

**AGREEMENT  
BETWEEN CITY OF LOS ANGELES  
AND  
LOS ANGELES COMMUNITY GARDEN COUNCIL  
FOR THE  
OPERATION AND MAINTENANCE  
OF VARIOUS COMMUNITY GARDENS ON PARK PROPERTY**

This AGREEMENT ("AGREEMENT") is entered into as of \_\_\_\_\_, 20\_\_\_\_, by and between the City of Los Angeles ("CITY"), a municipal corporation acting by and through its Board of Recreation and Park Commissioners, and Los Angeles Community Garden Council, a California 501(c)(3) non-profit corporation ("LACGC"), for the operation and maintenance of Solano Canyon Community Garden in Elysian Park, Drew Street Community Garden, El Sereno Community Garden, Patton Street Community Garden at Patton Street Park, and East Wilmington Community Garden in East Wilmington Greenbelt Park. CITY and LACGC may be referred to herein individually as "PARTY" or collectively as "PARTIES".

WHEREAS, CITY, through its Department of Recreation and Parks ("RAP"), owns or controls various real property where community gardens have been established and in operation for various lengths of time at Solano Canyon Community Garden in Elysian Park, Drew Street Community Garden, El Sereno Community Garden, Patton Street Community Garden at Patton Street Park, and East Wilmington Community Garden in East Wilmington Greenbelt Park ("PROPERTIES"), as included and set forth at length in the description of PROPERTIES attached hereto and incorporated herein by reference as Exhibit A;

WHEREAS, LACGC has a history of operating successful community-based gardens in Southern California, including existing operations at the PROPERTIES, and states that it wishes to continue operating and maintaining such PROPERTIES to provide gardening programs to fulfill the recreational needs of residents of the City of Los Angeles;

WHEREAS, LACGC and CITY entered into Agreement No. 3370 on February 20, 2013, for operation of a community garden at Solano Canyon in Elysian Park, which expired on February 19, 2016;

WHEREAS, LACGC and CITY entered into Agreement No. 3399 on February 20, 2013, for operation of the Drew Street Community Garden at 3304 Drew Street, which expired on February 19, 2016;

WHEREAS, CITY issued Right-of-Entry Permit No. PD-ROE-066 to LACGC on August 7, 2015, for operation of the Patton Street Community Garden at 327 N. Patton Street, which expired on June 30, 2016;

WHEREAS, CITY issued Right-of-Entry Permit No. PD-ROE-071 to LACGC on August 26, 2015, for operation of the El Sereno Community Garden at 5466 Huntington Drive, which expired on February 28, 2016;

WHEREAS, CITY issued Right-of-Entry Permit No. PD-ROE-079 to LACGC on May 11, 2017, for operation and maintenance of community gardens at the PROPERTIES, which expires on May 10, 2018;

WHEREAS, CITY, through the Board of Recreation and Park Commissioners ("BOARD"), agreed to accept LACGC's offer of continuing operations and maintenance of all the PROPERTIES at the BOARD's meeting of \_\_\_\_\_ (Report No. \_\_\_\_\_); and,

WHEREAS, LACGC may also undertake operations and maintenance at new community gardens that may be developed on property owned or controlled by RAP, which on a case by case basis and upon approval by the BOARD, may be added to the list of PROPERTIES under this AGREEMENT, and which shall be operated by LACGC under the same terms and conditions as at the existing PROPERTIES.

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

1. **Use of Properties.** In consideration of the anticipated benefits to the public, the sufficiency of which is mutually acknowledged, CITY grants to LACGC this AGREEMENT authorizing use of the PROPERTIES for the operation of community gardens as described in the Permitted Uses set forth below, which shall be performed by LACGC in compliance with the terms and conditions of this AGREEMENT.

PARTIES may mutually agree to add additional community gardens on property owned or under the control of CITY to the list of PROPERTIES in Exhibit A, to be operated under all terms and conditions of this AGREEMENT, subject to approval by the BOARD.

2. **Term and Termination.** The performance period authorized under this AGREEMENT (for ease of reference, shall be referred to herein as "TERM") shall be a maximum of **ten (10)** years from the date of execution of this AGREEMENT, subject to annual performance evaluations ("ANNUAL PERFORMANCE REVIEWS") conducted by RAP to determine the feasibility and benefit of continuing the collaborative relationship under this AGREEMENT.
  - a. **Commencement and Expiration.** This AGREEMENT shall take effect on the date set forth above, and shall end upon the expiration of the TERM of this AGREEMENT, or the earlier of (i) a written termination notice from CITY to LACGC, effective after sixty (60) calendar days from the date of issuance due to either an unfavorable Performance Review of LACGC's performance or termination for cause during the TERM; or, (ii) the date that LACGC ceases to operate the PROPERTIES. If CITY should elect to terminate this AGREEMENT, LACGC agrees to immediately cease all operations and other activity and to peacefully surrender the PROPERTIES to CITY.
  - b. **Cease to Operate.** The phrase "cease to operate" shall mean the first to occur of any of the following: (i) the termination (but not temporary suspension) of LACGC's corporate charter or grant of non-profit status, if such exists, unless the same is reinstated within sixty (60) calendar days after such termination; (ii) a material change in LACGC's purposes or function as contained in LACGC's corporate charter or grant of non-profit status ("Stated Purposes"); (iii) a material change in the delivery of services by LACGC, as described herein; or (iv) the failure of LACGC to use the PROPERTIES for any of the PERMITTED USES (as set forth in Section 5) or LACGC's failure to comply with the agreed upon PERFORMANCE REQUIREMENTS (as set forth in Section 6), 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 PROPERTIES, or for reason beyond LACGC's control.

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 LACGC shall be contingent upon favorable ANNUAL PERFORMANCE REVIEW for the PROPERTIES, which shall include, but not be limited to:
  - (i) An evaluation of LACGC's compliance with the terms and conditions of this AGREEMENT;
  - (ii) Fulfillment of LACGC's obligations for the operation and maintenance of the PROPERTIES under this AGREEMENT, including the provision of programs and/or services performed under the PERMITTED USES specified herein;
  - (iii) Fulfillment of all PERFORMANCE REQUIREMENTS included herein;
  - (iv) Adequacy of LACGC's funding and resources to operate and maintain each of the PROPERTIES in accordance with this AGREEMENT;
  - (v) The volume of the public's use of the PROPERTIES and participation in LACGC's programs; and
  - (vi) LACGC's cooperation with CITY staff.
- b. Every year during the TERM of this AGREEMENT, for purposes of completing the Annual Performance Review process, LACGC shall submit to RAP during the period of February 1st through May 30th of each year, an annual performance or program report ("PERFORMANCE REPORT"). This PERFORMANCE REPORT may include, but not be limited to:
  - (i) Annual Budget and Report of Expenditures
  - (ii) Data on participants and program results
  - (iii) Discussion of program changes or challenges
- c. RAP reserves the right to request additional materials or clarifying information after review of the submitted PERFORMANCE REPORT.
- d. CITY's approval to continue the collaborative relationship and this AGREEMENT shall be based solely on findings obtained through the performance review process, evaluation of the PERFORMANCE REPORT, and a review of compliance with the terms and conditions of this AGREEMENT. A sample PERFORMANCE EVALUATION form is attached hereto and incorporated herein by reference as Exhibit B. Results of the performance review may also be used in determining future collaborations with LACGC. CITY shall not unreasonably withhold its determination.

4. **Access to Properties.** LACGC and any authorized third party associated with LACGC's activities at the PROPERTIES will abide by the terms and conditions expressed in this AGREEMENT, and will cooperate fully with CITY's employees in the performance of their duties. Authorized representatives, agents and employees of CITY will have the right to enter the PROPERTIES for purposes of fulfilling normal duties or in the case of emergencies. Prior notice will be given to LACGC when feasible. If required for public safety, CITY may immediately suspend and/or terminate LACGC activities involving the PROPERTIES.
5. **Permitted Uses, Associated Requirements, and Restrictions.** PROPERTIES shall be operated as community gardens in a manner that maximizes the gardening experience for persons desiring to grow food, flowers, and ornamental plants, and in accordance with RAP's Community Operated Open Space Policy and Guidelines approved by the BOARD on May 4, 2011 (Report No. 11-121) and the following requirements ("PERMITTED USES"):
  - a. PROPERTIES may be used for meetings related to the operation and maintenance of a community garden.
  - b. The public will be allowed access for public programs, tours of the garden and during special events; scheduled school tours and field trips will be conducted by a registered and fingerprinted employee or volunteer of LACGC. LACGC shall ensure that any employee and/or volunteer, is appropriately evaluated pursuant to normal CITY background check procedures for RAP volunteers.
  - c. No commercial activity will be allowed on the PROPERTIES.
  - d. Grown and harvested fruit and vegetation are for personal consumption and may not be used for for-profit commercial purposes.
  - e. PROPERTIES shall not be permitted to be used for organized sports, public event space, or paid parking.
  - f. LACGC 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. The documentation of this written consent must be provided to RAP prior to photographs being taken.
  - g. The dispensing and/or consumption of beer, wine or other intoxicating liquors (commonly referred to alcoholic beverages) shall not be permitted to occur on the PROPERTIES.
6. **Performance Requirements.** LACGC must operate and maintain the PROPERTIES in accordance with the following ("PERFORMANCE REQUIREMENTS"):
  - a. LACGC shall perform operations and maintenance efficiently and economically, at its sole cost and expense.
  - b. LACGC agrees that it shall operate the PROPERTIES only during the specified days and hours listed in Section 7 of this AGREEMENT.

- c. LACGC, at its sole cost and expense, shall provide sufficient staff necessary to perform the operation and maintenance of the PROPERTIES, providing all materials, supplies, equipment, and funds necessary to provide the public with such recreational opportunities to the reasonable satisfaction of RAP. LACGC may collect participant fees as described in Section 9 (Funding and Fundraising).
- d. LACGC's staffing of the PROPERTIES shall comply with applicable City, State, and/or Federal protocols for recreation and/or maintenance staff, such as, background checks, finger printing, etc, whether the person is an employee or volunteer of LACGC.
- e. LACGC shall punctually pay or cause to be paid, all of the financial obligations incurred in connection with the operation and maintenance of the PROPERTIES, including payment to RAP for any water or other utilities used, as applicable. LACGC shall discharge or provide for the discharge of all claims authorized or incurred for labor, equipment, materials, and supplies furnished in connection with LACGC's use of the PROPERTIES.
- f. LACGC will work with involved gardeners and communities to develop and promulgate written garden rules for each of the PROPERTIES by using as a starting point or resource a Sample Garden Rules for a Community Garden, attached as Exhibit C and incorporated herein.

7. **Days and Periods of Use.** Hours and days of LACGC and public access to PROPERTIES are:

Sunrise to sunset daily for the operation and maintenance of community gardens. Any extended times or hours for specified events or programs related to a community garden may be granted with prior written consent of CITY ("PERMITTED TIMES").

8. **Parking.** During the TERM of this AGREEMENT and during PERMITTED TIMES and in connection with the PERMITTED USES specified above in Section 5 of this AGREEMENT, LACGC, its staff, and public patrons and/or guests, whether or not involved in LACGC activities at the PROPERTIES, shall have the non-exclusive right without charge, to park vehicles within any available parking spaces at the PROPERTIES on a first-come-first-served basis. Exclusive or designated parking shall not be allowed. Off-site street parking is allowed, subject to the Department of Transportation regulations.

9. **Funding and Fundraising.** All funds, including grants, donations, or any other funds received by LACGC in connection with the PROPERTIES or related to matters covered by this AGREEMENT, or generated from programs or activities conducted on the PROPERTIES, shall be applied exclusively to the operations and maintenance of the PROPERTIES, and will be strictly accounted for as provided herein. Such funds shall not be commingled with other funds of LACGC unrelated to this AGREEMENT and/or the operation and maintenance of the PROPERTIES. If for any reason LACGC fails to secure funding to carry out its obligations and commitments under this AGREEMENT, CITY may and can terminate this AGREEMENT pursuant to a Breach and Default of this AGREEMENT. LACGC may charge gardening participants appropriate fees for programs, services, and/or activities offered by LACGC on the PROPERTIES, including a monthly fee for use a garden plot, in an amount comparable to those fees charged by organizations offering similar programs, services, and/or activities in the community. LACGC may also charge admission fees for

special events in an amount comparable to admission fees charged for similar events in the community.

LACGC may hold fundraising activities on PROPERTIES, but must obtain prior written approval for the date and time from RAP contact person set forth in Notices Section 24 for each fundraising event no fewer than thirty (30) calendar days prior to the scheduled activity. LACGC 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 PROPERTIES must be used only in support of the activities authorized under this AGREEMENT. Within thirty (30) days of each fundraising event held at the PROPERTIES, LACGC shall provide a written balance statement for the event that shall detail expenses and revenues, including net funds raised. Fundraising activities shall not include the distribution and/or the consumption of alcoholic beverages in accordance with Section 5.g. of this AGREEMENT.

**10. Maintenance and Repair of Properties.** During the TERM of this AGREEMENT, and subject to the terms and conditions contained herein, PARTIES agree to the following provisions for the Maintenance and Repair of the PROPERTIES:

- a. Pursuant to the mutual agreement of PARTIES, LACGC shall operate and maintain the PROPERTIES efficiently and economically at its sole cost and expense, and shall perform the functions of daily maintenance and/or repair of the PROPERTIES, providing all materials, supplies, equipment, and funds necessary to perform appropriate maintenance and required repair to the reasonable satisfaction of CITY.
- b. LACGC, at its sole cost and expense, shall perform or cause to be performed all necessary maintenance and repair of improvements to PROPERTIES, in consultation with CITY's designated representative, or by CITY's written request and/or instruction.
- c. LACGC shall punctually pay or cause to be paid, all of the financial obligations incurred in connection with the maintenance and repair of the PROPERTIES. LACGC shall discharge or provide for the discharge of all claims authorized or incurred for labor, equipment, materials, and supplies furnished in connection with LACGC's use of the PROPERTIES.

**11. Consideration.** The consideration for this AGREEMENT in exchange for LACGC's use of the PROPERTIES shall be LACGC's provision of gardening-associated recreational activity, programming and services, and maintenance and/or repair of the PROPERTIES, at no cost to CITY, pursuant to the terms and conditions of this AGREEMENT and in accordance with RAP policies for recreation and/or park purposes, together with the attendant benefits to the People of the City of Los Angeles. Additionally, LACGC's use of the PROPERTIES shall be subject to certain cost recovery reimbursement fees described below. Such fees are subject to change with prior written notice to LACGC.

- a. **Utilities.** Pursuant to RAP policy regarding utility payments for services provided at park facilities operated by non-profit and other collaborating entities, approved by the BOARD on October 2, 2002 (Report No. 02-349), the cost of utility services to the PROPERTIES, such as electricity, gas, and water, shall be the sole financial responsibility of the organization operating and maintaining the subject facility. With respect to the PROPERTIES under this AGREEMENT, where LACGC currently does not pay directly to

the utility service provider for water used, which includes **Solano Canyon Community Garden, Patton Street Community Garden and East Wilmington Community Garden**, RAP shall invoice LACGC semi-annually for actual water use based on a water sub-meter installed at the PROPERTIES. Payment for each six month billing period (January-June and July-December) will be made by LACGC in a lump sum within thirty (30) calendar days of receipt of an invoice from RAP. Payments may be made by check or money order made payable to "City of Los Angeles, Department of Recreation and Parks" and mailed to the RAP Partnership Division at the address listed in Section 24 of this AGREEMENT.

- b. **Trash and Solid Waste Disposal.** Trash disposal and removal of solid waste, green waste and recyclables shall be the sole responsibility and expense of LACGC. CITY shall bear no costs in regards to the disposal and /or removal of trash, solid waste and green waste.
- c. **Annual Lease Payment.** **El Sereno Community Garden** is located on land leased by the State of California Department of Transportation (CalTrans) to RAP, which includes a yearly lease payment of one hundred dollars (\$100.00). LACGC agrees to reimburse RAP for any such lease payments RAP makes to CalTrans.

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

Changes to garden plot layout and configuration, and changes to garden paths are not alterations, improvements, and replacements within the meaning of this section and do not require CITY review and approval. However, a change in the number of garden plots shall require approval by RAP.

13. **Capital Project Proposal.** When proposing a project involving any alterations, additional improvements, and/or replacements to the PROPERTIES, LACGC shall adhere to the following guidelines and instructions for submitting a proposed project for RAP's consideration:

- a. Submit a project proposal for RAP review and presentation for conceptual approval by the BOARD, if necessary. The proposal should include but not be limited to, project objectives, conceptual drawings, a written description of the project's scope of work, general project details and requirements, and estimated preliminary budget.
- b. Should the project be conceptually approved by the BOARD, LACGC will be authorized to perform any required preliminary work or site assessments, either through a right-of-entry permit if required, or the CITY's authority and/or this AGREEMENT.
- c. Depending on the scope of work and magnitude of the proposed project, LACGC may be assessed an administrative fee to be determined by RAP, for project review and all

services provided by CITY staff. Such fee shall be paid to the "City of Los Angeles Department of Recreation and Parks" and shall have been paid in full prior to CITY conceptual approval of the proposed project.

- d. If necessary and pursuant to the recommendation of the City Attorney, a development agreement shall be prepared to set forth the terms and conditions under which the proposed project shall be implemented, depending on the scope of work and project magnitude.
- e. When prepared, LACGC shall submit 50% and 90% complete design drawings for RAP review and approval. Upon RAP's approval, all design and architectural work shall be completed by a California licensed architect and/engineer.
- f. PARTIES shall submit a proposed development agreement and final plans and specifications, respectively, to the BOARD for its consideration and final project approval.
- g. LACGC shall obtain, at its own cost and expense, all necessary and/or required City, County, State, and/or Federal permits, approvals, licenses, and/or authorizations for project implementation, including but not limited to environmental clearances, in compliance with the California Environmental Quality Act (CEQA).
- h. LACGC shall submit approved plans and specifications for final approval to:

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

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

**14. Insurance.** Before occupying the PROPERTIES under this AGREEMENT and periodically as required during its TERM, LACGC shall furnish CITY with evidence of insurance from firms reasonably acceptable to CITY and approved to do such business in the State of California. LACGC or any third party providing work or services under this AGREEMENT shall name the City of Los Angeles and its boards, officers, agencies and employees as an additional insured for all required coverages, as applicable. LACGC 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 D, which is incorporated herein by reference.

- a. LACGC 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 LACGC sixty (60) calendar days written notice, provided that such amounts and/or types shall be reasonably available to LACGC.
- b. If any of the required insurance contains aggregate limits or applies to other operations of LACGC outside of this AGREEMENT, LACGC shall give CITY written notice of any incident, occurrence, claim, settlement or judgment against such insurance that in

LACGC's best judgment may diminish the protection such insurance affords CITY within thirty (30) calendar days of the knowledge of same. LACGC shall further restore such aggregate limits or shall provide other replacement insurance for such aggregate limits within sixty (60) calendar days of the knowledge of same.

- c. If an insurance company elects to cancel insurance before the stated expiration date, declines to renew in the case of a continuous policy, reduces the stated limits other than by impairment of an aggregate limit or materially reduces the scope of coverage, thereby affecting CITY's interest, LACGC will provide CITY at least thirty (30) calendar days prior written notice of such intended election. The notice will be sent by receipted delivery addressed as follows: City Administrative Officer, Risk Management, 200 North Main Street, Room 1240, City Hall East, Los Angeles, California 90012, or to such address as CITY may specify by written notice to LACGC.
- d. LACGC's failure to procure and maintain the required insurance shall constitute a material breach of this AGREEMENT under which CITY may immediately terminate the AGREEMENT or, at its discretion, pay to procure or renew such insurance to protect CITY's interest; in which case LACGC 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 LACGC's financial capacity. Additionally, such programs or retention must provide CITY with an equivalent protection from liability.

**15. Indemnification.** Except for the active negligence or willful misconduct of CITY, LACGC undertakes and agrees to defend, indemnify and hold harmless the City of Los Angeles and all of its boards, officers, agents, employees, assigns and successors-in-interest from and against all suits and causes of action, claims, losses, demands and expenses, including but not limited to attorneys' fees and costs of litigation, for damage or liability of any nature whatsoever, for death or injury to any person, including LACGC's employees and agents, arising in any manner by reason of or incident to the performance of work under this AGREEMENT on the part of LACGC and/or any third party.

CITY may recover at law any and all claims and damages which may be due as a result of damage or destruction occurring on the PROPERTIES because of LACGC's active negligence or willful misconduct. LACGC agrees that any third party working or providing services within the PROPERTIES will indemnify and hold harmless the City of Los Angeles and its officers, agencies, invitees, employees, contractors and volunteers from any and all liability, actual or alleged, including court costs and reasonable attorney's fees, which may arise from the acts or omissions of the LACGC, excepting the active negligence or willful misconduct of LACGC.

**16. Casualty and Condemnation.** LACGC shall be excused from its obligations in this AGREEMENT with respect to the operation, maintenance and repair of any portion of the PROPERTIES or any improvement there damaged by casualty or taken by condemnation until any such portion or improvement is restored to LACGC's use. CITY shall not be obligated to restore PROPERTIES damaged by casualty in whole or in part. If one or more of the PROPERTIES is taken by condemnation, CITY shall not be obligated to provide LACGC a replacement property for LACGC's use.

**17. Hazardous Substances.** PARTIES agree that PROPERTIES shall be used in a manner consistent with its intended public recreational purposes and within the scope of use set forth above. LACGC shall use PROPERTIES in compliance with laws pertaining to hazardous substances and ensure that no pesticides, insecticides, herbicides and rodent poisons not in compliance with this section are used on PROPERTIES. 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 LACGC to any governmental agency or third party under applicable statute. No lead or oil based paint, paint thinner, varnishes, lacquers and stain shall be brought onto or stored on the PROPERTIES.

**18. Publicity.** PARTIES agree to cooperate and coordinate with respect to the nature, text, and timing of any press release or public announcement(s) concerning the existence of this AGREEMENT, the use or promotion of the PROPERTIES, the acquisition of any real property, or construction of any improvements at the PROPERTIES, except as may be legally required by applicable laws, regulations, or judicial order. PARTIES agree to notify each other in writing of any press release, public announcement, marketing or promotion of the PROPERTIES. Further, any press release, public announcement, marketing materials, or brochures prepared by either CITY or LACGC, shall appropriately acknowledge the contributions of both PARTIES. All press releases, public announcements, and marketing materials relative to any Quimby funded property acquired for park purposes shall explicitly acknowledge the use of Quimby funds as a source of funding. To the extent stipulated in any grant agreement, the PARTIES 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, PARTIES shall coordinate the scheduling and LACGC of any public or media event to provide the opportunity for attendance and participation by officials and/or representatives of both PARTIES; including elected officials and public officials. Similarly, any document, written report, or brochure prepared by either CITY or LACGC, in whole or in part pursuant to the acquisition of property and/or installation of improvements, shall contain any acknowledgements required under any grant agreement.

LACGC agrees that any public release or distribution of information related to this AGREEMENT or related project, programs or services, shall include the following statement at the beginning or introduction of such release:

"In collaboration with the City of Los Angeles Department of Recreation and Parks"

**19. Signage.** No signs or banners of any kind will be displayed unless previously approved in writing by RAP. RAP may require removal or refurbishment, at LACGC's expense, of any sign previously approved. On all signage at PROPERTIES, LACGC shall provide the following credit,

"In collaboration with the City of Los Angeles, Department of Recreation and Parks"

**20. Filming.** It is the policy of the City of Los Angeles to facilitate the use of City controlled properties as film locations when appropriate. RAP has established a Park Film Office to coordinate use of park property for film production purposes. Any commercial filming at the

PROPERTIES shall be subject to approval by RAP and the Film Office. All fees for use of park property by film production companies, including PROPERTIES, 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.

21. **Taxes and Possessory Interest.** LACGC shall pay all taxes of whatever character that may be levied or charged upon the rights of LACGC to use the PROPERTIES, or upon LACGC'S improvements, fixtures, equipment, or other property thereon or upon LACGC'S operations hereunder. In addition, by executing the AGREEMENT and accepting the benefits thereof, a property interest may be created known as a "Possessory Interest" and such property interest will be subject to property taxation. LACGC, as the party in whom the Possessory Interest is vested, may be subject to the payment of the property taxes levied by the State and County upon such interest.
22. **Breach or Default by LACGC.** The following occurrences constitute events of breach or default of this AGREEMENT: LACGC materially fails in the performance of any provision or condition of this AGREEMENT, such as failure to maintain required insurance coverage, failure to comply with applicable legal requirements, failure to pay assessed fees or utility charges, or failure to fulfill the obligation to operate, maintain and repair the PROPERTIES as specified herein. LACGC's attempt to assign rights or obligations under this AGREEMENT without CITY's prior written consent shall also constitute an event of breach or default.
23. **Breach or Default by LACGC – CITY's Remedies.** Upon the occurrence of one or more events of breach or default by LACGC, 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 LACGC, and if LACGC does not cure said breach or default within thirty (30) calendar days of receipt of said notice, CITY may, by delivering a second written notice to LACGC, terminate this AGREEMENT without further delay, whereupon LACGC shall vacate the PROPERTIES within sixty (60) calendar days. For a breach or default involving sanitary or safety conditions, the cure period is reduced to seven (7) calendar days.
  - b. **CITY's Right to Cure.** CITY at its sole discretion and with no obligation to do so and subject to any applicable conditions and limitations set forth elsewhere in this AGREEMENT, may, after a continuing breach or default by LACGC, perform or cause to be performed any of LACGC's unperformed obligations under this AGREEMENT, in which case LACGC shall reimburse CITY for any costs incurred by CITY in the performance of any of LACGC's unperformed obligations. CITY may enter the PROPERTIES and remain there for the purpose of correcting or remedying the continuing breach or default. Such action by CITY shall not be deemed to waive or release said breach or any default or CITY's right to take further, preventative action.
24. **Notices.** Any notice, request for consent, or statement ("Notice"), that CITY or LACGC 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 CITY or LACGC may designate a different address for any Notice by written statement to the other in accordance with the provisions of this Section. A Notice shall be delivered personally or sent by confirmed facsimile

transmission, by reliable courier providing tracking services, or by deposit with the United States Postal Service with postage prepaid and return receipt requested.

All Notices shall be addressed as follows:

If to CITY:

City of Los Angeles Department of Recreation and Parks  
Partnership Division  
Attention: Division supervisor  
221 N. Figueroa Street, Suite 180,  
Mail stop 628-9  
Los Angeles, California 90012  
Tel.: (213) 202-5600; fax: (213) 202-2614

If to LACGC:

Los Angeles Community Garden Council  
c/o Julie A. Beals, Executive Director  
4470 W. Sunset Boulevard, #381  
Los Angeles, California 90027  
Tel: (323) 942-9676

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

**26. 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 agency relationship. LACGC shall have no power to obligate or bind CITY in any manner whatsoever. Further, under no circumstances will LACGC 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 LACGC the power to be an agent of the CITY or an actor under the color of law, be it civilly or criminally.

**27. 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.

**28. Ordinances and Standard Provisions.** The "Standard Provisions for City Contracts (Rev. 3/09)" are incorporated herein by reference and attached hereto as Exhibit E. If there is any conflicting language between the "Standard Provisions for City Contracts (Rev. 3/09)" and this AGREEMENT, the language of this AGREEMENT shall prevail. In addition, LACGC will provide documentation of compliance with all required Ordinance Provisions as determined by CITY.

**29. Approval of Sub-agreements.** Any concession, such as the sale of food and/or beverages or other items, shall be subject to prior written approval by CITY. In addition, any concession or other sub-agreement affecting the PROPERTIES shall be filed with CITY for review and written approval no fewer than sixty (60) calendar days before the date LACGC proposes to implement any sub-agreement. No sub-agreement shall take effect unless approved by

CITY. LACGC shall require all individuals and entities intended to provide programs or services within the PROPERTIES to agree in writing to abide by all conditions set forth in this AGREEMENT.

30. **Safety Practices.** LACGC shall correct violations of safety practices immediately and shall cooperate fully with CITY in the investigation of accidents or deaths occurring on the PROPERTIES. In the event of death or serious injury (requiring an emergency room hospital visit), LACGC must notify RAP's Partnership Division as soon as possible but no later than twenty-four (24) hours after the incident. Notice of non-serious injuries occurring on the PROPERTIES shall be provided to RAP's Partnership Division within seventy-two (72) hours. LACGC shall keep internal documentation of the incident(s) and provide RAP's General Manager or his or her designee with such information upon request.
31. **Ratification.** At the request of CITY, and because of the need therefore, LACGC began performance of the responsibilities herein required prior to the execution hereof. By its execution hereof, CITY hereby accepts such service subject to all the terms, covenants, and conditions of this AGREEMENT, and ratifies its AGREEMENT with LACGC for such services to the extent LACGC's obligations and services were performed in accordance with the terms and conditions of this AGREEMENT.

32. **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: List of Properties used by Los Angeles Community Garden Council and a Site Map for each Property
- Exhibit B: Sample Performance Evaluation Form
- Exhibit C: Sample Garden Rules for a Community Garden
- Exhibit D: Insurance Requirements
- Exhibit E: Standard Provisions for City Contracts (Rev. 3/09)

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 E; 4) Exhibit D; 5) Exhibit C; and 6) Exhibit B.

**[Signature Page Follows]**

Agreement No. \_\_\_\_\_

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

**CITY:**

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

**LACGC:**

LOS ANGELES COMMUNITY GARDEN  
COUNCIL, a California 501(c)(3) non-profit  
corporation

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

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

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

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

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

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

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

**APPROVED AS TO FORM:**

MICHAEL N. FEUER, City Attorney

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

By: \_\_\_\_\_  
Deputy City Attorney

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

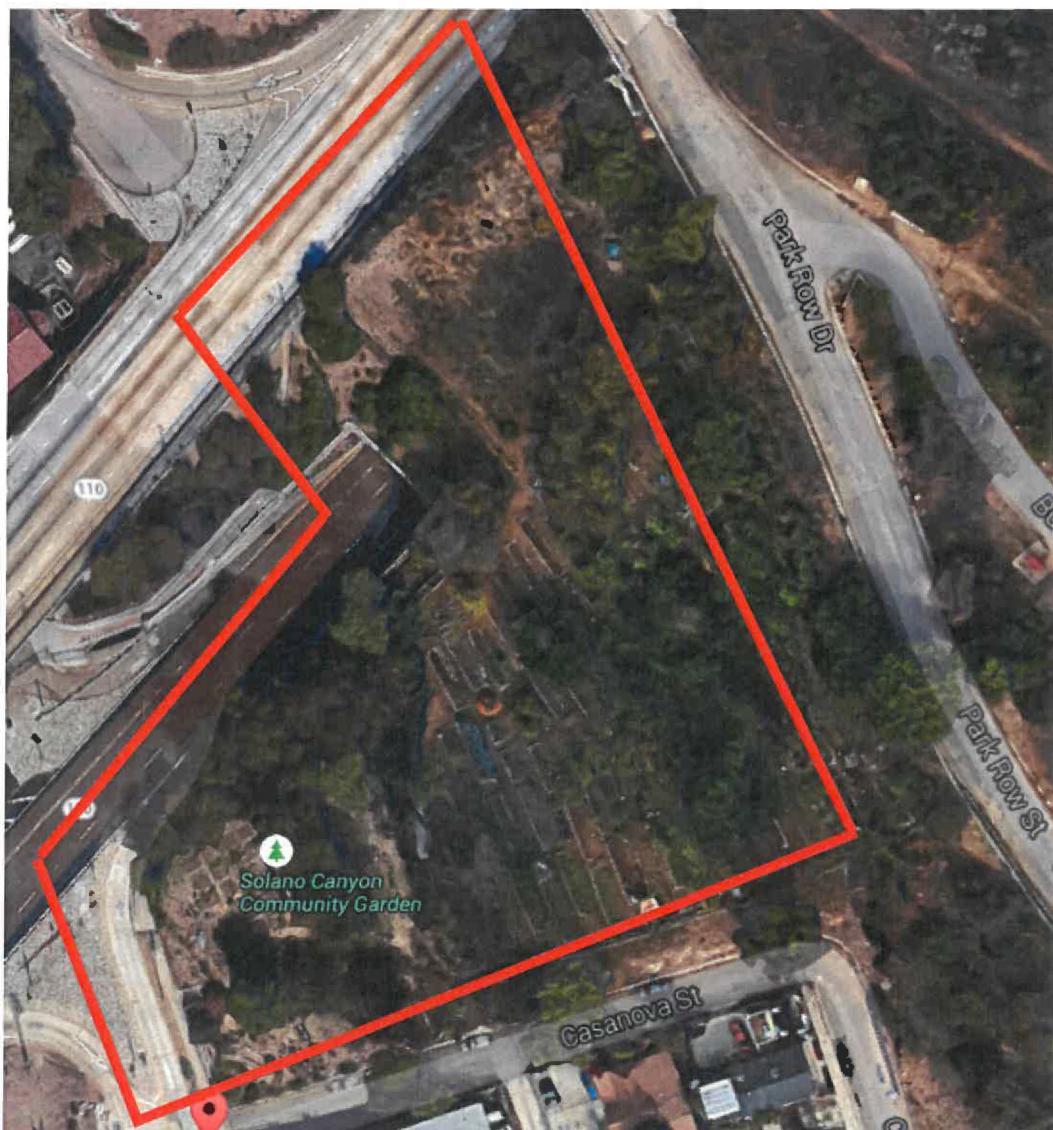
**EXHIBIT A****Properties used by Los Angeles Community Garden Council**

<b>Community Garden</b>	<b>Address</b>	<b>No. of Garden Plots</b>	<b>Garden Acreage</b>
Solano Canyon Community Garden	545 Solano Avenue, Los Angeles, CA 90012	137	5.00
Drew Street Garden	3304 Drew Street, Glassell Park, CA 90065	38	0.11
El Sereno Community Garden	5466 Huntington Drive, Los Angeles, CA 90032	25	0.77
Patton Street Community Garden	327 N. Patton Street, Los Angeles, CA 90027	10	0.09
East Wilmington Community Garden	East 'L' Street, between Drumm Avenue and Coil Avenue, Los Angeles, CA 90744	37	10,000 sq. feet

**Site Map for Solano Canyon Community Garden**

Solano Canyon Community Garden in Elysian Park – 545 Solano Avenue, Los Angeles, CA 90012

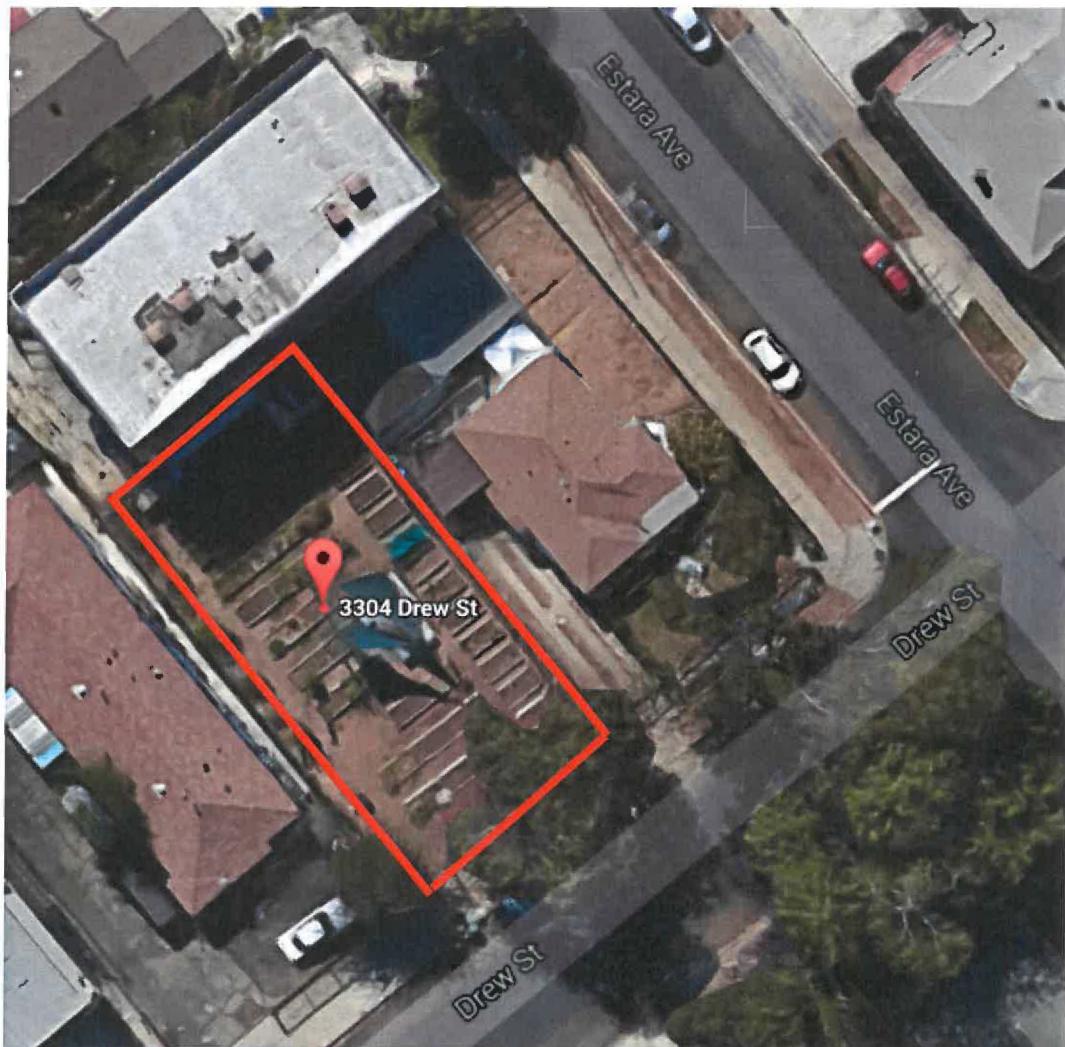
The area authorized for the operation and maintenance of the Solano Canyon Community Garden is enclosed by the bold line on the map below.



**Site Map for Drew Street Community Garden**

Unofficially named Drew Street Park – 3304 Drew Street, Los Angeles, CA 90065

The area authorized for the operation and maintenance of the Drew Street Community Garden, informally named "Glassell Park Community Garden", is enclosed by the bold line on the map below.



**Site Map for El Sereno Community Garden**

**El Sereno Community Garden** in the community of Glassell Park – 5466 Huntington Drive, Los Angeles, CA 90032.  
APN 5292-020-901, 902, 903, 904, and 908 (0.77 acres)

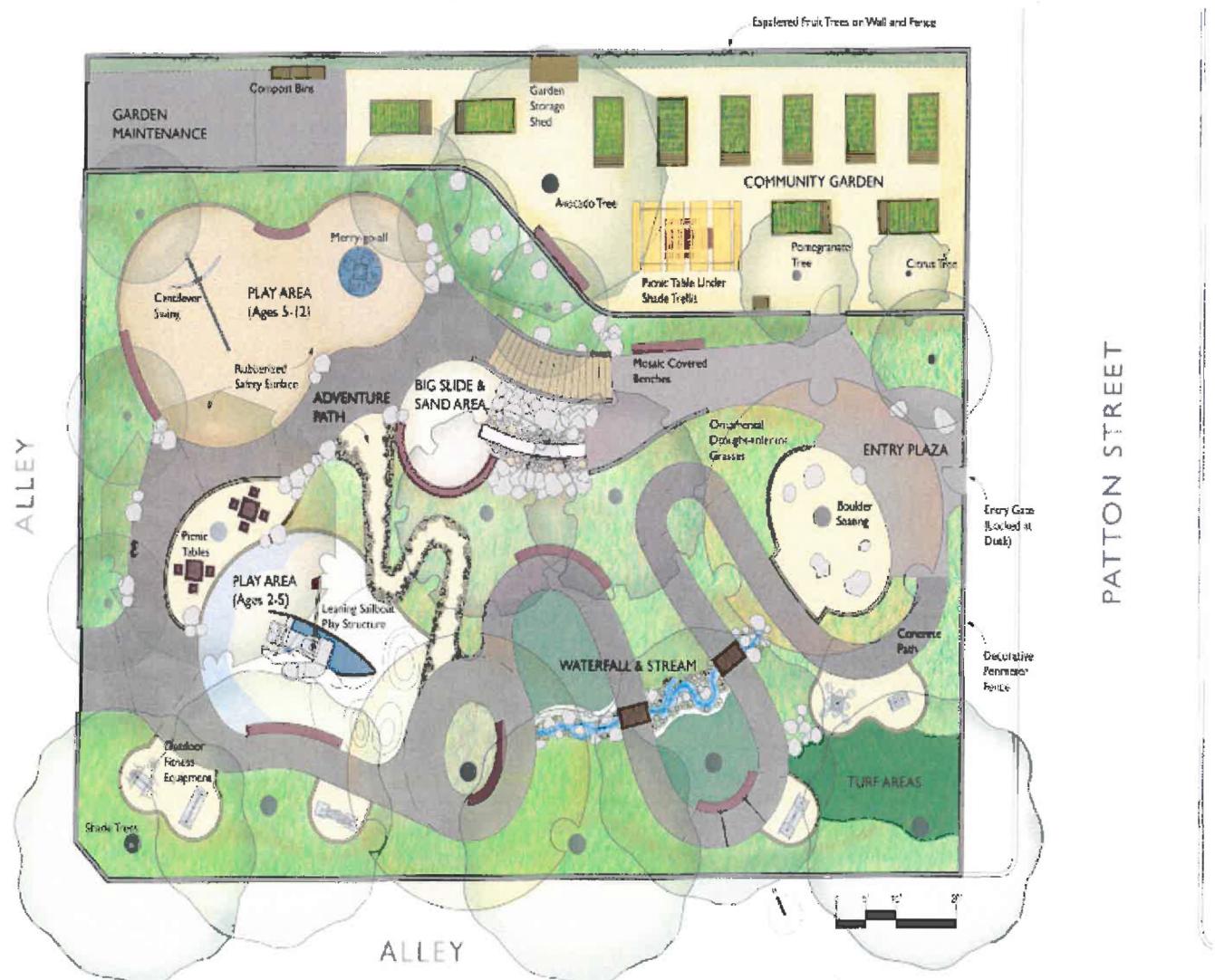
The area authorized for the operation and maintenance of El Sereno Community Garden is enclosed by the bold line on the map below.



### Site Map for Patton Street Community Garden

**Patton Street Community Garden - 327 Patton Street, Los Angeles, CA 90027**

The community garden is part of Patton Street Park as depicted below. The area authorized for the operation and maintenance of the Patton Street Community Garden is enclosed by a line around the upper portion of the diagram below and labeled as a community garden.



### Site Map for East Wilmington Community Garden

East Wilmington Community Garden is located at East Wilmington Greenbelt Park in Wilmington. The garden is on East 'L' Street, between Drumm Avenue and Coil Avenue. The area authorized for the operation and maintenance of the East Wilmington Community Garden is enclosed by the bold line on the map below.



East Wilmington  
Community Garden

Agreement No. \_\_\_\_\_

## EXHIBIT B

### Sample Performance Evaluation Form

#### **City of Los Angeles Department of Recreation and Parks PARTNERSHIP DIVISION**

#### PERFORMANCE REVIEW

<b>ORGANIZATION</b>	
<b>PROJECT/PROGRAM TITLE</b>	
<input type="checkbox"/> ONE-TIME or ROE <input type="checkbox"/> <input type="checkbox"/> ANNUAL <input type="checkbox"/>	
<b>DEPARTMENT FACILITY(IES)/ADDRESS &amp; PHONE NUMBER</b>	
<b>CONTRACT NUMBER</b>	<b>CONTRACT EXPIRATION DATE</b>
<b>ORGANIZATION TYPE</b> <input type="checkbox"/> 501(c)(3) <input type="checkbox"/> Government <input type="checkbox"/> Sports Group <input type="checkbox"/> Community Group other than 501(c)(3) <input type="checkbox"/> For-Profit <input type="checkbox"/> Other	
<b>AGREEMENT TYPE</b> <input type="checkbox"/> ROE <input type="checkbox"/> Exclusive <input type="checkbox"/> Shared <input type="checkbox"/> Gift/Capital <input type="checkbox"/> Gift/Funding <input type="checkbox"/> MOU/MOA <input type="checkbox"/> Joint Use <input type="checkbox"/> Other	
<b>DATE &amp; TIME OF INSPECTION</b>	<b>REVIEW PERIOD COVERED</b>
<b>NUMBER OF PARTICIPANTS PRESENT ON DATE OF INSPECTION</b>	<b>NUMBER OF VOLUNTEERS/STAFF PRESENT ON DATE OF INSPECTION</b>
<b>NUMBER OF PARTICIPANTS REGISTERED AT THIS TIME (OR HOW MANY ARE SERVED)</b>	<b>NUMBER OF VOLUNTEERS/STAFF EMPLOYED AT THIS TIME</b>
<b>NAME, TITLE, AND EMAIL ADDRESS OF SITE CONTACT</b>	

**Describe activities at time of inspection**

	Unsatisfactory	Improvement Needed	Meets Standards	Exceeds Standard	Outstanding
<b>PROGRAM</b>	<input type="checkbox"/>				
Collaboration enhances recreational opportunities (no duplication)					
Based on inspection or oral/written feedback, participants are enjoying/engaged in program					

Participation appears to include a reasonable proportion from the local community and inclusion of special needs participants (based on inspection or RAP staff comments)					
Instructors, leaders, staff, and/or volunteers are specialized, licensed, experienced, and/or have an appropriate level of education					
Instructors, leaders, staff, and/or volunteers are professional, polite, and prepared					
	<b>Unsatisfactory</b>	<b>Improvement Needed</b>	<b>Meets Standards</b>	<b>Exceeds Standard</b>	<b>Outstanding</b>
<b>FINANCIAL</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Cost of the program is free, low cost, or similar to programs in the same community and consistent with agreement (list fees/rates)					
Organization's annual budget is provided and is sufficiently funded for commitment (attach)					
Organization pays cost recovery fees on-time and according to requirements (attach payment summary)					
Value to Department (list total expenses from 990 & attach)					
	<b>Unsatisfactory</b>	<b>Improvement Needed</b>	<b>Meets Standards</b>	<b>Exceeds Standard</b>	<b>Outstanding</b>
<b>OUTREACH</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Number of current participants reaches or exceeds target of agreement; list the target number of participants in the agreement					
Is there a current waiting list? How many people are on it? Is there a fee? (attach a copy of the list and list the fee amount, if any)					
If space is available, what efforts did the organization make to recruit new participants during this review period?					
Organization provided demographic information and analysis (attach)					
Organization performed and provided annual surveys of participants or parents of participants about program (attach)					
Marketing material (attach) and any signs on site include "In collaboration with the City of Los Angeles, Department of Recreation & Parks" and the Department logo					
Organization's web site links to the RAP web site (list website address if applicable)					

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Department has approved all marketing materials					
	Unsatisfactory	Improvement Needed	Meets Standards	Exceeds Standard	Outstanding
<b>SAFETY COMPLIANCE</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Employees and volunteers of program are fingerprinted and written verification is provided					
Current liability insurance that includes the City of Los Angeles, Department of Recreation and Parks as determined by City Risk Manager (attach printouts)	CA#: Expiration Date:				
Adequate program staff to provide proper supervision and safety (list ratio of staff to participants)					
All equipment and instructional supplies adhere to Department safety specifications and requirements					
Maintains designated areas in a clean and orderly condition					
	Unsatisfactory	Improvement Needed	Meets Standards	Exceeds Standard	Outstanding
<b>ORGANIZATION COMPLIANCE</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Maintains good communication and a professional relationship with the Department					
Provides required written reports including Annual Report (attach)	Date Due: Date Received:				
Annual report data about the program is consistent with agreement terms including fees charged to participants					
Compliance with all terms of the agreement (days & hours of operation, parking, fees, approved use of space, participants, etc.)					
Organization is in good legal standing: check Sec. of State website and (if applicable) proof of 501(c)(3) status (attach printouts)					
Is sub-leasing of the space occurring?					
Does Department have control over property usage during non-designated times (if applicable)					
Public Complaints resolved (attach, if any)					

Agreement No. \_\_\_\_\_

Compliance Resolutions completed satisfactorily (attach, if any)					
List any small scale improvements planned, in progress, or completed (i.e. painting, changes to landscaping, etc.) Were the improvements approved by the Dept.? (if applicable, list date and name of approver)					
Capital improvement projects are in conformance with City Standards and in coordination with the Department, and Bureau of Engineering (if applicable, list projects planned, in progress, or completed)					

OVERALL EVALUATION	Unsatisfactory	Improvement Needed	Meets Standards	Exceeds Standard	Outstanding
	<input type="checkbox"/>				

**PARTICIPANTS (OR PARENTS) - Comments / Complaints / Complements**

(Large empty box for comments)

**SITE STAFF OR VOLUNTEERS - Comments / Issues/Requests**

(Large empty box for comments)

**RAP STAFF (Recreation, Maintenance, Construction, Other)**

**Additional Comments / Complaints / Complements (attach any Compliance Resolution forms)**

*Include any comments on how Partner is reaching out to community, and how well participation reflects community.*

(Large empty box for comments)

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--

**ADDITIONAL COMMENTS / RESULTS / RECOMMENDATIONS**

--

**NAME AND TITLE OF EVALUATOR**

SIGNATURE OF EVALUATOR	DATE
------------------------	------

**NAME AND TITLE OF REVIEWER**

SIGNATURE OF REVIEWER	DATE
-----------------------	------

**ATTACHMENTS**

- Participant Progress Stats    Annual Budget    Payment Summary    990/Expenses    Demographic Analysis  
 Annual Surveys    Flyers and PR Materials    Insurance Status    Annual Report    Legal/501c3 Status  
 Public Comments/Complaints    Compliance Resolution Forms    Photos    Program Forms    Other \_\_\_\_\_

Please sign below and return entire form within one week to acknowledge receipt of this performance review.

**PRINT NAME AND TITLE OF SITE CONTACT**

SIGNATURE OF SITE CONTACT	DATE
---------------------------	------

## EXHIBIT C

### **Los Angeles Community Garden Council Sample Operating Rules and Guidelines for a Community Garden**

The Los Angeles Community Garden Council will work with communities and gardeners to develop garden rules. Each community garden will have its own written garden rules based on the specific needs and circumstances of the community. As the garden is a shared space, it is necessary that gardeners agree to observe a set of rules regarding how to maintain their assigned plots and shared areas as well as cultivate positive relationships. The following sample garden rules are for consideration to be used as a starting point.

#### **Garden Hours, Maintenance, and Tools**

1. Gardeners may access the garden from sunrise to sundown daily, year-round. Gardeners are responsible for locking the gate behind them. Keys and combinations are strictly for personal use and must not be shared with others.
2. Gardeners must plant their plot within \_\_\_\_ days of the plot being assigned. They must garden year-round.
3. If gardeners are unable to tend the plot due to illness or traveling, they must arrange for someone else to tend the plot and notify the Garden Leadership Team.
4. Gardeners must keep their plot, paths, and surrounding areas around their plot clean and free of trash, weeds, and debris. They must keep the plot free of weeds, pests, and diseases. Because of the communal nature of a community garden, this is necessary to control against invasions of the whole garden.
5. Plot boundaries are clearly defined and plants must remain within the boundaries of each plot. Gardeners may not plant trees in their plots or any plants higher than \_\_\_\_ feet.
6. Gardeners must not apply any pesticides, insecticides or herbicides in the garden without approval from the Garden Leadership team. Organic gardening promotes the health of our produce, soil, and fellow gardeners.
7. Gardeners are responsible for taking any trash or recyclables that they generate with them out of the garden.
8. Tools must be returned to their proper location after use to keep the garden and toolsheds in a neat condition. Gardeners are responsible for locking the toolsheds. If a tool is missing, damaged or broken, inform a member of the Garden Leadership Team immediately. Gardeners may be held responsible for damaged or broken items or equipment and they may not be replaced if missing or broken. Please conserve water and use a trigger-operated nozzle on the hose

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as required by California law. Notify the Garden Leadership Team of any leaks. Maintain your raised bed to conserve water.

9. All water hoses are to be left coiled near the water spigots.
10. Gardeners may be required to contribute some time each month to maintain the communal areas of the garden.

### **Plot Assignments and Gardener Meetings**

11. Plots are assigned based on the date and time of receipt of the plot application. Only one plot will be assigned per household.
12. The plot fee is \$\_\_\_\_ per year. The plot fee will be reassessed after \_\_\_\_ months to ensure that it covers the cost of the water bills and basic garden maintenance.
13. The first payment of \$\_\_\_\_ and a key deposit of \$\_\_\_\_ must accompany the application. Payment can be made by check payable to "LA Community Garden Council" or by cash. A receipt will be issued immediately for all cash payments.
14. Plots are assigned for a \_\_\_\_-month period. Renewal is not automatic and is based on gardeners' following the rules. After a plot has been renewed \_\_\_\_ times, it may be given to someone on the garden waitlist.
15. Fees will not be refunded.
16. If all plots have been assigned, an applicant will be placed on a waitlist. The Garden Leadership Team will maintain this waitlist.
17. Gardeners are encouraged or may be required to attend scheduled meetings.

### **Mutual Respect**

18. Gardeners must not take food, plants or materials from other gardeners' plots.
19. Gardeners must not water, weed or cultivate other gardeners' plots without express permission from that plot's main gardener.
20. Gardeners must not use abusive or profane language or discriminate against others for any reason including but not limited to: age, race, religion, national origin, gender, sex, sexual orientation, political affiliation or ability.
21. Gardeners' guests and visitors may enter the garden only if accompanied by the main gardener. Guests and visitors must follow all rules, terms, and conditions stated here.
22. All children under 18 years must be supervised by a responsible adult.

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23. \_\_\_\_\_ are prohibited in the garden. (Examples: tobacco, alcohol, illegal drugs)
24. Possession of dangerous chemicals, harmful substances, and fire arms is prohibited at all times.
25. Pets are not allowed in the garden.
26. Community events may only be held in the garden with the permission of the Garden Leadership Team.
27. Headphones must be used if playing music in the garden, except for at a community event with the permission of the Garden Leadership Team.
28. Gardeners may not collect money or organize raffles without the permission of the Garden Leadership Team.

### **Safety**

29. Gardeners are to report any accidents or vandalism promptly to a member of the Garden Leadership Team.
30. In case of fire or other emergency please call 911.
31. For city services call 2-1-1

### **Consequences for Violating the Garden Rules**

32. Gardeners may be asked to leave the garden for:
  - a. Violating the stated rules
  - b. Neglecting to maintain their plot
  - c. Harassment, discrimination, physical or verbal abuse of any party affiliated with the garden
33. Removal from the garden will follow:
  - a. For the first incident, a documented verbal warning made in a one-on-one meeting
  - b. For the second incident, a written warning
  - c. In the event of a third incident, a gardener will be asked to leave the garden
34. Upon dismissal, dues will not be returned. It is expected the gardener will leave the plot as when it was assigned.

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## EXHIBIT D

### Insurance Requirements

#### Required Insurance and Minimum Limits

Name: Los Angeles Community Garden Council Date: 04/12/2017

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

Limits

<input checked="" type="checkbox"/> <b>Workers' Compensation - Workers' Compensation (WC) and Employer's Liability (EL)</b>		WC	Statutory
		EL	\$1,000,000
<input type="checkbox"/>	Waiver of Subrogation in favor of City	<input type="checkbox"/>	Longshore & Harbor Workers
		<input type="checkbox"/>	Jones Act

General Liability \$1,000,000

Products/Completed Operations       Sexual Misconduct  
 Fire Legal Liability

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

Professional Liability (Errors and Omissions)

Discovery Period 12 Months After Completion of Work or Date of Termination

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 100% of the contract price

Crime Insurance

Other: 1) If a contractor has no employees and decides not to cover herself/himself for workers' compensation, please complete the form entitled "Request for Waiver of Workers' Compensation Insurance Requirements" located at <http://cao.facility.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.

Agreement No. \_\_\_\_\_

EXHIBIT E

**Standard Provisions for City Contracts (Rev – 03/09)**

# STANDARD PROVISIONS FOR CITY CONTRACTS

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## **STANDARD PROVISIONS FOR CITY CONTRACTS**

### **PSC-1. CONSTRUCTION OF PROVISIONS AND TITLES HEREIN**

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

### **PSC-2. NUMBER OF ORIGINALS**

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

### **PSC-3. APPLICABLE LAW, INTERPRETATION AND ENFORCEMENT**

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

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

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

#### **PSC-4. TIME OF EFFECTIVENESS**

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

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

#### **PSC-5. INTEGRATED CONTRACT**

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

#### **PSC-6. AMENDMENT**

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

#### **PSC-7. EXCUSABLE DELAYS**

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

#### **PSC-8. BREACH**

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

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

## **PSC-9. WAIVER**

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

## **PSC-10. TERMINATION**

### **A. TERMINATION FOR CONVENIENCE**

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

### **B. TERMINATION FOR BREACH OF CONTRACT**

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

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

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

#### **PSC-11. INDEPENDENT CONTRACTOR**

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

#### **PSC-12. CONTRACTOR'S PERSONNEL**

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

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

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

#### **PSC-13. PROHIBITION AGAINST ASSIGNMENT OR DELEGATION**

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

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

#### **PSC-14. PERMITS**

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

#### **PSC-15. CLAIMS FOR LABOR AND MATERIALS**

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

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

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

#### **PSC-17. RETENTION OF RECORDS, AUDIT AND REPORTS**

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

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

#### **PSC-18. FALSE CLAIMS ACT**

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

#### **PSC-19. BONDS**

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

#### **PSC-20. INDEMNIFICATION**

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

#### **PSC-21. INTELLECTUAL PROPERTY INDEMNIFICATION**

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

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

## **PSC-22. INTELLECTUAL PROPERTY WARRANTY**

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

## **PSC-23. OWNERSHIP AND LICENSE**

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

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

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

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

#### **PSC-24. INSURANCE**

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

#### **PSC-25. DISCOUNT TERMS**

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

#### **PSC-26. WARRANTY AND RESPONSIBILITY OF CONTRACTOR**

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

#### **PSC-27. NON-DISCRIMINATION**

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

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

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

#### **PSC-28. EQUAL EMPLOYMENT PRACTICES**

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

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

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

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

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

#### **PSC-29. AFFIRMATIVE ACTION PROGRAM**

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

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

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

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

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

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

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

#### **PSC-30. CHILD SUPPORT ASSIGNMENT ORDERS**

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

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

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

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

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

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

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

#### **PSC-32. AMERICANS WITH DISABILITIES ACT**

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

### **PSC-33. CONTRACTOR RESPONSIBILITY ORDINANCE**

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

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

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

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

### **PSC-35. EQUAL BENEFITS ORDINANCE**

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

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

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

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

#### **PSC-36. SLAVERY DISCLOSURE ORDINANCE**

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

## EXHIBIT 1

### INSURANCE CONTRACTUAL REQUIREMENTS

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

### CONTRACTUAL REQUIREMENTS

CONTRACTOR AGREES THAT:

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

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

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

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

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

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

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

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

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

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

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