of Los Angeles Department of Recreation and Parks" and shall have been paid in full prior to the conceptual approval of the proposed project.
- d. If necessary depending on the scope of work and magnitude of the proposed project, and pursuant to the recommendation of the City Attorney, a development agreement may be required to set forth the terms and conditions under which the proposed project may be implemented.
- e. When prepared, ORGANIZATION shall submit 50% and 90% complete design drawings for RAP review and approval. Upon approval, all design and architectural work shall be completed by a California licensed architect and/engineer.
- f. If deemed necessary, PARTIES shall submit a proposed development agreement and final plans and specifications, respectively, to the BOARD for its consideration and final project approval.
- g. ORGANIZATION shall obtain, at its own cost and expense, all necessary and/or required City, County, State, and/or Federal permits, approvals, licenses, and/or authorizations for project implementation, including but not limited to environmental clearances in compliance with the California Environmental Quality Act (CEQA).
- h. Contingent upon the scope and magnitude of the proposed project, a community review process may also be required. ORGANIZATION and City shall discuss and coordinate the community process once deemed necessary.
- i. ORGANIZATION shall submit approved plans and specifications for final approval to:

Superintendent, Planning, Maintenance and Construction Branch  
City of Los Angeles Department of Recreation and Parks  
221 N. Figueroa Street, Suite 400  
Los Angeles, CA 90012

- j. Upon receipt of final approval, ORGANIZATION may commence construction in coordination with CITY staff.

#### **14. Insurance**

Before accessing and using the PREMISES under this AGREEMENT, and periodically as required during its TERM, ORGANIZATION shall furnish CITY with evidence of insurance on an annual basis, from firms reasonably acceptable to CITY and approved to do such business in the State of California. ORGANIZATION 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. ORGANIZATION 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 attached hereto and incorporated herein by reference.

- a. ORGANIZATION 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 ORGANIZATION sixty (60) calendar days written notice, provided that such amounts and/or types shall be reasonably available to ORGANIZATION.
- b. If any of the required insurance contains aggregate limits or applies to other operations of ORGANIZATION outside of this AGREEMENT, ORGANIZATION shall give CITY written notice of any incident, occurrence, claim, settlement or judgment against such insurance that in ORGANIZATION's best judgment may diminish the protection such insurance affords CITY within thirty (30) calendar days of the knowledge of same. ORGANIZATION 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.
- c. 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, ORGANIZATION 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 ORGANIZATION.

- d. ORGANIZATION's failure to procure and maintain the required insurance shall constitute a material breach of this AGREEMENT under which CITY may either (i)

provide ORGANIZATION 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 CITY shall have the right to terminate the AGREEMENT or, (ii) at its discretion, pay to procure or renew such insurance to protect CITY's interest. ORGANIZATION agrees to reimburse the CITY for all money so paid.

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

## **15. Indemnification**

Except for the active negligence or willful misconduct of CITY, or any of its boards, officers, agents, employees, assigns and successors in interest, ORGANIZATION 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, (1) 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), (2) damages or liability of any nature whatsoever, (3) for death or injury to any person, including ORGANIZATION's employees and agents, or (4) 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 ORGANIZATION, its 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 AGREEMENT. This provision will survive expiration or termination of this AGREEMENT.

ORGANIZATION is aware of the condition of the PREMISES and accepts the PREMISES in its present condition, and agrees to abide by all health and safety regulations and orders. ORGANIZATION has carefully reviewed this document, understands its contents, and signs it voluntarily, without being subject to coercion.

## **16. Casualty and Condemnation**

ORGANIZATION shall be excused from its obligations in this AGREEMENT including, without limitation, the payment of the CRRF, the operation, maintenance and repair of any portion of the PREMISES or any improvement thereon that is damaged by casualty or taken by condemnation until any such portion or improvement is restored to at least its condition prior to said casualty or condemnation. CITY shall not be obligated to restore the PREMISES damaged by casualty in whole or in part. If any portion of the PREMISES is taken by condemnation, CITY shall not be obligated to provide ORGANIZATION a replacement property for ORGANIZATION's use.

CITY shall not be obligated to restore the PREMISES damaged by casualty in whole or in part. If CITY chooses not to restore the PREMISES, CITY shall provide notice to ORGANIZATION thereof within thirty (30) days of such casualty, and this AGREEMENT shall terminate upon ORGANIZATION's receipt of such notice. If the PREMISES is taken by condemnation, CITY shall provide notice to ORGANIZATION thereof within thirty (30)



days of such taking, and this AGREEMENT shall terminate upon ORGANIZATION's receipt of such notice, and CITY shall not be obligated to provide ORGANIZATION a replacement property for ORGANIZATION's use.

**17. Hazardous Substances and Environmental Sensitivity**

PARTIES agree that the PREMISES shall be used in a manner consistent with its intended purposes and within the scope of use set forth above. ORGANIZATION shall use the PREMISES in compliance with laws pertaining to hazardous substances and ensure that no pesticides, insecticides, herbicides and rodent poisons not in compliance with this Section are used on the PREMISES. As used herein, "hazardous substances" shall mean any product, chemical, material or waste whose nature, quantity and/or intensity of presence, use, manufacture, disposal, transportation, spill, release or effect, either by itself or in combination with other such substances, is either: (a) potentially injurious to public health, safety or welfare or injurious to the environment; (b) regulated or monitored by any governmental authority; or (c) a basis for liability of CITY or ORGANIZATION to any governmental agency or third party under applicable statute. No lead or oil-based paint, paint thinner, varnishes, lacquers and stain shall be brought onto or stored on the PREMISES.

ORGANIZATION must operate the PREMISES in an environmentally sensitive manner and must comply with RAP policies regarding protection of the environment. ORGANIZATION shall not use or allow the use of environmentally unsafe products of any kind on the PREMISES.

**18. Publicity**

Should there be the need, PARTIES agree to cooperate and coordinate with respect to the nature, text, and timing of any press release or public announcement(s) concerning the existence of this AGREEMENT, the use or promotion of the PREMISES, or construction of any improvements on the PREMISES, except as may be legally required by applicable laws, regulations, or judicial order. Such cooperation and coordination shall occur prior to the release of any such press release or public announcement(s). PARTIES agree to notify each other in writing prior to the release or use of any press release, public announcement, marketing, or promotion of the PREMISES prior to such event occurring. Further, any press release, public announcement, marketing materials, or brochures prepared by either CITY or ORGANIZATION, shall appropriately acknowledge the contributions of both PARTIES. Further, PARTIES shall coordinate the scheduling of any public or media event to provide the opportunity for attendance and participation by officials and/or representatives of both PARTIES; including elected officials and public officials. Similarly, any document, written report, or brochure prepared by CITY or ORGANIZATION, in whole or in part, with respect to the use of the PREMISES, shall contain any acknowledgements required under any grant agreement.

To the extent stipulated in any grant agreement, with respect to the PROGRAM and the use of the PREMISES in connection thereto, CITY and ORGANIZATION shall duly notify any grantors, and each other, prior to any public or media event publicizing the accomplishments funded by any grant agreement, and shall provide the opportunity for attendance and participation by representatives. Further, CITY and ORGANIZATION shall coordinate the scheduling and organization of any public or media event to provide the

opportunity for attendance and participation by officials and/or representatives of both CITY and ORGANIZATION; including elected officials and public officials. Similarly, any document, written report, or brochure prepared by either CITY or ORGANIZATION, in whole or in part, with respect to the PROGRAM and the use of the PREMISES in connection thereto, shall contain any acknowledgements required under any grant agreement.

**19. Signage**

No signs or banners of any kind will be displayed by ORGANIZATION unless previously approved in writing by RAP and the BOARD when required pursuant to RAP policy and protocol(s), and/or the RAP General Manager or his or her designee. RAP may require removal or refurbishment, at ORGANIZATION's expense, of any sign previously approved by RAP and installed, or caused to be installed, by ORGANIZATION.

**20. Filming**

It is the policy of the CITY to facilitate the use of City-controlled properties as film locations when available and appropriate. RAP has established a Park Film Office to coordinate and document the use of park property for film production purposes. Any commercial filming on the PREMISES shall be subject to approval by RAP and the Film Office. All fees for use of the PREMISES by film production companies shall be established and collected by the Film Office in accordance with CITY and RAP policies. The Park Film Office may be reached at (323) 644-6220. ORGANIZATION shall not charge any fees for film production conducted on the PREMISES.

**21. Taxes and Possessory Interest**

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

**22. Breach or Default by ORGANIZATION**

The following occurrences constitute events of breach or default of this AGREEMENT: ORGANIZATION materially fails in the performance of any provision or condition of this AGREEMENT, such as failure to maintain required insurance coverage, failure to comply with applicable legal requirements, or failure to fulfill the obligation to operate, maintain and repair the PREMISES as specified herein. ORGANIZATION's attempt to assign rights or obligations under this AGREEMENT without CITY's prior written consent shall also constitute an event of breach or default.

**23. Breach or Default by ORGANIZATION – CITY's Remedies**

Upon the occurrence of one or more events of breach or default by ORGANIZATION, CITY may, at its election and without waiving any right to select any other remedy provided in this Section or elsewhere in this AGREEMENT, initiate any of the following:

- a. Notice to Cure Breach or Default. CITY may issue a written notice of breach or default to ORGANIZATION, and if ORGANIZATION does not cure said breach or default within thirty (30) calendar days of receipt of said notice, CITY may, by delivering a second written notice to ORGANIZATION, terminate this AGREEMENT without further delay, whereupon ORGANIZATION shall vacate the PREMISES within fourteen (14) calendar days. For a breach or default involving sanitary or safety conditions, the cure period is reduced to seven (7) calendar days.
- b. CITY's Right to Cure. CITY at its sole discretion and with no obligation to do so, subject to any applicable conditions and limitations set forth elsewhere in this AGREEMENT, may, after a continuing breach or default by ORGANIZATION, perform or cause to be performed any of ORGANIZATION's unperformed obligations under this AGREEMENT. CITY may enter the PREMISES and remain there for the purpose of correcting or remedying the continuing breach or default. Such action by CITY shall not be deemed to waive or release said breach or any default or CITY's right to take further, preventative action.

#### **24. AGREEMENT NOTICES and Contacts**

Any notice, request for consent, or statement ("NOTICE"), that RAP or ORGANIZATION is required or permitted to give or cause to be given to the other, shall be in writing and shall be delivered or addressed as set forth below (except for notices regarding insurance as provided in Section 14, above). Either RAP or ORGANIZATION may designate a different address for any NOTICE by written statement to the other in accordance with the provisions of this Section. NOTICES shall be delivered personally or sent by confirmed facsimile transmission, by reliable courier providing tracking services, or by deposit with the United States Postal Service with postage prepaid and return receipt requested.

All NOTICES shall be addressed as follows:

To ORGANIZATION:      Los Angeles Parks Foundation  
   c/o Tony Budrovich, Executive Director  
   2650 North Commonwealth Avenue  
   Los Angeles, CA 90027  
   (310) 472-1990  
   mobile: (213)479-5549  
   tony@laparksfoundation.org

To CITY:                      City of Los Angeles Department of Recreation and Parks  
   Attn: Sustainability Section  
   221 N. Figueroa Street, Suite 180  
   Los Angeles, CA 90012  
   (213) 202-2633  
   mariana.valdivia@lacity.org

With a copy to:              City of Los Angeles Department of Recreation and Parks  
   Griffith Region  
   Attn: Stefanie Smith, Superintendent  
   (323) 661-9465

**25. Primary PREMISES and PROGRAM Contacts**

The following should be the primary contacts for day-to-day matters regarding the PREMISES and PROGRAM-related operations and maintenance:

**Contacts for ORGANIZATION:**

Tony Budrovich, Executive Director  
(310) 472-1990  
tony@laparksfoundation.org

**Contacts for RAP:**

Javier Solis, Superintendent of Maintenance  
javier.solis@lacity.org  
Office: (213) 485-4809

Jorge De Loera, Grounds Maintenance Supervisor II, Griffith Region  
jorge.deloera@lacity.org  
(818) 243-1145

**26. Representations and Warranties**

PARTIES each represent and warrant to the other that it has full power and authority to execute this AGREEMENT and to perform its obligations and requirements hereunder. This AGREEMENT constitutes the valid and legal binding obligation of PARTIES, enforceable in accordance with its terms and conditions.

**27. No Joint Venture or Agency Relationship**

Nothing herein contained shall be construed to place the PARTIES to this AGREEMENT in the relationship of a joint venture, association, partnership, or other form of a business organization or agency relationship. ORGANIZATION shall have no power to obligate or bind the CITY in any manner whatsoever. Under no circumstances will the ORGANIZATION represent itself to be an agent of the CITY or any of its departments. Nothing in this AGREEMENT may be construed to have authorized or vested in ORGANIZATION the power to be an agent of the CITY or an actor under the color of law, be it civilly or criminally.

**28. Relationship of Parties**

PARTIES agree that no other party shall have any right, power, or authority to assume, create, or incur any expense, liability, or obligation, expressed or implied, on behalf of any other party, except as expressly provided herein.

**29. Merchandise**

No merchandise shall be sold by ORGANIZATION on the PREMISES without the prior written consent of the RAP General Manager or his or her designee.

**30. Approval of Sub-Agreements**

Any operation, services, or activity conducted on the PREMISES on behalf of the ORGANIZATION by a third party, including but not limited to the sale of food and/or

beverages or other items, shall be subject to prior written approval by the CITY. In addition, any concession or other sub-agreement affecting the PREMISES shall be filed with RAP for review and written approval no fewer than sixty (60) calendar days before the date ORGANIZATION proposes to implement the sub-agreement. No sub-agreement shall take effect unless approved by the CITY. ORGANIZATION shall require all individuals and organizations providing programs or services within the PREMISES to agree in writing to abide by all conditions set forth in this AGREEMENT.

### **31. Safety Practices**

ORGANIZATION shall correct violations of safety practices during its PERMITTED USE immediately and shall cooperate fully and in good faith with CITY in the investigation of accidents or deaths occurring on the PREMISES. In the event of death or serious injury (requiring an emergency room hospital visit), ORGANIZATION must notify the RAP contacts referenced in Sections 24 and 25 as soon as possible but no later than twenty-four (24) hours after the incident by telephone call with a follow-up email notice. Notice of non-serious injuries occurring on the PREMISES shall be provided to RAP within seventy-two (72) hours. ORGANIZATION shall keep internal documentation of the incident(s) during the previous two (2) years and provide RAP with such information upon request.

### **32. Ordinances and Standard Provisions**

The "Standard Provisions for City Contracts (Rev. 06/24)[v.1]"; (Standard Provisions) are incorporated herein by reference and attached hereto as Exhibit D. If there is any conflicting language between the "Standard Provisions for City Contracts (Rev. 06/24)[v.1]" and this AGREEMENT, the language of this AGREEMENT shall prevail. In addition, ORGANIZATION will provide documentation of compliance with all required Ordinance Provisions as determined by CITY. For purposes of the Standard Provisions, the term "Contractor" shall mean ORGANIZATION.

### **33. Non-Discrimination**

ORGANIZATION shall not discriminate unlawfully against any individual because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. ORGANIZATION shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.

ORGANIZATION agrees that in the event of breach of any of the above nondiscrimination covenants, with proper notification as per Section 24, CITY shall have the right to terminate this AGREEMENT and to reenter and repossess said land and the facilities thereon and hold the same as if said AGREEMENT had never been executed.

### **34. Suspected Child Abuse**

ORGANIZATION or ORGANIZATION's parents, volunteers, agents, contractors and subcontractors, and/or any person participating in ORGANIZATION's PROGRAM or activities on the PREMISES must contact the Los Angeles County Child Protection Hotline to report any suspected child abuse on the PREMISES. ORGANIZATION will notify RAP contact listed in Sections 24 and 25 within twenty-four (24) hours of any such report.

**35. Ratification**

At the request of RAP, and because of the need therefore, ORGANIZATION may have begun performance of the responsibilities herein required prior to the execution hereof. By its execution hereof, RAP hereby accepts such services subject to all the terms, covenants, and condition of this AGREEMENT, and ratifies its AGREEMENT with ORGANIZATION for such services.

**36. 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 Plan

EXHIBIT B: Sample Performance Report Questionnaire

EXHIBIT C: Insurance Requirements and Instructions for Submission

EXHIBIT D: Standard Provisions for City Contracts (Rev. 06/24)[v.1]

In the event of any inconsistency between any of the provisions of this AGREEMENT and/or exhibits attached hereto, the inconsistency shall be resolved by giving precedence in the following order: 1) This AGREEMENT exclusive of attachments; 2) Exhibit A; 3) Exhibit D; 4) Exhibit C; and 5) Exhibit B.

**[SIGNATURE PAGE TO FOLLOW]**

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

**CITY:**

CITY OF LOS ANGELES, a municipal corporation, acting by and through its BOARD OF RECREATION AND PARK COMMISSIONERS

By signing below, the signatory attests that they have no personal, financial, beneficial, or familial interest in this Agreement.

By: \_\_\_\_\_  
President

By: \_\_\_\_\_  
Secretary

Date: \_\_\_\_\_

**ORGANIZATION:**

LOS ANGELES PARKS FOUNDATION, a California 501(c)(3) non-profit corporation

By: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

HYDEE FELDSTEIN SOTO, City Attorney

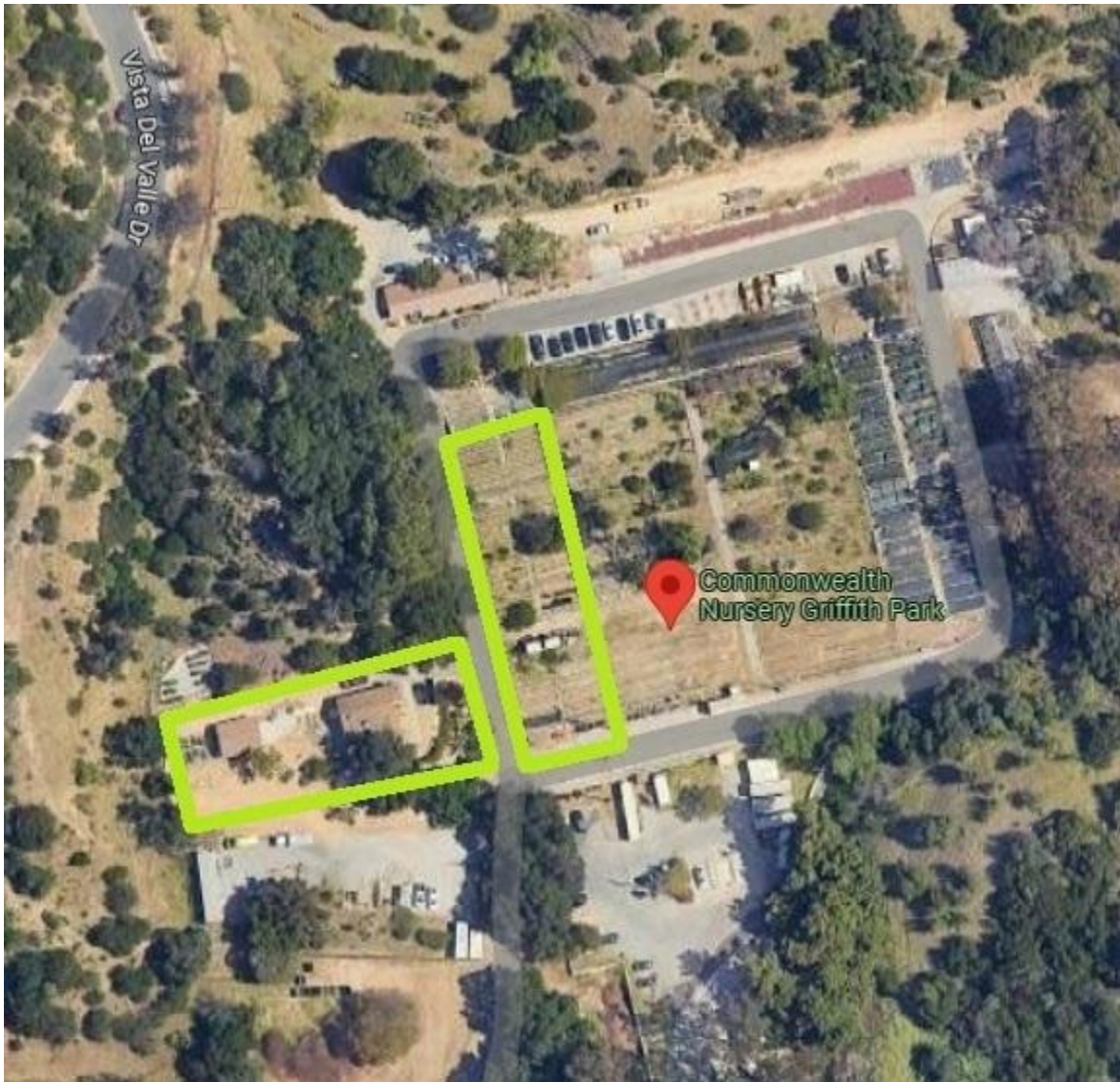
By: \_\_\_\_\_  
Brendan Kearns, Deputy City Attorney

Date: \_\_\_\_\_

## EXHIBIT A Site Plan

Nursery House, Demonstration Garden and Commonwealth Nursery Terraces at Griffith Park  
2650 N. Commonwealth Avenue, Los Angeles, CA 90027

The PREMISES authorized for the operation and maintenance of the Nursery House, Demonstration Garden and Commonwealth Nursery Terraces at Griffith Park by ORGANIZATION is depicted below. The Nursery House and Demonstration Garden are enclosed in the lime green rectangle to the left, and the Commonwealth Nursery Terraces to be utilized by ORGANIZATION are in the other lime green rectangle to the right within the site map below.





**EXHIBIT B**  
**Sample Performance Report Questionnaire**



**City of Los Angeles Department of Recreation and Parks**  
**Partnership Section**

**ANNUAL PERFORMANCE REPORT**

**ORGANIZATION NAME:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_

**CONTACT NAME:** \_\_\_\_\_ **PHONE NUMBER:** \_\_\_\_\_

Pursuant to your Organization's Agreement with the Department of Recreation and Parks and the required Annual Performance Report, please provide responses to the following questions (if applicable) regarding the public services and programs provided by your organization on park property. You may include additional information as deemed necessary.

Please send the completed Report to the Partnership Section at [rap.partnerships@lacity.org](mailto:rap.partnerships@lacity.org), with "Annual Performance Report – *organization name*" on the subject line. You may contact Partnership Section staff at (213) 202-5600, should you have any questions.

**A. PROGRAM**

1. Describe the program and/or service(s) offered.
2. What are the hours of operation/sessions for the facility?
3. How many participants were enrolled during the performance period?
4. How many of the enrolled participants are from the community (within a 5-mile radius)?
5. How many employees does the organization have?
6. How many volunteers does the organization have?
7. Are any of the staff specialized, licensed, certified, or extraordinarily experienced in a specific field? Please explain briefly.
8. Is the organization able to accommodate participants who have special needs?
  - If so, what needs can be met?
  - Do any of the current, enrolled participants have special needs?
9. List the achievements and/or challenges that occurred during this performance period.
10. Please provide a copy of the schedule of events and activities that occurred during the performance period.

**B. FINANCIAL**

1. Provide the schedule of rates and fees for the public programs and services offered.
2. Did the rates/fees increase during this performance period?
3. Please provide a performance period Profit and Loss Report.
4. Please provide the Annual Budget for the upcoming performance period (fiscal year).
5. Please provide a copy of the organization's IRS most recent 990 form filed with the Internal Revenue Service (IRS).

Partnership Section  
Annual Performance Report

**C. OUTREACH**

1. Did the organization operate at full capacity during this review period?
2. Does the organization have a waiting list?
  - Are potential participants charged a fee to be added to the waiting list?
  - What is the organization's method for choosing an individual from the waiting list to fill an available spot?
3. What effort did the organization make during this review period to recruit new participants?
4. Does the organization collect demographic information from the participants?
5. Does the organization survey participants about the program?

**D. SAFETY COMPLIANCE**

1. Are the organization's employees and volunteers fingerprinted under a Department of Justice background check?
2. What is the ratio of staff to participants?
  - Does this ratio satisfy applicable requirements for supervision and safety under industry regulations/guidelines?
3. Does all of the equipment and instructional supplies adhere to the appropriate safety specifications and requirements under standard industry guidelines and/or regulations?

**E. ORGANIZATION COMPLIANCE**

1. Is the organization in good legal standing as a nonprofit organization?
2. Does the organization sub-let any space to another entity?
3. Has the organization received any complaints?
  - If so, please describe the situation and how it was addressed/resolved.
4. Were any improvements or repairs to the facility performed by the organization or RAP? Please list the date(s) and name(s) of the entities involved, including RAP staff.
5. Does the organization have any staff or volunteer comments/issues/requests that the organization would like to discuss with RAP?

**REQUIRED ATTACHMENTS (as applicable)**

1. Annual Profit & Loss Report
2. Annual Schedule of Events and Activities
3. Program Handbook
4. Annual Budget for Upcoming Fiscal Year
5. Copy of IRS 990 form
6. Copies of:
  - Waiting List
  - Demographic Information (if applicable)
  - Annual Surveys of Participants
  - Marketing Materials
  - Insurance Confirmation Number (from Risk Management website)
  - Proof of 501(c)(3) status

Thank you for your cooperation in completing this process.

*Revised April 2020*

## EXHIBIT C

### Insurance Requirements

Form Gen. 146 (Rev. 6/12v)

#### Required Insurance and Minimum Limits

Name: Los Angeles Park Foundation Date: 07/11/2024

Agreement/Reference: Operation & Maint. of the Nursery House, Demonstration Garden, and a portion of Commonwealth Nursery

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

<input checked="" type="checkbox"/> <b>Workers' Compensation (WC) and Employer's Liability (EL)</b>		WC <u>Statutory</u>
		EL <u>\$ 1,000,000</u>
<input checked="" type="checkbox"/> Waiver of Subrogation in favor of City	<input type="checkbox"/> Longshore & Harbor Workers	
	<input type="checkbox"/> Jones Act	
<hr/>		
<input checked="" type="checkbox"/> <b>General Liability</b> <u>City of Los Angeles must be named as an additional insured party</u>		<u>\$ 1,000,000</u>
<input checked="" type="checkbox"/> Products/Completed Operations	<input type="checkbox"/> Sexual Misconduct _____	
<input type="checkbox"/> Fire Legal Liability _____		
<input checked="" type="checkbox"/> \$2,000,000 aggregate		
<hr/>		
<input checked="" type="checkbox"/> <b>Automobile Liability</b> (for any and all vehicles used for this contract, other than commuting to/from work)		<u>1,000,000</u>
<hr/>		
<input type="checkbox"/> <b>Professional Liability</b> (Errors and Omissions)		_____
Discovery Period <u>12 months after completion of work or date of termination</u>		
<hr/>		
<input type="checkbox"/> <b>Property Insurance</b> (to cover replacement cost of building - as determined by insurance company)		_____
<input type="checkbox"/> All Risk Coverage	<input type="checkbox"/> Boiler and Machinery	
<input type="checkbox"/> Flood _____	<input type="checkbox"/> Builder's Risk	
<input type="checkbox"/> Earthquake _____	<input type="checkbox"/> _____	
<hr/>		
<input type="checkbox"/> _____		_____
<hr/>		
<input type="checkbox"/> _____		_____
<hr/>		
<input checked="" type="checkbox"/> _____		_____
<hr/>		
<input type="checkbox"/> <b>Surety Bonds</b> - Performance and Payment (Labor and Materials) Bonds		_____
<input type="checkbox"/> <b>Crime Insurance</b>		_____
<hr/>		
Other: <u>Provided to: Priya Macwan</u>		
<u>If a contractor has no employees and decides to not cover herself/himself for workers' compensation, please</u>		
<u>complete the form entitled "Request for Waiver of Workers' Compensation Insurance Requirement" located at:</u>		
<u><a href="http://cao.lacity.org/risk/InsuranceForms.htm">http://cao.lacity.org/risk/InsuranceForms.htm</a>.</u>		
<u>In the absence of imposed auto liability requirements, all contractors using vehicles during the course of their</u>		
<u>contract must adhere to the financial responsibility laws of the State of California.</u>		

**CITY OF LOS ANGELES**  
**INSTRUCTIONS AND INFORMATION**  
**ON COMPLYING WITH CITY INSURANCE REQUIREMENTS**

(Share this information with your insurance agent or broker)

**1. Agreement/Reference** All evidence of insurance should identify the nature of your business with the CITY. Clearly show any assigned number of a bid, contract, lease, permit, etc. or give the project name and the job site or street address to ensure that your submission will be properly credited. Provide the **types of coverage and minimum dollar amounts** specified on the Required Insurance and Minimum Limits sheet (Form Gen. 146) included in your CITY documents.

**2. When to Submit** Normally, no work may begin until a CITY insurance certificate approval number ("CA number") has been obtained, so insurance documents should be submitted as early as practicable. For **As-needed Contracts**, insurance need not be submitted until a specific job has been awarded. **Design Professionals** coverage for new construction work may be submitted simultaneously with final plans and drawings, but before construction commences.

**3. Acceptable Evidence and Approval** Electronic submission is the required method of submitting your documents. **KwikComply** is the CITY's online insurance compliance system and is designed to make the experience of submitting and retrieving insurance information quick and easy. The system is designed to be used by insurance brokers and agents as they submit client insurance certificates directly to the City. It uses the standard insurance industry form known as the **ACORD 25 Certificate of Liability Insurance** in electronic format. **KwikComply** advantages include standardized, universally accepted forms, paperless approval transactions (24 hours, 7 days per week), and security checks and balances. The easiest and quickest way to obtain approval of your insurance is to have your insurance broker or agent access **KwikComply** at <https://kwikcomply.org/> and follow the instructions to register and submit the appropriate proof of insurance on your behalf.

**Contractor must provide City** a thirty (30) day notice of cancellation (ten (10) days for non-payment of premium) AND an Additional Insured Endorsement naming the CITY an additional insured completed by your insurance company or its designee. If the policy includes an automatic or blanket additional insured endorsement, the Certificate must state the CITY is an automatic or blanket additional insured. An endorsement naming the CITY an Additional Named Insured and Loss Payee as Its Interests May Appear is required on property policies. All evidence of insurance must be authorized by a person with authority to bind coverage, whether that is the authorized agent/broker or insurance underwriter.

Additional Insured Endorsements DO NOT apply to the following:

- Indication of compliance with statute, such as Workers' Compensation Law.
- Professional Liability insurance.

Verification of approved insurance and bonds may be obtained by checking **KwikComply**, the CITY's online insurance compliance system, at <https://kwikcomply.org/>.

**4. Renewal** When an existing policy is renewed, have your insurance broker or agent submit a new Acord 25 Certificate or edit the existing Acord 25 Certificate through **KwikComply** at <https://kwikcomply.org/>.

**5. Alternative Programs/Self-Insurance** Risk financing mechanisms such as Risk Retention Groups, Risk Purchasing Groups, off-shore carriers, captive insurance programs and self-insurance programs are subject to separate approval after the CITY has reviewed the relevant audited financial statements. To initiate a review of your program, you should complete the



Applicant's Declaration of Self Insurance form (<http://cao.lacity.org/risk/InsuranceForms.htm>) to the Office of the City Administrative Officer, Risk Management for consideration.

6. **General Liability** insurance covering your operations (and products, where applicable) is required whenever the CITY is at risk of third-party claims which may arise out of your work or your presence or special event on CITY premises. **Sexual Misconduct** coverage is a required coverage when the work performed involves minors. **Fire Legal Liability** is required for persons occupying a portion of CITY premises. Information on two CITY insurance programs, the SPARTA program, an optional source of low-cost insurance which meets the most minimum requirements, and the Special Events Liability Insurance Program, which provides liability coverage for short-term special events on CITY premises or streets, is available at ([www.2sparta.com](http://www.2sparta.com)), or by calling (800) 420-0555.

7. **Automobile Liability** insurance is required only when vehicles are used in performing the work of your Contract or when they are driven off-road on CITY premises; it is not required for simple commuting unless CITY is paying mileage. However, compliance with California law requiring auto liability insurance is a contractual requirement.

8. **Errors and Omissions** coverage will be specified on a project-by-project basis if you are working as a licensed or other professional. The length of the claims discovery period required will vary with the circumstances of the individual job.

9. **Workers' Compensation and Employer's Liability** insurance are not required for single-person contractors. However, under state law these coverages (or a copy of the state's Consent To Self Insure) must be provided if you have any employees at any time during the period of this contract. Contractors with no employees must complete a Request for Waiver of Workers' Compensation Insurance Requirement (<http://cao.lacity.org/risk/InsuranceForms.htm>). A **Waiver of Subrogation** on the coverage is required only for jobs where your employees are working on CITY premises under hazardous conditions, e.g., uneven terrain, scaffolding, caustic chemicals, toxic materials, power tools, etc. The Waiver of Subrogation waives the insurer's right to recover (from the CITY) any workers' compensation paid to an injured employee of the contractor.

10. **Property** Insurance is required for persons having exclusive use of premises or equipment owned or controlled by the CITY. **Builder's Risk/Course of Construction** is required during construction projects and should include building materials in transit and stored at the project site.

11. **Surety** coverage may be required to guarantee performance of work and payment to vendors and suppliers. A **Crime Policy** may be required to handle CITY funds or securities, and under certain other conditions. **Specialty coverages** may be needed for certain operations. For assistance in obtaining the CITY required bid, performance and payment surety bonds, please see the City of Los Angeles Contractor Development and Bond Assistance Program website address at <http://cao.lacity.org/risk/BondAssistanceProgram.pdf> or call (213) 258-3000 for more information.

12. **Cyber Liability & Privacy** coverage may be required to cover technology services or products for both liability and property losses that may result when a CITY contractor engages in various electronic activities, such as selling on the Internet or collecting data within its internal electronic network. Contractor's policies shall cover liability for a data breach in which the CITY employees' and/or CITY customers' confidential or personal information, such as but not limited to, Social Security or credit card information are exposed or stolen by a hacker or other criminal who has gained access to the CITY's or contractor's electronic network. The policies shall cover a variety of expenses associated with data breaches, including: notification costs, credit monitoring, costs to defend claims by state regulators, fines and penalties, and loss resulting from identity theft. The policies are required to cover liability arising from website media content, as well as property exposures from: (a) business interruption, (b) data loss/destruction, (c) computer fraud, (d) funds transfer loss, and (e) cyber extortion.

**EXHIBIT D**  
**Standard Provisions for City Contracts (Rev. 6/24)[v.1]**

**TO BE ATTACHED SEPARATELY**

## **ATTACHMENT A**

Standard Provisions for City Contracts (Rev. 6/24 [v.1])

## STANDARD PROVISIONS FOR CITY CONTRACTS

### TABLE OF CONTENTS

<b>PSC-1</b>	<u>Construction of Provisions and Titles Herein</u> .....	<b>1</b>
<b>PSC-2</b>	<u>Applicable Law, Interpretation and Enforcement</u> .....	<b>1</b>
<b>PSC-3</b>	<u>Time of Effectiveness</u> .....	<b>1</b>
<b>PSC-4</b>	<u>Integrated Contract</u> .....	<b>2</b>
<b>PSC-5</b>	<u>Amendment</u> .....	<b>2</b>
<b>PSC-6</b>	<u>Excusable Delays</u> .....	<b>2</b>
<b>PSC-7</b>	<u>Waiver</u> .....	<b>2</b>
<b>PSC-8</b>	<u>Suspension</u> .....	<b>3</b>
<b>PSC-9</b>	<u>Termination</u> .....	<b>3</b>
<b>PSC-10</b>	<u>Independent Contractor</u> .....	<b>5</b>
<b>PSC-11</b>	<u>Contractor's Personnel</u> .....	<b>5</b>
<b>PSC-12</b>	<u>Assignment and Delegation</u> .....	<b>6</b>
<b>PSC-13</b>	<u>Permits</u> .....	<b>6</b>
<b>PSC-14</b>	<u>Claims for Labor and Materials</u> .....	<b>6</b>
<b>PSC-15</b>	<u>Current Los Angeles City Business Tax Registration Certificate Required</u> ....	<b>6</b>
<b>PSC-16</b>	<u>Retention of Records, Audit and Reports</u> .....	<b>6</b>
<b>PSC-17</b>	<u>Bonds</u> .....	<b>7</b>
<b>PSC-18</b>	<u>Indemnification</u> .....	<b>7</b>
<b>PSC-19</b>	<u>Intellectual Property Indemnification</u> .....	<b>7</b>
<b>PSC-20</b>	<u>Intellectual Property Warranty</u> .....	<b>8</b>
<b>PSC-21</b>	<u>Ownership and License</u> .....	<b>8</b>
<b>PSC-22</b>	<u>Data Protection</u> .....	<b>9</b>



## TABLE OF CONTENTS (Continued)

<b>PSC-23</b>	<u>Insurance</u> .....	<b>9</b>
<b>PSC-24</b>	<u>Best Terms</u> .....	<b>9</b>
<b>PSC-25</b>	<u>Warranty and Responsibility of Contractor</u> .....	<b>10</b>
<b>PSC-26</b>	<u>Mandatory Provisions Pertaining to Non-Discrimination in Employment</u> .....	<b>10</b>
<b>PSC-27</b>	<u>Child Support Assignment Orders</u> .....	<b>10</b>
<b>PSC-28</b>	<u>Living Wage Ordinance</u> .....	<b>11</b>
<b>PSC-29</b>	<u>Service Contractor Worker Retention Ordinance</u> .....	<b>11</b>
<b>PSC-30</b>	<u>Access and Accommodations</u> .....	<b>11</b>
<b>PSC-31</b>	<u>Contractor Responsibility Ordinance</u> .....	<b>12</b>
<b>PSC-32</b>	<u>Business Inclusion Program</u> .....	<b>12</b>
<b>PSC-33</b>	<u>Slavery Disclosure Ordinance</u> .....	<b>12</b>
<b>PSC-34</b>	<u>First Source Hiring Ordinance</u> .....	<b>12</b>
<b>PSC-35</b>	<u>Local Business Preference Ordinance</u> .....	<b>12</b>
<b>PSC-36</b>	<u>Iran Contracting Act</u> .....	<b>12</b>
<b>PSC-37</b>	<u>Restrictions on Campaign Contributions in City Elections</u> .....	<b>12</b>
<b>PSC-38</b>	<u>Contractors' Use of Criminal History for Consideration of Employment Applications</u> .....	<b>13</b>
<b>PSC-39</b>	<u>Limitation of City's Obligation to Make Payment to Contractor</u> .....	<b>13</b>
<b>PSC-40</b>	<u>Compliance with Identity Theft Laws and Payment Card Data Security Standards</u> .....	<b>14</b>
<b>PSC-41</b>	<u>Compliance with California Public Resources Code Section 5164</u> .....	<b>14</b>
<b>PSC-42</b>	<u>Possessory Interests Tax</u> .....	<b>14</b>
<b>PSC-43</b>	<u>Confidentiality</u> .....	<b>15</b>
<b>PSC-44</b>	<u>Contractor Data Reporting</u> .....	<b>15</b>

<b>Exhibit 1</b>	<b><u>Insurance Contractual Requirements</u></b> .....	<b>16</b>
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## STANDARD PROVISIONS FOR CITY CONTRACTS

### **PSC-1. Construction of Provisions and Titles Herein**

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

### **PSC-2. Applicable Law, Interpretation and Enforcement**

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

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

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

### **PSC-3. Time of Effectiveness**

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

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

#### **PSC-4. Integrated Contract**

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

#### **PSC-5. Amendment**

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

#### **PSC-6. Excusable Delays**

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

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

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

#### **PSC-7. Waiver**

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

## **PSC-8. Suspension**

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

## **PSC-9. Termination**

### **A. Termination for Convenience**

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

### **B. Termination for Breach of Contract**

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

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

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

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

#### **PSC-10. Independent Contractor**

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

#### **PSC-11. Contractor's Personnel**

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

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

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

#### **PSC-12. Assignment and Delegation**

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

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

#### **PSC-13. Permits**

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

#### **PSC-14. Claims for Labor and Materials**

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

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

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

#### **PSC-16. Retention of Records, Audit and Reports**

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



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

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

#### **PSC-17. Bonds**

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

#### **PSC-18. Indemnification**

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

#### **PSC-19. Intellectual Property Indemnification**

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

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

#### **PSC-20. Intellectual Property Warranty**

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

#### **PSC-21. Ownership and License**

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

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

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

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

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

## **PSC-22. Data Protection**

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

## **PSC-23. Insurance**

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

## **PSC-24. Best Terms**

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

#### **PSC-25. Warranty and Responsibility of Contractor**

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

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

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

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

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

#### **PSC-27. Child Support Assignment Orders**

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

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

**PSC-28. Living Wage Ordinance**

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

**PSC-29. Service Contractor Worker Retention Ordinance**

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

**PSC-30. Access and Accommodations**

**CONTRACTOR** represents and certifies that:

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

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

### **PSC-31. Contractor Responsibility Ordinance**

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

### **PSC-32. Business Inclusion Program**

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

### **PSC-33. Slavery Disclosure Ordinance**

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

### **PSC-34. First Source Hiring Ordinance**

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

### **PSC-35. Local Business Preference Ordinance**

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

### **PSC-36. Iran Contracting Act**

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

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

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

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

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

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

#### **PSC-44. Contractor Data Reporting**

If Contractor is a for-profit, privately owned business, Contractor shall, within 30 days of the effective date of the Contract and on an annual basis thereafter (i.e., within 30 days of the annual anniversary of the effective date of the Contract), report the following information to City via the Regional Alliance Marketplace for Procurement (“RAMP”) or via another method specified by City: Contractor’s and any Subcontractor’s annual revenue, number of employees, location, industry, race/ethnicity and gender of majority owner (“Contractor/Subcontractor Information”). Contractor shall further request, on an annual basis, that any Subcontractor input or update its business profile, including the Contractor/Subcontractor Information, on RAMP or via another method prescribed by City.

## **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](http://www.lacity.org/cao/risk). The City approved Bond Assistance Program is available for those contractors who are unable to obtain the City-required performance bonds. A City approved insurance program may be available as a low cost alternative for contractors who are unable to obtain City-required insurance.

### **CONTRACTUAL REQUIREMENTS**

#### **CONTRACTOR AGREES THAT:**

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

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

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

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

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

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

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

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

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

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

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

# Required Insurance and Minimum Limits

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Agreement/Reference: \_\_\_\_\_

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

## Limits

### Workers' Compensation (WC) and Employer's Liability (EL)

WC Statutory

EL \_\_\_\_\_

☐ Waiver of Subrogation in favor of City☐ Longshore & Harbor Workers☐ Jones Act

### General Liability

☐ Products/Completed Operations☐ Sexual Misconduct \_\_\_\_\_☐ Fire Legal Liability \_\_\_\_\_☐

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

### Professional Liability (Errors and Omissions)

Discovery Period \_\_\_\_\_

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

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

### Pollution Liability

☐

### Surety Bonds - Performance and Payment (Labor and Materials) Bonds

### Crime Insurance

Other: \_\_\_\_\_