

APPROVED

OCT 15 2020

BOARD OF RECREATION AND PARK COMMISSIONERS

BOARD REPORT

NO. 20-197

DATE October 15, 2020

C.D. 1

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: HIGHLAND PARK RECREATION CENTER - AGREEMENT WITH OPTIONS FOR LEARNING FOR THE OPERATION OF A RECREATIONAL CHILD DEVELOPMENT AND HEAD START PRESCHOOL PROGRAM

AP Diaz _____

S. Piña-Cortez _____

H. Fujita _____

C. Santo Domingo _____

V. Israel _____

*N. Williams NDW

General Manager

Approved X

Disapproved _____

Withdrawn _____

RECOMMENDATIONS

1. Approve a proposed three (3) year agreement between the Department of Recreation and Parks (RAP) and Options for Learning, a 501(c)(3) non-profit organization, setting forth the terms and conditions for the organization's operation of a Head Start Preschool program at Highland Park Recreation Center (Agreement), in substantially the form attached hereto as Attachment 1 and subject to appropriate approvals;
2. Direct the Board of Recreation and Park Commissioners (Board) Secretary to transmit the Agreement to the City Attorney for review and approval as to form; and,
3. Authorize the Board President and Secretary to execute the Agreement upon receipt of the necessary approvals.

SUMMARY

Options for Learning (Options) offers Head Start preschool programs throughout the County of Los Angeles at a number of different locations. Options is federally funded and depending on the location, the programs are offered free to low-cost for families who meet income qualifications. One such program is offered at the Highland Park Recreation Center pool building located at 1650 Piedmont Avenue, Los Angeles, CA 90044 (Pool Building), and it is free to families who meet federal poverty guidelines (Program).

Options has been allowed to operate and offer its Program at the Pool Building for a number of years under prior agreements and permits issued by RAP. The Program at the Pool Building enrolls up to twenty (20) children from the local community ages three (3) to five (5) each school year. The RAP Aquatics program at Highland Park Recreation Center is seasonal and only uses the Pool Building during the summer pool season. From approximately late August to mid-May when the Pool Building is not being used by RAP, Options utilizes an approximate 2,500 square

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foot portion of the Pool Building (located on the south side of the park), consisting of the boy's locker room, indoor restroom, kitchen, and office, adjacent to the park's baseball fields. Options also utilizes the outdoor children's play area on a shared basis with the public during their normal hours of operation, as described in the proposed Agreement.

Based on the success Options has had in serving the Highland Park community for many years, and services provided for the benefit of the community at no cost to Program participants and RAP, RAP staff recommends that the Board approve the proposed Agreement with Options in order to allow Options to continue operating the Program for the benefit of community families who may otherwise not have access to a free program such as the one offered by Options. Options' operation of the Program and fulfillment of its commitments under the proposed Agreement will continue to be monitored and evaluated through the Partnership Section's annual performance review process.

FISCAL IMPACT

The proposed Agreement will have no adverse impact on RAP's General Fund as costs and expenses associated with the Program offered by Options are covered by grants from the federal government and other sources, at no cost to RAP.

STRATEGIC PLAN INIATIVES AND GOALS

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

Goal No. 6: Build financial strength and innovative collaborations to help expand and improve L.A. City parks and programs

Outcome No. 2: Improved management of facilities

Result: Provision of a federally funded head start preschool program

This Report was prepared by Joel Alvarez, Sr. Management Analyst II, and Raymond Chang, Management Analyst, Partnership Section.

ATTACHMENT

- 1) Proposed Agreement

**AGREEMENT
BETWEEN CITY OF LOS ANGELES
AND
OPTIONS FOR LEARNING
TO OPERATE
A LICENSED HEADSTART PRESCHOOL PROGRAM
AT HIGHLAND PARK RECREATION CENTER**

This AGREEMENT (“AGREEMENT”) is entered into as of January 1, 2021, (“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 Options for Learning (“ORGANIZATION”), a 501(c)(3) non-profit corporation. CITY and ORGANIZATION may be referred to herein individually as “PARTY”, or collectively as “PARTIES”.

WHEREAS, CITY, through its Department of Recreation and Parks (“RAP”), owns property commonly known as Highland Park Recreation Center (“PARK”) located at 6150 Piedmont Avenue; and,

WHEREAS, ORGANIZATION currently operates a licensed Head Start preschool program at the PARK for children ages 3 years through 5 years old whose parents meet federal poverty guidelines (“PROGRAM”); and,

WHEREAS, ORGANIZATION desires to continue to operate the PROGRAM at the pool facility building at the PARK, which is more fully described herein and shown by the Site Plan attached hereto and incorporated herein by reference as Exhibit A (“PREMISES”); and,

WHEREAS, the PROGRAM is free for its participants and ORGANIZATION supplements its revenue with grants from the Federal government in order to cover its operating expenses for the PROGRAM; and,

WHEREAS, ORGANIZATION desires to continue its use of the PREMISES to operate the PROGRAM for the public good and to meet the ongoing and increasing childcare needs of the residents of the City of Los Angeles; and,

WHEREAS, RAP is amenable to authorizing such operation pursuant to the terms and conditions of this AGREEMENT for a period of three (3) years, subject to annual performance evaluations as described further herein and other terms and conditions set forth herein; and,

WHEREAS, CITY, through its Board of Recreation and Park Commissioners (“BOARD”), has approved this AGREEMENT at the BOARD meeting held on date (Board Report No. XX-XXX), allowing for operation of the PROGRAM at the PREMISES.

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

1. License to Use and Description of Premises.

In consideration of the anticipated benefits to the public, the sufficiency of which is mutually acknowledged, CITY grants to ORGANIZATION by this AGREEMENT, the use of the PREMISES for the operation of the PROGRAM as described herein, which shall be performed by ORGANIZATION in accordance with the terms and conditions of this AGREEMENT. RAP shall have no obligation to provide staff, supplies, equipment, services, or funding for the operation of the PROGRAM, and if such is requested from RAP by ORGANIZATION, ORGANIZATION agrees to reimburse RAP for any financial impacts resulting from RAP's provision of such, in accordance with RAP standard Schedule of Rates and Fees and/or permitting requirements.

The PREMISES shall be the Pool building boys locker room located within the south-side of the PARK adjacent to the baseball fields, as depicted by the Site Plan attached hereto as Exhibit A, to be used for purposes of operating and maintaining the PROGRAM in accordance with the terms and conditions of this AGREEMENT.

The PREMISES shall include the approximate 2,500 square foot area of the PARK's pool building facility, consisting only of the boy's locker room, indoor restroom, kitchen, and office. ORGANIZATION shall also be allowed to utilize the outdoor children's playground, grass area and concrete areas located between the basketball courts and pool locker room.

2. Term and Termination.

The term of this AGREEMENT (for ease of reference, shall be referred to herein as "TERM") shall be **three (3) years** from the COMMENCEMENT DATE, subject to annual performance evaluations ("ANNUAL PERFORMANCE REVIEWS") more fully described below in Section 3 of this AGREEMENT.

- a. Commencement and Expiration. This AGREEMENT shall take effect on the COMMENCEMENT DATE above, and shall end upon the expiration of the TERM.
- b. Termination. In addition to the CITY's right to terminate this AGREEMENT for an uncured breach or default as set forth in Section 19, CITY and ORGANIZATION may terminate this AGREEMENT upon written notice of termination given to the other party no less than sixty (60) days prior to the date of termination. Further, City may immediately terminate this AGREEMENT in the event ORGANIZATION ceases to operate as defined below.
- c. Cease to Operate. The phrase "ceases to operate" shall mean the first to occur of any of the following: (i) the termination (but not temporary suspension) of

ORGANIZATION's corporate charter or grant of non-profit status, unless the same is reinstated within sixty (60) calendar days after such termination; (ii) a material change in ORGANIZATION's purposes or function as contained in ORGANIZATION's corporate charter or grant of non-profit status ("Stated Purposes"); (iii) a material change in the delivery of services by ORGANIZATION from that described herein; or (iv) the failure of ORGANIZATION to use the PREMISES for any of the PERMITTED USES or any other default of the terms and conditions or other obligations contained in this AGREEMENT, for a consecutive period of sixty (60) calendar days; unless prevented from doing so because of damage, destruction, major repairs or refurbishment of the improvements within the PREMISES, or for reasons beyond ORGANIZATION's control. Under such circumstances, ORGANIZATION shall immediately cease and desist from all use of the PREMISES, and this AGREEMENT shall be deemed terminated upon ORGANIZATION's receipt of such notification of immediate termination from RAP.

3. Annual Performance Reviews.

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

- a. Continuance of CITY's collaboration with ORGANIZATION shall be contingent upon a favorable ANNUAL PERFORMANCE REVIEW, which shall include, but not be limited to:
 - (i) An evaluation of ORGANIZATION's compliance with the terms and conditions of this AGREEMENT;
 - (ii) Fulfillment of ORGANIZATION's obligations under this AGREEMENT for the operation of the PROGRAM as more fully described under the PERMITTED USES specified in Section 5, and maintenance of the PREMISES under this AGREEMENT;
 - (iv) Adequacy of ORGANIZATION's funding and financial resources to continue operating the PROGRAM for the benefit of the public throughout the TERM of this AGREEMENT; and,
 - (v) ORGANIZATION's cooperation with CITY staff.
- b. Every year during the life of this AGREEMENT, for purposes of completing the ANNUAL PERFORMANCE REVIEW process, ORGANIZATION shall submit to RAP during the period of July 1st through August 30th of each year, an annual performance or program report ("PERFORMANCE REPORT"), generally describing ORGANIZATION's PROGRAM activities, issues, accomplishments, etc., to provide RAP with an understanding of

ORGANIZATION's performance during the prior fiscal year (July through June). This PERFORMANCE REPORT shall specifically include, but not be limited to:

- (i) Annual Financial Statement (Revenue and Expenditures for prior fiscal year);
 - (ii) Annual Budget for upcoming fiscal year (July through June);
 - (iii) PROGRAM participant data describing the number of persons served during the prior fiscal year; and,
 - (iv) Discussion of PROGRAM changes or challenges.
- c. RAP reserves the right to request reasonable additional materials or clarifying information upon review of the submitted PERFORMANCE REPORT.
- d. CITY's approval to continue the collaborative relationship shall be based on findings obtained through the ANNUAL PERFORMANCE REVIEW, evaluation of the PERFORMANCE REPORT, and a review of compliance with the terms and conditions of this AGREEMENT, including interviews with RAP's recreational and operations and maintenance staff at the PREMISES. A Sample Annual Performance Report Questionnaire is attached hereto and incorporated herein by reference as Exhibit B. Results of the ANNUAL PERFORMANCE REVIEW may be used in determining future collaborations with ORGANIZATION. CITY shall not unreasonably withhold its determination of the ANNUAL PERFORMANCE REVIEW.

4. Access to Premises.

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

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

the CITY shall promptly provide written notice to ORGANIZATION of same.

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

5. Permitted Uses and Use Restrictions.

ORGANIZATION shall not expand and/or change the scope of PERMITTED USES set forth in this Section without the prior written approval and consent of the BOARD through an amendment to this AGREEMENT. ORGANIZATION is authorized to use the PREMISES in accordance with the following conditions:

- a. ORGANIZATION, in compliance with the California Child Care Center General Licensing Requirements, shall operate a licensed Head Start preschool program for children ages 3 years through 5 years old whose parents meet federal poverty guidelines. ORGANIZATION shall provide such PROGRAM services for a maximum of 20 children from the surrounding neighborhood, at no cost to RAP and free of charge to PROGRAM participants. ORGANIZATION shall be responsible for all costs related to the operation of this PROGRAM and maintenance of the PREMISES throughout the TERM of this AGREEMENT.
- b. ORGANIZATION shall provide sufficient staff to maintain a staff-to-student ratio in accordance with childcare licensing requirements for the operation of preschool related programs in accordance with State of California childcare licensing regulations and requirements and RAP Childcare Guidelines.
- c. ORGANIZATION shall ensure that no photographs of minors or depiction of their likeness is included in any publication without obtaining prior written consent from the child's parent or legal guardian.
- d. ORGANIZATION shall not sub-let or issue any permit for use of the PREMISES.
- e. ORGANIZATION is solely responsible for the actions of all individuals and/or organizations participating in the PROGRAM at the PREMISES, and shall ensure that such individuals and/or organizations agree in writing to abide by all conditions set forth in this AGREEMENT.
- f. The dispensing and /or consumption of beer, wine or other intoxicating liquors (commonly referred to alcoholic beverages) shall not be permitted on the PREMISES.

- g. No merchandise shall be sold or authorized to be sold by ORGANIZATION on the PREMISES.
- h. Safety Measures. ORGANIZATION shall ensure that any and all emergency exits in the Pool Locker Room are not blocked with furniture or other items while utilizing PREMISES. ORGANIZATION shall also ensure that the doors opening to the pool deck area are secure, not allowing children and/or ORGANIZATION staff and other individuals to access the pool deck area.
- i. Vacation of PREMISES and removal of ORGANIZATION's belongings. When ORGANIZATION vacates PREMISES for the summer period (no later than May 14 of each year), ORGANIZATION shall remove all of its belongings, furniture and other items from the PREMISES. Should any items be left within the PREMISES and not removed at minimum two days prior to the scheduled pool opening day of RAP pool operations, RAP reserves the right to discard such items at its discretion, as they cannot be stored within the PREMISES.

6. Obligations of ORGANIZATION.

ORGANIZATION shall:

- a. Operate on the PREMISES only during the specified days and hours listed below in Section 7 of this AGREEMENT.
- b. Maintain the PREMISES in accordance with Section 9 of this AGREEMENT.
- c. Provide all staff, materials, supplies, and equipment for the PROGRAM, and consistently use reasonable efforts to obtain funds necessary to operate it.
- d. Ensure ORGANIZATION's protocol for selecting and authorizing any person participating in the provision of PROGRAM activities on the PREMISES complies with applicable local, State, and/or Federal protocols for employees, volunteers, contractors and subcontractors engaging in the PERMITTED USES described herein, including background checks, finger printing, and any certifications, licenses and approvals to the extent required by applicable law. ORGANIZATION shall comply, and ensure any of its employees, volunteers and authorized third parties complies with all applicable CITY, State and Federal rules, laws and regulations in the performance of this AGREEMENT and in the operation of the PROGRAM
- e. Obtain any and all operating permits and/or licenses that may be required in connection with its operations, including but not limited to, tax permits, business licenses, health permits, certifications, etc.
- f. Punctually pay or cause to be paid all ORGANIZATION financial obligations incurred in connection with the operation and maintenance of the PREMISES as set forth in this AGREEMENT. ORGANIZATION shall discharge or provide

for the discharge of all claims authorized or incurred for labor, equipment, materials, and supplies furnished in connection with ORGANIZATION's use of the PREMISES to the extent such claims do not arise due to any CITY action or omission.

- g. Prohibit and prevent the dispensing and/or consumption of beer, wine or other intoxicating liquors (commonly referred to as alcoholic beverages), which is NOT one of the PERMITTED USES authorized herein, and therefore shall not be permitted to occur on the PREMISES under any circumstances.
- h. Comply with all RAP policies and procedures as well as all Federal, State, County, and local regulations, orders and mandates, including but not limited to health and safety orders and guidelines related to COVID-19, and background checks and fingerprinting for any volunteer or paid staff participating in the PROGRAM at the PREMISES, throughout the TERM of this AGREEMENT. In doing so, ORGANIZATION shall maintain regular communication with RAP staff to ensure ORGANIZATION's compliance with such policies, procedures, regulations, orders and requirements and ORGANIZATION shall be solely responsible for all costs related to ensuring such compliance.

7. Days and Periods of Use.

ORGANIZATION shall be entitled to use the PREMISES to operate the PROGRAM during the times specified herein (PERMITTED TIMES).

- a. PERMITTED TIMES shall approximately coincide with the Los Angeles Unified School District (LAUSD) traditional school year schedule. Notwithstanding the foregoing, the PERMITTED TIMES shall be subject to and not include those times reserved for RAP's Aquatics Division programming schedule for the summer pool season.
- b. Subject to the foregoing paragraph above, ORGANIZATION is authorized to enter PREMISES on or around August 21 each year, and vacate PREMISES on or around May 14 each year, in coordination with and subject to RAP Aquatics Division approval.
- c. ORGANIZATION is aware that RAP's Aquatics Division operates an open pool program for the general public during the summer months of each year, acknowledges that the RAP Aquatics program has priority of use of the PREMISES, and agrees to utilize PREMISES under the following conditions:
 - i. RAP Aquatics staff shall be allowed access to PREMISES at least three (3) weeks prior to the end of the LAUSD school year to prepare the pool and related facilities to be open for use by the public. Should Aquatics and/or RAP maintenance staff find that any needed repairs and/or maintenance work would require ORGANIZATION to vacate PREMISES to accommodate such repairs, ORGANIZATION shall cooperate and comply

with such requests from RAP staff, whether temporary, until the commencement of the next school year, or otherwise.

- ii. ORGANIZATION will vacate PREMISES for the summer aquatics program and remove all of its furniture and belongings either prior to the filling of the pool with water, or prior to the opening day of the pool to the public, subject to prior coordination with and determination by RAP Aquatics staff. Opening day normally takes place during a weekend period following the last day of school pursuant to the current LAUSD school year calendar.
 - iii. ORGANIZATION will be allowed back onto the PREMISES after the pool has closed to the public following the end of the summer pool season, which normally takes place during the weekend prior to the first day of school and after pool has been fully drained of water (which could take up to seven days to complete), subject to determination by RAP Aquatics Division staff.
- d. Generally, PREMISES is not to be utilized by both RAP and ORGANIZATION at the same time. However, if ORGANIZATION desires to utilize PREMISES while the pool is being drained (which could take up to seven days), ORGANIZATION must obtain prior approval from RAP Aquatic Division staff and ensure that a RAP Aquatics monitor is present during the draining process, contingent upon staff availability. If Aquatics staff is available, ORGANIZATION must reimburse RAP for the cost of staff time at the hourly-fully burdened rate of an Aquatics monitor for the hours the Aquatics monitor needs to be present and on duty while ORGANIZATION is utilizing PREMISES.
 - e. PERMITTED TIMES of ORGANIZATION operations are 7:30 a.m. to 3:30 p.m., Monday through Friday. ORGANIZATION shall be allowed to enter PREMISES one hour before and stay one hour after PERMITTED TIMES for set-up and clean-up purposes.
 - f. ORGANIZATION shall not be allowed onto PREMISES during hours other than those PERMITTED TIMES authorized without RAP's prior written authorization.
 - g. ORGANIZATION is aware that the PARK recreation center's operating hours are 11:00 a.m. to 9:00 p.m. Monday through Friday; 9:00 a.m. to 5:00 p.m. Saturday; and closed on Sunday. Additionally, the recreation center's staff is unavailable on Federal Holidays. The PARK recreation center is subject to additional closures at the sole discretion of RAP.
 - h. ORGANIZATION shall cooperate with RAP personnel and staff on all matters relative to the conduct of operations or any activity, event, and/or special use, including concerns related to parking, traffic, security, and attendance.

8. Parking.

During the TERM of this AGREEMENT and during PERMITTED TIMES specified above in Section 7 of this AGREEMENT, ORGANIZATION, its staff, and public patrons and/or guests, whether or not involved in ORGANIZATION activities at the PREMISES, shall have the non-exclusive right to park vehicles within any publicly available parking spaces at the PARK on a first-come-first-served basis. If such parking is metered or normally requires a fee, ORGANIZATION, its staff, and public patrons and/or guests shall be required to adhere to established parking requirements. Exclusive or designated parking shall not be allowed, unless previously approved in writing by RAP.

9. Maintenance and Repair of Premises.

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

- a. ORGANIZATION accepts PREMISES in its current condition and hereby assumes all risk of injury, loss or damage, which may result from any defective conditions of the PREMISES or which may otherwise arise by reason of the use of PREMISES, and releases and discharges the CITY from any claims therefore. CITY shall not have any obligation to repair, remodel, replace, and/or reconstruct any building, facility, feature, or portion of the PREMISES, nor any appliance or fixture thereon, whether installed by CITY or ORGANIZATION, and regardless of cause.
- b. ORGANIZATION, in performing all required maintenance and repair of the PREMISES, shall provide all staff and materials, supplies, equipment, and funds necessary to perform appropriate maintenance and/or repairs. All maintenance and/or repair shall be performed to the reasonable satisfaction of CITY and in consultation with CITY's designated representative, or by CITY's written request and/or instruction.
- c. ORGANIZATION shall perform the following maintenance duties on daily basis:
 - i. Maintain PREMISES in a clean condition removing all debris and trash;
 - ii. Keep the PREMISES and the nearby areas clean at all times;
 - iii. Pick up and dispose of trash and debris whether by ORGANIZATION activity or activity of a contracted vendor;
 - iv. Prevent any trash or debris matter or material from being or accumulating upon said PREMISES such that it is clearly visible to public view; and,
 - v. Maintain PREMISES in a manner that is consistent and in compliance with all Federal, State, County and local regulations, orders and guidelines,

including but not limited to health and safety orders and guidelines related to COVID-19.

- d. ORGANIZATION shall ensure that no offensive or dangerous materials, nor any substance constituting an unnecessary, unreasonable or material hazard detrimental to the public health, is permitted or allowed to remain on PREMISES.
- e. ORGANIZATION shall be responsible for securing ORGANIZATION's equipment and materials at the PREMISES during PERMITTED TIMES and ensuring the same during non-operating hours. CITY and/or RAP shall not be responsible for the security of ORGANIZATION personal property before, during, or after PERMITTED TIMES.
- f. ORGANIZATION shall immediately repair, or cause to be repaired, any damages to the PREMISES which occur during ORGANIZATION's operations, or that is caused by ORGANIZATION's use of the PREMISES; ORGANIZATION acknowledges that any damage which remains unrepaired may constitute a hazard to public safety, requiring that all use of the PREMISES immediately cease
- g. To the extent that needed repairs are not made, ORGANIZATION waives any and all claims against CITY for damages or indemnification as a result of the failure to make repairs.

10. Fundraising.

ORGANIZATION may hold fundraising activities on the PREMISES, but must obtain prior written approval for the date and time from the RAP staff listed in Section 17 for each fundraising event, no fewer than thirty (30) calendar days prior to the scheduled activity. ORGANIZATION may have no more than four (4) fundraising events per year with a maximum of one (1) fundraising event per quarter. All monies raised from fundraising conducted at the PREMISES must be used only in support of the activities authorized under this AGREEMENT. Fundraising activities shall not include the distribution and/or the consumption of alcoholic beverages.

11. Consideration and CRRF.

The consideration for this AGREEMENT in exchange for ORGANIZATION's use of the PREMISES shall be ORGANIZATION's provision of the PROGRAM for the benefit of the general public and maintenance and/or repair of the PREMISES, at no cost to RAP or the CITY, pursuant to the terms and conditions of this AGREEMENT. However, in addition to the cost of operations and maintenance, ORGANIZATION is also responsible for the cost of utility services, solid waste disposal, and any fiscal impacts to RAP. In accordance with RAP policies, ORGANIZATION shall be responsible for such expenses, either through direct payments to applicable service providers or payment of Cost Recovery

Reimbursement Fees (CRRF) to RAP, as described in further detail below.

- a. Cost Recovery Reimbursement Fees: ORGANIZATION shall pay a CRRF to RAP for costs incurred by RAP, as related to ORGANIZATION use of the PREMISES, which do not include any costs paid directly to applicable utility or service providers. The CRRF shall be **\$245.00 per month**. Non-payment of the CRRF shall be considered a default of this AGREEMENT and cause for immediate termination of this AGREEMENT
- b. Electricity and Water. Pursuant to RAP policy regarding utility fees for services provided at park facilities operated by non-profit organizations and other collaborations, approved by the Board on July 13, 2011 (Report No. 11-202), ORGANIZATION pro-rata cost of electricity and water at the PREMISES shall be the responsibility of ORGANIZATION and shall be reimbursed to RAP as part of the CRRF amount in Section 11(a) above.
- c. Trash and Solid Waste Disposal. Pursuant to RAP policy regarding trash and solid waste disposal for services provided at park facilities operated by non-profit organizations and other collaborations, approved by the Board on February 1, 2012 (Report No. 12-028), ORGANIZATION pro rata cost of waste disposal at the PREMISES shall be the responsibility of ORGANIZATION and shall be reimbursed to RAP as part of the CRRF amount in Section 11(a) above.
- d. Telephone and Data Lines. ORGANIZATION shall be responsible for the cost of telephone and data lines utilized within PREMISES and shall pay the service provider directly.
- e. Monthly payments of the CRRF shall be made by the tenth day of the month for the current month. ORGANIZATION is wholly responsible for timely payment of the monthly fee.
- f. All CRRF payments must be made by check or money order made payable to:

“City of Los Angeles Department of Recreation and Parks”
- g. All CRRF payments must be mailed or delivered to:

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

12. Insurance.

Before accessing and using the PREMISES under this AGREEMENT, and periodically as required during its TERM, ORGANIZATION shall furnish CITY with evidence of insurance on an annual basis, from firms reasonably acceptable to

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

- a. ORGANIZATION shall maintain all such insurance at its sole cost and expense throughout the TERM of this AGREEMENT. CITY may, by applying generally accepted risk management principles, change the required amounts and types of insurance to be effective at the renewal date of the insurance then in effect by giving ORGANIZATION sixty (60) calendar days written notice, provided that such amounts and/or types shall be reasonably available to ORGANIZATION.
- b. If any of the required insurance contains aggregate limits or applies to other operations of ORGANIZATION outside of this AGREEMENT, ORGANIZATION shall give CITY written notice of any incident, occurrence, claim, settlement or judgment against such insurance that in ORGANIZATION's best judgment may diminish the protection such insurance affords CITY within thirty (30) calendar days of the knowledge of same. ORGANIZATION shall further restore such aggregate limits or shall provide other replacement insurance for such aggregate limits within thirty (30) calendar days of the knowledge of same.
- c. If an insurance company elects to (i) cancel insurance before the stated expiration date, (ii) declines to renew in the case of a continuous policy, (iii) reduces the stated limits other than by impairment of an aggregate limit, or (iv) materially reduces the scope of coverage, thereby affecting CITY's interest, ORGANIZATION shall provide CITY at least thirty (30) calendar days prior written notice of such intended election by the insurance company, or ten (10) calendar days prior written notice if such cancellation is for non-payment of premium.

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

City Administrative Officer, Risk Management
200 North Main Street, Room 1240, City Hall East
Los Angeles, California 90012

Or to such address as CITY may specify by written notice to ORGANIZATION.

- d. ORGANIZATION's failure to procure and maintain the required insurance shall constitute a material breach of this AGREEMENT under which CITY may either (i) provide ORGANIZATION five (5) calendar days written notice of such failure, upon receipt of which ORGANIZATION shall have five (5) calendar days to

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

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

13. Indemnification.

Except for the active negligence or willful misconduct of CITY, or any of its boards, officers, agents, employees, assigns and successors in interest, ORGANIZATION shall defend, indemnify and hold harmless CITY and any of its boards, officers, agents, employees, assigns, and successors in interest from and against all lawsuits and causes of action, claims, losses, demands and expenses, including, but not limited to, (1) attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by CITY, including but not limited to, costs of experts and consultants), (2) damages or liability of any nature whatsoever, (3) for death or injury to any person, including ORGANIZATION's employees and agents, or (4) damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of an act, error, or omission by ORGANIZATION, its subcontractors, or their boards, officers, agents, employees, assigns, and successors in interest. The rights and remedies of CITY provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this AGREEMENT. This provision will survive expiration or termination of this AGREEMENT.

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

ORGANIZATION further acknowledges and agrees that it knowingly and freely assumes all COVID-19 related risks, both known and unknown, relating to exercising the terms and conditions of this AGREEMENT and ORGANIZATION hereby forever releases, waives, relinquishes, and discharges CITY, along with its officers, agents, employees, or other representatives, and their successors and assigns, from any and all COVID-19 related claims, demands, liabilities, rights, damages, expenses, and causes of action of whatever kind or nature, and other losses of any kind, whether known or unknown, foreseen or unforeseen, as a result of ORGANIZATION's performance under this AGREEMENT, including but not limited to personal injuries, death, disease or property losses, or any other loss, and including but not limited to claims based on the alleged negligence of any City Representative or any other person related to COVID-19 sanitization. ORGANIZATION further promises and agrees to indemnify and hold CITY harmless from any and all damages resulting from the contraction of COVID-19.

14. Casualty and Condemnation.

ORGANIZATION shall be excused from its obligations in this AGREEMENT including, without limitation, the payment of the CRRF, the operation, maintenance and repair of any portion of the PREMISES or any improvement thereon that is damaged by casualty or taken by condemnation until any such portion or improvement is restored to at least its condition prior to said casualty or condemnation. CITY shall not be obligated to restore the PREMISES damaged by casualty in whole or in part. If CITY chooses not to restore the PREMISES, CITY shall provide notice to ORGANIZATION thereof within thirty (30) days of such casualty, and this AGREEMENT shall terminate upon ORGANIZATION's receipt of such notice. If the PREMISES is taken by condemnation, CITY shall provide notice to ORGANIZATION thereof within thirty (30) days of such taking, and this AGREEMENT shall terminate upon ORGANIZATION's receipt of such notice, and CITY shall not be obligated to provide ORGANIZATION a replacement property for ORGANIZATION's use.

15. Publicity.

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

16. Signage.

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

17. Filming.

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

18. Taxes and Possessory Interest.

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

19. Breach or Default by ORGANIZATION.

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

- a. Notice to Cure Breach or Default. CITY may issue a written notice of breach or default to ORGANIZATION, and if ORGANIZATION does not cure said breach or default within thirty (30) calendar days of receipt of said notice, CITY may terminate this AGREEMENT without further delay, whereupon BROTHERHOOD shall immediately terminate its activities at the PREMISES. For a breach or default involving sanitary or safety conditions, the cure period is reduced to seven (7) calendar days.
- b. CITY's Right to Cure. CITY at its sole discretion and with no obligation to do so, subject to any applicable conditions and limitations set forth elsewhere in this AGREEMENT, may, after a continuing breach or default by

ORGANIZATION, perform or cause to be performed any of ORGANIZATION's unperformed obligations under this AGREEMENT. CITY may enter the PREMISES and remain there for the purpose of correcting or remedying the continuing breach or default. Such action by CITY shall not be deemed to waive or release said breach or any default or CITY's right to take further, preventative action.

20. Notices.

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

a. To ORGANIZATION:

Ms. Dolores Mead
885 S. Village Oaks Drive
Covina, CA 91724

Phone: (626) 967-7848

b. To RAP:

Andre Brent, Principal Recreation Supervisor,
Citywide Aquatics Division
Phone: (323) 906-7953
Cell Phone: (818) 679-1327
Email: Andre.Brent@lacity.org

Steve A Steward Jr., Aquatic Facility Manager III
Citywide Aquatics Supplies Supervisor
Tel: 213-485-5559 / 4899
Email: Steve.Steward@lacity.org

3900 Chevy Chase Drive
Los Angeles, CA. 90039-1221

21. Representations and Warranties.

CITY and ORGANIZATION 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 CITY and ORGANIZATION, enforceable in accordance with its terms and conditions.

22. No Joint Venture or Agency Relationship.

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

23. Relationship of Parties.

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

24. Sub-Lease Restriction.

No sub-lease for space shall take effect at the PREMISES unless approved in advance and in writing by RAP. ORGANIZATION shall require all individuals and organizations providing programs or services within the PREMISES to agree to abide by all conditions set forth in this AGREEMENT, as applicable to such programs or services.

25. Safe Practices.

ORGANIZATION shall correct violations of safety practices during its PERMITTED USE immediately and shall cooperate fully and in good faith with CITY in the investigation of accidents or deaths occurring on the PREMISES. In the event of death or serious injury (requiring an emergency room hospital visit), ORGANIZATION must notify the RAP contacts referenced in Section 14 as soon as possible but no later than twenty-four (24) hours after ORGANIZATION has knowledge of the incident by telephone call, with a follow up email notice. Notice of non-serious injuries occurring at the PREMISES shall be within seventy-two (72) hours. ORGANIZATION shall maintain at the PREMISES a record of non-serious injuries occurring on the PREMISES, copies of which shall be provided to RAP upon receipt of a written request therefor. ORGANIZATION shall keep internal documentation of the incident(s) occurring during the previous two (2) years and provide RAP with such information upon request.

26. Suspected Child Abuse.

ORGANIZATION must promptly contact the Los Angeles County Child Protection Hotline to report any suspected child abuse at the PREMISES. ORGANIZATION shall notify the RAP contacts specified in Section 20 within 24 hours after a report has been made.

27. Hazardous Substances

PARTIES agree that the PREMISES shall be used in a manner consistent with its intended public recreational purposes and within the scope of use set forth above. ORGANIZATION shall use the PREMISES in compliance with laws pertaining to

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

28. Ordinances and Standard Provisions.

The "Standard Provisions for City Contracts (Rev. 10/17)[v.3]" (Standard Provisions) are incorporated herein by reference and attached hereto as Exhibit D. If there is any conflicting language between the "Standard Provisions for City Contracts (Rev. 10/17)[v.3]" and this AGREEMENT, the language of this AGREEMENT shall prevail. In addition, ORGANIZATION will provide documentation of compliance with all required Ordinance Provisions as determined by CITY. For purposes of the Standard Provisions, the term "Contractor" shall mean ORGANIZATION.

29. Incorporation of Documents.

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

- Exhibit A: Site Plan
- Exhibit B: Sample Annual Performance Report Questionnaire
- Exhibit C: Insurance Requirements and Instructions for Submission
- Exhibit D: Standard Provisions for City Contracts (Rev. 10/17)[v.3]

The order of precedence in resolving conflicting language, if any, in the documents shall be: 1) This AGREEMENT exclusive of attachments; 2) Exhibit A; 3) Exhibit B; 4) Exhibit C; 5) Exhibit D.

[SIGNATURE PAGE FOLLOWS]

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

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

Options for Learning, Inc., a 501(c)(3) California non-profit corporation

By: _____
President

By: _____

By: _____
Secretary

Title: _____

Date: _____

Date: _____

By: _____

Title: _____

Date: _____

APPROVED AS TO FORM:

MICHAEL N. FEUER, City Attorney

By: _____
Deputy City Attorney

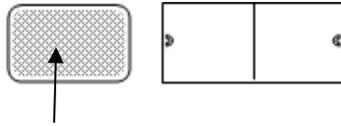
Date: _____

EXHIBIT A Site Plan

The PREMISES, located within the grounds of Highland Park Recreation Center, at 1650 Piedmont Avenue, Los Angeles, CA 90044, is delineated below within the red lines. The PREMISES includes a portion of the pool building of roughly 2,500 square feet. ORGANIZATION, on a non-exclusive, shared use basis with the general public, shall also be allowed to utilize the outdoor children's playground, grass area and concrete areas located between the basketball courts and pool locker room.



Diagram not to scale



Outside play equipment



Pool Building →

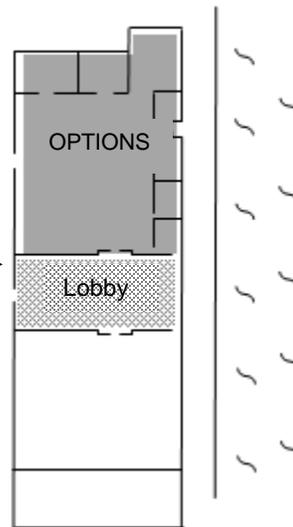


EXHIBIT B
Sample Annual Performance Report Questionnaire



City of Los Angeles Department of Recreation and Parks
Partnership Section

ANNUAL PERFORMANCE REPORT

ORGANIZATION NAME: _____

ADDRESS: _____

CONTACT NAME: _____ **PHONE NUMBER:** _____

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

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

A. PROGRAM

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

B. FINANCIAL

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

Partnership Section
Annual Performance Report

C. OUTREACH

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

D. SAFETY COMPLIANCE

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

E. ORGANIZATION COMPLIANCE

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

REQUIRED ATTACHMENTS (as applicable)

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

Thank you for your cooperation in completing this process.

Revised April 2020

EXHIBIT C

Required Insurance and Minimum Limits

Name: Options for Learning, Inc. Date: 05/04/2020

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

	Limits
<input checked="" type="checkbox"/> Workers' Compensation - Workers' Compensation (WC) and Employer's Liability (EL)	WC <u>Statutory</u> EL <u>\$1,000,000</u>
<input checked="" type="checkbox"/> Waiver of Subrogation in favor of City	
<input type="checkbox"/> Longshore & Harbor Workers <input type="checkbox"/> Jones Act	
<input checked="" type="checkbox"/> General Liability <u>City of Los Angeles must be named as an additional insured party</u>	<u>\$1,000,000</u>
<input checked="" type="checkbox"/> Products/Completed Operations	<input checked="" type="checkbox"/> Sexual Misconduct <u>1,000,000</u>
<input type="checkbox"/> Fire Legal Liability _____	
<input type="checkbox"/> _____	
<input type="checkbox"/> Automobile Liability (for any and all vehicles used for this contract, other than commuting to/from work)	
<input type="checkbox"/> Professional Liability (Errors and Omissions)	
Discovery Period _____	
<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"/> _____
<input type="checkbox"/> Pollution Liability	
<input type="checkbox"/> _____	
<input type="checkbox"/> Surety Bonds - Performance and Payment (Labor and Materials) Bonds	100% of the contract price
<input type="checkbox"/> Crime Insurance	

Other: 1) If a contractor has no employees and decides to not cover herself/himself for workers' compensation insurance, please complete the form entitled "Request for Waiver of Workers' Compensation Insurance Requirement" located at <http://cao.lacity.org/risk/InsuranceForms.htm>.
2) In the absence of imposed auto liability requirements, all contractors using vehicles during the course of their contract must adhere to the financial responsibility laws of the State of California.

CITY OF LOS ANGELES

INSTRUCTIONS AND INFORMATION
ON COMPLYING WITH CITY INSURANCE REQUIREMENTS

(Share this information with your insurance agent or broker)

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

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

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

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

Additional Insured Endorsements DO NOT apply to the following:

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

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

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

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

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

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

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

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

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

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

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

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

EXHIBIT D

Standard Provisions for City Contracts

TO BE ATTACHED

STANDARD PROVISIONS FOR CITY CONTRACTS

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STANDARD PROVISIONS FOR CITY CONTRACTS

PSC-1. Construction of Provisions and Titles Herein

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

PSC-2. Applicable Law, Interpretation and Enforcement

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

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

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

PSC-3. Time of Effectiveness

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

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

PSC-4. Integrated Contract

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

PSC-5. Amendment

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

PSC-6. Excusable Delays

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

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

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

PSC-7. Waiver

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

PSC-8. Suspension

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

PSC-9. Termination

A. Termination for Convenience

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

B. Termination for Breach of Contract

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

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

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

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

PSC-10. Independent Contractor

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

PSC-11. Contractor's Personnel

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

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

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

PSC-12. Assignment and Delegation

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

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

PSC-13. Permits

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

PSC-14. Claims for Labor and Materials

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

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

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

PSC-16. Retention of Records, Audit and Reports

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

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

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

PSC-17. Bonds

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

PSC-18. Indemnification

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

PSC-19. Intellectual Property Indemnification

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

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

PSC-20. Intellectual Property Warranty

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

PSC-21. Ownership and License

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

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

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

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

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

PSC-22. Data Protection

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

PSC-23. Insurance

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

PSC-24. Best Terms

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

PSC-25. Warranty and Responsibility of Contractor

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

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

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

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

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

PSC-27. Child Support Assignment Orders

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

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

PSC-28. Living Wage Ordinance

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

PSC-29. Service Contractor Worker Retention Ordinance

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

PSC-30. Access and Accommodations

CONTRACTOR represents and certifies that:

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

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

PSC-31. Contractor Responsibility Ordinance

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

PSC-32. Business Inclusion Program

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

PSC-33. Slavery Disclosure Ordinance

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

PSC-34. First Source Hiring Ordinance

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

PSC-35. Local Business Preference Ordinance

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

PSC-36. Iran Contracting Act

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

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

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

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

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

You are a subcontractor on City of Los Angeles Contract #_____. Pursuant to the City of Los Angeles Charter Section 470(c)(12) and related ordinances, you and your principals are prohibited from making campaign contributions to and fundraising for certain elected City of Los Angeles (“**CITY**”) officials and candidates for elected **CITY** office for twelve months after the **CITY** contract is signed. You are required to provide the names and contact information of your principals to the **CONTRACTOR** and to amend that information within ten business days if it changes during the twelve month time period. Failure to comply may result in termination of this Contract and any other available legal remedies. Information about the restrictions may be found online at ethics.lacity.org or by calling the Los Angeles City Ethics Commission at (213) 978-1960.”

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

CONTRACTOR shall comply with the City Contractors’ Use of Criminal History for Consideration of Employment Applications Ordinance, LAAC Section 10.48 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

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

Notwithstanding any other provision of this Contract, including any exhibits or attachments incorporated therein, and in order for **CITY** to comply with its governing legal requirements, **CITY** shall have no obligation to make any payments to **CONTRACTOR** unless **CITY** shall have first made an appropriation of funds equal to or in excess of its obligation to make any payments as provided in this Contract. **CONTRACTOR** agrees that any services provided by **CONTRACTOR**, purchases made by **CONTRACTOR** or expenses incurred by **CONTRACTOR** in excess of the appropriation(s) shall be free and without charge to **CITY** and **CITY** shall have no obligation to pay for the services, purchases or expenses. **CONTRACTOR** shall have no obligation to provide any services,

provide any equipment or incur any expenses in excess of the appropriated amount(s) until **CITY** appropriates additional funds for this Contract.

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

CONTRACTOR shall comply with all identity theft laws including without limitation, laws related to: (1) payment devices; (2) credit and debit card fraud; and (3) the Fair and Accurate Credit Transactions Act (“FACTA”), including its requirement relating to the content of transaction receipts provided to Customers. **CONTRACTOR** also shall comply with all requirements related to maintaining compliance with Payment Card Industry Data Security Standards (“PCI DSS”). During the performance of any service to install, program or update payment devices equipped to conduct credit or debit card transactions, including PCI DSS services, **CONTRACTOR** shall verify proper truncation of receipts in compliance with FACTA.

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

California Public Resources Code Section 5164 prohibits a public agency from hiring a person for employment or as a volunteer to perform services at any park, playground, or community center used for recreational purposes in a position that has supervisory or disciplinary authority over any minor, if the person has been convicted of certain crimes as referenced in the Penal Code, and articulated in California Public Resources Code Section 5164(a)(2).

If applicable, **CONTRACTOR** shall comply with California Public Resources Code Section 5164, and shall additionally adhere to all rules and regulations that have been adopted or that may be adopted by **CITY**. **CONTRACTOR** is required to have all employees, volunteers and Subcontractors (including all employees and volunteers of any Subcontractor) of **CONTRACTOR** working on premises to pass a fingerprint and background check through the California Department of Justice at **CONTRACTOR’S** sole expense, indicating that such individuals have never been convicted of certain crimes as referenced in the Penal Code and articulated in California Public Resources Code Section 5164(a)(2), if the individual will have supervisory or disciplinary authority over any minor.

PSC-42. Possessory Interests Tax

Rights granted to **CONTRACTOR** by **CITY** may create a possessory interest. **CONTRACTOR** agrees that any possessory interest created may be subject to California Revenue and Taxation Code Section 107.6 and a property tax may be levied on that possessory interest. If applicable, **CONTRACTOR** shall pay the property tax. **CONTRACTOR** acknowledges that the notice required under California Revenue and Taxation Code Section 107.6 has been provided.

PSC-43. Confidentiality

All documents, information and materials provided to **CONTRACTOR** by **CITY** or developed by **CONTRACTOR** pursuant to this Contract (collectively “Confidential Information”) are confidential. **CONTRACTOR** shall not provide or disclose any Confidential Information or their contents or any information therein, either orally or in writing, to any person or entity, except as authorized by **CITY** or as required by law. **CONTRACTOR** shall immediately notify **CITY** of any attempt by a third party to obtain access to any Confidential Information. This provision will survive expiration or termination of this Contract.

EXHIBIT 1

INSURANCE CONTRACTUAL REQUIREMENTS

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

CONTRACTUAL REQUIREMENTS

CONTRACTOR AGREES THAT:

- 1. Additional Insured/Loss Payee.** The CITY must be included as an Additional Insured in applicable liability policies to cover the CITY'S liability arising out of the acts or omissions of the named insured. The CITY is to be named as an Additional Named Insured and a Loss Payee As Its Interests May Appear in property insurance in which the CITY has an interest, e.g., as a lien holder.
- 2. Notice of Cancellation.** All required insurance will be maintained in full force for the duration of its business with the CITY. By ordinance, all required insurance must provide at least thirty (30) days' prior written notice (ten (10) days for non-payment of premium) directly to the CITY if your insurance company elects to cancel or materially reduce coverage or limits prior to the policy expiration date, for any reason except impairment of an aggregate limit due to prior claims.
- 3. Primary Coverage.** CONTRACTOR will provide coverage that is primary with respect to any insurance or self-insurance of the CITY. The CITY'S program shall be excess of this insurance and non-contributing.
- 4. Modification of Coverage.** The CITY reserves the right at any time during the term of this Contract to change the amounts and types of insurance required hereunder by giving CONTRACTOR ninety (90) days' advance written notice of such change. If such change should result in substantial additional cost to CONTRACTOR, the CITY agrees to negotiate additional compensation proportional to the increased benefit to the CITY.
- 5. Failure to Procure Insurance.** All required insurance must be submitted and approved by the Office of the City Administrative Officer, Risk Management prior to the inception of any operations by CONTRACTOR.

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

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

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

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

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

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

Required Insurance and Minimum Limits

Name: _____

Date: _____

Agreement/Reference: _____

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

Limits

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

WC Statutory

EL _____

Waiver of Subrogation in favor of City

Longshore & Harbor Workers

Jones Act

___ **General Liability** _____

Products/Completed Operations

Sexual Misconduct _____

Fire Legal Liability _____

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

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

Discovery Period _____

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

All Risk Coverage

Boiler and Machinery

Flood _____

Builder's Risk

Earthquake _____

___ **Pollution Liability** _____

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

___ **Crime Insurance** _____

Other: _____