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(213) 202-2633 FAX (213) 202-2614

May 5, 2022

Honorable Eric Garcetti, Mayor  
City of Los Angeles  
Room 303, City Hall

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

Honorable Mayor and Members of the City Council:

Subject:

Sherman Oaks Castle Park – Batting Cage Concession Amendment No. 1 to Supplemental Agreement No. 254 With A.J. Family Entertainment, LLC To Extend Term.

Recommendation for Council Action:

The Board of Recreation and Park Commissioners (Board) respectfully requests City Council and Mayor approval for the Department of Recreation and Parks (RAP) to (i) Approve the proposed Amendment No. 1 to the Supplemental Agreement to Agreement No. 254 (Amendment) between the Department of Recreation and Parks (RAP) and A.J. Family Entertainment, LLC, for the operation of the Batting Cage Concession at Sherman Oaks Castle Park

Background:

Sherman Oaks Castle Park (SOCP) is a five-acre family entertainment center in Sherman Oaks featuring three (3) landscaped 18-hole miniature golf courses, an arcade, a food service concession, and batting cages. Located at the center of the property, a 7,500 square-foot medieval castle themed building (Building) houses the arcade, food concession, and miniature golf administration. SOCP is open every day of the year, serving three hundred thousand (300,000) guests annually.

A.J. Family Entertainment, LLC, the current batting cages concessionaire, has been operating the Batting Cages since 2007 under Agreement No. 254 (Agreement) with a ten (10) year term plus, one five (5) year extension option which was exercised in 2018.

Fiscal Impact Statement:

For Calendar Year (CY) 2019, RAP's revenue share from the Batting Cages was \$278,794. For CY 2020 RAP received \$58,556, a 79% decrease due to the closure in March. For CY 2021, RAP received \$328,562 a 17.9% increase from 2019, as they reopened on February 23, 2021.



Honorable Mayor Garcetti and Honorable City Council

May 5, 2022

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If you have any questions with regard to this matter, please contact Mr. Rahulan Kathir, Management Assistant, Special Operations Branch, at (213) 202-5667

Very truly yours,

BOARD OF RECREATION AND  
PARK COMMISSIONERS

A handwritten signature in blue ink that reads "Takisha Sardin". The signature is fluid and cursive, with the first name and last name clearly distinguishable.

Takisha Sardin  
Acting Commission Executive  
Assistant II

Attachments: Board Report No. 22-103

cc: Rahulan Kathir, Management Assistant, Special Operations Branch

APPROVED

MAY 05 2022

BOARD OF RECREATION  
AND PARK COMMISSIONERS

## BOARD REPORT

NO. 22-103DATE May 5, 2022C.D. 4

## BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: SHERMAN OAKS CASTLE PARK – BATTING CAGE CONCESSION  
AMENDMENT NO. 1 TO SUPPLEMENTAL AGREEMENT NO. 254 WITH A.J.  
FAMILY ENTERTAINMENT, LLC TO EXTEND TERM.

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



General Manager

Approved X

Disapproved \_\_\_\_\_

Withdrawn \_\_\_\_\_

RECOMMENDATIONS

1. Approve the proposed Amendment No. 1 to the Supplemental Agreement to Agreement No. 254 (Amendment), in substantially the form attached hereto as Attachment 1, to extend the term of the Supplemental Agreement to Agreement No. 254 (Agreement) by fifteen months to account for the closure and limited operations of the concessions under the Agreement due to the COVID-19 pandemic.
2. Direct Board of Recreation and Park Commissioners (Board) Secretary to transmit the proposed Amendment to the Mayor in accordance with Executive Directive No. 3 (Villaraigosa Series), the City Council for approval, and the City Attorney for approval as to form;
4. Authorize the Board President and Secretary to execute the Amendment upon receipt of the necessary approvals; and
5. Authorize the Department of Recreation and Parks (RAP) Staff to make any necessary technical changes to implement the Board's intentions in approving this Report.

SUMMARY

## BOARD REPORT

PG. 2 NO. 22-103

Sherman Oaks Castle Park (SOCP) is a five-acre family entertainment center in Sherman Oaks featuring three (3) landscaped 18-hole miniature golf courses, an arcade, a food service concession, and batting cages. Located at the center of the property, a 7,500 square-foot medieval castle themed building (Building) houses the arcade, food concession, and miniature golf administration. SOCP is open every day of the year, serving three hundred thousand (300,000) guests annually.

The miniature golf portion of the park is operated by RAP. The batting cages, arcade, and food service are each operated by independent, private business entities under concession agreements with RAP.

The batting cages concession (Batting Cages), located adjacent to the Building, features the latest pitching machines with speeds from forty (40) miles per hour (mph) to eighty (80) mph for softball and baseball practice.

A.J. Family Entertainment, LLC, the current batting cages concessionaire, has been operating the Batting Cages since 2007 under Agreement No. 254 (Agreement) with a ten (10) year term plus one five (5) year extension option which was exercised in 2018 when a Supplemental Agreement was approved by the Board (Board Report 18-031).

In 2021 the Batting Cages generated Eight Hundred Forty Three Thousand Two Hundred (\$843,200) in gross receipts and paid Three Hundred Twenty Eight Thousand, Five Hundred Sixty Two dollars (\$328,562) in rent to RAP. To date, and to RAP staff's actual knowledge, Concessionaire has met all contractual terms and conditions, including timely payment of rent and occupancy tax, and insurance requirements.

Due to health risks associated with the COVID-19 pandemic, SOCP, the miniature Golf Courses, and three RAP concessions (Batting Cages, Café, and Arcade) were closed to the public on March 13, 2020, in conformance with mandatory health directives. The Batting Cages reopened on February 23, 2021 but functioned at limited capacity until June 2021. To allow the Concessionaire to enjoy the full term of their Agreement, RAP Staff recommends extending the term of the Agreement for 15 months as part of the proposed Amendment (COVID Extension). Thus, with the COVID Extension, the term of the Agreement under the proposed Amendment will expire on August 16, 2023. In addition, the Amendment will incorporate into the Agreement the latest version of the City's Standard Provisions for City Contracts.

### FISCAL IMPACT

For Calendar Year (CY) 2019, RAP's revenue share from the Batting Cages was \$278,794. For CY 2020 RAP received \$58,556, a 79% decrease due to the closure in March. For CY 2021, RAP received \$328,562 a 17.9% increase from 2019, as they reopened on February 23, 2021.

## BOARD REPORT

PG. 3 NO. 22-103

### STRATEGIC PLAN INITIATIVES AND GOALS

Approval of this Report advances RAP's Strategic Plan by supporting:

Goal No. 6: Build Financial Strength & Innovative Partnerships

Outcome No. 2: Improved management of rental facilities and concessions.

This Report was prepared by Rahulan Kathir, Management Assistant, Special Operations Branch, Concessions Unit.

### LIST OF ATTACHMENTS/EXHIBITS

- 1) Proposed Amendment to Supplemental Agreement to Agreement No. 254 for Operation and Maintenance of SOCP Batting Cages Concession
- 2) Agreement No. 254 with Supplemental Agreement

**AMENDMENT NO. 1 TO THE SUPPLEMENTAL AGREEMENT TO AGREEMENT NO. 254  
FOR THE OPERATION OF THE BATTING CAGE CONCESSION AT SHERMAN OAKS  
CASTLE PARK**

THIS AMENDMENT NO.1 TO THE SUPPLEMENTAL AGREEMENT TO AGREEMENT NO. 254 ("AMENDMENT") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_\_\_, by and between the CITY OF LOS ANGELES, a municipal corporation (hereinafter referred to as "CITY"), acting by and through its Board of Recreation and Park Commissioners (hereinafter referred to as "BOARD") and A.J. FAMILY ENTERTAINMENT, LLC, (hereinafter referred to as "CONCESSIONAIRE").

**WITNESSETH**

Whereas, on February 21, 2018, the BOARD approved The Supplemental Agreement to Agreement No. 254 (BR 18-031) (hereinafter referred to as "AGREEMENT") for the Batting Cage Concession at Sherman Oaks Castle Park (hereinafter referred to as "CONCESSION") with the term of the Agreement ending on May 16, 2022; and

Whereas, on August 29, 2018, the City Council approved the AGREEMENT for the CONCESSION (Council File 06-2795) and authorized the Board President and Secretary to execute the AGREEMENT on behalf of the CITY; and

Whereas, the CITY and CONCESSIONAIRE desire to amend the AGREEMENT to extend the term of the Agreement until August 16, 2023 by extending the term for an additional period of 15 months to account for the closure and limited operations of the CONCESSION due to the COVID-19 pandemic; and

Whereas, the Board of Recreation and Park Commissioners has approved this AMENDMENT on May 5, 2022 (Report No. XX-xxxxx).

Now, therefore, the CITY and CONCESSIONAIRE hereby mutually agree to amend the AGREEMENT effective May 15, 2022 as follows:

**1. SECTION 5. TERM OF AGREEMENT**

Section 5 of the AGREEMENT is hereby amended and restated in its entirety as follows below in quotation marks:

"The term of the Supplemental Agreement of which this Agreement is made a part ("Term") shall be for six (6) years and three (3) months. The Supplemental Agreement shall be effective as of May 17, 2017 and shall end upon the expiration of the Term on August 16, 2023. The City shall have the right to terminate this Supplemental Agreement in accordance with the termination provisions of the

Standard Provisions for City Contracts (Rev. 10/21) [v.4] as attached to the Supplemental Agreement as Appendix A. Neither City, its Department of Recreation and Parks, the Board, nor any officer, employee, or Board member thereof shall be liable in any manner to Contractor because of such termination.”

## **2. INCORPORATION OF DOCUMENTS**

Paragraph 2 of the Section entitled “INCORPORATION OF DOCUMENTS” is hereby amended and restated in its entirety as follows below in quotation marks

:  
“2. Appendix A of this Supplemental Agreement, which Contractor agrees and acknowledges is the Standard Provisions for City Contracts (Rev. 10/21) [v.4] which shall be a part of the terms and conditions of this Supplemental Agreement.

## **3. APPENDIX A**

Appendix A of the AGREEMENT is hereby replaced in its entirety with Attachment A of this AMENDMENT.

## **ATTACHMENT**

The following attachment is attached to this AMENDMENT:

Attachment A - Standard Provisions for City Contracts (Rev. 10/21, v.4)

(Signature Page to Follow)

IN WITNESS WHEREOF, the parties hereto have caused this AMENDMENT NO. 1 TO THE SUPPLEMENTAL AGREEMENT TO AGREEMENT NO. 254, to be executed by their duly authorized representatives.

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

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
President

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
Secretary

A.J. FAMILY ENTERTAINMENT, LLC - CONCESSIONAIRE

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
Name:  
Managing Member

\_\_\_\_\_  
Name:  
Managing Member

APPROVED AS TO FORM:

MICHAEL N. FUEUR  
City Attorney

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
Steven Hong  
Deputy City Attorney



ATTACHMENT A

STANDARD PROVISIONS FOR CITY CONTRACTS (REV. 10/21, v. 4)

## STANDARD PROVISIONS FOR CITY CONTRACTS

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## STANDARD PROVISIONS FOR CITY CONTRACTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **PSC-8. Suspension**

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

## **PSC-9. Termination**

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

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

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

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

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

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

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

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

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

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

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

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



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

**PSC-12. Assignment and Delegation**

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

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

**PSC-13. Permits**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **PSC-23. Insurance**

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

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

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

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

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

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

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

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

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

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

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

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

**PSC-28. Living Wage Ordinance**

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

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

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

**PSC-30. Access and Accommodations**

**CONTRACTOR** represents and certifies that:

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

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

**PSC-31. Contractor Responsibility Ordinance**

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

**PSC-32. Business Inclusion Program**

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

**PSC-33. Slavery Disclosure Ordinance**

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

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

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

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

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

**PSC-36. Iran Contracting Act**

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

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

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

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

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

You are a subcontractor on City of Los Angeles Contract # \_\_\_\_\_. Pursuant to the City of Los Angeles Charter Section 470(c)(12) and related ordinances, you and your principals are prohibited from making campaign contributions to and fundraising for certain elected City of Los Angeles (“**CITY**”) officials and candidates for elected **CITY** office for twelve months after the **CITY** contract is signed. You are required to provide the names and contact information of your principals to the **CONTRACTOR** and to amend that information within ten business days if it changes during the twelve month time period. Failure to comply may result in termination of this Contract and any other available legal remedies. Information about the restrictions may be found online at [ethics.lacity.org](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. COVID-19**

Employees of Contractor and/or persons working on its behalf, including, but not limited to, subcontractors (collectively, “Contractor Personnel”), while performing services under this Agreement and prior to interacting in person with City employees, contractors, volunteers, or members of the public (collectively, “In-Person Services”) must be fully vaccinated against the novel coronavirus 2019 (“COVID-19”). “Fully vaccinated” means that 14 or more days have passed since Contractor Personnel have received the final dose of a two-dose COVID-19 vaccine series (Moderna or Pfizer-BioNTech) or a single dose of a one-dose COVID-19 vaccine (Johnson & Johnson/Janssen) and all booster doses recommended by the Centers for Disease Control and Prevention. Prior to assigning Contractor Personnel to perform In-Person Services, Contractor shall obtain proof that such Contractor Personnel have been fully vaccinated. Contractor shall retain such proof for the document retention period set forth in this Agreement. Contractor shall grant medical or religious exemptions (“Exemptions”) to Contractor Personnel as required by law. If Contractor wishes to assign Contractor Personnel with Exemptions to perform In-Person Services, Contractor shall require such Contractor Personnel to undergo weekly COVID-19 testing, with the full cost of testing to be borne by Contractor. If Contractor Personnel test positive, they shall not be assigned to perform In-Person Services or, to the extent they have already been performing In-Person Services, shall be immediately removed from those assignments. Furthermore, Contractor shall immediately notify City if Contractor Personnel performing In-Person Services (1) have tested positive for or have been diagnosed with COVID-19, (2) have been informed by a medical professional that they are likely to have COVID-19, or (3) meet the criteria for isolation under applicable government orders.

## **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:** \_\_\_\_\_

\_\_\_\_\_

**STANDARD PROVISIONS**

**FOR CITY CONTRACTS (Rev. 10/21) [v.4]**



CITY OF LOS ANGELES  
DEPARTMENT OF  
RECREATION AND PARKS



Agreement for Concession Operation  
of the  
Batting Cages Concession  
at the  
Sherman Oaks Castle Park

Administrative Resources Division  
3900 West Chevy Chase Drive  
Mail Stop 628  
Los Angeles, California 90039  
(818) 243-6488

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THIS AGREEMENT is made and entered into this 17<sup>th</sup> day of May, 2006, by and between the CITY OF LOS ANGELES, a municipal corporation (hereinafter "CITY"), acting by and through its BOARD OF RECREATION AND PARK COMMISSIONERS (hereinafter "BOARD"), and A.J. Family Entertainment, LLC (hereinafter "CONCESSIONAIRE").

WITNESSETH

WHEREAS, CITY advertised for proposals for the operation of the Sherman Oaks Castle Park Batting Cages Concession; and,

WHEREAS, the principal purpose of CITY in entering into this AGREEMENT is to serve the public by providing a batting cages concession at the Sherman Oaks Castle Park; and,

WHEREAS, the BOARD received four proposals on December 13, 2005; and,

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

WHEREAS, CONCESSIONAIRE desires to secure and enter into an AGREEMENT in accordance with the foregoing and undertakes to provide services of the type and character required therein by CITY to meet the needs of the public at the Sherman Oaks Castle Park.

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

SECTION 1. DEFINITIONS:

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

AGREEMENT: This Concession Agreement consisting of 8 pages and 4 Exhibits (A-D) attached hereto.

CONCESSION: Sherman Oaks Castle Park Batting Cages  
4989 Sepulveda Blvd.  
Sherman Oaks, California 91403

CONCESSIONAIRE: A.J. Family Entertainment, LLC

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



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

SOCp: The Sherman Oaks Castle Park.

STANDARD CONDITIONS: Standard Conditions and Regulations for the Operation of Concessions (Revised December 2005).

## SECTION 2. CONCESSION GRANTED

CONCESSIONAIRE shall be granted the exclusive right and obligation to utilize CONCESSION PREMISES to operate and maintain a batting cages concession and to provide related services to patrons at the SOCp.

No other batting cages concession will be granted at this location. CONCESSIONAIRE shall provide improvements and maintenance of the CONCESSION PREMISES in accordance with other provisions of this AGREEMENT. CONCESSIONAIRE shall not perform or conduct any activity on the CONCESSION PREMISES which is not directly related to the purpose set forth in the AGREEMENT for the subject concession without the prior written consent of the GENERAL MANAGER. Any sublicensing of these related activities requires the written approval of the GENERAL MANAGER.

CITY reserves the right to further develop or improve the CONCESSION PREMISES as it sees fit, and without interference or hindrance; however, the CITY shall consider the desires or views of the CONCESSIONAIRE.

## SECTION 3. CONCESSION PREMISES

The CONCESSION PREMISES to be authorized for use by CONCESSIONAIRE shall include the batting cages facility, a small operation booth directly adjacent to the cages, the area between the hand rail and the cages, and the areas approximately 25' away from these, exclusive of the miniature golf area, parking stalls, and the downslope area between the cage facility and the Los Angeles River, as indicated in the premises map attached hereto as Exhibit A.

## SECTION 4. INCORPORATION OF STANDARD CONDITIONS

CONCESSIONAIRE shall abide by all provisions of the STANDARD CONDITIONS, attached hereto as Exhibit B and incorporated herein. These STANDARD CONDITIONS cover all aspects of CONCESSION operations except that in cases where there is a conflict between the STANDARD CONDITIONS and the terms of this AGREEMENT, the AGREEMENT is deemed to be controlling.

## SECTION 5. TERM

The term of this Concession AGREEMENT shall be ten (10) years, effective on the date of execution, with a renewal option exercisable at the CITY's sole discretion for an additional five (5) years. Any renewal shall be at the sole discretion of the CITY, which will give the CONCESSIONAIRE a written notice of its willingness to renew no later than forty-five days prior to the end of the then current term.

## SECTION 6. RENTAL

CONCESSIONAIRE shall pay the DEPARTMENT a monthly rental fee as follows:

- 10% of all gross receipts from retail sales;
- 40% of all gross receipts from tokens, time rental, and filming.

Should the AGREEMENT be extended at the CITY's option for the additional five-year term, these rental fees shall continue during that term. The CONCESSIONAIRE shall mail all payments and reports to:

Department of Recreation and Parks  
Concessions Office  
P.O. Box 5358  
Glendale, CA 91221-5385

Use of the CONCESSION PREMISES for purposes not expressly permitted herein, whether or not approved in writing by GENERAL MANAGER, may result in additional charges.

## SECTION 7. OPERATING RESPONSIBILITIES

### A. Prices:

All prices charged shall be prominently posted and shall not exceed prevailing market prices for the same standard grade of service or merchandise at similar venues in the surrounding community. Prices deviating from the approved schedule and subsequent price changes by CONCESSIONAIRE are subject to approval from the BOARD.

### B. Batting Cages Operation Provisions:

At a minimum, CONCESSIONAIRE shall be required to:

- Provide balls to be dispensed by machines.
- Provide bats and helmets to customers.
- Have one technician on site during regular hours of operation and provide a second technician during peak hours.
- Provide adequate seating for waiting customers.
- Coordinate with SOCP management to develop and implement a procedure to track and issue passes for group events and parties. Such procedures shall be subject to the approval of the DEPARTMENT.
- Use a cash register or point of sale system.

- Accept credit card payments from customers.

C. Hours/Days of Operation:

The CONCESSIONAIRE shall remain open during the regular business hours that the SOCP is open. CONCESSIONAIRE shall be allowed access into the premises no more than one hour before regularly scheduled opening and no more than 30 minutes past closing unless otherwise authorized by the facility manager. Hours of operation are subject to change seasonally.

The SOCP standard hours of operation are:

Monday through Thursday	10:00 a.m. to 11:00 p.m.
Friday	10:00 a.m. to midnight
Saturday	9:00 a.m. to midnight
Sunday	9:00 a.m. to 11:00 p.m.

D. Safety:

Due to the potential for sports-related injuries to the batting cage patrons, the CONCESSIONAIRE shall be required to:

- Post for the public, implement, and enforce, all required safety rules and regulations related to the CONCESSION;
- Ensure that all staff is trained and knowledgeable of guidelines for the proper operation of the batting cages and ball machines.

E. Personnel:

CONCESSIONAIRE's staff shall be uniformed and wear name/I.D. badges for ease of identification by patrons. CONCESSIONAIRE shall have written employee rules and an employee handbook tailored to the concession business which addresses safety, professional conduct, and customer service.

F. Fixtures and Equipment:

CONCESSIONAIRE shall provide and install at its own sole expense all CONCESSION-related equipment, furnishings, and materials necessary to operate, including, but not limited to: token sales machines, cash registers, shelving, racks, counters, etc. All fixtures and equipment required for said concession shall be purchased, installed and maintained, and all expendables shall be purchased by, CONCESSIONAIRE at its expense and shall remain its personal property.

G. Maintenance of Equipment and Concession Premises:

CONCESSIONAIRE shall provide all maintenance, repair, replacement, and service required on all equipment and furnishings used in the CONCESSION, including machines, nets, and cages, and keep such equipment in good repair and in a clean and orderly condition and appearance. To accomplish this requirement, CONCESSIONAIRE shall establish an adequate preventive maintenance program and the provisions of same shall be subject to periodic review by CITY'S representatives. CONCESSIONAIRE shall ensure every reasonable measure to attempt to repair or replace damaged or "out-of-

order” machines and equipment within 48 hours of notification; and be responsible for replacement of all light bulbs adjacent to and used by the batting cage facility.

Insofar as sanitation and appearance of the CONCESSION PREMISES is involved, the GENERAL MANAGER may direct CONCESSIONAIRE to perform necessary repairs and maintenance.

Common areas shared by other SOCP concessions and CITY shall not be considered under the control of CONCESSIONAIRE for purposes of this section. In the event CONCESSION PREMISES are damaged as a result of vandalism, it shall be the responsibility of the CONCESSIONAIRE to repair or replace any damages. CONCESSIONAIRE shall be responsible for electrical and mechanical repairs and maintenance of CONCESSION PREMISES.

CITY shall be responsible for repair and maintenance of utility lines within walls and ground underneath the CONCESSION PREMISES. Other applicable maintenance responsibilities are defined within the STANDARD CONDITIONS.

H. Utilities:

Utility fees will be paid by the CONCESSIONAIRE, monthly and directly to the utility companies, after individual utility meters for each concession at the SOCP are installed. Before and until separate meters are installed and placed under the name of the CONCESSIONAIRE, CONCESSIONAIRE shall pay to the DEPARTMENT a utility fee of \$250 per month.

Water and trash pick-up from the main dumpster(s) will be paid by the DEPARTMENT. The CONCESSIONAIRE shall pay for any additional utilities or services (telephone, internet, cable, satellite T.V., etc.). The telephone number shall be placed under the name “Sherman Oaks Castle Park Batting Cages,” and shall not be transferable to any other location.

SECTION 8. INSURANCE

CONCESSIONAIRE shall procure at its expense, and keep in effect at all times during the term of this AGREEMENT, the types and amounts of insurance specified on the Required Insurance page, attached hereto as Exhibit C and incorporated herein.

SECTION 9. PERFORMANCE BOND

CONCESSIONAIRE shall provide a Performance Bond before execution of this AGREEMENT by CITY in the amount of \$52,000, whereas the form, agreement of deposit and indemnity, and the deposit maintenance of said bond are set forth by the STANDARD CONDITIONS.

## SECTION 10. CAPITAL IMPROVEMENTS

The CONCESSIONAIRE agrees to make to the satisfaction of the CITY the improvements to the CONCESSION PREMISES specified in the Capital Improvements section of the CONCESSIONAIRE'S proposal, attached hereto as Exhibit D and incorporated herein, in the amount, at minimum, of \$22,500.

Individually, the details (design, expense, time-line, applicable permits, etc.) of each capital improvement listed shall be subject to the prior review and approval of the GENERAL MANAGER prior to coordination and implementation. CITY shall hold CONCESSIONAIRE responsible for guaranteeing the completion of all proposed improvements, according to approved plans, regardless of cost. CONCESSIONAIRE shall begin and complete said improvements within a reasonable time frame as outlined in CONCESSIONAIRE'S proposal upon consideration and approval by the GENERAL MANAGER.

All structural or other improvements, constructed or installed by CONCESSIONAIRE in the CONCESSION PREMISES, both as listed in CONCESSIONAIRE'S proposal and any other improvements made by CONCESSIONAIRE on the CONCESSION PREMISES, including the plans and specifications therefore, shall be at its sole cost and expense, unless constructed or installed at the CITY's request, in which case said improvements will be funded or performed by the CITY.

## SECTION 11. WRITTEN NOTICES

Written notices to DEPARTMENT shall be addressed to:

City of Los Angeles, Department of Recreation and Parks  
1200 W. 7th Street, Suite 700  
Los Angeles, CA 90017  
Attention: GENERAL MANAGER

and

City of Los Angeles, Department of Recreation and Parks  
Attention: Concessions Unit  
3900 W. Chevy Chase Drive, Mail Stop 628  
Los Angeles, CA 90039

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

John Wawee, Andy Slater  
A.J. Family Entertainment, LLC  
18871 Braemore Road  
Granada Hills, California 91326

## SECTION 12. INCORPORATION OF DOCUMENTS

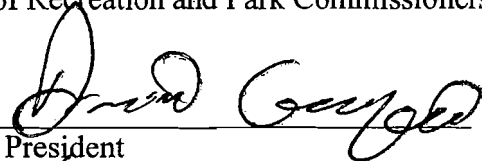
The following Exhibits are to be attached to and made part of this AGREEMENT by reference:

- A. Premises Map.
- B. Standard Conditions and Regulations for the Operation of Concessions.
- C. Insurance Requirements.
- D. Capital Improvements section of CONCESSIONAIRE's proposal.

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

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

BY:

  
President

DATE:

5/17/07

BY:

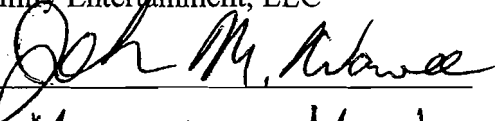
  
Secretary

DATE:

5/18/07

A.J. Family Entertainment, LLC

BY:



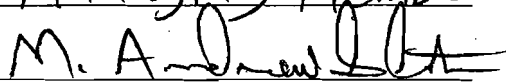
DATE:

5-7-07

Title:

Managing Member

BY:



DATE:

5-7-07

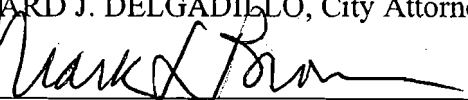
Title:

MANAGING MEMBER

APPROVED AS TO FORM:

ROCKIARD J. DELGADILLO, City Attorney

BY:

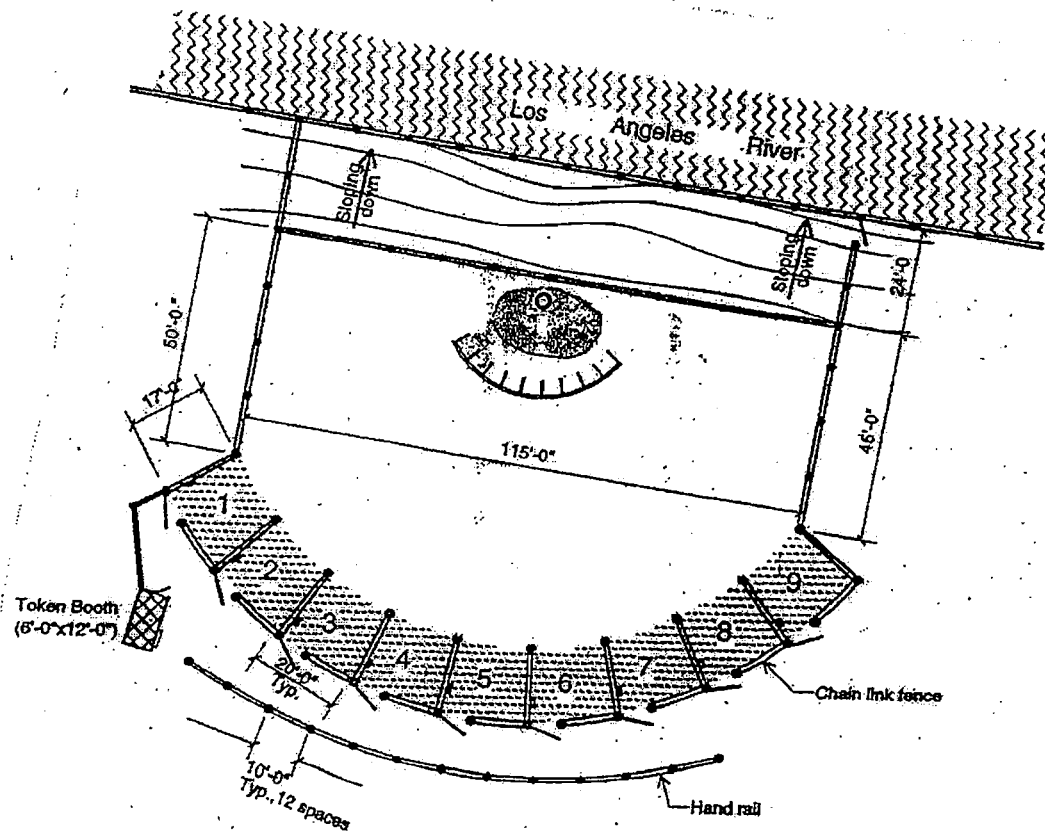


DATE:

5-17-07

MARK BROWN

Sr. Assistant City Attorney



**SHERMAN OAKS CASTLE PARK MINI-GOLF COURSE CONCESSIONS**  
**4989 Sepulveda Boulevard, Sherman Oaks, CA 91403**  
**BATTING CAGES FLOOR PLAN**

Department of Recreation & Parks, Design Division, HB09/15/95, Revised 11/12/96, P.3 of 3





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

STANDARD CONDITIONS  
And REGULATIONS  
for the Operation  
of CONCESSIONS

Revised December 2005

Administrative Resources Division  
3900 West Chevy Chase Drive, Mail Stop 628  
Los Angeles, California 90039  
(818) 243-6488  
web: [www.laparks.org](http://www.laparks.org)

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**STANDARD CONDITIONS AND REGULATIONS  
FOR THE OPERATION OF CONCESSIONS  
(STANDARD CONDITIONS)**

**DEFINITIONS**

For the purpose of these Standard Conditions, the following words and phrases are defined and shall be construed as hereinafter set out:

- AGREEMENT: The written, executed Concession Agreement to which these STANDARD CONDITIONS are attached.
- BOARD: Board of Recreation and Park Commissioners.
- CITY: The City of Los Angeles, acting by and through its Board of Recreation and Park Commissioners.
- CONCESSION: The permitted operations granted by the Agreement.
- CONCESSIONAIRE: The person or entity permitted by the Concession Agreement to operate a CONCESSION at the FACILITY.
- DEPARTMENT: The Recreation and Parks Department of the City of Los Angeles.
- FACILITY: The Recreation and Parks Department facility at which the CONCESSION is permitted to operate.
- GENERAL MANAGER: The General Manager of the Department of Recreation and Parks, or that person's authorized representative, acting as an Agent of CITY. All actions of the General Manager are subject to review by the BOARD.
- LAAC: The Los Angeles Administrative Code.
- LAMC: The Los Angeles Municipal Code.
- PREMISES: The geographical area, as defined in the AGREEMENT, in which the CONCESSION may be operated.

**SECTION 1. CONCESSION GRANTED**

For and in consideration of the payment of the fees and charges as hereinafter provided, and subject to all of the terms, covenants, and conditions of the AGREEMENT and these Standard Conditions, CITY hereby grants to CONCESSIONAIRE the privilege to provide only those services set forth in the AGREEMENT, and not for any other purpose without the prior written consent of the GENERAL MANAGER. The concession rights herein granted shall be carried on at the FACILITY solely within the limits and confines of said areas designated as PREMISES in the AGREEMENT. CONCESSIONAIRE, by accepting the AGREEMENT, agrees for itself, its successors, and assigns, that it will not make use of the PREMISES in any manner which might interfere with the recreational uses of the FACILITY.

In the event of a conflict between CONCESSIONAIRE and any other concessionaire or any lessee at the FACILITY regarding the services to be offered or products to be sold by respective concessionaires or lessees, GENERAL MANAGER shall meet and confer with all necessary parties to determine the services to be offered or products to be sold by each, and CONCESSIONAIRE hereunder agrees thereafter to be bound by said determination.

**SECTION 2. PREMISES**

The PREMISES subject to these Standard Conditions are described in the AGREEMENT. CONCESSIONAIRE shall not use or allow the PREMISES to be used, in whole or in part,

during the term of the AGREEMENT, for any use in violation of any present or future laws, ordinances, rules, and regulations at any time applicable thereto of any public or governmental authority or agencies, departments or officers thereof, including CITY, relating to sanitation or the public health, safety or welfare or operations at and use of the PREMISES.

### **SECTION 3. TERM OF AGREEMENT**

The term of the AGREEMENT shall be the period as specified in the AGREEMENT. Neither CITY, nor any BOARD member, officer, or employee thereof shall be liable in any manner to CONCESSIONAIRE because of any action taken to revoke or renew the AGREEMENT.

### **SECTION 4. TIME OF EXECUTION**

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

- A. The Office of the City Attorney has indicated in writing of its approval of the AGREEMENT as to form and legality; AND
- B. Said AGREEMENT has been approved by the CITY's Council, BOARD, officer, or employee authorized to give such approval; AND
- C. Said AGREEMENT has been signed on behalf of the CONCESSIONAIRE by the person or persons authorized to bind the CONCESSIONAIRE hereto, AND
- D. Said AGREEMENT has been signed on behalf of the CITY by the person authorized and designated to so sign by the CITY's Council, Board, officer, or employee to enter into the AGREEMENT.

### **SECTION 5. NUMBER OF ORIGINALS**

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

### **SECTION 6. INDEPENDENT CONTRACTORS/ CONSULTANTS**

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

### **SECTION 7. CONCESSION RENTAL**

#### **A. Rental Payments**

As part of the consideration for CITY'S granting the concession rights herein above set forth, CONCESSIONAIRE shall pay to CITY a rental payment in the amount specified in the AGREEMENT. Such rental payment may be specified as a monthly flat rate amount, or a percentage of CONCESSIONAIRE'S gross receipts as defined herein, or some specified, predetermined combination thereof.

#### **B. Gross Receipts Defined**

The term "gross receipts" is defined as the total amount charged for the sale of any goods or services (whether or not such services are performed as a part of or in connection with the sale of goods) provided in connection with this CONCESSION, but not including any of the following:

- 1. Cash discounts allowed or taken on sales;

2. Any sales taxes, use taxes, or excise taxes required by law to be included in or added to the purchase price and collected from the consumer or purchaser and paid by CONCESSIONAIRE;
3. California Redemption Value (CRV);
4. Receipts from the sale of waste or scrap materials resulting from the CONCESSION operation;
5. Receipts from the sale of or the trade-in value of any furniture, fixtures, or equipment used in connection with the CONCESSION, and owned by CONCESSIONAIRE;
6. The value of any merchandise, supplies, or equipment exchanged or transferred from or to other business locations of CONCESSIONAIRE where such exchanges or transfers are not made for the purpose of avoiding a sale by CONCESSIONAIRE which would otherwise be made from or at the PREMISES;
7. Refunds from, or the value of, merchandise, supplies, or equipment returned to shippers, suppliers, or manufacturers;
8. Receipts from the sale at cost of uniforms, clothing, or supplies to CONCESSIONAIRE'S employees where such uniforms, clothing, or supplies are required to be worn or used by said employees;
9. Receipts from any sale where the subject of such sale, or some part thereof, is thereafter returned by the purchaser to and accepted by CONCESSIONAIRE, to the extent of any refund actually granted or adjustment actually made, either in the form of cash or credit;
10. Fair market trade-in allowance, in the event merchandise is taken in trade;
11. The amount of any cash or quantity discounts received from sellers, suppliers, or manufacturers;
12. Discounts or surcharges applied to receipts for services or merchandise, with the concurrence of both CONCESSIONAIRE and GENERAL MANAGER, including discounts to employees, if concurred by GENERAL MANAGER.

CONCESSIONAIRE shall not reduce or increase the amount of gross receipts, as herein defined, as a result of any of the following:

1. Any error in cash handling by CONCESSIONAIRE or CONCESSIONAIRE'S employees or agents;
2. Any losses resulting from bad checks received from the consumers or purchasers; or from dishonored credit, charge, or debit card payments; or any other dishonored payment to CONCESSIONAIRE by customer or purchaser;
3. Any arrangement for a rebate, kickback, or hidden credit given or allowed to customer.

### **C. Payment Due Dates**

#### **1. Flat Rate Rental**

If the AGREEMENT requires a flat rate monthly rental, then unless otherwise specified, the rental amount shall be due on the first (1st) day of the month of operation and shall be considered past due if postmarked after the fifteenth (15th) day of that month.

#### **2. Percentage of Gross Receipts Rental**

If the AGREEMENT requires a rental rate based on a percentage of gross receipts, then unless otherwise specified, the rental payment shall be payable in monthly installments during the term of the AGREEMENT. Within fifteen (15) days after the end of each calendar month, CONCESSIONAIRE shall pay CITY as the rental payment for such

previous calendar month the guaranteed minimum monthly fee, if applicable, or the percent of gross receipts received in said previous month, whichever sum is greater. Payments shall be considered past due if postmarked after the fifteenth (15th) day of the month in which payment is due.

**D. Monthly Rental Reports**

CONCESSIONAIRE shall transmit with each rental payment a Monthly Gross Receipts and Rent Report, also referred to as a Monthly Remittance Advice, for the month for which rent is submitted. The GENERAL MANAGER shall provide a form for this purpose, and the completed form shall include a statement of the Gross Receipts by source of sales, and such other information as the GENERAL MANAGER may properly require.

**E. Pro Rata Payment**

If the execution or termination of the AGREEMENT falls on any date other than the first or last day of any calendar month, the applicable rental payment for said month, if it is based on a flat rate or a minimum rental, shall be pro rated.

**F. Late Payment Fee**

Failure of CONCESSIONAIRE to pay any of the rental payments or any other fees, changes, or payments required herein on time is a breach of the AGREEMENT for which CITY may terminate same or take such other legal action as it deems necessary.

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

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

**SECTION 8. ADDITIONAL FEES AND CHARGES**

If CITY pays any sum or incurs any obligations or expense which CONCESSIONAIRE has agreed to pay or reimburse CITY for, or if CITY is required or elects to pay any sum or to incur any obligations or expense by reason of the failure, neglect, or refusal of CONCESSIONAIRE to perform or fulfill any one or more of the conditions, covenants, or agreements contained in the AGREEMENT, or as a result of an act or omission of CONCESSIONAIRE contrary to said conditions, covenants, and agreements, CONCESSIONAIRE agrees to pay to CITY the sum so paid or the expense so incurred, including all interest, costs, (including CITY'S 15% administrative overhead cost), damages, and penalties. This amount shall be added to the rental payment thereafter due hereunder, and each and every part of the same shall be and become additional rental payment, recoverable by CITY in the same manner and with like remedies as if it were originally a part of the basic rental payment set forth in Section 7 hereof.

For all purposes under this Section, and in any suit, action, or proceeding of any kind between the parties hereto, any receipt showing the payment of any sum by CITY for any work done or material furnished shall be prima facie evidence against CONCESSIONAIRE that the amount of such payment was necessary and reasonable. Should CITY elect to use its own personnel in making any repairs, replacements, and/or alterations, and to charge CONCESSIONAIRE with the cost of same, receipts and timesheets will be used to establish the charges, which shall be presumed to be reasonable in absence of contrary proof submitted by CONCESSIONAIRE.

## **SECTION 9. OPERATING RESPONSIBILITIES**

CONCESSIONAIRE shall, at all times during the term of the AGREEMENT, comply with the following conditions:

### **A. Cleanliness**

CONCESSIONAIRE shall keep the PREMISES and the surrounding area [at least twenty-five (25) feet] clean and sanitary at all times. No offensive or refuse matter, nor any substance constituting an unnecessary, unreasonable, or unlawful fire hazard, or material detrimental to the public health, shall be permitted to remain thereon, and CONCESSIONAIRE shall prevent any such matter or material from being or accumulating upon said PREMISES.

CONCESSIONAIRE at its own expense, shall see that all garbage or refuse is collected as often as necessary and in no case less than twice a week. It shall furnish all equipment and materials necessary therefore, including trash receptacles of a size, type, and number approved by GENERAL MANAGER. If no trash storage area is made available, CONCESSIONAIRE shall provide at its own expense and with the GENERAL MANAGER'S prior written approval, an enclosed area concealing the trash storage from public view.

### **B. Conduct**

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

### **C. Disorderly Persons**

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

### **D. Non-Discrimination/ Equal Employment Practices/ Affirmative Action**

1. CONCESSIONAIRE, in its CONCESSION operations at the FACILITY, for itself, its personal representatives, successors in interest and assigns, as part of the consideration hereof, does hereby covenant and agree that: (1) no person on the grounds of race, color, national origin, religion, ancestry, sex, age, physical disability, or sexual orientation shall be excluded from participation, denied the benefits of or be otherwise subjected to discrimination in access to or in the use of the facilities covered by the AGREEMENT; (2) that in the construction of any improvements on, over or under the PREMISES authorized to



be utilized herein and the furnishing of services thereon, no person on the grounds of race, color, national origin, religion, ancestry, sex, age, physical disability, or sexual orientation shall be excluded from participation in, denied the benefits of or otherwise be subjected to discrimination.

2. CONCESSIONAIRE agrees that in the event of breach of any of the above nondiscrimination covenants, with proper notification as per Section 17, CITY shall have the right to terminate the AGREEMENT and to reenter and repossess said land and the facilities thereon and hold the same as if said AGREEMENT had never been executed.

3. In addition, CONCESSIONAIRE, during the term of the AGREEMENT, agrees not to discriminate in its employment practices against any employee or applicant for employment because of the employee's or applicant's race, color, religion, national origin, ancestry, sex, age, physical disability, or sexual orientation. All subcontracts entered into by CONCESSIONAIRE shall be approved in advance by CITY and shall contain a like provision.

#### **E. Personnel**

##### **1. Freedom from Tuberculosis**

For employees preparing food, and others as required by statute or directive of the GENERAL MANAGER, CONCESSIONAIRE shall provide the GENERAL MANAGER with certificates on applicable employees indicating freedom from communicable tuberculosis (reference Section 5163 of the California Public Resources Code).

##### **2. Qualified Personnel**

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

##### **3. Concession Manager**

CONCESSIONAIRE shall appoint, subject to approval by GENERAL MANAGER, a Concession Manager of CONCESSIONAIRE'S operations at the FACILITY. If CONCESSIONAIRE elects to subcontract the management of any or all of the CONCESSION operations to a managing entity or entities, the provisions of this section shall also apply to any such entity.

Such person must be a qualified and experienced manager or supervisor of operations, vested with full power and authority to accept service of all notices provided for herein and regarding operation of the CONCESSION , including the quality and prices of

CONCESSION goods and services, and the appearance, conduct, and demeanor of CONCESSIONAIRE'S agents, servants, and employees. The Concession Manager shall be available during regular business hours and, at all times during that person's absence, a responsible subordinate shall be in charge and available.

The Concession Manager shall devote the greater part of his or her working time and attention to the operation of the CONCESSION and shall promote, increase and develop the business. During the days and hours established for the operation of the subject concession, the Concession Manager's personal attention shall not be directed toward the operation of any other business activity.

If, for reasons of ill health, incapacitation, or death, the Concession Manager becomes incapable of performing each and all terms and provisions of the AGREEMENT, CITY may, in its sole discretion, suspend the AGREEMENT and all terms and conditions contained therein.

**F. Merchandise and Price Schedules**

CITY agrees that CONCESSIONAIRE'S merchandise, including its prices for same, shall be within CONCESSIONAIRE'S discretion; subject, however, to disapproval by GENERAL MANAGER if the selection of items offered is inadequate, of inferior quality, or if any of said prices are excessively high or low. Such determination shall not be unreasonable and shall take into account the business considerations presented by CONCESSIONAIRE. All prices shall be comparable to prices charged in similar establishments in the neighborhood. CONCESSIONAIRE shall provide the GENERAL MANAGER with a list of prices for all merchandise and services. This list shall be updated whenever prices are changed.

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

**G. Diversion of Business**

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

**H. Hours of Operation**

The CONCESSION shall be operated during normal FACILITY hours and, unless otherwise specified in the AGREEMENT, must be open for business each day that the FACILITY is open. Hours of operation include all holidays that the FACILITY is open. CONCESSIONAIRE must post the hours of operation in a location visible to the public, and

must be open for business during the hours posted. Hours of operation may not be changed without prior written approval of GENERAL MANAGER.

**I. Equipment, Furnishings, and Expendables**

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

**J. Maintenance of Equipment**

CONCESSIONAIRE shall, at all times and at its expense, keep and maintain all equipment, whether owned and/or installed by CONCESSIONAIRE or CITY, such as, but not limited to, heat exchangers, fans, controls and electric panels, installed by CITY, together with all of the fixtures, plate and mirror glass, equipment and personal property therein, in good repair and in a clean, sanitary, and orderly condition and appearance.

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

**K. Claims for Labor and Materials**

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

**L. Signs and Advertisements**

CONCESSIONAIRE shall not erect, construct, or place any signs, banners, ads, or displays of any kind whatsoever upon any portion of CITY property without the prior written approval from the GENERAL MANAGER. If CONCESSION is located on U.S. Army Corps of Engineers' ("Corps") property, CONCESSIONAIRE shall also be required to obtain Corps' prior written approval. Certain signs and advertisements may also require the prior written approval of the Cultural Affairs Department or other appropriate agencies.

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

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

#### **M. Taxes and Permits**

##### **1. Taxes**

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

##### **2. City of Los Angeles Business Tax**

During the entire term of the AGREEMENT, the CONCESSIONAIRE must hold a current Los Angeles Business Tax Registration Certificate as required by the CITY'S Business Tax Ordinance (LAMC Article 1, Chapter 2, sections 21.00 et. seq.).

##### **3. Occupancy Tax**

Pursuant to Section 21.3.3 of Article 1.3 of the LAMC Commercial Tenants Occupancy Tax, CONCESSIONAIRE must pay to the City of Los Angeles for the privilege of occupancy, a tax at the rate of \$1.48 per calendar quarter or fractional part thereof for the first \$1,000 or less of charges (rent) attributable to said calendar quarter, plus \$1.48 per calendar quarter for each additional \$1,000 of charges or fractional part thereof in excess of \$1,000. Said tax shall be paid quarterly to the DEPARTMENT, on or before the fifteenth (15th) of April, July, October, and January of each calendar year, for the preceding three (3) months.

##### **4. Other Taxes, Permits, and Licenses**

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

#### **N. Utilities**

CONCESSIONAIRE shall be responsible for those utility charges as described in the AGREEMENT. Charges may include, but are not limited to, deposits, installation costs, meter deposits, and all service charges for gas, electricity, water, heat, air-conditioning, and other utility services to PREMISES, and shall be paid by CONCESSIONAIRE regardless of whether such utility services are furnished by CITY or by other utility service providers. Water shall be utilized by CONCESSIONAIRE in the most efficient manner possible, and CONCESSIONAIRE expressly agrees to comply with all CITY water conservation programs.

The CITY reserves the right to adjust utility fees annually based on prior years' usage. If the CONCESSIONAIRE desires to install a separate utility meter for their CONCESSION and be billed directly from the utility service provider instead of paying the CITY'S utility fee, CONCESSIONAIRE will assume full responsibility, financial and otherwise, for the separate meter and must first obtain prior written approval from the CITY. The CITY reserves the right to install a separate utility meter for the CONCESSION; in such event, CONCESSIONAIRE shall be billed directly from the utility service provider instead of paying the DEPARTMENT's utility fee.

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

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

**O. Vending Machines**

CONCESSIONAIRE shall not install, or allow to be installed, any vending machines, electronic games, or other coin operated machines without prior written approval of the GENERAL MANAGER. The GENERAL MANAGER shall have the right to order the immediate removal of any unauthorized machines.

**P. Safety**

CONCESSIONAIRE shall correct safety deficiencies, and violations of safety practices, immediately after the condition becomes known or GENERAL MANAGER notifies CONCESSIONAIRE of said condition. CONCESSIONAIRE shall cooperate fully with CITY in the investigation of accidents occurring on the PREMISES. In the event of injury to a patron or customer, CONCESSIONAIRE shall reasonably ensure that the injured person receives prompt and qualified medical attention, and as soon as possible thereafter, CONCESSIONAIRE shall submit a CITY Form General No. 87 "Non-Employee Accident or Illness Report." If CONCESSIONAIRE fails to correct hazardous conditions specified by the GENERAL MANAGER in a written notice, which have led, or in the opinion of CITY could lead, to injury, the GENERAL MANAGER may, in addition to all other remedies which may be available to CITY, repair, replace, rebuild, redecorate, or paint any such PREMISES to correct the specified hazardous conditions, with the cost thereof, plus fifteen percent (15%) for administrative overhead, to be paid by CONCESSIONAIRE to CITY on demand.

**Q. Environmental Sensitivity**

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

**SECTION 10. MAINTENANCE OF PREMISES**

**A. Interior of Premises**

**1. Areas to be Maintained by CONCESSIONAIRE:**

CONCESSIONAIRE shall, at its expense, keep and maintain all the interior walls and surfaces of PREMISES and all improvements, fixtures, and utility systems which may now or hereafter exist thereon, whether installed by CITY or CONCESSIONAIRE. Improvements shall include all buildings and appurtenances recessed into or attached by any method to the ground or to another object which is recessed or attached to the ground or to other CITY-owned facilities (such as buildings, fences, posts, signs, electrical hook-ups, plumbing, tracks, tanks, etc.).

**2. Duties:**

CONCESSIONAIRE'S maintenance duties shall include all sweeping, washing, servicing, repairing, replacing, cleaning, and interior painting that may be required to properly maintain the premises in a safe, clean, operable, and attractive condition. CONCESSIONAIRE shall provide for such repairs, replacements, rebuilding, and restoration as may be required by or given prior written approval by the GENERAL MANAGER to comply with the requirements hereof. Those duties shall also include electrical, mechanical, and plumbing maintenance in the interior of the premises, such as light fixtures, toilets, and faucets.

**B. Exterior of Premises and Common Passageways**

CITY shall maintain the exterior of all buildings and will endeavor to perform all exterior repairs occasioned by normal wear and tear, and the elements, unless otherwise provided for in the AGREEMENT. Common passageways leading to other CONCESSION facilities or offices maintained by CITY which also lead to the PREMISES shall not be considered under the control of CONCESSIONAIRE for purposes of this Section.

**C. Correction of Conditions Leading to Damage**

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

**D. Property Damage and Theft Reporting**

CONCESSIONAIRE shall complete and submit to the DEPARTMENT a "Special Occurrence and Loss Report," in the event that the PREMISES and/or CITY-owned property is damaged or destroyed, in whole or in part, from any cause whatsoever, and in the event of

theft, burglary, or other crime committed on the PREMISES. Blank forms for this purpose shall be provided by the DEPARTMENT.

**E. Damage or Destruction to Premises**

**1. Partial Damage:**

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

**2. Extensive Damage:**

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

**3. Complete Destruction:**

In the event all or a substantial portion of the PREMISES are completely destroyed by fire, explosion, the elements, public enemy, or other casualty, or are so damaged that they are uninhabitable and cannot be replaced except after more than sixty (60) days, CITY shall be under no obligation to repair, replace or reconstruct said PREMISES, and an appropriate portion of the fees and charges payable hereunder shall abate as of the time of such damage or destruction and shall henceforth cease until such time as the said PREMISES are fully restored. If within four (4) months after the time of such damage or destruction said PREMISES have not been repaired or reconstructed, CONCESSIONAIRE may terminate this AGREEMENT in its entirety as of the date of such damage or destruction. Notwithstanding the foregoing, if the said PREMISES, or a substantial portion thereof, are completely destroyed as a result of the negligent acts or omissions of CONCESSIONAIRE, its agents, officers, or employees, said fees and charges shall not abate and CITY may, in its discretion, require CONCESSIONAIRE to repair and reconstruct the same within twelve (12) months of such destruction and CONCESSIONAIRE shall be responsible for reimbursing CITY for the cost and expenses incurred in making such repairs. CONCESSIONAIRE shall continue paying CITY rent as determined above during the rebuilding of the facility.

**4. Limits of CITY'S Obligation Defined:**

In the application of the foregoing provisions, CITY may, but shall not be obligated to, repair or reconstruct the PREMISES. If CITY chooses to do so, CITY'S obligation shall



also be limited to repair or reconstruction of the PREMISES to the same extent and of equal quality as obtained by CONCESSIONAIRE at the commencement of its operations hereunder. Redecoration and replacement of furniture, equipment and supplies shall be the responsibility of CONCESSIONAIRE and any such redecoration and refurbishing/reequipping shall be equivalent in quality to that originally installed.

#### **F. Pest Control**

Unless otherwise specified in the AGREEMENT, CONCESSIONAIRE shall be responsible for pest control in and around the PREMISES, including but not limited to, abatement of insects (including roaches, bees, etc.), spiders, rodents, vermin, and other nuisance pests, if the pests are found in or on structures or areas used and maintained by CONCESSIONAIRE, such as any of the following portions of the PREMISES:

1. Any portion of a building or enclosed structure with walls, roof, and doors, such as pro shops, gift shops, golf car storage facilities, restaurants, food stands, ticket and sales booths, kiosks, theater stage buildings, offices and storage facilities, storage containers owned and/or used by CONCESSIONAIRE, equine housing, etc.
2. Open structures such as golf driving range tee structures, theater seating, arenas, etc.
3. Areas enclosed with a fence such as tennis courts, batting cages, etc.

CITY shall be responsible for pest control if pests are found in or on structures or areas maintained by CITY, such as:

1. Open, unfenced areas such as those locations permitted for mobile food vending, bike rentals, coin-operated telescopes, etc.
2. Recreation centers, rental halls, and other facilities occupied in part by CONCESSIONAIRE but maintained by CITY.
3. Other areas, structures, or facilities adjacent to the PREMISES, but not used by or under the control of CONCESSIONAIRE; or areas, structures, or facilities shared by CONCESSIONAIRE and CITY.

Pest control for pests which may cause permanent structural damage to DEPARTMENT property (for example, termite infestation) shall be the responsibility of CITY. CONCESSIONAIRE shall take all reasonable measures to reduce the proliferation of pests, including maintaining the PREMISES clean and orderly in accordance with this Section, and keeping wood components painted. GENERAL MANAGER may direct CONCESSIONAIRE to take additional measures to abate pests which are an immediate threat to public health or safety.

#### **SECTION 11. IMPROVEMENTS**

CONCESSIONAIRE shall make no improvements to the PREMISES without prior written authorization of the GENERAL MANAGER as required. CITY has the right to monitor all phases of construction. All improvements must be made according to DEPARTMENT standards. All architectural services acquired by CONCESSIONAIRE must be with an agency qualified to do business in the State of California. All improvements provided by CONCESSIONAIRE during the term of the AGREEMENT shall be performed and completed at its sole expense, and shall become the property of CITY upon termination of the AGREEMENT.



CITY reserves the right to further develop or improve the FACILITY and the PREMISES as it sees fit, and without interference or hindrance by CONCESSIONAIRE. Such development or improvement may require the suspension or termination of the AGREEMENT. CITY shall not be liable for loss of business which results from the construction of any development or improvements to the FACILITY or the PREMISES.

**A. Proposed Capital Improvements:**

CONCESSIONAIRE is responsible to complete all Capital Improvements ("Improvements") as proposed in the Proposal submitted in response to the Request for Proposal (RFP) issued for the AGREEMENT, and to the funding level proposed. If details of the Improvements stipulated in the awarded AGREEMENT differ in any way from the Improvements in the Proposal, CONCESSIONAIRE shall be responsible for those Improvements as prescribed in the AGREEMENT. However, award of the AGREEMENT shall not constitute approval to make the proposed Improvements. CONCESSIONAIRE shall be responsible for the cost of the Improvements, as stipulated in the AGREEMENT, and shall begin and complete said Improvements within the time frame specified in the AGREEMENT, or as prescribed by the GENERAL MANAGER. The Improvements must have prior written approval from the General Manager. The Improvements are a condition of the AGREEMENT and must be begun and completed as stipulated therein, once approved by GENERAL MANAGER. CITY reserves the right to recover damages from CONCESSIONAIRE if the Improvements are not begun and completed as stipulated. Such damages may include, but are not limited to, recovering up to the entire cost of the Improvements from the CONCESSIONAIRE's performance bond. The bond must be recompensed as stipulated in Section 14, "Faithful Performance Bond," herein. Should Improvements as stipulated in the AGREEMENT be completed at a lower cost than that committed in the Proposal, the difference shall be applied to additional CONCESSION improvements as approved by the GENERAL MANAGER.

**B. Compliance with Applicable Rules and Regulations:**

All structural or other improvements, equipment and interior design and decor constructed or installed by CONCESSIONAIRE in the facility areas, including the plans and specifications therefore, shall in all respects conform to and comply with the applicable statutes (including the California Environmental Quality Act), ordinances, building codes, rules and regulations of CITY and such other authorities that may have jurisdiction over the facility areas or CONCESSIONAIRE'S operations therein. The approval by GENERAL MANAGER of any improvements as provided above shall not constitute a representation or warranty as to such conformity or compliance, but responsibility therefore shall at all times remain in CONCESSIONAIRE.

**C. Procurement of Permits and Approvals:**

CONCESSIONAIRE shall, at its sole expense, and prior to construction of any Improvements, procure all building, fire, safety, aesthetic, environmental, and other permits and approvals necessary for the construction of the structural and other improvements, installation of the equipment, and the interior design and decor. Copies of all said permits and approvals shall thereafter be submitted to the DEPARTMENT. No permission to begin said Improvements shall be granted by GENERAL MANAGER prior to CONCESSIONAIRE's obtaining of said permits and approvals.

**D. Subcontractors:**

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

**SECTION 12. PROHIBITED ACTS**

CONCESSIONAIRE shall not:

1. Do or allow to be done anything which may interfere with the effectiveness or accessibility of utility, heating, ventilating, or air conditioning systems or portions thereof on the PREMISES or elsewhere on the FACILITY, nor do or permit to be done anything which may interfere with free access and passage in the PREMISES or the public areas adjacent thereto, or in the streets or sidewalks adjoining the PREMISES, or hinder police, fire fighting or other emergency personnel in the discharge of their duties;
2. Interfere with the public's enjoyment and use of the FACILITY or use the PREMISES for any purpose which is not essential to the CONCESSION operations;
3. Rent, sell, lease or offer any space for storing of any articles whatsoever within or on the PREMISES other than specified herein, without the prior written approval of the GENERAL MANAGER;
4. Overload any floor in the PREMISES;
5. Place any additional lock of any kind upon any window or interior or exterior door in the PREMISES, or make any change in any existing door or window lock or the mechanism thereof, unless a key therefore is maintained on the PREMISES, nor refuse, upon the expiration or sooner termination of the AGREEMENT, to surrender to GENERAL MANAGER any and all keys to the interior or exterior doors on the PREMISES, whether said keys were furnished to or otherwise procured by CONCESSIONAIRE, and in the event of the loss of any keys furnished by GENERAL MANAGER, CONCESSIONAIRE shall pay CITY, on demand, the cost for replacement thereof;
6. Do or permit to be done any act or thing upon the PREMISES which will invalidate, suspend or increase the rate of any insurance policy required under the AGREEMENT, or carried by CITY, covering the PREMISES, or the buildings in which the same are located or which, in the opinion of GENERAL MANAGER, may constitute a hazardous condition that will increase the risks normally attendant upon the operations contemplated under the AGREEMENT, provided, however, that nothing contained herein shall preclude CONCESSIONAIRE from bringing, keeping or using on or about the PREMISES such materials, supplies, equipment and machinery as are appropriate or customary in carrying on its business, or from carrying on said business in all respects as is customary;
7. Use, create, store or allow any hazardous materials as defined in Title 26, Division 19.1, Section 19-2510 of the California Code of Regulations, or those which meet the criteria of the above Code, as well as any other substance which poses a hazard to health and environment, provided, however, that nothing contained herein shall preclude CONCESSIONAIRE from bringing, keeping or using on or about the PREMISES such materials, supplies, equipment and machinery as are appropriate or customary in carrying on its business, or from carrying on said business in all respects as is customary except that all hazardous materials must be stored and used in compliance with all City, State and Federal rules, regulations, ordinances and laws;

8. Allow any sale by auction upon the PREMISES;
9. Permit undue loitering on or about the PREMISES;
10. Use the PREMISES in any manner that will constitute waste;
11. Use or allow the PREMISES to be used for any improper, immoral, or unlawful purposes.

## **SECTION 13. LIABILITY**

### **A. Indemnification:**

Except for the active negligence or willful misconduct of City, CONCESSIONAIRE undertakes and agrees to defend, indemnify and hold harmless City and any and all of City's Officers, Agents, and Employees from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees and cost of litigation, damage or liability of any nature whatsoever, for death or injury to any person, including CONCESSIONAIRE'S employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of, or incident to, the performance of this agreement on the part of CONCESSIONAIRE, its officers, agents, employees, or sub-contractor of any tier.

### **B. Insurance:**

#### **1. General Conditions**

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

- a. **Additional Insured**  
CITY, its Officers, Agents and Employees shall be included as additional insureds in all liability insurance policies except: Workers' Compensation/ Employer's Liability, Professional Errors and Omissions and second-party Legal Liability coverages (such as Fire Legal). CITY shall be named Loss Payee As Its Interest May Appear in all required property, fidelity or surety coverages.
- b. **Insurance Requirements**  
All insurance required hereunder shall conform to CITY requirements established by Charter, ordinance or policy and shall be filed with the Office of the City Attorney for its review in accordance with Los Angeles City Administrative Code Sections 11.47 through 11.56.
- c. **Primary Insurance**  
Such insurance shall be primary with respect to any insurance maintained by CITY and shall not call on CITY's insurance program for contributions.
- d. **Admitted Carrier/Licensed California Broker**  
Such insurance shall be obtained from brokers or carriers authorized to transact insurance business in California.
- e. **30-Day Notice**  
With respect to the interest of CITY, such insurance shall not be canceled, materially reduced in coverage or limits or non-renewed except after thirty (30) days written notice by receipted delivery (e.g. certified mail-return receipt, courier) has been given to City Attorney Insurance and Bonds.
- f. **Prior Approval**

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

g. Severability of Interest

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

h. Acceptable Evidence

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

i. Renewal

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

j. Aggregate Limits/Blanket Coverage

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

**2. Self-Insurance and Self-Insured Retentions**

Self-insurance programs and self-insured retentions in insurance policies are subject to separate approval by CITY upon review of evidence of CONCESSIONAIRE'S financial capacity to respond. Additionally, such programs or retentions must provide CITY with at least the same protections from liability and defense of suits as would be afforded by first-dollar insurance.

**3. Modification of Coverage**

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

#### **4. Availability/Failure to Procure Insurance**

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

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

#### **5. Underlying Insurance**

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

#### **C. Workers' Compensation**

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

### **SECTION 14. FAITHFUL PERFORMANCE BOND**

CONCESSIONAIRE shall provide a Faithful Performance Bond ("Bond") prior to execution of the AGREEMENT by CITY. CITY shall not execute the AGREEMENT and CONCESSIONAIRE may not begin operations on the PREMISES until Bond has been received and approved. The Bond must meet all the following requirements:

#### **A. Amount of Bond**

The amount of the Bond shall be specified in the AGREEMENT.

#### **B. Form of Bond**

CONCESSIONAIRE'S Bond shall be in any one of the following forms but may not be a combination of two or more types:

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

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

**C. Agreement of Deposit and Indemnity**

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

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

**D. Maintenance of Deposit**

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

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

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

The surety on said Bond shall, by appropriate notation thereon, stipulate and agree that no change, extension of time, alteration or addition to the terms of the AGREEMENT or to the work to be performed hereunder, shall in any way affect its obligation under said Bond, and shall consent to waive notice of any such matters.

**E. Return of Bond to CONCESSIONAIRE**

Said Bond shall be returned to CONCESSIONAIRE and any rights assigned to Bond shall be surrendered by CITY in writing, after the expiration or earlier termination of the AGREEMENT and any exit audits performed in conjunction with the AGREEMENT. The CITY reserves the right to deduct from the Bond, any amounts up to and including the full amount of the Bond as stated herein, owed to the CITY by CONCESSIONAIRE as shown by any exit audits performed by CITY, or as compensation to CITY for failure to adhere to the terms and conditions of the AGREEMENT.

**SECTION 15. ASSIGNMENT, SUBLEASE, BANKRUPTCY**

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

The CONCESSIONAIRE may not, without prior written permission of the City:

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

**SECTION 16. BUSINESS RECORDS**

CONCESSIONAIRE shall maintain during the term of the AGREEMENT and for three (3) years thereafter, all of its books, ledgers, journals, and accounts wherein are kept all entries reflecting the gross receipts received or billed by it from the business transacted pursuant to the AGREEMENT. Such books, ledgers, journals, accounts, and records shall be available for inspection and examination by GENERAL MANAGER, or a duly authorized representative, during ordinary business hours at any time during the term of this agreement and for at least three (3) years thereafter.



**A. Employee Fidelity Bonds**

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

**B. Cash And Record Handling Requirements**

If requested by GENERAL MANAGER, CONCESSIONAIRE shall prepare a description of its cash handling and sales recording systems and equipment to be used for operation of the CONCESSION which shall be submitted to GENERAL MANAGER for approval.

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

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

**C. Method of Recording Gross Receipts**

Unless otherwise specified in the AGREEMENT, CONCESSIONAIRE shall obtain and install a cash register(s) on which it shall record all gross sales. The cash register shall be non-resettable and sufficient to supply an accurate recording of all sales on tape. CONCESSIONAIRE shall not purchase or install the cash register before obtaining the GENERAL MANAGER'S written approval of the specific register to be purchased. All cash registers shall have a price display which is and shall remain at all times visible to the public.

**D. Annual Statement of Gross Receipts and Expenses**

CONCESSIONAIRE shall transmit a Statement of Gross Receipts and Expenses for the CONCESSION operations as specified in the AGREEMENT, in a form acceptable to the GENERAL MANAGER, on or before sixty (60) days after the close of each calendar year during the term of the AGREEMENT.

**SECTION 17. REGULATIONS, INSPECTION, AND DIRECTIVES**

**A. Subject To**

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



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

**B. Permissions**

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

**C. Right of Inspection**

CITY and the GENERAL MANAGER, their authorized representatives, agents and employees shall have the right to enter upon the PREMISES at any and all reasonable times for the purpose of inspection, evaluation, and observation of CONCESSIONAIRE'S operation. During these inspections, they shall have the right to photograph, film, or otherwise record conditions and events taking place upon the PREMISES. The inspections may be made by persons identified to CONCESSIONAIRE as CITY Employees, or may be made by independent contractors engaged by CITY. Inspections may be made for the purposes set forth below, and for any other lawful purpose for which the CITY or another governmental entity with jurisdiction is authorized to perform inspections of the PREMISES:

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

**D. Control of Premises**

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

**E. Americans with Disabilities Act**

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

**F. Child Support Ordinance**

The AGREEMENT is subject to Section 10.10, Article 1, Chapter 1, Division 10 of the LAAC, Child Support Assignment Orders Ordinance. CONCESSIONAIRE is required to complete a Certification of Compliance with Child Support obligations which is attached to the AGREEMENT and incorporated herein by this reference. Pursuant to this ordinance, CONCESSIONAIRE shall (1) fully comply with all State and Federal employment reporting requirements applicable to Child Support Assignment Orders; (2) certify that the principal owner(s) of CONCESSIONAIRE are in compliance with any Wage and Earnings Assignment Orders and Notices of Assignment applicable to them personally; (3) fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment in accordance with California Family Code section 5230 et seq.; and (4) maintain such compliance throughout the term of this AGREEMENT.

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

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

**H. Living Wage Ordinance/Service Contract Worker Retention Ordinance**

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

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

**I. Contractor Responsibility Ordinance**

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

**J. Equal Benefits Ordinance**

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

**K. Contractor Evaluation Ordinance**

At the end of the AGREEMENT, the CITY will conduct an evaluation of the CONCESSIONAIRE's performance. The CITY may also conduct evaluations of the CONCESSIONAIRE's performance during the term of the AGREEMENT. As required by Section 10.39.2 of the Los Angeles Administrative Code, evaluations will be based on a number of criteria, including the quality of the work product or service performed, the timeliness of performance, financial issues, and the expertise of personnel that the CONCESSIONAIRE assigns to the AGREEMENT. A CONCESSIONAIRE who receives a "Marginal" or "Unsatisfactory" rating will be provided with a copy of the final CITY evaluation and allowed 14 calendar days to respond. The CITY will use the final CITY evaluation, and any response from the CONCESSIONAIRE, to evaluate proposals and to conduct reference checks when awarding other service contracts.

**L. Slavery Disclosure Ordinance**

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

**SECTION 18. TERMINATION**

**A. By CITY**

CITY shall have the right to immediately terminate the AGREEMENT in its entirety and all rights ensuing therefrom as provided by applicable law if any one or more of the following events occur:

1. CONCESSIONAIRE fails to keep, perform and observe any promise, covenant and condition set forth in the AGREEMENT on its part to be kept, performed or observed after receipt of written notice of default from GENERAL MANAGER, except where fulfillment of CONCESSIONAIRE'S obligation requires activity over a period of time and CONCESSIONAIRE has commenced to perform whatever may be required within ten (10) days after receipt of such notice and continues such performance diligently and without interruption except for causes beyond its control;
2. The interest of CONCESSIONAIRE under the AGREEMENT is assigned, transferred, passes to or devolves upon, by operation of law or otherwise, any other person, firm or corporation without the written consent of GENERAL MANAGER;
3. CONCESSIONAIRE becomes, without the prior, written approval of GENERAL MANAGER a successor or merged corporation in a merger, a constituent corporation in a consolidation or a corporation in dissolution;
4. The levy of any attachment or execution, or the appointment of any receiver, or the execution of any other process of any court of competent jurisdiction which is not vacated, dismissed or set aside within a period of ten (10) days and which does, or as a

direct consequence of such process will, interfere with CONCESSIONAIRE'S use of the PREMISES or with its operations under the AGREEMENT;

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

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

#### **B. CITY'S Right of Reentry**

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

**C. Additional Rights of CITY**

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

**D. Survival of CONCESSIONAIRE'S Obligations**

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

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

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

**E. Waiver of Redemption and Damages**

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

**F. By CONCESSIONAIRE**

The AGREEMENT may be terminated by CONCESSIONAIRE upon the happening of one or more of the following events:

1. The permanent abandonment by the DEPARTMENT of the FACILITY or the permanent removal of all DEPARTMENT services from the FACILITY;

2. The lawful assumption by the United States Government, or any authorized agency thereof, of the operation, control or use of the FACILITY or any substantial part thereof, in such manner as to materially restrict CONCESSIONAIRE from operating thereon;
3. The complete destruction of all or a substantial portion of the PREMISES from a cause other than the negligence or omission to act of CONCESSIONAIRE, its agents, officers, or employees, and the failure of CITY to repair or reconstruct said PREMISES;
4. Any exercise of authority under the AGREEMENT which so interferes with CONCESSIONAIRE'S use and enjoyment of the PREMISES as to constitute a termination, in whole or in part, of the AGREEMENT by operation of law in accordance with the laws of the State of California; or
5. The default by CITY in the performance of any covenant or agreement herein required to be performed by CITY and the failure of CITY to remedy such default for a period of thirty (30) days after receipt from CONCESSIONAIRE of written notice to do so.

#### **SECTION 19. SURRENDER OF POSSESSION**

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

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

#### **SECTION 20. WAIVER**

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

#### **SECTION 21. CONDITIONS AND COVENANTS**

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

#### **SECTION 22. FORCE MAJEURE**

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

#### **SECTION 23. REMEDIES ARE NON-EXCLUSIVE**

No right, power, remedy, or privilege of CITY shall be construed as being exhausted or discharged by the exercise thereof in one or more instances. It is agreed that each and all of said

rights, powers, remedies, or privileges shall be deemed cumulative and additional and not in lieu or exclusive of each other or of any other remedy available to CITY at law or in equity.

#### **SECTION 24. AGREEMENT BINDING UPON SUCCESSORS**

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

#### **SECTION 25. LAW OF CALIFORNIA APPLIES**

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

#### **SECTION 26. AGENT FOR SERVICE OF PROCESS**

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

#### **SECTION 27. VENUE**

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

#### **SECTION 28. ATTORNEY'S FEES**

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

#### **SECTION 29. WAIVER OF CLAIMS**

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



## **SECTION 30. NOTICES**

### **A. To CITY**

Unless otherwise stated in the AGREEMENT, written notices to CITY hereunder shall, until CONCESSIONAIRE'S receipt of written notice otherwise from these parties, be addressed to said parties at Department of Recreation and Parks, 3900 West Chevy Chase Drive, Mail Stop 628, Los Angeles, California, 90039, attention: Concessions Unit.

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

### **B. To CONCESSIONAIRE**

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

All such notices may either be delivered personally to the CONCESSIONAIRE or to any officer or responsible employee of CONCESSIONAIRE or may be deposited in the United States mail, properly addressed as aforesaid with postage fully prepaid for delivery by registered or certified mail. Service in such manner by registered or certified mail shall be effective upon receipt.

## **SECTION 31. INTERPRETATION**

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

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

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

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

## **SECTION 32. AGREEMENT CONTAINS ENTIRE AGREEMENT**

The provisions of the AGREEMENT contain the entire Agreement between the parties hereto and said AGREEMENT may not be changed or modified in any manner except by formal, written amendment fully executed by both CITY and CONCESSIONAIRE. In the event of a conflict between provisions of the AGREEMENT and these Standard Conditions, the language of the AGREEMENT is controlling.



### **SECTION 33. TIME OF THE ESSENCE**

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

**EXHIBIT C**  
**INSURANCE REQUIREMENTS**

Name: A.J. Family Entertainment, LLC Date:       , 200    
Agreement/Reference: Sherman Oaks Castle Park Batting Cage

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

Limits

<u>  X  </u>	Workers' Compensation (Statutory Limit)/Employer's Liability	\$ <u>1,000,000</u>
	<input checked="" type="checkbox"/> Waiver of Subrogation in favor of City	

<u>  X  </u>	General Liability	\$ <u>1,000,000</u>
	<input checked="" type="checkbox"/> Premises and Operations	<input type="checkbox"/> Collapse & Underground
	<input checked="" type="checkbox"/> Contractual Liability	<input checked="" type="checkbox"/> Products/Completed Operations
	<input checked="" type="checkbox"/> Independent Contractors	<input type="checkbox"/> Fire Legal Liability
	<input type="checkbox"/> _____	

_____	Automobile Liability (if vehicle is used for this contract, other than commuting to/from work)	\$ _____
	<input type="checkbox"/> Hired Automobiles	<input type="checkbox"/> Owned Automobiles
	<input type="checkbox"/> Non-owned Automobiles	<input type="checkbox"/> _____

_____	Professional Liability (Errors and Omissions)	\$ _____
-------	---	----------

Discovery Period 12 MONTHS AFTER COMPLETION OF WORK OR FROM DATE OF TERMINATION OF THE AGREEMENT/ CONTRACT.

_____	Property Insurance to cover value of bldg (as determined by city or insurance company)		
	<input type="checkbox"/> All Risk Coverage	<input type="checkbox"/> Boiler and Machinery	\$ _____
	<input type="checkbox"/> Extended Coverage	<input type="checkbox"/> Debris Removal	
	<input type="checkbox"/> Flood	<input type="checkbox"/> _____	\$ _____
	<input type="checkbox"/> Earthquake	<input type="checkbox"/> _____	\$ _____

_____	Pollution Liability	\$ _____
	<input type="checkbox"/> _____	

Fidelity Bond	Surety Bond	\$ _____
---------------	-------------	----------

_____		\$ _____
	<input type="checkbox"/> _____	\$ _____

Notes: \_\_\_\_\_

# CITY OF LOS ANGELES INSURANCE SUBMITTAL GUIDELINES

(Share this information with your insurance agent or broker)

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## **CONTACT**

For CITY Insurance forms and additional information about their completion 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).

## **GENERAL INFORMATION**

1. **Project ID** All submissions must 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 dollar amounts** specified on the Insurance Requirements Sheet (Form Gen. 146) included in your CITY documents.
2. **When to submit** Normally, no work or occupancy may begin until an Office of the City Administrative Officer, Risk Management insurance approval number has been obtained, so 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. **Availability of Insurance** Coverages and limits are subject to availability on the open market at reasonable cost as determined by the CITY. For requirements to be relaxed or waived, your broker or agent must document non-availability or non-affordability in a letter to the CITY. It must show a good faith effort to place the required insurance, must list the names of the insurance carriers contacted and show the declinations or cost indications received from each. Non-availability or non-affordability cannot be based on contractor/consultant's loss history or loss experience.
4. **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 their financial statements.

## **ADMINISTRATIVE REQUIREMENTS**

5. **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. 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.
6. **Aggregate Limits/Impairment** If any of the required insurance coverages contain annual aggregate limits, you 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 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 CITY'S protection are allowed without CITY'S prior written consent.
7. **Signature** - All submissions must bear the autograph of a person with authority to bind coverage, whether that is the authorized agent/broker or insurance underwriter.

## INSURANCE SUBMITTAL GUIDELINES

### POLICY CONDITIONS

8. **Additional Insured/Loss Payee** The CITY must be included as an additional insured in applicable liability policies to cover the CITY'S vicarious liability for the acts or omissions of the named insured. Such coverage is not expected to respond to the active negligence of the CITY. 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.
9. **Notice of Cancellation** You agree contractually to maintain all required insurance in full force for the duration of your business with the CITY. By ordinance, all required insurance must provide at least thirty (30) days' prior written notice directly to the CITY if your *insurance company* elects to cancel or reduce coverage prior to the policy expiration date (ten (10) days for non-payment of premium). This also applies when the **scope of coverage** which affects the CITY'S interest is to be reduced or when the **dollar limits** of coverage are to be reduced for any reason except impairment of an aggregate limit due to prior claims. Submissions not meeting this requirement will be rejected.
10. **Primary Coverage** The coverage must be 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.
11. **Separation of Insureds (Severability of Interest)** In **construction contracts**, the CITY must be able to retain its rights as a potential claimant as well as to be protected as an additional insured for vicarious liability to third party claimants except with respect to the insurance company's limits of liability.

### PROCEDURES

12. **Acceptable Evidence and Approval** CITY Insurance forms (available online at [www.lacity.org/cao/risk](http://www.lacity.org/cao/risk)) completed by your insurance company or its designee and signed by its authorized representative are the preferred form of evidence of insurance. (Note: The CITY forms are acceptable to the California Department of Insurance from any insurance carrier. They need not be re-filed by individual insurance companies.) Altered forms may not be accepted but the "Other Provisions" box on the CITY forms, may be used, as necessary, to provide pertinent information such as important exclusions, specific provisions or scheduled locations/equipment. Additional pages may be attached for this purpose, as well. If they are, make note of it in this box. Completed CITY Insurance forms can be sent electronically as an email attachment ([insurance.bonds@cao.lacity.org](mailto:insurance.bonds@cao.lacity.org)) or faxed to the Office of the City Administrative Officer, Risk Management ((213) 978-7615 or (213) 978-7616). An acceptable alternative to the CITY Insurance form is a **copy of the full insurance policy** which contains a thirty (30) day cancellation notice provision (ten (10) days for non-payment of premium) and additional insured and/or loss-payee status, when appropriate, for the CITY. **Binders and Cover Notes** are also acceptable as interim evidence for up to 90 days. Certificates of Insurance are acceptable for the following purposes: 1) supplemental information to accompany endorsements; renewals or extensions of coverage already on file with the CITY; 2) for the naming of third-party, additional insureds; 3) as an indication of compliance with statute, such as Workers' Compensation Law or the California Financial Responsibility Law for Automobile Liability, 4) as proof of coverage beyond CITY requirements or which does not directly relate to the CITY'S interests.
13. **Renewal** When an existing policy is timely renewed, submit a renewal endorsement or a Certificate of Insurance. However, if your policy number changes or you use a different underwriting company (insurer) you must submit new evidence which meets the policy conditions listed in Sections 8 through 11 of this information sheet.

### COVERAGE INFORMATION

14. **Dollar Limits** of required insurance are sometimes set by statute or ordinance. When there is no specific amount required by law, limits are based on the amount of risk to the CITY from the contractor, vendor or permittee's activities.

## INSURANCE SUBMITTAL GUIDELINES

15. **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 on CITY premises. **Contractual liability** coverage is a required inclusion in this insurance. (The CITY'S SPARTA program ([www.2sparta.com](http://www.2sparta.com), (800) 420-0555), is an optional source of low-cost insurance which meets most minimum requirements).
16. **Automobile Liability** insurance is required only where vehicles are used in performing the work of your Contract or where 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.
17. **Errors and Omissions** coverage will be specified on a project-by-project basis if you are working as a licensed professional. The length of the claims discovery period required will vary with the circumstances of the individual job.
18. **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. **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.
19. **Property Insurance** is required for persons having exclusive use of premises or equipment owned or controlled by the CITY. **Fire Legal Liability** is required for persons occupying a portion of CITY premises.
20. **Surety** coverage may be required to guarantee performance of work. A **Fidelity bond** may be required to handle CITY funds, high value property and under certain other conditions. **Specialty Coverages** may be needed for certain operations. For assistance in obtaining the City required bid, payment or performance surety bonds please see the City of Los Angeles Bond Assistance Program at <http://www.lacity.org/cao/risk/BondAssistanceProgram.pdf> or call (213) 327-0298 for more information.

**WORKERS' COMPENSATION SPECIAL ENDORSEMENT**

FOR THE CITY OF LOS ANGELES

Form GCL 137/AM (Rev. 12/2003)

SUBMIT IN DUPLICATE

1. Endorsement No.

2. Issue Date (mm/dd/yy)

**3. Producer**

Telephone

**5. Policy Information**

Carrier:

Policy No.:

Policy Period:

**4. Named Insured**

**6. Applicability** This insurance pertains to the operations and/or tenancy of the named insured under all written agreements and permits in force with the City of Los Angeles unless checked here ☐ in which case only the following specific agreements and permits with the City of Los Angeles are covered:

City Agreement/Permit No.:

**7. Type of Insurance****Workers' Compensation****8. Coverages****Liability Limits in Thousands \$**

Workers' Compensation  
and  
Employer's Liability

\$  
Statutory  
(Each Accident)  
(Disease-Policy Limit)  
(Disease-Each Employee)

**9. Includes (check as applicable):**☐ Waiver of Subrogation against the City.☐ Broad Form All States Endorsement.☐**10. Other Provisions** (Description of operations, premises, vehicles, pertinent exclusions, names of other insureds, etc)

**Property has been sub-leased by this Department from the following agency which must be additionally insured:**  
**U.S. Army Corps of Engineers**

**11. Claims:** Underwriter's representative for claims pursuant to this insurance.

In consideration of the premium charged and notwithstanding any inconsistent statement in the policy to which this endorsement is attached or any endorsement now or hereafter attached thereto, it is agreed as follows:

**12. Cancellation Notice.** If the Company elects to cancel this insurance before the stated expiration date, or declines to renew in case of a continuous policy, or reduces the stated limits other than by impairment of an aggregate limit, the Company will, with respect to the City's interests, provide the City at least thirty (30) days prior written notice of such election. Notice will be made by receipted delivery addressed as follows: **City Administrative Officer, Risk Management, 200 North Main Street, Room 1240, City Hall East, Los Angeles, CA 90012.** It is understood, however, that this notice to the City shall not affect the Company's right to give a lesser notice to the Named Insureds in the event of nonpayment of premium.

Except as stated above nothing herein shall be held to waive, alter or extend any of the limits, conditions, agreements or exclusions of the policy to which this endorsement is attached.

**Endorsement Holder****13. City Department/Bureau**

**Department of Recreation and Parks  
Administrative Resources Division  
3900 W. Chevy Chase Drive, Stop 656-3  
Los Angeles, Ca 90039-1221**

**14. Authorized****Representative** ☐ Broker/Agent ☐ Underwriter ☐

I \_\_\_\_\_ (print/type name), warrant that I have authority to bind the above-mentioned insurance company and by my signature hereon do so bind this company to this endorsement.

Signature \_\_\_\_\_

(original signature required on copy furnished to Risk Management)

Telephone: \_\_\_\_\_

Date Signed \_\_\_\_\_

# GENERAL LIABILITY SPECIAL ENDORSEMENT

FOR THE CITY OF LOS ANGELES

Form GL-13-GL (Rev. 12/2003)

SUBMIT IN DUPLICATE

1. Endorsement No.

2. Issue Date (mm/dd/yy)

## 3. Producer

Telephone

## 4. Named Insured

## 5. Policy Information

Carrier:

Policy No.:

Policy Period:

Coverage Trigger (Check one): ☐ Occurrence ☐ Claims Made

Check ☐ if Loss Adjustment Expense is included in Limits

6. ☐ Deductible ☐ Self-Insured Retention (check which) of \$

with a stop loss cap of \$ applies to

coverage. ☐ Per occurrence ☐ Per Claim

7. **Applicability** This insurance pertains to the operations and/or tenancy of the Named Insured under all written agreements and permits in force with the City of Los Angeles unless checked here ☐ in which case only the following specific agreements and permits with the City of Los Angeles are covered:

City Agreement/Permit No.:

## 8. Type of Insurance

### General Liability (Check one)

☐ Commercial General Liability

☐ Comprehensive Form (1973 Occurrence)

(Retroactive Date)

## 9. Coverages

### Liability Limits in Thousands \$

	Each Occurrence	Aggregate
<input type="checkbox"/> Premises/Operations		
<input type="checkbox"/> Underground & Collapse Hazard		
<input type="checkbox"/> Products/Completed Operations		
<input type="checkbox"/> Contractual		
<input type="checkbox"/> Independent		

10. **Other Provisions:** (Description of operations, premises, vehicles, pertinent exclusions, names of other insureds, etc)

**Property has been sub-leased by this Department from the following agency which must be additionally insured:**  
**U.S. Army Corps of Engineers**

11. **Claims:** Underwriter's representative for claims pursuant to this insurance.

In consideration of the premium charged and notwithstanding any inconsistent statement in the policy to which this endorsement is attached or any endorsement now or hereafter attached thereto, it is agreed as follows:

12. **Additional Insured.** The City of Los Angeles and its officers and employees are included as additional insureds with regard to liability and defense of suits arising from the operations and uses performed by or on behalf of the Named Insured.

13. **Contribution Not Required.** The insurance program of the City of Los Angeles shall be excess of this insurance and shall not contribute with it.

14. **Separation of Insureds.** This insurance applies separately to each insured against whom claim is made or suit is brought except with respect to the Company's limits of liability. The inclusion of any person or organization as an insured shall not affect any right which such person or organization would have as a claimant if not so included.

15. **Cancellation Notice.** If the Company elects to cancel this insurance before the stated expiration date, or declines to renew in case of a continuous policy, or reduces the stated limits other than by impairment of an aggregate limit, the Company will, with respect to the City's interests, provide the City at least thirty (30) days prior written notice of such election. Notice will be made by receipted delivery addressed as follows: **City Administrative Officer, Risk Management, 200 North Main Street, Room 1240, City Hall East, Los Angeles, CA 90012.** It is understood, however, that this notice to the City shall not affect the Company's right to give a lesser notice to the Named Insureds in the event of nonpayment of premium.

Except as stated above nothing herein shall be held to waive, alter or extend any of the limits, conditions, agreements or exclusions of the policy to which this endorsement is attached.

## Endorsement Holder

### 16. City Department/Bureau

**Department of Recreation and Parks**

**Administrative Resources Division**

**3900 W. Chevy Chase Drive, Stop 656-3**

**Los Angeles, Ca 90039-1221**

### 17. Authorized

Representative ☐ Broker/Agent ☐ Underwriter ☐

I (print/type name), warrant that I have authority to bind the above-mentioned insurance company and by my signature hereon do so bind this company to this endorsement.

Signature

(original signature required on copy furnished to Risk Management)

Telephone:

Date Signed

## EXHIBIT D

### Capital Improvements

After hiring Architect Catherine McKenna, and consulting with her, we are extremely excited about our proposed capital improvements. We feel they will greatly enhance the appearance of Sherman Oaks Castle Park.

Capital improvements will include:

#### **Renovate Operation Booth**

- Install a standing seam metal roof with vertical roof panels.
- Add stone panels around the exterior of the operations booth.

#### **Provide Shading for the Spectator Area**

- Add a shade structure to the east end of the spectator area.
- Plant 3 trees for aesthetic appeal and shading.

#### **Enhance Aesthetics around the Perimeter of the Batting Cage**

- Adding decorative fencing to the perimeter of the spectator area.
- Add a decorative wind screen to the back side of the batting cage.
- Adding vertical banners to the light poles.

### Cost

Improvement	Cost
<b>Shade Structure</b>	<b>\$5,000</b>
<b>Stone Panels for Concession Booth</b>	<b>\$4,000</b>
<b>Roof Panels for Concession Booth</b>	<b>\$3,000</b>
<b>Banners</b>	<b>\$500</b>
<b>Fencing</b>	<b>\$5,000</b>
<b>Trees</b>	<b>\$3,000</b>
<b>Decorative Wind Screen</b>	<b>\$2,000</b>

All costs include installation. Costs are per Catherine McKenna but are approximate.



## **Capital Improvements**

### **Timeline**

The shade structure, stone panels and roof for the operations booth, and banners will be installed within the first 5 years of the contract.

If awarded the contract, the design phase will commence immediately upon the execution of the agreement. Construction will begin during the first off season after all necessary planning, and approvals are received. Due to our 21 years of experience at Sherman Oaks Castle Park Batting Cages, we know the best time to accomplish the capital improvements would be in the three months of November, December and January.

We plan to do the fencing, trees and wind screens in the beginning of the second 5 year period of the contract.

We will spend at least the minimum \$10,000 amount in the optional third 5 year period. But, it is very difficult at this time to predict what capital improvements we will need 10 or more years in the future. Wear and tear might dictate what we need to do. Also, technology changes rapidly and it gives new opportunities every year. We would like the ability to adjust the ideas we have now for something else in the future which might be more beneficial to the facility and customers.

### **Estimated Down Time**

We plan to be fully operational during most installation periods. As stated, it is preferable that all installations and refurbishments are done in the off season. We do close down in December or January (depending on weather) for 3-5 days to do our annual maintenance and painting projects. We would plan to do the renovations of the operations booth during this time period. If it cannot be completed in this time period, a mobile kiosk or office would be rented until completion of the project.

DEPARTMENT OF RECREATION  
AND PARKS

BOARD OF COMMISSIONERS

SYLVIA PATSAOURAS  
PRESIDENT

LYNN ALVAREZ  
VICE PRESIDENT

MELBA CULPEPPER  
PILAR DIAZ  
JOSEPH HALPER

IRIS L. DAVIS  
BOARD SECRETARY (213) 202-2640

CITY OF LOS ANGELES  
CALIFORNIA



ERIC GARCETTI  
MAYOR

MICHAEL A. SHULL  
GENERAL MANAGER

ANTHONY-PAUL (AP) DIAZ, ESQ.  
EXECUTIVE OFFICER &  
CHIEF OF STAFF

RAMON BARAJAS  
ASSISTANT GENERAL MANAGER

VICKI ISRAEL  
ASSISTANT GENERAL MANAGER

SOPHIA PIÑA-CORTEZ  
ASSISTANT GENERAL MANAGER  
(213) 202-2633 FAX (213) 202-2614

October 15, 2018

A.J. Family Entertainment, LLC  
18871 Braemore Rd  
Granada Hills, CA 91326

Attention: John. Wawee, Andy Slater

Gentlepersons:

Enclosed is Supplemental Agreement to Agreement No. 254, executed on October 11, 2018, between the City of Los Angeles, by and through its Board of Recreation and Park Commissioners, and your organization, for operation of the batting cages concession at Sherman Oaks Castle Park for five (5) years and shall end upon the expiration of the Term on May 16, 2022.

If you have any questions with regard to the Contract at this time, please contact Mr. Mark Stipanovich, Management Analyst II, Concessions Unit, at (213) 202-5680.

Very truly yours,

BOARD OF RECREATION AND  
PARK COMMISSIONERS

IRIS L. DAVIS  
Commission Executive Assistant II

Enclosures

cc: City Controller (w/ enclosure)  
City Attorney (w/ enclosure)  
Departmental Chief Accountant (w/ enclosure)  
Mark Stipanovich, Management Analyst II, Concessions Unit, Finance Division, (w/out enclosure)



SUPPLEMENTAL AGREEMENT TO AGREEMENT NO. 254

BETWEEN

THE LOS ANGELES DEPARTMENT OF RECREATION AND PARKS  
(RAP)

AND

A.J. FAMILY ENTERTAINMENT, LLC

FOR

THE OPERATION OF THE BATTING CAGE CONCESSION AT  
SHERMAN OAKS CASTLE PARK  
FOR FIVE (5) YEARS AND SHALL END UPON THE EXPIRATION OF  
THE TERM ON MAY 16, 2022

**SUPPLEMENTAL AGREEMENT TO AGREEMENT NO. 254  
BETWEEN THE CITY OF LOS ANGELES  
AND  
A.J. FAMILY ENTERTAINMENT, LLC  
FOR THE OPERATION OF THE BATTING CAGES CONCESSION AT THE  
SHERMAN OAKS CASTLE PARK**

This **SUPPLEMENTAL AGREEMENT** to Agreement No. 254 ("SUPPLEMENTAL AGREEMENT") is made this 11<sup>th</sup> of October, 2018, by and between the City of Los Angeles, a municipal corporation, acting by and through its Board of Recreation and Park Commissioners (collectively, "City") and A.J. Family Entertainment, LLC ("Contractor" or "Concessionaire"). CITY and Contractor may be referred to herein individually as "PARTY", or collectively as "PARTIES".

WITNESSETH

**WHEREAS**, on or about May 17, 2007, the City and the Contractor entered into that certain Agreement No. 254 for Concession Operation of the Batting Cages Concession at the Sherman Oaks Castle Park ("Agreement"); and,

**WHEREAS**, the Agreement was executed on or about May 17, 2007 with a ten (10) year term that expired on May 16, 2017 and included an option to extend the term for an additional five (5) years exercisable at the City's sole discretion ("Option"); and,

**WHEREAS**, the City desires to exercise such Option to extend the term of the Agreement to May 16, 2022 and to make other amendments to the Agreement as set forth in this Supplemental Agreement, and the Contractor desires to accept such extension and amendments; and,

**WHEREAS**, the Board of Recreation and Park Commissioners ("Board") approved this Supplemental Agreement at the meeting of the Board of Recreation and Park Commissioners on February 21, 2018 (Report No. 18-031)].

**NOW THEREFORE**, in consideration of the foregoing, and the terms and conditions contained herein, and the performance thereof, the Parties agree to enter into this Supplemental Agreement as follows:

The Agreement (Agreement No. 254) for the Concession Operation of the Batting Cages Concession at the Sherman Oaks Castle Park is hereby incorporated by reference into this Supplemental Agreement as if fully set forth herein, except as specifically modified below. The term "AGREEMENT" as used in the Agreement, and all references thereto, shall also mean this Supplemental Agreement. The term "CONCESSIONAIRE" as used in the Agreement, and all references thereto, shall also mean the Contractor.

**SECTION 5 – TERM**

Section 5 of the Agreement is hereby amended to include the following in quotation marks:

“The term of the Supplemental Agreement of which this Agreement is made a part (“Term”) shall be for five (5) years. The Supplemental Agreement shall be effective as of May 17, 2017 and shall end upon the expiration of the Term on May 16, 2022. The City shall have the right to terminate this Supplemental Agreement in accordance with the termination provisions of the Standard Provisions for City Contracts (Rev. 10/17) [v.2] as attached to the Supplemental Agreement as Appendix A. Neither City, its Department of Recreation and Parks, the Board, nor any officer, employee, or Board member thereof shall be liable in any manner to Contractor because of such termination.”

### **SECTION 7.I.**

The following Sub-Section 7.I. Constitutional and Other Limits on Concessionaire’s Rights to Exclusivity is added to the Agreement as part of this Supplemental Agreement:

“Notwithstanding exclusivity granted to Concessionaire by the terms of this Agreement, the City in its discretion may require Concessionaire, without any reduction in rent or other valuable consideration to Concessionaire, to accommodate the rights of persons to access and engage in expressive activities, as guaranteed by the first amendment to the United States constitution, the California constitution, and other laws, as these laws are interpreted by the City. Expressive activities include, but are not limited to, protesting, picketing, proselytizing, soliciting, begging, and vending of certain expressive, message-bearing items.”

### **SECTION 8 – INSURANCE REQUIREMENTS**

Section 8 of the Agreement is amended to add the following in quotation marks:

“Contractor (Concessionaire) shall procure at its expense, and keep in effect at all times during the Term of the Supplemental Agreement, the types and amounts of insurance specified in Appendix B of the Supplemental Agreement.”

### **INCORPORATION OF DOCUMENTS**

The following documents, and all exhibits thereto, are hereby incorporated into and made a part of this Supplemental Agreement:

1. The Agreement and all exhibits thereto, as may be explicitly amended by this Supplemental Agreement.
2. Appendix A of this Supplemental Agreement, which Contractor agrees and acknowledges is the Standard Provisions for City Contracts (Rev. 10/17)[v.2] which shall be a part of the terms and conditions of this Supplemental Agreement.
3. Appendix B of this Supplemental Agreement, which are the Insurance Requirements for this Supplemental Agreement.

In the event of any conflict or inconsistency between the provisions of this Supplemental Agreement and any of the documents incorporated herein, the order of precedence of these documents shall be: (1) this Supplemental Agreement, (2) Appendix A Standard Provisions for

City Contracts (Rev. 10/17)[v.2], (3) the Agreement; and (3) the other exhibits incorporated into this Agreement.

With the exception of terms and provisions of the Agreement explicitly amended by this Supplemental Agreement, the remainder of the terms and conditions of the Agreement (Agreement No. 254) as incorporated into this Supplemental Agreement as if fully set forth herein shall remain unchanged and in full force and effect by way of this Supplemental Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Agreement to Agreement No. 254, to be executed by their duly authorized representatives.

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

BY:   
President

DATE: 10/03/18

BY:   
Secretary

DATE: 10/03/18

A.J. Family Entertainment, LLC

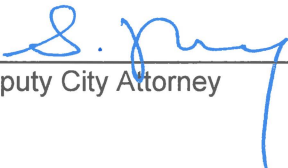
BY:   
~~President~~ Managing Member

DATE: 9-25-18

BY:   
~~Secretary~~ Managing Member

DATE: 9-25-18

APPROVED AS TO FORM:  
MICHAEL N. FEUER, City Attorney

BY:   
Deputy City Attorney

DATE: 10/11/18

## Appendix A



## STANDARD PROVISIONS FOR CITY CONTRACTS

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## STANDARD PROVISIONS FOR CITY CONTRACTS

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

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

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

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

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

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

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

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

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

**PSC-4. Integrated Contract**

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

**PSC-5. Amendment**

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

**PSC-6. Excusable Delays**

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

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

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

**PSC-7. Waiver**

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

#### **PSC-8.    Suspension**

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

#### **PSC-9.    Termination**

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

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

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

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

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

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

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

**PSC-10. Independent Contractor**

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

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

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

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

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

**PSC-12. Assignment and Delegation**

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

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

**PSC-13. Permits**

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

**PSC-20. Intellectual Property Warranty**

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

**PSC-21. Ownership and License**

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

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

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

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

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

**PSC-22. Data Protection**

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

**PSC-23. Insurance**

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

**PSC-24. Best Terms**

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

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

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

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

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

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

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

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

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

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

**PSC-28. Living Wage Ordinance**

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

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

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

**PSC-30. Access and Accommodations**

**CONTRACTOR** represents and certifies that:

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

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

**PSC-31. Contractor Responsibility Ordinance**

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

**PSC-32. Business Inclusion Program**

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

**PSC-33. Slavery Disclosure Ordinance**

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

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

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

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

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

**PSC-36. Iran Contracting Act**

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

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

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

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

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

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

## **EXHIBIT 1**

### **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) as determined in writing by the CAO-RM.

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.

Submitting your documents. **Track4LA®** 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. Track4LA® 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 **Track4LA®** at <http://track4la.lacity.org> and follow the instructions to register and submit the appropriate proof of insurance on your behalf.

Insurance industry certificates other than the ACORD 25 may be accepted, however ***submissions other than through Track4LA® will significantly delay the insurance approval process as documents will have to be manually processed.*** **CONTRACTOR must provide CITY** a thirty day notice of cancellation (ten 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. Completed **Insurance Industry Certificates other than ACORD 25 Certificates** are sent electronically to [CAO.insurance.bonds@lacity.org](mailto:CAO.insurance.bonds@lacity.org).

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 **Track4LA®**, the **CITY'S** online insurance compliance system, at <http://track4la.lacity.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 **Track4LA®** at <http://track4la.lacity.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 CAO-RM 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 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.

## 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

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

WC

Statutory

EL

\_\_\_\_\_

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

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

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

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**Professional Liability** (Errors and Omissions)

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

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**Property Insurance** (to cover replacement cost of building - as determined by insurance company)
☐ All Risk Coverage☐ Boiler and Machinery☐ Flood \_\_\_\_\_☐ Builder's Risk☐ Earthquake \_\_\_\_\_☐ \_\_\_\_\_

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**Pollution Liability**
☐ \_\_\_\_\_

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

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**Crime Insurance**

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

\_\_\_\_\_

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## Appendix B

**Required Insurance and Minimum Limits**Name: A.J. Family Entertainment, LLCDate: 02/13/2018Agreement/Reference: for the operation of the Batting Cage Concession at the Sherman Oaks Castle Park

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 StatutoryEL 1,000,000☒ Waiver of Subrogation in favor of City☐ Longshore & Harbor Workers☐ Jones Act☒ **General Liability** City of Los Angeles must be named as an Additional Insured1,000,000☒ 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)1,000,000☐ **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☐ **Surety Bonds - Performance and Payment (Labor and Materials) Bonds**☐ **Crime Insurance**Other: Provided to: Mark Stipanovich @ RAP

If a contractor has no employees and decides to not cover herself/himself for workers' compensation, please complete the form entitled "Request for Waiver of Workers' Compensation Insurance Requirement" located at: <http://cao.lacity.org/risk/InsuranceForms.htm>

In the absence of imposed auto liability requirements, all contractors using vehicles during the course of their contract must adhere to the financial responsibility laws of the State of California.