

BOARD REPORT

NO. 16-258

DATE: December 14, 2016

C.D. Various

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: AGREEMENT WITH AMERICAN PARK NETWORK MEDIA, LLC FOR THE INSTALLATION, OPERATION AND ONGOING SERVICE OF PUBLIC WI-FI AND OTHER COMMUNICATION SERVICE PROVIDER SERVICES AT VARIOUS PARKS; EXEMPTION FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) PURSUANT TO ARTICLE III, SECTION 1, CLASS 3(4) OF THE CITY CEQA GUIDELINES

AP Diaz		*V. Israel	_____
R. Barajas	_____	K. Regan	_____
H. Fujita	_____	N. Williams	_____



 General Manager

Approved _____ Disapproved _____ Withdrawn _____
 As Amended _____

RECOMMENDATIONS

- 1) Accept a donation from American Park Network (APN) Media, LLC, a Delaware limited liability company (APN Media), consisting of the provision of Wi-Fi and other communication service provider services in select, high-traffic parks, recreation areas and other sites, as more fully described in the Summary of this Report;
- 2) Approve a proposed Agreement between City and APN Media (Agreement) with an initial term of one year, with two automatic one-year extensions, herein included as Attachment 1, establishing their respective roles, responsibilities, and relationship with respect to the furnishing, installing, maintaining, and ongoing service of public Wi-Fi at various park sites; subject to review and approval of the Mayor, and of City Attorney as to form;
- 3) Find that the project is exempt from the California Environmental Quality Act pursuant to Article III, Section 1, Class 3(4) of the City CEQA Guidelines.

SUMMARY

APN Media desires to provide and be responsible for the costs of installation, provision, and on-going service of Wi-Fi services as a donation to the City of Los Angeles (City) for the benefit and enjoyment of patrons at various high traffic park sites. APN Media is located at 41 East 11th Street, 11th Floor, New York, New York 10003. APN Media hopes to benefit patrons of various facilities by providing enhanced internet connectivity through Wi-Fi, as a means to provide an accessible digital information portal while communicating Department of Recreation and Parks (RAP) messaging to the public.

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The initial list of sites to be provided Wi-Fi services include Echo Park Lake, Griffith Park Observatory, Pershing Square, Venice Beach, Reseda Park, Cabrillo Beach, and EXPO Center. Other sites may be added at any time by mutual agreement between RAP and APN Media.

Donor's contribution in connection with the project is the provision, installation and ongoing maintenance of the computer hardware and networks required to provide the Wi-Fi services, ~~at no cost to RAP~~. RAP's role will be to provide input on content presented through the Wi-Fi services based on the priorities of RAP. RAP may incur telecommunication service costs to maintain internet service accounts for any new sites.

The proposed Agreement between the City and APN Media outlines each party's respective roles, responsibilities, and relationship with respect to the furnishing, installing, maintenance and operation of Wi-Fi services. The term of the proposed Agreement is for one year commencing upon its execution, and shall automatically be extended for two successive one-year renewal periods.

RAP has had a previous agreement with APN Media, a Memorandum of Understanding (MOU) for a Wi-Fi Pilot Program at Designated Park Locations. (Report No. 14-291) It was for the same sites as the agreement being proposed, except that EXPO Center was not included. APN Media's performance under that MOU was good and well within our expectations.

ENVIRONMENTAL IMPACT STATEMENT

RAP Staff has determined that the Project consists of installation of computer equipment and provision of Wi-Fi services for public use involving negligible or no expansion of facility use. Therefore, the Project is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Article III, Section 1, Class 3(4) of the City CEQA Guidelines.

FISCAL IMPACT STATEMENT

Acceptance of this donation results in no fiscal impact to the RAP General Fund as APN Media will be solely responsible for all costs and expenses associated with the provision of W-Fi internet access at various park sites.

This Report was prepared by Alex Yee, Director of Systems, Systems Division.

LIST OF ATTACHMENT(S)

- 1) Proposed Agreement with APN Media, LLC

EXCERPT FROM THE MINUTES OF THE REGULAR MEETING
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16-258

AGREEMENT WITH AMERICAN PARK NETWORK MEDIA, LLC
FOR THE INSTALLATION, OPERATION AND ONGOING
SERVICE OF PUBLIC WI-FI AND OTHER COMMUNICATION
SERVICE PROVIDER SERVICES AT VARIOUS PARKS;
EXEMPTION FROM THE CALIFORNIA ENVIRONMENTAL
QUALITY ACT (CEQA) PURSUANT TO ARTICLE III, SECTION 1,
CLASS 3(4) OF THE CITY CEQA GUIDELINES

Alex Yee, Director of Systems, presented Board Report No. 16-258 for acceptance of a donation from American Park Network Media, LLC (APN Media) consisting of the provision of Wi-Fi and other communication service provider services in select, high-traffic parks, recreation areas and other sites; approval of a proposed Agreement with APN Media for an initial term of one year with two automatic one-year extensions to establish their respective roles, responsibilities, and relationship with respect to the furnishing, installing, maintaining, and ongoing service of public Wi-Fi at various park sites; and approval of the finding that the project is exempt from the California Environmental Quality Act (CEQA) pursuant to Article III, Section 1, Class 3(4) of the City CEQA Guidelines.

Recommendation No. 2 of Board Report No. 16-258 was corrected to specify that the proposed Agreement is subject to review and approval of the Mayor, and of City Attorney as to form:

- 2) Approve a proposed Agreement between City and APN Media (Agreement) with an initial term of one year, with two automatic one-year extensions, herein included as Attachment 1, establishing their respective roles, responsibilities, and relationship with respect to the furnishing, installing, maintaining, and ongoing service of public Wi-Fi at various park sites, subject to review and approval of the Mayor, and of City Attorney as to form;

Page 2 of Board Report No. 16-258 was also corrected to accurately reflect that the Wi-Fi service is not completely cost-free to the Department. The Department may incur telecommunication service costs to maintain internet service accounts for any new sites.

The Board and Department staff discussed the Department's discretion to approve sponsor messaging prior to being posted to avoid any postings on the landing page that may be deemed as objectionable or non-compliant according to City and Department regulations.

Section 2.1 of the proposed Agreement was amended to specify that all SPONSOR messaging shall be pre-approved by RAP before being posted.

Public comments were invited for the Board Reports. Three requests for public comment were submitted, and such comments were made to the Board.

President Patsouras requested a Motion to approve the Board Reports as presented and Board Report Nos. 16-241, 16-248, 16-249, 16-257, and 16-258 as amended; with the exception of Board Report No. 16-240 which did not require any Board action, Board Report No. 16-256 which was previously approved under a separate vote, and Board Report No. 16-250

EXCERPT FROM THE MINUTES OF THE REGULAR MEETING
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which will be acted on under a separate subsequent Motion. Commissioner Sanford moved that the aforementioned Board Reports be approved with amendments, and that the Resolutions recommended in the Reports be thereby approved. Commissioner Diaz seconded the Motion. There being no objections, the Motion was unanimously approved.

**AGREEMENT
BETWEEN THE CITY OF LOS ANGELES AND
APN MEDIA, LLC FOR THE
INSTALLATION, OPERATION AND ONGOING SERVICE
OF PUBLIC WI-FI IN PARKS**

This partnership agreement (“AGREEMENT”) is entered into as of _____, 20___, (“COMMENCEMENT DATE”) by and between the City of Los Angeles, a municipal corporation acting by and through its Board of Recreation and Park Commissioners (“CITY”), and APN Media, LLC (“PARTNER”), a Delaware limited liability company. (Collectively, CITY, and PARTNER are the “PARTIES” and individually, each is a “PARTY”.)

WHEREAS, CITY, through its Department of Recreation & Parks (RAP), owns and operates park, recreation, tourism and other public venues located throughout Los Angeles, California (ALL PARKS); and,

WHEREAS, RAP provides services that will enhance the visitor experience and educate the public in ALL PARKS; and

WHEREAS, PARTNER specializes in supporting park and recreation departments at the Federal, State, and local level by providing visitor information and enhancing the visitor experience through printed, web-based, experiential, mobile and digital solutions; as well as creating and implementing sponsor-based education programs and sponsored Wi-Fi, in and around parks and public lands; and

WHEREAS, the PARTIES wish to set forth an agreement through which PARTNER shall provide Wi-Fi and other communication service provider services in select, high-traffic parks, recreation areas and other sites managed by CITY, RAP or RAP Partners (WI-FI PARKS or, individually, a WI-FI PARK), which, as described herein, shall provide multiple benefits including a visitor service, enhanced connectivity and a means to provide an accessible digital information portal to communicate RAP and/or RAP Partners messaging to the public (SERVICES). A list of initial WI-FI PARKS has been agreed upon by the PARTIES and is attached hereto as Exhibit A. The list of WI-FI PARKS can be expanded at any time by mutual agreement of RAP and PARTNER, whereby certain parameters regarding the deployment of the Services may differ.

WHEREAS, CITY has agreed to accept this offer of installation, operations and ongoing maintenance at the meeting of the Board of Recreation and Park Commissioners (BOARD) on _____, 20___ (Report No. _____).

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

1. Description of the SERVICES

- 1.1 PARTNER shall provide the SERVICES without charge to CITY and shall be a provider of the SERVICES in the WI-FI PARKS.
- 1.2 SERVICES shall comply with all relevant CITY and RAP policies and regulations.
- 1.3 SERVICES shall be made available to park visitors for free, unless otherwise agreed upon by the PARTIES.
- 1.4 SERVICES shall be referred to as “Approved Wi-Fi of Los Angeles Recreation & Parks.” PARTNER shall be referred to as an “Official Partner of Los Angeles Recreation & Parks” and/or an “Approved Wi-Fi provider of Los Angeles Recreation & Parks.”
- 1.5 Information content, including web links to CITY, RAP and non-profit partner sites, which are presented via the SERVICES, shall be provided and/or approved by RAP and CITY at their sole discretion (CONTENT).
- 1.6 CITY acknowledge that the SERVICES are sponsor-supported, with any funding from sponsors (SPONSOR) being the sole responsibility and accruing in sole benefit to the PARTNER unless mutually agreed upon by the PARTIES. Notwithstanding, Partner shall work with RAP to help generate sponsor support for PROGRAMS that are separate from the SERVICES.
- 1.7 The PARTIES acknowledge that the speed of SERVICES is subject to multiple factors beyond the control of PARTNER, including but not limited to the available speed of broadband services from third party providers and the volume of visitor usage, and, that speed can typically be increased by CITY providing multiple broadband lines and/or faster broadband connections. For the purpose of clarity, CITY acknowledges that visitor demand for higher than average data use, such as is required for streaming movies or downloading large files, is not standard in free public systems and is therefore not contemplated as part of the SERVICES. Such uses shall be mitigated by placing a speed limit/ceiling for each individual user.

2. Description of *Oh, Ranger! Wi-Fi*™ — User Experience

- 2.1 The following is a general description of the Wi-Fi User Experience (UX), which is a part of the SERVICES:
 - Upon selecting the Wi-Fi network associated with the SERVICES, WI-FI PARK visitors will be taken to a WELCOME PAGE (WELCOME PAGE), where they will be required to accept standard terms and conditions (T&C).
 - The WELCOME PAGE will include, but is not limited to, the following: RAP acknowledgement, PARTNER acknowledgement, SPONSOR acknowledgement,

a link to the T&C, a link to connect to the Internet and an indication that users must accept T&C in order to connect to the Internet.

- While connecting to the Internet, a brief SPONSOR video will play (or another SPONSOR-related promotion will appear), after which the user will be taken to a landing page (LANDING PAGE). SPONSOR messaging shall be compliant with CITY/RAP regulations and family-friendly. All SPONSOR messaging shall be approved by RAP and CITY at their sole discretion, which shall not be unreasonable withheld.
- The LANDING PAGE will include, but is not limited to, the following: RAP acknowledgement, PARTNER acknowledgement, SPONSOR acknowledgement, with links to the websites of each, and a link to download the mobile app produced by PARTNER. It will also offer access to the T&C and privacy statement. From the Landing Page, users may browse the Internet. The Landing Page offers a platform for RAP to provide visitor information and links to promote ALL PARKS and/or RAP and/or RAP's non-profit Partners.

2.2 The PARTIES acknowledge that PARTNER may update the UX from time-to-time to improve the interface, as well as the utility and experience of user. For the purpose of clarity, the UX, including the presentation design and screen flow, is not considered to be CONTENT and is the sole intellectual property of PARTNER. PARTNER shall obtain approval from RAP for SPONSORS whose messages in any form (i.e. banner, textual, audio, video) appear in the UX, which approval shall not be unreasonable withheld or delayed. For the purpose of clarity, the PARTIES acknowledge that Toyota has already been approved as a SPONSOR.

3. Role of PARTNER

3.1 PARTNER shall be responsible for paying the cost of installing the networks required to provide the SERVICES. All hardware, which may include but is not limited to wireless access points (APs), small cells, DAS, LTE-U transmitters, signal beams, repeaters, routers, modems, antennas, POE adapters, satellite dishes, cables, electrical wirings, conduit, equipment cabinets and any mounting brackets or other necessary materials and equipment, along with related software as needed, are the responsibility of the PARTNER and shall always remain the sole property of the PARTNER. PARTNER shall reasonable cleanup and restore any and all RAP properties after any work performed onsite by PARTNER or effectuated by PARTNER.

3.2 PARTNER shall provide RAP with proposed site maps for each future WI-FI PARK, including equipment placement plan, for CITY'S final approval, which approval shall not be unreasonably withheld or delayed. The parties have already agreed upon the site maps and equipment for WI-FI PARKS that currently have the SERVICES. In order to best enhance the visitor experience, RAP and PARTNER shall make best efforts to collaborate on all new site maps. Any

substantive changes in site maps once approved require advanced approval of CITY by RAP, which approval shall not be unreasonably withheld or delayed.

- 3.3 PARTNER shall be responsible for repair or replacement cost of equipment necessary to provide the SERVICES, as long as the breakage is not a result of actions taken by the CITY or RAP, or due to vandalism that could have been reasonably protected against by CITY or RAP.
- 3.4 PARTNER shall arrange for internet connections within the WI-FI PARKS as needed, to be incorporated into the SERVICES, with sufficient speed to support the SERVICES in a commercially reasonable manner. For WI-FI PARKS where it's viable to use CITY or RAP broadband connections (BROADBAND CONNECTIONS) for the SERVICES, or those of CITY or RAP Partners, PARTNER will coordinate with RAP to use these connections for the SERVICES. The BROADBAND CONNECTIONS shall be of the highest speed that is economically reasonable. It is acknowledged by the PARTIES as of the date of this Agreement, that the minimum viable speeds for the BROADBAND CONNECTIONS are 15Mbps download speed and 2 Mbps upload speed, and that higher speeds are always more desirable with respect to the user experience. PARTNER shall be granted access to the WI-FI PARKS as needed by CITY to install, or oversee the installation of, the BROADBAND CONNECTIONS, and to service, repair and/or maintain the BROADBAND CONNECTIONS as needed.
- 3.5 PARTNER will work collaboratively with RAP to develop sponsorship program opportunities in order to provide additional promotional benefits to CITY or RAP, serve the visitor interests or attract potential sponsors. PROGRAMS (PROGRAMS) will be promoted in the SERVICES and implemented by PARTNER in the WI-FI PARKS, and may include components such as events or experiential activities, the details and locations of which shall be determined by mutual agreement. All such PROGRAMS must be compliant with all related RAP and CITY regulations. Potential PROGRAMS require the approval of RAP, which shall not be unreasonably withheld or delayed.
- 3.6 PARTNER shall coordinate with RAP to develop CONTENT on the LANDING PAGE that enhances the visitor experience.
- 3.7 PARTNER will share general user data (DATA) from the SERVICES as requested by RAP. DATA can be helpful to understand visitor use patterns, assist in operational decision making, be useful as a forecasting tool and may also inform other means in which the SERVICES can add value to WI-FI PARK operations. PARTNER will adhere to industry standard practices with respect to collection of DATA. Email addresses and other user contact information, which may be requested of users of the SERVICES as part of the Wi-Fi authentication process, shall be considered part of the DATA. For clarity, all users must agree to the T&C in order to use the SERVICES and gain access to the Internet. CITY and RAP agrees that DATA shall be for internal use, such that it shall not

disclose DATA to any third party. Notwithstanding, if CITY or RAP needs to disclose aggregated visitor data as a function of solicitation for services and/or grants, or for other necessary public reporting purposes, such use of said aggregated visitor traffic data is permitted.

- 3.8 PARTNER shall provide RAP with proposed signage for use in each future WI-FI PARK, including a sign placement plan, for CITY'S final approval, which approval shall not be unreasonably withheld or delayed. For clarity, RAP has already approved the sign design and placement for WI-FI PARKS that currently have the SERVICES.
- 3.9 PARTNER, at its sole expense, reserves the right to sell promotional sponsorship and/or access to the SERVICES, including but not limited to video advertisements, SSID leases and communications service provider use to enhance coverage in the WI-FI PARKS, all of which shall adhere to all applicable CITY and RAP rules and regulations. There shall be no sponsors of Wi-Fi or other connectivity services in WIFI PARKS that are competitive to SPONSORS secured by PARTNER. For the purposes of clarity, this applies to sponsors of connectivity only, not sponsors for any other RAP programs.
- 3.10 In the event that PARTNER is able to secure SSID leases or communications service provider use to enhance coverage in a WI-FI PARK, PARTNER will, upon implementation, immediately assume management and all costs and responsibilities associated with the BROADBAND CONNECTIONS at that time for said WI-FI PARK. CITY grants PARTNER the right to increase the speed or otherwise upgrade the BROADBAND CONNECTIONS at any time that PARTNER deems such an upgrade beneficial to enhance or better enable the SERVICES. This shall include the right to switch to different broadband service providers, regardless of who provided the initial BROADBAND CONNECTIONS.
- 3.11 PARTNER will interact with RAP's on-site liaison, point of contact (POC) for WI-FI PARKS where the SERVICES are provided. Said POC to be identified by RAP, as may be needed in order to periodically test, upgrade or troubleshoot the SERVICES from time-to-time.
- 3.12 PARTNER shall respond to requests from CITY and RAP in a timely manner.

4. Role of RAP

- 4.1 RAP shall provide PARTNER with input on CONTENT presented through the SERVICES based on the priorities of RAP and will collaborate with PARTNER to include CONTENT on the LANDING PAGE that enhances the visitor experience.
- 4.2 RAP shall provide CONTENT elements, at RAP's sole discretion, at no cost to PARTNER, including interpretive text, photographs, maps, charts, artwork, links and any other information (MATERIALS) that are owned by the RAP or otherwise in the public domain as may be appropriate for potential inclusion in the

SERVICES in the appropriate digital formats, as available and requested by PARTNER. PARTNER shall have the right to supplement the MATERIALS, so long as PARTNER shall obtain approval from RAP before making any changes that will substantially alter CONTENT.

- 4.3 RAP shall provide PARTNER with necessary access and at least one POC for each WI-FI PARK in which the SERVICES are provided so that PARTNER can install, maintain, upgrade, service and/or repair the SERVICES and, where applicable, the BROADBAND CONNECTIONS, in the most efficient manner possible.
- 4.4 RAP will work with PARTNER to identify the best possible locations for the SERVICES and shall provide reasonable, economical security for any equipment required for the SERVICES.
- 4.5 RAP shall promote the SERVICES, at RAP's sole discretion, through all its relevant and available channels, which may include but shall not be limited to RAP's websites, social media, publications, tourism campaigns, media outreach, on-site collateral and other targeted channels. All promotion of the SERVICES must be compliant with RAP's policies.
- 4.6 RAP shall generate awareness of the SERVICES through on-site signage. It is acknowledged by the PARTIES that the most important means to generate ongoing awareness of the SERVICES is through on-site signage placed throughout the WI-FI PARKS, which shall well-define the area in which the SERVICES are provided in a highly visible manner. Said signage shall be designed by PARTNER with input from RAP in order to adhere to CITY sign regulations, including the manner in which SPONSOR recognition is incorporated. On signage at WI-FI PARKS, PARTNER shall provide the following credit or similar credit as approved by RAP in writing: "In collaboration with the City of Los Angeles Department of Recreation and Parks"
- 4.7 RAP shall provide constant electric power and BROADBAND CONNECTIONS for the SERVICES.
- 4.8 RAP shall respond to requests from PARTNER in a timely manner.

5. Intellectual Property, Feedback & Use Restrictions.

- 5.1 PARTNER is solely responsible for, and will have full discretion with respect to the design of, the UX. In the event that CITY or RAP provides suggestions, ideas or other feedback (FEEDBACK) to PARTNER or any of its affiliates in connection with the UX FEEDBACK, PARTNER and its affiliates will be free to use FEEDBACK in any manner without restriction and without royalty or other compensation to CITY or RAP. This Agreement does not grant CITY or RAP any license or other rights to any intellectual property or technology owned or operated by PARTNER or any of PARTNER's affiliates, including, without

limitation, any trademarks or trade names.

- 5.2 PARTNER, CITY and RAP agree not to use the SERVICES for any unlawful purpose, including infringement of the copyrights or other proprietary rights of others, or in any illegal manner or for creation or distribution of illegal content.

6. Copyright.

- 6.1 The copyright and all other right, title and interest to the SERVICES shall belong to PARTNER.
- 6.2 Except for MATERIALS authored by CITY or RAP and photographs provided by CITY or RAP, the copyright and all other right, title and interest in all CONTENT and any other intellectual property created in connection with the SERVICES shall be and remain the property of PARTNER, and PARTNER shall be considered the "author" of the work and creator of the SERVICES for all statutory and regulatory filings or registrations.

7. Term

- 7.1 The term of this AGREEMENT shall be for one (1) year commencing on the date the AGREEMENT is fully executed ("INITIAL TERM"), and shall automatically be extended for two (2) successive one-year extension periods (EXTENSION TERMS) (as used herein, the INITIAL TERM and the EXTENSION TERMS shall collectively be referred to as the "TERM"), unless one of the PARTIES terminates this AGREEMENT subject to the terms and conditions herein. Any PARTY may terminate this AGREEMENT in the event of a material breach that, upon providing written NOTICE as defined herein, is not cured in a commercially reasonable timeframe. In addition, RAP may choose not to renew should PARTNER fail to maintain the SERVICES at a quality level that is consistent with commercially reasonable standards and PARTNER may choose not to renew based on the SERVICES no longer being commercially viable. In the event that a PARTY chooses not to renew for the reasons allowed herein, such NOTICE must be given not less than sixty (60) calendar days prior to the expiration of the INITIAL TERM or any EXTENSION TERM.
- 7.2 **Non-Renewal Notice** If for any reason either party desires that the term of this Agreement expires at the end of the then-existing Extension Term, such party shall provide the other party with written notice (a "**Non-Extension Notice**"), at least sixty (60) calendar days prior to the end of the then existing Extension Term, of its desire that the Term expire at the end of the then existing Extension Term, and shall not be subject to extension pursuant to 7.1 of this Agreement. If neither party provides the other with a timely Non-Extension Notice, this Agreement shall automatically renew in accordance with Paragraph 7.1.
- 7.3 In the event of a non-extension or termination of this AGREEMENT as stipulated

herein, PARTNER agrees to immediately cease all operations and other activity, remove all property and equipment for the SERVICES within one hundred eighty (180) calendar days of receiving or providing a written NOTICE of same. Notwithstanding, RAP may notify PARTNER of its desire that any conduit or cabling installed by PARTNER be left on premises, in which case PARTNER shall leave such conduit or cabling in place, and therefore, becomes RAP property. In the absence of such notification, and if PARTNER fails to remove all its property and equipment within one hundred eighty (180) calendar days after non-extension or termination of this AGREEMENT, RAP, at its option, may remove such property and equipment, in which event PARTNER shall pay to the RAP upon demand, the reasonable cost of such removal, plus the cost of disposition thereof. Upon removal of its property, PARTNER agrees to leave the premises in as close to original condition as is reasonably possible, subject to normal wear and tear.

8. Representations and Warranties.

- 8.1 PARTNER represents and warrants to CITY and RAP that it is or will be the sole owner or licensee of the copyright and all other right, title and interest in any MATERIALS provided by PARTNER for inclusion in the SERVICES, including but not limited to interpretive text, photographs, maps, charts, artwork and any other information, and PARTNER further represents and warrants that the publication of such MATERIALS as contemplated herein will not result in any copyright infringement or violation of any rights belonging to another person or entity.
- 8.2 CITY and RAP represent and warrant to PARTNER that CITY and RAP are or will be the sole owner or licensee of the copyright and all other right, title and interest in any MATERIALS provided for inclusion in the SERVICES, including but not limited to interpretive text, photographs, maps, charts, artwork and any other information, and CITY and RAP further represent and warrants that the publication of such Materials as contemplated herein will not result in any copyright infringement or violation of any rights belonging to another person or entity.

9. Confidentiality.

- 9.1 The PARTIES agree that in order to create the relationship contemplated herein, each PARTY shall be provided with and shall otherwise have access to certain proprietary business information regarding the other PARTIES' business that is generally acknowledged to be confidential, including but not limited to sales and marketing information, web strategy and metrics, pricing policies, program performance, financial data and future plans ("CONFIDENTIAL MATERIALS"). Each PARTY agrees that it and its employees, directors and affiliates shall reasonably protect such CONFIDENTIAL MATERIALS and prevent the disclosure of such CONFIDENTIAL MATERIALS, whether directly or indirectly, to any third party in perpetuity.

Each PARTY shall ensure that any CONFIDENTIAL MATERIALS that it receives are not disclosed to any person, firm, corporation, or other third party, except that the PARTIES shall be under no obligation with respect to information that is, or becomes other than by their own actions, generally known or in the public domain. Notwithstanding the foregoing, each PARTY may disclose CONFIDENTIAL MATERIALS in the event that it becomes legally compelled (including interrogatories, written requests for information or documents, subpoena, civil investigative demand or similar process) to disclose such CONFIDENTIAL MATERIALS, provided; however, that the legally compelled PARTY shall promptly advise the other PARTIES of such legal compulsion and, to the extent that the other PARTIES secures a legally enforceable protective order, the legally compelled PARTY shall comply with such protective order. The terms of this section shall survive the termination of this AGREEMENT in perpetuity.

10. Limitation of Liability

- 10.1 The SERVICES are provided “as is” and PARTNER disclaims all warranties, expressed or implied, including but not limited to the implied warranties of merchantability, fitness for a particular purpose, and non-infringement with respect thereto. PARTNER shall in no event be liable to CITY or RAP for any loss of data, loss of money, cost of cover or other special, indirect, incidental, consequential, punitive or exemplary damages of any kind or nature including, without limitation, those arising from the breach or termination of this AGREEMENT, whether such liability is foreseeable or unforeseeable or is asserted on the basis of contract, tort (including negligence or strict liability), failure of warranty, or otherwise, and even if PARTNER has been warned of the possibility of any such loss or damage, regardless of theory of liability. CITY and RAP acknowledge and agree that PARTNER cannot ensure that the MATERIALS submitted by CITY and RAP will be protected from theft or misuse by third PARTIES or that users of the SERVICES and other third PARTIES will comply with any content usage rules CITY may make applicable in connection with use of the MATERIALS or the SERVICES, and PARTNER will have no liability arising from a failure of any security system or procedure should any third party or SERVICES user fail to comply with said usage rules.

11. Assignment

- 11.1 This AGREEMENT shall inure to the benefit of, and shall be binding upon, the permitted assigns, successors in interest, personal representatives, estates, heirs, and legatees of each of the PARTIES hereto. PARTNER may not sell or assign all or any portion of its rights, title and interest in this AGREEMENT without the prior written consent of RAP, which consent shall not be unreasonably withheld or delayed. The assignment of this AGREEMENT to a wholly owned subsidiary or other related company, or the purchase of all or substantially all of the stock and/or assets of the PARTNER by another entity,

shall not require the prior consent of RAP. In the case of a sale or assignment, the purchaser or assignee shall undertake in writing to perform all of the PARTNER's obligations under this AGREEMENT, and upon receipt by the RAP of such written undertaking by the purchaser or assignee, the PARTNER shall be relieved of all further liability and obligations under this AGREEMENT.

12. Indemnification

- 12.1 Except for the active negligence or willful misconduct of RAP or CITY, or any of their Boards, Officers, Agents, Employees, Assigns and Successors in Interest, PARTNER undertakes and agrees to defend, indemnify and hold harmless CITY, RAP and any of their Boards, Officers, Agents, Employees, Assigns and Successors in Interest from and against all suits and causes of action, claims, losses, demands and expenses, including but not limited to, attorneys' fees (both in house and outside counsel) and costs of litigation (including all actual litigation cost 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 PARTNER'S employees and agents, or damage or destruction of any property of the negligent acts, errors, omission or willful misconduct incident to the performance of this AGREEMENT by PARTNER or its subcontractors of any tier, including any claim that the MATERIALS provided by PARTNER infringe or violate any third party trademark, copyright, trade secret, right of publicity or privacy (including but not limited to defamation), patent or other proprietary right. Rights and remedies available to CITY under this provision are cumulative of those provided for elsewhere in this AGREEMENT and those allowed under the law of the United States, the State of California, and CITY. This provision shall survive the expiration or termination of this AGREEMENT.
- 12.2 Except for the active negligence or willful misconduct of PARTNER, or any of its Boards, Officers, Agents, Employees, Assigns and Successors in Interest, RAP and CITY undertake and agree to defend, indemnify and hold harmless PARTNER and any of its Boards, Officers, Agents, Employees, Assigns and Successors in Interest from and against all suits and causes of action, claims, losses, demands and expenses, including but not limited to, attorneys' fees (both in house and outside counsel) and costs of litigation (including all actual litigation cost incurred by the PARTNER, 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 CITY'S employees and agents, or damage or destruction of any property of the negligent acts, errors, omission or willful misconduct incident to the performance of this AGREEMENT by CITY and RAP or its subcontractors of any tier, including any claim that the MATERIALS provided by CITY or RAP infringe or violate any third party trademark, copyright, trade secret, right of publicity or privacy (including but not limited to defamation), patent or other proprietary right. Rights and remedies available to PARTNER under this provision are cumulative of those provided for elsewhere in this AGREEMENT and those allowed under the law of the United States, the State of California, and

PARTNER. This provision shall survive the expiration or termination of this AGREEMENT.

13. Insurance

- 13.1 Before commencing work to provide the SERVICES and periodically as required during its TERM, PARTNER shall furnish CITY with evidence of insurance from firms reasonably acceptable to CITY and approved to do such business in the State of California, as defined in Exhibit B attached hereto. PARTNER or any third party providing work or services under this AGREEMENT shall name the City of Los Angeles and its boards, officers, agents, employees, assigns and successors in interest as an additional insured for all required coverages, as applicable. PARTNER will ensure that like insurance will be maintained by any such third party. Evidence of required coverage shall be on forms reasonably acceptable to the CITY's Risk Manager and shall include the types and minimum limits set forth in Exhibit B attached hereto and incorporated herein by reference.
- 13.2 PARTNER shall maintain all such insurance at its sole cost and expense throughout the TERM of this AGREEMENT. CITY may, by applying generally accepted risk management principles, change the required amounts and types of insurance to be effective at the renewal date of the insurance then in effect by giving PARTNER sixty (60) calendar days written NOTICE, provided that such amounts and/or types shall be reasonably available to PARTNER.
- 13.3 If any of the required insurance contains aggregate limits or applies to other operations of PARTNER outside of this AGREEMENT, PARTNER shall give CITY written NOTICE of any incident, occurrence, claim, settlement or judgment against such insurance that in PARTNER's best judgment may diminish the protection such insurance affords CITY within thirty (30) calendar days of the knowledge of same. PARTNER shall further restore such aggregate limits or shall provide other replacement insurance for such aggregate limits within sixty (60) calendar days of the knowledge of same.
- 13.4 If an insurance company elects to cancel insurance before the stated expiration date, declines to renew in the case of a continuous policy, reduces the stated limits other than by impairment of an aggregate limit or materially reduces the scope of coverage, thereby affecting CITY's interest, PARTNER will provide CITY at least thirty (30) calendar days (ten (10) calendar days for non-payment of premium) prior written NOTICE of such intended election. The NOTICE will be sent by receipted delivery addressed as follows: City Administrative Officer, Risk Management, 200 North Main Street, Room 1240, City Hall East, Los Angeles, California 90012, or to such address as CITY may specify by written NOTICE to PARTNER.

- 13.5 PARTNER's failure to procure and maintain the required insurance shall constitute a material breach of this AGREEMENT. At its discretion, CITY may pay to procure or renew such insurance to protect CITY's interest, in which case PARTNER agrees to reimburse CITY for all money so paid.
- 13.6 Self-insurance programs and self-insured retention in insurance policies are subject to separate approval by CITY upon review of evidence of PARTNER's financial capacity. Additionally, such programs or retention must provide CITY with an equivalent protection from liability.

14. Hazardous Substances

- 14.1 PARTNER shall provide the SERVICES in compliance with laws pertaining to hazardous substances. As used herein, "hazardous substances" shall mean any product, chemical, material or waste whose nature, quantity and/or intensity of presence, use, manufacture, disposal, transportation, spill, release or effect, either by itself or in combination with other such substances, is either: (a) potentially injurious to public health, safety or welfare or injurious to the environment; (b) regulated or monitored by any governmental authority; or (c) a basis for liability of RAP, CITY or PARTNER to any governmental agency or third party under applicable statute.

15. Publicity

- 15.1 The PARTIES agree to cooperate and coordinate with respect to the nature, text, and timing of any press release or public announcement(s) concerning the existence of this AGREEMENT and the use or promotion of the SERVICES, except as may be legally required by applicable laws, regulations, or judicial order. The PARTIES agree to notify each other in writing of any press release, public announcement, marketing or promotion of the SERVICES. Further, any press release, public announcement, marketing materials or brochures prepared by any of the PARTIES, shall appropriately acknowledge the contributions of RAP, CITY and PARTNER. Further, the PARTIES shall coordinate the scheduling and organization of any public or media event to provide the opportunity for attendance and participation by officials and/or representatives of RAP, CITY and PARTNER; including elected officials and public officials.
- 15.2 PARTNER agrees that any public release or distribution of information related to this AGREEMENT or related project, programs or services, shall include the following statement within the introduction of such release: "In collaboration with the City of Los Angeles Department of Recreation and Parks"
- 15.3 Notwithstanding any provision herein, neither of the PARTIES shall use the other's trademarks, trade names or logos (each a MARK) without prior written approval from the other. Each MARK shall remain the sole and exclusive intellectual property of the pertinent party.

16. Breach by PARTNER

- 16.1 The following occurrences constitute events of breach of this AGREEMENT: PARTNER materially fails in the performance of any provision or condition of this AGREEMENT, such as failure to maintain required insurance coverage, failure to comply with applicable legal requirements or failure to fulfill the obligation to maintain the SERVICES as specified herein.
- 16.2 Upon the occurrence of one or more events of breach or default by PARTNER, CITY may, at its election and without waiving any right to select any other remedy provided in this AGREEMENT, issue a written NOTICE of breach or default to PARTNER, and if PARTNER does not cure said breach or default within thirty (30) calendar days of receipt of said NOTICE, CITY may, by delivering a second written NOTICE to PARTNER, terminate this AGREEMENT without further delay subject to the terms herein.

17. Notices

- 17.1 Any notice, request for consent, or statement ("NOTICE"), that the PARTIES are required or permitted to give or cause to be given to the other, shall be in writing and shall be delivered or addressed as set forth below. The PARTIES may designate a different address for any NOTICE by written statement to the other in accordance with the provisions of this Section. A NOTICE shall be delivered personally or sent by confirmed facsimile transmission, by reliable courier providing tracking services, or by email with a hard copy deposited with the United States Postal Service with postage prepaid and return receipt requested.

All NOTICES shall be addressed as follows:

If to CITY:

City of Los Angeles Department of Recreation and Parks
Partnership Division
3900 Chevy Chase Drive, Mail Stop 628-9
Los Angeles, CA 90039
Tel.: (818) 243-6488

If to PARTNER:

American Park Network
41 East 11th Street, 11th Floor
New York, NY 10003
Tel.: (212) 581-3380

18. Duly Authorized

- 18.1 The PARTIES each represents and warrants to the other that it has full power and authority to execute this AGREEMENT and to perform its obligations and requirements hereunder. This AGREEMENT constitutes the valid and legal

binding obligation of the PARTIES, enforceable in accordance with its terms and conditions.

19. No Joint Venture, Relationship of Parties

- 19.1 Nothing herein contained shall be construed to place the PARTIES to this AGREEMENT in the relationship of a joint venture, association, partnership, or other form of a business organization or agency relationship. PARTNER shall have no power to obligate or bind RAP or CITY in any manner whatsoever. Further, under no circumstances will PARTNER represent itself to be an agent of the RAP or CITY or any of its departments. Nothing in this AGREEMENT may be construed to have authorized or vested in PARTNER the power to be an agent of the RAP or CITY or an actor under the color of law, be it civilly or criminally.
- 19.2 PARTIES agree that one shall not have any right, power, or authority to assume, create, or incur any expense, liability, or obligation, expressed or implied, on behalf of any other PARTY, except as expressly provided herein. PARTIES are independent contractors and this AGREEMENT is not intended to be nor shall it be construed as a joint venture, association, partnership, or other form of a business organization or agency relationship.

20. Ordinances and Standard Provisions

- 20.1 The "Standard Provisions for City Contracts (Rev. 3/09)" are incorporated herein by reference and attached hereto as Exhibit C. If there is any conflicting language between the "Standard Provisions for City Contracts (Rev. 3/09)" and this AGREEMENT, the language of the Standard Provisions shall prevail. PARTNER and CONTRACTOR have the same meaning for purposes of the "Standard Provisions for City Contracts (Rev. 3/09)." For clarity sake, notwithstanding anything herein, in the event of a termination for any reason, PARTNER shall retain ownership of all equipment installed to provide the SERVICE as long as it shall comply with the removal requirements as set forth herein.

21. Safety Practices

- 21.1 PARTNER shall correct violations of safety practices immediately and shall cooperate fully with CITY in the investigation of accidents related to the SERVICES.

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

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

By: _____ President

Date: _____

By: _____ Secretary

Date: _____

APN MEDIA, LLC:

By: _____ Date: _____

Title: _____

APPROVED AS TO FORM:

MICHAEL N. FEUER, City Attorney

By: _____

STREFAN FAUBLE
Deputy City Attorney III

Date: _____

**EXHIBIT A
INITIAL WI-FI PARKS**

The following is the list of initial WI-FI PARKS, which can be expanded at any time by mutual agreement of RAP and PARTNER:

Echo Park Lake
Griffith Park/Observatory
Pershing Square
Venice Beach
Reseda Park
Cabrillo Beach
EXPO Center.

**EXHIBIT B
INSURANCE REQUIREMENTS**

**CITY OF LOS ANGELES
INSTRUCTIONS AND INFORMATION
ON COMPLYING WITH CITY INSURANCE REQUIREMENTS**
(Share this information with your insurance agent or broker.)

1. **Agreement/Reference** All evidence of insurance 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 minimum dollar amounts** specified on the Required Insurance and Minimum Limits sheet (Form Gen. 146) included in your CITY documents.

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

3. **Acceptable Evidence and Approval** Electronic submission is the preferred method of submitting your documents. **Track4LATM** 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 primarily 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 – the CITY is a licensed redistributor of ACORD forms. Track4LATM 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 **Track4LATM** 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 that have been approved by the State of California, may be accepted, however **submissions other than through Track4LATM will significantly delay the insurance approval process as documents will have to be manually processed.** All certificates must provide a thirty (30) days’ cancellation notice provision (ten (10) days for non-payment of premium) AND an Additional Insured Endorsement naming the CITY an additional insured completed by your insurance company or its designee. If the policy includes an automatic or blanket additional insured endorsement, the Certificate must state the CITY is an automatic or blanket additional insured. An endorsement naming the CITY an Additional Named Insured and Loss Payee as Its Interests May Appear is required on property policies. All evidence of insurance must be authorized by a person with authority to bind coverage, whether that is the authorized agent/broker or insurance underwriter.

Completed Insurance Industry Certificates other than ACORD 25 Certificates are sent electronically to 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 **Track4LATM**, 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 **Track4LATM** at <http://track4la.lacity.org>.

5. **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. (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), or by calling (800) 420-0555.

6. **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.

7. **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.

Required Insurance and Minimum Limits

Name: APN MEDIA, LLC Date: 12/08/2016

Agreement/Reference: INSTALLATION, OPERATION AND ONGOING SERVICE OF PUBLIC WI-FI IN VARIOUS PARKS
 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
<hr/>	
<input checked="" type="checkbox"/> Workers' Compensation - Workers' Compensation (WC) and Employer's Liability (EL)	WC <u>Statutory</u>
<input checked="" type="checkbox"/> Waiver of Subrogation in favor of City	EL <u>\$1,000,000</u>
<input type="checkbox"/> Longshore & Harbor Workers <input type="checkbox"/> Jones Act	
<hr/>	
<input checked="" type="checkbox"/> General Liability	\$1,000,000
<input checked="" type="checkbox"/> Products/Completed Operations	<input type="checkbox"/> Sexual Misconduct
<input type="checkbox"/> Fire Legal Liability	
<input type="checkbox"/>	
<hr/>	
<input checked="" type="checkbox"/> Automobile Liability (for any and all vehicles used for this contract, other than commuting to/from work)	\$1,000,000
<hr/>	
<input type="checkbox"/> Professional Liability (Errors and Omissions)	_____
Discovery Period <u>12 Months After Completion of Work or Date of Termination</u>	
<hr/>	
<input type="checkbox"/> Property Insurance (to cover replacement cost of building - as determined by insurance company)	_____
<input type="checkbox"/> All Risk Coverage	<input type="checkbox"/> Boiler and Machinery
<input type="checkbox"/> Flood	<input type="checkbox"/> Builder's Risk
<input type="checkbox"/> Earthquake	<input type="checkbox"/>
<hr/>	
<input type="checkbox"/> Pollution Liability	_____
<input type="checkbox"/>	
<hr/>	
<input type="checkbox"/> Surety Bonds - Performance and Payment (Labor and Materials) Bonds	100% of the contract price
<input type="checkbox"/> Crime Insurance	_____

Other: _____

EXHIBIT C
STANDARD PROVISIONS FOR CITY CONTRACTS

STANDARD PROVISIONS FOR CITY CONTRACTS

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STANDARD PROVISIONS FOR CITY CONTRACTS

PSC-1. CONSTRUCTION OF PROVISIONS AND TITLES HEREIN

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

PSC-2. NUMBER OF ORIGINALS

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

PSC-3. APPLICABLE LAW, INTERPRETATION AND ENFORCEMENT

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

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

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

PSC-4. TIME OF EFFECTIVENESS

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

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

PSC-5. INTEGRATED CONTRACT

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

PSC-6. AMENDMENT

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

PSC-7. EXCUSABLE DELAYS

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

PSC-8. BREACH

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

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

PSC-9. WAIVER

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

PSC-10. TERMINATION

A. TERMINATION FOR CONVENIENCE

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

B. TERMINATION FOR BREACH OF CONTRACT

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

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

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

PSC-11. INDEPENDENT CONTRACTOR

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

PSC-12. CONTRACTOR'S PERSONNEL

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

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

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

PSC-13. PROHIBITION AGAINST ASSIGNMENT OR DELEGATION

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

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

PSC-14. PERMITS

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

PSC-15. CLAIMS FOR LABOR AND MATERIALS

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

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

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

PSC-17. RETENTION OF RECORDS, AUDIT AND REPORTS

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

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

PSC-18. FALSE CLAIMS ACT

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

PSC-19. BONDS

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

PSC-20. INDEMNIFICATION

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

PSC-21. INTELLECTUAL PROPERTY INDEMNIFICATION

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

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

PSC-22. INTELLECTUAL PROPERTY WARRANTY

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

PSC-23. OWNERSHIP AND LICENSE

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

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

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

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

PSC-24. INSURANCE

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

PSC-25. DISCOUNT TERMS

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

PSC-26. WARRANTY AND RESPONSIBILITY OF CONTRACTOR

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

PSC-27. NON-DISCRIMINATION

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

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

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

PSC-28. EQUAL EMPLOYMENT PRACTICES

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

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

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

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

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

PSC-29. AFFIRMATIVE ACTION PROGRAM

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

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

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

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

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

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

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

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

PSC-30. CHILD SUPPORT ASSIGNMENT ORDERS

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

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

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

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

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

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

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

PSC-32. AMERICANS WITH DISABILITIES ACT

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

PSC-33. CONTRACTOR RESPONSIBILITY ORDINANCE

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

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

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

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

PSC-35. EQUAL BENEFITS ORDINANCE

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

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

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

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

PSC-36. SLAVERY DISCLOSURE ORDINANCE

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

EXHIBIT 1

INSURANCE CONTRACTUAL REQUIREMENTS

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

CONTRACTUAL REQUIREMENTS

CONTRACTOR AGREES THAT:

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

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

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

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

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

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

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

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

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

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

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

Exhibit 1 (Continued) Required Insurance and Minimum Limits

Name: _____ Date: _____

Agreement/Reference: _____

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

Limits

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

- | | |
|---|---|
| <input type="checkbox"/> Waiver of Subrogation in favor of City | <input type="checkbox"/> Longshore & Harbor Workers |
| | <input type="checkbox"/> Jones Act |

___ **General Liability** _____

- | | |
|--|--|
| <input type="checkbox"/> Products/Completed Operations | <input type="checkbox"/> Sexual Misconduct _____ |
| <input type="checkbox"/> Fire Legal Liability _____ | |
| <input type="checkbox"/> _____ | |

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

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

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

- | | |
|--|---|
| <input type="checkbox"/> All Risk Coverage | <input type="checkbox"/> Boiler and Machinery |
| <input type="checkbox"/> Flood _____ | <input type="checkbox"/> Builder's Risk |
| <input type="checkbox"/> Earthquake _____ | <input type="checkbox"/> _____ |

___ **Pollution Liability** _____

- _____

___ **Surety Bonds – Performance and Payment (Labor and Materials) Bonds** 100 % of Contract Price

___ **Crime Insurance** _____

Other: _____